



## *TEXAS COUNCIL OF ENGINEERING COMPANIES*

### ***PROCUREMENT OF ENGINEERING SERVICES***

The Texas Transportation Commission has included in its legislative recommendations – without any public notice or comment - a proposal to drastically change existing laws governing how governmental entities select and procure providers of engineering services. The current process, often referred to as qualifications-based selection, requires that entities rank potential providers on the basis of qualifications, experience, and their ability to bring value to the project, then negotiate with providers in order of rankings until a fair and reasonable contract. The proposal by Commissioner Robert Nichols would substitute what is essentially a bidding system. This proposal is penny-wise and pound-foolish and will cost taxpayers far more than it saves.

#### ***QBS is the overwhelming standard across the country, not the exception.***

The law on engineering procurement as it currently exists in Texas is the law in over 40 states and the federal government. Approximately 47 state DOTs follow QBS, with only a handful of small states as the exception. Over the past 20 years, the Nichols approach has been tried by several large state DOTs and rejected as unworkable. QBS is not just a design industry idea; it is supported by owner groups such as the American Public Works Association and is a key component of the American Bar Association's Model Procurement Law.

#### ***The Nichols proposal will cost taxpayers far more than it saves.***

Although engineering costs are only one or two percent of the life cycle costs of a typical construction project, it is the quality of the engineering decisions made at the front end of the project that drives construction costs and life cycle costs. The Nichols proposal fundamentally changes the role of and the incentives for an engineer in a construction project. Rather than working as the owner's agent in developing cost-effective solutions the model becomes one of designing what is cheapest to design. Unfortunately (for the taxpayer), what is cheapest for the engineer to design is often most expensive for the owner to build. The effect of this proposal will be to short circuit the evaluation of engineering alternatives, compromise design quality, and increase change orders and construction costs. Since construction and maintenance costs are many times larger than design costs, the overall effect will be significantly worse for taxpayers.

***The proposal will lead to higher administrative costs, project delays, and more bureaucracy.***

Typically, in the early stages of an engineering procurement, the precise scope of work is undeveloped. Therefore, it is virtually impossible to put proposers on a level playing field with a common project understanding. Owners attempting to implement the proposal will be forced to make more engineering decisions in-house, which will result in more staff, higher administrative costs, project delays, and less innovation. Studies from other states confirm and quantify this fact.

***The existing system already promotes and ensures best value.***

Taxpayers have a right to receive and legislators have an obligation to ensure best value in contracting, but the existing system provides that far better than the Nichols proposal. Government-funded engineering work is virtually a regulated industry, and engineering contracts with state agencies – particularly TxDOT – are probably the most audited, overseen, and standardized contracts within state government. Actual market labor rates are available from a wide variety of industry surveys. Labor additives and indirect cost rates are rigorously audited in accordance with federal regulations and these audits are provided to owners. And most owners – especially TxDOT – have extensive documentation from past contracts and in-house projects to help evaluate the level of effort involved. This is a solution in search of a problem.

***The proposal will be detrimental to HUBs and DBEs and will promote offshoring of jobs.***

The use of HUB/DBEs in professional services, including engineering services, is extensive, typically well in excess of state goals. This is directly related to the flexibility and subjectivity in the professional services selection process, which gives providers an incentive to come to the table with teams that meet goals. Moving to a selection process that is price-based at the front end will create an outcome more like the construction industry, where providers must merely make a good faith effort to meet goals, but ultimately low price prevails. Similarly, offshoring of technician-level design work is already prevalent in the engineering industry. The greater the pressure for firms to push low price over quality and value, the more this trend will increase.