

September 21, 2016

D. Ann D'Angelo
Assistant General Counsel
Transportation Cabinet
Office of Legal Services
200 Mero Street
Frankfort, Kentucky 40622

Dear Ms. D'Angelo,

On behalf of the more than 31,000 members of the National Society of Professional Engineers (NSPE) and the approximately 500 members of the Kentucky Society of Professional Engineers (KSPE), we thank the Kentucky Transportation Cabinet for withdrawing the proposed rulemaking to repeal Kentucky Regulations 600 KAR 6:020, 600 KAR 6:030, and 600 KAR 6:060 and recognizing the essential value of Qualifications-Based Selection (QBS).

The three administrative regulations initially proposed for repeal are important components of QBS. QBS is a procedure whereby service providers are retained on the basis of qualifications, rather than price factors. Under the QBS method, the procuring agency reviews the qualifications submitted by interested individuals and firms, ranks respondents, and then negotiates with the most qualified respondent for a mutually agreeable contract.

NSPE believes QBS is the best method for procuring architectural and engineering services for the following reasons:

QBS protects the public welfare. Most individuals would not select medical or legal services based solely on cost — these highly skilled services are too important to leave to the lowest bid. Likewise, engineering is a highly skilled service that should not be selected on basis of the firm offering the cheapest price. Engineers design the highways and bridges we drive on, our water treatment systems, and all other infrastructure and systems upon which we rely. The design services provided by engineering firms directly affect the health, safety and welfare of the public, and it is important that only the most qualified and experienced firms be tasked with this critical function.

QBS protects the taxpayer. Over the life of a project, engineering services account for less than one-half of one percent of total project costs. Yet these services play a profound role in determining overall project costs. A well designed project by highly qualified firm will stay on time and on budget, solve construction and operational challenges, experience fewer change

orders during construction, enhance performance of the completed project, and lower long-term maintenance and repair costs.

QBS benefits small firms. QBS helps small firms compete by providing a forum to demonstrate their unique capabilities that often include a greater degree of niche market expertise, knowledge of local regulations and business practices, and greater involvement of senior level management in the execution of a project.

QBS promotes technical innovation. Using QBS, owners have the opportunity to fully define the project scope during the selection process. This process fosters innovative, cost-saving and timesaving approaches to problems, ensuring that the final project meets or exceeds the functional and performance goals set by the owner.

NSPE believes professional engineers, on the basis of design ability, experience, and integrity should perform all engineering services. NSPE has long supported the procurement of design professional services on the basis of qualifications and was instrumental in the enactment of the federal Brooks Architect-Engineer (A/E) Act (PL 92-582) (the “Brooks Act”). The federal Brooks Act, enacted in 1972, requires federal agencies to use QBS procedures when procuring design services.

NSPE and KSPE staff have been in contact and corresponded with you on this issue. We greatly appreciate your responsiveness and the information you have provided. In the absence of regulations pertaining to QBS, there is no enforceable mechanism to carry out QBS. If a change of staff, administration, or a shift in internal policy takes place without regulations for QBS, the policies of the Transportation Cabinet can be rewritten. NSPE, therefore, commends the Kentucky Transportation Cabinet for rescinding its proposal to repeal 600 KAR 6:020, 600 KAR 6:030, and 600 KAR 6:060.

Thank you for the opportunity to address this important issue. Please contact Arielle Eiser, NSPE Senior Manager of Government Relations, at aeiser@nspe.org with any comments or questions.

Sincerely,



Kodi Jean Verhalen, P.E., Esq., F.NSPE
President, 2016-2017
National Society of Professional Engineers