



## AIA Washington Council

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# Issue Brief

## Qualifications Based Selection for A/E Services

### Background

The AIA Washington Council supports the competitive selection of architects and engineers for state and local government (public sector) work based on professional qualification and competence, with negotiated fees. Both, 40 USC § 541 (The Brooks Act), and RCW 39.80 (Contracts for Architectural and Engineering Services) are endorsed by the AIA/WA for the public sector procurement of architecture and engineering (A/E) services.

Under qualifications-based selection laws (QBS), the contracting agency negotiates a scope of services, including the best possible fees, after selecting the most qualified firm. If the agency is unsatisfied with the scope of services and fees negotiated, it may end negotiations with that firm and start negotiations with the next most qualified firm. Through this process, the agency maintains ultimate control over not only the scope of a project, but the fees paid to the A/E firm. It also is in this negotiation process that the true scope of a project is generally determined. Fee-based selection would undermine these valuable negotiations. The initial price would change during the scope negotiations or the cost of the project would change due to inevitable change orders necessitated by efforts to adequately design the project.

In addition to the federal government, 47 of the 50 states hire architects and engineers by QBS. Moreover, the American Bar Association Model Procurement Code for State & Local Governments and the American Public Works Association each endorse QBS for selecting architecture and engineering services.

### Variations of Price Competition

While the vast majority of government agencies in Washington State actively support and use QBS, a small minority try to get around the law's provisions. One method used by some agencies is to ask the responding firms to provide a schedule of fees charged and the number of hours that will be assigned to the project. While the request does not ask directly for a fee proposal, it is a relatively simple matter to do the math to get an estimated price. Another manner for avoiding QBS is to have respondents put their bids in a "second envelope" that is opened after the firms are ranked on qualifications. The agency then uses the fees to skip more qualified firms and award the project to a firm with a lower bid. Both of these methods violate the state's QBS law by forcing price into the initial selection of the A/E firm.

### Americans Support QBS for A/E Services

In a nationwide poll of voters conducted December 16-22, 2004, (1,000 sample, margin of error +/- 3.1) by two respected national pollsters - The Tarrance Group, a Republican firm, and Lake Snell and Perry, a Democratic firm - it was found that only 11 percent of voters said they agreed with the viewpoint that "architects and engineers who are hired by government agencies to design and construct public buildings like schools, hospitals, airports, courthouses and prisons should always be awarded to the lowest bidder in order to save money."

On the other hand, a strong 88 percent agreed with the contrary statement, "Because public health and safety is at stake, these contracts should be awarded by selecting the best qualified architects and engineers and then negotiating the best possible fee." *In the poll, every major voter group registered over 80 percent support for the QBS concept.*