

## Qualifications-Based Selection

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### Issue

Describe the qualifications-based selection method for selecting architectural and engineering firms for capital projects, including whether it is required by state law or other jurisdictions' laws.

### Summary

Qualification-based selection (QBS) is a method for selecting firms that uses weighted criteria to compare and evaluate them in relation to the scope and needs of a specific project. Unlike other forms of procurement, these criteria do not include a proposed price for the contract. Rather, the agency uses the criteria to identify the highest-qualified firm and then enters contract negotiations with that firm. If the parties cannot reach agreement, then the agency negotiates with other firms until it reaches an agreement.

In Connecticut, the law requires that the departments of Administrative Services (DAS) and Transportation (DOT) use QBS, and both departments have used it for several decades. However, the law prescribes different procedures for the respective departments, which we describe separately below. Municipalities need not use QBS unless they are contracting for a state- or federally funded project and state or federal law requires it (e.g., school construction).

At the federal level, a law known as the Brooks Act requires federal agencies to use QBS when procuring architectural and engineering services. A separate federal law applies the Brooks Act's requirements to federally funded highway projects administered by states.

Most other states have a QBS law (often referred to as "mini-Brooks acts"). While we did not find any current sources with a precise total, information published in recent years by multiple state agencies and professional organizations indicates that a large majority of states (45 or more) have

them. States vary in terms of the scope of their QBS laws, including whether or not they apply to local governments.

## Connecticut

### *DAS*

The law requires DAS to use QBS when selecting consultants, including architects and engineers. Generally, the law requires the DAS commissioner to select the firm she judges to be most qualified and then negotiate a contract with that firm for compensation she determines is both fair and reasonable to the state. In determining fair and reasonable compensation, she must consider the following, in order of importance: the firm's professional competence, the proposal's technical merits, the firm's ability to perform the required services within the contract's time and budgetary limits, and the price of the services ([CGS § 4b-58](#)).

For certain types of projects, the law imposes specified processes and requirements, which we summarize below. More information is [available from DAS](#).

**Major Projects.** By law, DAS must establish a selection panel to evaluate consultant services proposals if the estimated cost of those services exceeds \$500,000 (referred to as "projects" in statute and "major projects" by DAS). Panels consist of three members for projects of less than \$5 million and five members for projects of \$5 million or more ([CGS §§ 4b-55](#) and [-56](#)). In practice, the department uses screening panels to conduct the first review of submitted proposals and prepare a shortlist for the selection panel's consideration.

The selection panel must select at least three firms that are most qualified, according to commissioner-established criteria, to perform the required services. For architects and engineers, the panel must also consider the firm's knowledge of the state's building and fire codes and its geographic location relative to the project's location. The panel must submit a list of the most qualified firms to the commissioner for her consideration unless it receives fewer than three responses, in which case it must submit the names of all responding firms ([CGS § 4b-57](#)).

The commissioner must negotiate a written contract with the most qualified firm on the list for compensation that she determines to be fair and reasonable to the state. If she does not reach an agreement with any of the panel's selected firms, she must (1) issue written findings of fact documenting the reasons and (2) negotiate with those firms she determines to be most qualified to render the requested services, for fair and reasonable compensation ([CGS § 4b-58\(a\)\(2\)](#)).

**On-Call Contracts.** DAS also employs architects and other consultants through "on-call" contracts ([CGS § 4b-51\(d\)](#)). An on-call contract defines a broad range of consultant services (e.g., architectural services) and is generally valid for two to three years. An on-call contract is not

connected to a specific project; rather, DAS subsequently issues task letters to firms with on-call contracts that identify a specific scope of services to be performed and the fee for those services.

The law establishes three-member selection panels within DAS for selecting on-call consultants. The panels must list the most qualified firms to perform the requested services. The panels must specifically consider the firm's knowledge of the building and fire codes and whether it is a micro-business (i.e., had gross revenues of \$3 million or less in the most recent fiscal year) ([CGS §§ 4b-56\(e\)](#) & [-57\(c\)](#)).

***State Properties Review Board Approval.*** Consultant contracts entered into by DAS must be approved by the State Properties Review Board if they cost more than \$100,000 (\$300,000 for higher education and Judicial Department projects). The approval requirement also applies to all DAS on-call contracts and to task letters with values exceeding \$100,000. The board has 30 days to approve or disapprove the contract or task letter; it is deemed approved if the board does not act within this timeframe ([CGS § 4b-23\(i\)](#)).

## ***DOT***

The law requires DOT to use QBS when selecting consultants, including architects and engineers ([CGS §§ 13b-20b](#) to [-20k](#), as amended by [PA 21-175](#), §§ 4 & 5). For each project, the law establishes within the department (1) selection panels to determine the most highly qualified firms and (2) negotiation committees to negotiate a contract with the selected firm. The panels have at least four members while the committees have three members.

The law requires consultants seeking contracts with DOT to annually prequalify with the department. A selection panel for a particular solicitation may consider firms that are not prequalified only if the prequalified list (1) contains fewer than five firms within the category of services being sought or (2) does not include the area of expertise the department requires ([CGS §§ 13b-20e](#) & [-20g](#), as amended by [PA 21-175](#), § 4).

In evaluating firms, the panel and DOT commissioner must be guided by the following criteria:

1. specialized design and technical competence for the required service;
2. capacity and capability to perform the work (including specialized services) within the time limitation;
3. past performance on state contracts and with other clients regarding control of costs, quality of work, program conformance, and cooperation with the client;
4. the firm's volume of work for DOT within the previous three years and the volume of work to be performed, with the goal of having an equitable distribution of contracts while maintaining the principle of selecting the most highly qualified firms; and

5. if a full work proposal process is used, the degree to which the proposal satisfies DOT's requirements ([CGS § 13b-20i](#)).

The panel must interview at least five consultants; if fewer than five respond, then it must interview all responding firms. The panel must furnish a list of the most qualified firms to the commissioner, who must select a firm from this list ([CGS § 13b-20j](#)).

After the commissioner makes his selection, a negotiating committee receives fee proposals from the firm and the applicable DOT bureau and enters negotiations with the firm. If the committee cannot negotiate a satisfactory contract at a price it determines to be fair, competitive, and reasonable, then it must terminate negotiations. At this point the commissioner must select a different firm from the selection panel's list, and the committee must negotiate with the firm. This process is repeated until an agreement is reached. If the committee cannot reach an agreement with any of the selected firms, then the selection panel must select additional firms ([CGS § 13b-20k](#)).

More information is available from [DOT's Consultant Selection Office](#).

Federal law also requires DOT to use QBS for federally funded highway projects (see below).

## ***Municipalities***

Generally, bidding requirements for municipal projects depend on the contract's funding source. If funded by the municipality, then the requirements, if any, would be governed by the local charter or ordinances. If the project is funded in whole or in part by the state, then additional statutory requirements, such as using QBS, may apply.

For example, the school construction grant program requires a QBS process for selecting consultants, including architects and engineers ([CGS § 10-287\(b\)\(2\)](#), as amended by [PA 22-118](#), § 376). However, the Local Transportation Improvement Program (LoTCIP), which is also state-funded, does not contain such a requirement ([CGS § 13a-98n](#)). Rather, DOT advises municipalities to use local procedures for procuring architectural and engineering services (see DOT's [LoTCIP guidelines](#), p. 14).

OLR Report [2017-R-0360](#) provides more information about municipal contracting.

## **Other Jurisdictions**

### ***Federal Government***

A federal law (known as the Brooks Act) requires federal agencies to use QBS when procuring architectural and engineering services. Under the act, agency heads must hold discussions with at

least three firms to consider anticipated concepts and compare alternative methods for furnishing services. The agency head must then (1) select at least three firms, in order of preference, the agency considers most highly qualified to provide the required services and (2) begin negotiations with the top-ranked firm.

The contract must be for compensation that is fair and reasonable to the federal government, considering the services' scope, complexity, professional nature, and estimated value. If the agency and firm cannot agree to a contract, the agency head must repeat this process with other firms, in order of ranking, until an agreement is reached. If an agreement is not reached with any of the originally selected firms, then the agency must select additional firms in order of competence and qualifications and negotiate with these firms, in order of ranking, until an agreement is reached ([40 U.S.C. §§ 1101-1104](#)).

***Application to Transportation Projects.*** The Brooks Act's requirements are also incorporated by reference into the law governing federal funding of highway projects. Under this law, when a state transportation agency performs or supervises a federally funded highway project, it must follow the Brooks Act's requirements when selecting, among others, architects and engineers ([23 U.S.C. § 112\(b\)\(2\)](#)).

### ***Other States***

While we did not find any sources with current, comprehensive information about how many states have QBS laws, information published in recent years by multiple state agencies and professional organizations indicates that a large majority of states have them. For example, in a 2015 presentation, the North Carolina Board of Examiners for Engineers and Surveyors estimated that 47 states have mini-Brooks acts.

However, the laws may vary with respect to the types of projects they apply to, permissible exceptions, and whether they apply to local governments. For example, as noted earlier, Connecticut's QBS laws apply to certain state agencies but not to municipalities broadly. In North Carolina, the state's QBS law applies to local governments, but it allows them (as well as the state DOT) to exempt a project if the professional fee is less than \$50,000 ([N.C.G.S. § 143-64.32](#)).

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