



**ACEC
OKLAHOMA**

**How to Select
a Consulting Engineer
for Your Project**

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by the

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THE IMPORTANCE OF GOOD DESIGN

It is no exaggeration to say that the most important ingredient of any construction project is its design. The quality of design is the single most important factor in determining a project's "life-cycle cost" — the initial cost of construction, plus the ongoing costs for operation and maintenance.

Design is one of the very first steps in the construction process, but it dictates everything that follows: the size and layout of the facility; type of construction materials; capacity of mechanical and electrical systems; energy efficiency; and other factors. Not even the best contractor using the finest of construction materials can overcome the failings of a poor design.

Professional design services — engineering, architecture or surveying — represent only a small percentage of the construction budget, and a far smaller percentage of life-cycle cost, so it makes sound economic sense to ensure your consulting engineer has the experience and qualifications needed to deliver a high-quality design.

Qualifications-Based Selection (QBS) is a process that enables the project owner to obtain the services of a highly qualified engineering professional at a fair and reasonable cost, an investment in quality that will result in substantial savings over the life of the project.

This manual will explain, in detail, how to select and retain a consulting professional engineer or other "design professional" (architect or professional land surveyor) using the QBS process. While the primary purpose of this manual is to assist cities, villages, townships, school boards and other "public authorities," private construction owners can reap the same benefits from the use of QBS. Throughout this manual, the terms "owner" and "public authority" are used interchangeably to refer to public construction project owners.

WHY USE QUALIFICATIONS-BASED SELECTION?

Construction of any physical facility is a complicated and highly technical process. Yet, at the outset of most construction projects, owners do not fully comprehend the complexities of the projects they envision and the wide range of design and construction services that will be required in order to transform their vision into reality.

The consulting engineer or architect takes the owner's general concepts and transforms them into technical documents — plans and specifications — that are used by the construction contractor to build the owner's facility. In the construction process, the professional engineer serves as the agent of the owner, representing the owner's interests in day-to-day dealings with contractors, suppliers, equipment manufacturers and others providing goods and services on the project. The engineer is also the owner's "eyes and ears" on the construction site. Obviously, it is vital that the owner and engineer share a professional relationship characterized by trust, respect and effective communication.

Qualifications-Based Selection fosters this type of relationship by bringing the owner and engineer together as a team, enabling them to define the project in detail and agree upon the services that will be required to make the project a reality. No wonder, then, that QBS is the most widely endorsed method for selecting a professional consulting engineer.

Since 1972, all agencies of the federal government have been required to use the QBS procedure for selecting design professionals. **In 1982, the Oklahoma legislature passed the "State Consultants Act,"** which mandates the use of the QBS procedure by all state government entities, and allows the use of the "**State Consultants Act**" by all political subdivisions. The American Bar Association recommends the use of Qualifications-Based Selection by state and local governments, saying:

"The principal reasons supporting this selection procedure for architect, engineer and land surveying services are the lack of a definitive scope of work for such services at the time the selection is made and the importance of selecting the best qualified firm. In general, the architect, engineer or land surveyor is engaged to represent the (state's) interest and is, therefore, in a different relationship with the (state) from that normally existing in a buyer-seller situation. For these reasons, the qualifications, competence, and availability of the most qualified architect, engineer or land surveyor firms are considered initially, and price negotiated later."

The American Public Works Association, agrees, saying:

"Competitive bidding for engineering and architectural services is not in the best public interest because it may lead to the employment of the least qualified rather than the best qualified, as should be the objective. The sole objective of bidding is low cost. Only when the services or a product can be described in exact detail, where all parties can bid on the same basis for comparison, should bidding be considered. Professional services in engineering, law, architecture, and medicine — to name a few — are not recognized as being amenable to detailed specifications."

HOW QUALIFICATIONS-BASED SELECTION WORKS

The QBS process involves three distinct phases:

Phase I — Selection of the Most Qualified Engineer

The project owner prepares a basic description of the project to be built or the problem to be solved, then invites engineering firms to submit statements of qualifications to be considered for the engineering contract. Interested firms are rated objectively on the basis of their qualifications and ultimately, the most qualified firm is identified and offered the opportunity to enter contract negotiations.

Phase II — Definition of the Scope of Service

The selected engineering firm meets with the owner to discuss the proposed project in detail. These discussions enable the engineer to write a detailed scope of service, a document that specifies exactly the various tasks the engineer will perform on behalf of the owner.

Phase III — Fee and Contract Negotiation

Once the scope of services is agreed upon, the engineer develops a fee proposal for the owner's consideration. If the fee proposal is agreeable, the two parties enter into a contract. If the fee proposal is not acceptable, the two parties agree on revisions to the scope of work and budget, then enter into a contract for the project.

The following pages describe each of these phases in detail.

PHASE I - SELECTION OF THE MOST QUALIFIED ENGINEER

STEP 1: PREPARE A PRELIMINARY PROJECT DESCRIPTION

To begin the selection process, prepare a brief written description of the project. This helps interested engineering firms decide whether they are capable and qualified to perform the services needed. When the preliminary project description is properly written and communicated, it saves time, money, and effort for both the owner and the interested firms.

The preliminary project description should include:

- The project name or identification and planned location.
- Project details, including intended size, function, capacity, and other general requirements. Is the project a renovation or modernization? Will it involve demolition, additions, new construction, or energy or land use studies?
- Project budget and anticipated funding sources.
- Anticipated project schedule, including completion of design work, beginning of construction, and planned project completion date.
- Unique requirements or restrictions such as zoning or environmental problems.
- Specific services to be provided by the engineer, such as feasibility studies, program development, design, construction observation or management, budget development. A blank form to assist you in developing a preliminary project description is included in the back of this manual as Appendix A (page 14).

STEP 2: INVITE SUBMISSION OF QUALIFICATION STATEMENTS

Once the preliminary description of the project has been prepared, interested and qualified engineering firms should be invited to submit statements of their professional qualifications.

The Design Professional Selection Law requires every public authority to announce its intent to contract for engineering (or architectural and surveying) services, however, the law does not dictate the use of any one specific method for making this announcement. The public authority may choose to publish the announcement in a local newspaper or in a regularly issued municipal bulletin, send the announcement to professional organizations such as ACEC OKLAHOMA for wider distribution, or mail the announcement directly to a pre-selected group of firms.

No matter which form of announcement the public authority chooses, documentation of the announcement should be kept on file at least until project completion. The contract announcement should include:

- The preliminary project description.
- The project owner's name and the name, address and phone number of the project contact person.
- A list of information each firm should include in its statement of qualifications, such as the names of firm owners, number of years in business, the types of services offered, background on key technical personnel, similar projects designed by the firm, projects underway, etc.
- The deadline for submitting statements of qualifications.

See Appendix B (page 15) for a model of an invitation to submit statements of qualifications.

STEP 3: EVALUATE STATEMENTS OF QUALIFICATIONS

When the deadline for submission of statements of qualifications has passed, the owner should then evaluate the qualifications of those firms that submitted statements and narrow the field of interested firms to a “short list” of three to five firms.

Each firm that submitted a statement of qualifications should be evaluated on the basis of its experience on similar projects, expertise of its key professional staff, its physical equipment and facilities, references, and other factors of importance to the owner. This evaluation can be conducted by one individual or a committee appointed by the owner.

Again, some local governments may have specific ordinances or policies regarding the makeup of engineer selection committees. The most important consideration is that the person or persons performing the evaluation are fair and competent and capable of making rational decisions.

A sample of a scoring sheet like that normally used in the evaluation of the statements of qualifications is provided as Appendix C (page 16).

Frequently, an owner will attach more importance to certain firm qualifications than others (for instance, experience on similar projects might be most important). This form can be tailored to meet those concerns simply by assigning a higher arithmetic weight to those factors that are of greatest significance to the owner.

Before meeting to perform the evaluations, the owner should check the references of each firm under consideration. This check should not be limited to the references supplied by the firms. A model form to aid in the checking of references is included as Appendix D (page 17).

Based upon the evaluation of the statements of qualifications and reference checks, lesser-qualified firms can be disqualified, leaving a short-list of three to five firms for further consideration. For most projects it is recommended that three firms be short-listed. For a very large project, a short list of four or five firms may be desired.

The short-listed firms should be officially notified that they have been selected for further consideration. As a courtesy, the owner should also send a letter of thanks to those firms not selected for further consideration.

STEP 4: EVALUATE AND RANK THE SHORT-LISTED FIRMS

Once the short-list of firms selected for further consideration is complete, the owner begins the final step in the selection process: evaluation and ranking of the short-listed firms. To accomplish the final selection, the owner should ask each of the three firms to submit a technical proposal for the project.

This proposal should describe in detail each firm's technical approach to the project; their plan for managing and performing the required work; the personnel they will assign to the project; their proposed work schedules; the office in which the work will be performed; and other project-specific information.

A model of a memorandum that informs the short-listed firms of their selection for further consideration and requests technical proposals is included as Appendix E (page 18).

PRE-INTERVIEW TOURS OF PROJECT SITE

Generally, it is to the benefit of the owner to allow the short-listed firms to tour the project site prior to the deadline for submission of technical proposals. Touring the site gives the firms the opportunity to obtain information about the proposed project that can help them prepare better proposals and aids them in preparing for interviews, should the owner elect to interview the firms.

Tours work best when a representative of the owner meets independently with representatives of each firm. On larger projects, a group tour for all short-listed firms may be more expeditious.

At this time, the owner should also make available to all of the short-listed firms any feasibility studies, surveys, or other preliminary information that could help the firms in the preparation of their technical proposals.

INTERVIEWING SHORT-LISTED FIRMS

Depending on the size and complexity of the project, the owner may want to interview representatives of the short-listed firms. These interviews should be conducted after technical proposals have been reviewed, but before the final ranking process.

By interviewing representatives of the short-listed firms, the owner has the opportunity to compare each firm's interpretation and understanding of the project and the various technical approaches that the firms have proposed to accomplish the project. Interviews also give the owner an important insight into each firm's management style and communications abilities. For this reason, the owner should require that all short-listed firms send managers or owners, as well as the key engineers and other professionals who will be responsible for the work, to these interviews.

The following are suggested guidelines for setting up and conducting the interviews:

- The physical setup for the interview should be comfortable, with good acoustics and sufficient room. A separate area should be provided for firms waiting to be interviewed. Equipment such as blackboards, flip charts, and audiovisual screens will be useful if available. Most firms will bring their own equipment to present their information. Since equipment setup time may cause some delays in the interviewing process, two rooms should be used if possible. While one firm is being interviewed in the first room, another firm can set up for its presentation in the second room, thereby facilitating the process and ensuring that important interview time is not spent checking equipment and wasting time.
- Allow approximately 45 minutes for each interview and 15 minutes between interviews. This will allow ample time for representatives of the engineering firms to make their presentations and for you to ask questions. This should also allow sufficient time for selection committee members to discuss the presentations among themselves before beginning the next interview.
- Schedule all of the interviews on the same day. This enables the committee to compare all of the interviewed firms while information is fresh in their minds and ensures consistent interview scoring.
- Most interviews are held in a closed session. If ordinances or regulations require that the interviews be conducted publicly, the firms should be notified of this.
- While it is appropriate to question firms about how they would approach the design of a project, owners should not ask for an actual design solution during the interview. Appropriate and responsive designs require considerably more interaction between the owner and engineer than is possible during the interview. If either the owner or the engineer comes to the interview with a preconceived engineering solution, considerable time and energy will have been spent to get to this point. This may inhibit further creativity and prevent other, perhaps better, solutions from being explored.
- Owners may want to ask the firm representatives how they calculate the fees for their professional services. However, specific fee amounts are best resolved later, during detailed discussions with the firm selected, after there is a comprehensive and mutual understanding of the actual scope of services to be performed. This ensures that the owner's requirements for the project are taken into account in the development of the scope of work, rather than having the scope and fee developed solely by the engineering firm.

THE FINAL RANKING PROCESS

After technical proposals have been received and interviews have been conducted, each firm should be evaluated independently by the owner and/or each member of the selection committee. It is critical that this evaluation be as fair and impartial as possible, and for this reason it is helpful to rate each firm by using a standard form that lists the significant selection criteria. A model evaluation form is included as Appendix F (page 19).

Again, this form should be tailored to reflect the owner's priorities in terms of which criteria are most important. If one individual is conducting the evaluations, that person ranks the firms, highest to lowest, according to their total scores. When a committee is involved, the chairman should collect the evaluation sheets from the members of the committee. Each firm's scores are then tallied and averaged, and the firms are then ranked, from the highest average score to the lowest. A model tally sheet for the evaluation forms is included as Appendix G (page 20).

The firm that is rated most highly overall should be notified that it has been selected to receive the contract, pending agreement on the scope of service and the fee for those services. The other short-listed firms should be notified of the final ranking, as well. A model memorandum to short-listed firms, announcing the final selection, is included as Appendix H (page 21).

At this point, the owner is ready to proceed to the next phase of the QBS process.

PHASE II — DEFINITION OF THE SCOPE OF SERVICE

From the moment the most qualified firm has been identified, the owner and the selected engineering firm begin working together as a team. They start by sitting down together to discuss the project in detail and to gain a better understanding of one another.

The engineer will want to learn about the owner's priorities and objectives for the project. Is the most important objective to keep the initial construction cost as low as possible? Or is very high dependability (i.e., low risk of failure or interruption of service) more important? Is it imperative that the design and construction time be kept to a minimum, to realize operational benefits more quickly, or is it more important to design and construct the facility to ensure that long-term operating costs are minimized? Are there unique social, environmental or political issues involved in the project? Is it possible the facility will be expanded or modified in the future?

While it is vital that the engineer has a full and detailed understanding of the owner's goals and objectives, it is just as important for the owner to understand exactly what can and cannot be expected as a result of the engineer's work.

This exchange, which can take several days on a major project, leads to the development of the detailed scope of service, the written document that specifies the services to be provided by the engineer. This document is the foundation of the contract between the two parties.

PHASE III — FEE AND CONTRACT NEGOTIATION

ESTABLISHING ENGINEERING FEES

When the detailed scope of service is agreed upon, the engineer is in a position to develop and submit a detailed fee proposal to the owner.

Consulting engineers use basically four different methods to calculate fees for their services. No matter which of these fee bases is used, the owner has a right to expect that the engineer will be able to fully document the proposed fee.

The **lump sum** or **fixed-fee** is perhaps the most common fee structure in use today. As its name implies, under a fixed-fee arrangement, the owner and engineer agree in advance on the total compensation that will be paid for the agreed-upon services. This fee basis is best used when all of the project goals and required services are well-defined and can be mutually agreed upon during negotiation.

While the lump sum fee basis may provide the highest comfort level for the owner, because engineering costs are fixed at the outset of the project, it should be recognized that the lump sum fee must be renegotiated if the engineer is required to perform additional work not included in the original scope of service, or conversely, should the original scope of service be reduced.

Another frequently used fee structure is **time-plus-expense**. Most firms have developed a standard hourly fee rate for each of their professional employees. Project fees are estimated by multiplying the estimated number of hours the professional will spend on the project times the standard hourly rate. This number is then multiplied by a factor of between 2 and 3, to cover the firm's indirect costs for items such as rent, computer design equipment and software, telephones, taxes, fringe benefits and other items of "overhead," plus profit.

Frequently, time-plus-expense contracts will provide for a "not-to-exceed" maximum fee. Generally, the consulting engineer will inform the owner when engineering costs are approaching 75 percent of the estimated budget figure, then forecast the probable total cost. This allows the owner to examine progress and, if appropriate, to revise either the scope or the budget for the project.

Under the **per diem** fee method, the owner agrees to pay the engineer a predetermined fee for each day, or part of a day, the engineer devotes to the service of the owner. Per diem compensation is most frequently employed when the work is personal, of a limited time duration or somewhat irregular. This could include consultation in highly specialized areas, such as appraisals, feasibility studies, investigation of conditions, collection of data, court or public hearing testimony.

A variant of the per diem method of compensation is the **retainer**. Generally, an owner will employ a consulting engineer on a retainer basis to be assured of having quick access to the services of a selected individual engineer or firm. Smaller municipalities will frequently use the retainer method of compensation to contract for services of a consulting engineer to serve as city or village engineer. Compensation is based on a fixed sum, paid monthly, or on some other mutually agreeable basis, with additional compensation at hourly rates for additional time spent at the request of the owner.

THE NEGOTIATION PROCESS

If the fee proposed by the engineer is more than the owner has budgeted, the two sit down together to review options for modifying the scope of services, in order to reduce the fee. The engineer informs the client of any risks or problems that might result from any changes in the scope of services, and a revised fee is agreed upon. This kind of an open, communicative relationship greatly enhances the odds for a successful project.

On occasion, two parties negotiating in good faith will be unable to reach a contract agreement. This happens infrequently because, by its very nature, the QBS process fosters excellent communication and understanding between the owner and engineering firm. If an impasse is reached, however, the owner should terminate discussions with the first-ranked firm and invite the firm ranked second on the short-list to enter into contract discussions.

THE CONTRACT FORM

It is standard practice today for the project owner and engineer to enter into a written contract for professional services. While some public authorities feel it is in their best interest to draft their own contract forms, generally it is wise to consider use of a standard contract form, such as those developed by the Engineers Joint Contract Documents Committee or the American Institute of Architects. The EJCDC and AIA documents are widely used, have been tested in courts throughout the United States over several decades, and are generally regarded as fairly protecting the interests of the owners, engineers and contractors.

QUALIFICATIONS-BASED SELECTION IS FLEXIBLE

Qualifications-Based Selection is a comprehensive process, but it need not be burdensome. In fact, the great virtue of the system is that it can be adapted to any project, large or small.

You can tailor each step in the process to meet your needs and your timetable. For instance, on a small project, the preliminary project description might be very brief, perhaps only a few paragraphs.

And rather than sending out formal invitations to submit statements of qualifications, you might simply phone three or four recommended firms, fax them the preliminary project description and ask them to submit statements of qualifications.

On projects of greater urgency, you may want to request simultaneous submission of statements of qualifications and technical proposals from two or three reputable firms, then proceed directly to selection, scope definition and execution of a contract. As noted previously, neither project site tours nor interviews are necessary on all projects.

The point is, QBS is a flexible, reliable process which is widely recommended because it enables you to obtain quality engineering services at a fair and reasonable cost. This investment in quality will save you money over the life of your project.

QUALIFICATIONS-BASED SELECTION MEANS QUALITY

Our society is becoming more and more conscious of the need to build quality into everything we do, everything we produce. We have come to learn that simply paying a low price for something isn't enough; we expect to get value for the price we pay.

Dr. W. Edwards Deming, one of the fathers of the quality management initiative in American industry, said it this way in the fourth of his 14 rules for quality improvement:

“End the practice of awarding business on the basis of price tag. Instead, minimize total cost. Move toward a single supplier for any one item, on a long-term relationship of loyalty and trust.”

This quotation, in a nutshell, describes the philosophy behind Qualifications-Based Selection.

Engineers and architects are licensed professionals, just as are lawyers and doctors. To remain in practice, they must build long-term, trusting relationships with their clients, and this is possible only by providing a high quality service at a fair and reasonable cost.

It is said that “Some people know the price of everything and the value of nothing.” By using Qualifications-Based Selection, you can be assured of receiving true value at a fair and reasonable price, and that translates into a quality project.

Appendix A

Preliminary Project Description (Model Form)

Name of Project _____

Project Owner _____

Project Location _____

Contact Person _____ Title _____

Address _____

Phone _____ Email _____

Description of Planned Facility _____

Total Budget _____

Source of Financing _____

Project Schedule:

Planned Date of Design Startup _____

Planned Date of Design Completion _____

Planned Date of Construction Startup _____

Planned Date of Construction Completion _____

Site Restrictions or Problems _____

Professional Services Required _____

Appendix B

Invitation to Submit a Statement of Professional Qualifications (Model Form)

TO: (List all firms that receive the invitation)

FROM: (Project owner)
(Owner's representative and title)

SUBJECT: Invitation to Submit Statement of Professional Qualifications

Your firm is invited to submit its statement of professional qualifications to become eligible for an interview that could lead to a design commission for our project. Attached is a list of information that should be included in your statement of qualifications, along with a preliminary project description.

It is our intention to review the statements of qualifications and select (insert number) firms for further consideration.

The short-listed firms will be given tours of the project site and granted interviews prior to final selection of a design consultant.

Your statement of qualifications should be delivered to the following address no later than 5 p.m. on _____.
(date)

Statements received after this deadline will not be considered.

Statements of qualifications should be transmitted to:

Name _____

Title _____

Address _____

Appendix C

Evaluation Form for Statements of Qualifications (Model Form)

Name of Project _____

Name of Design Firm _____

Name of Evaluator _____

Criteria	Rating		Weight		Score
I. Firm and Individual Qualifications					
• Firm's number of years in Business		x	(0 - 5)	=	
• Firm's Background and Experiences on similar projects		x	(0 - 5)	=	
• Experience of Firm's current personnel on similar projects		x	(0 - 5)	=	
II. Proximity to Project Site		x	(0 - 5)	=	
III. Capacity to Perform Work					
• Ability to meet proposed schedule		x	(0 - 5)	=	
• Firm's equipment & facilities		x	(0 - 5)	=	
IV. References					
• Quality of Design		x	(0 - 5)	=	
• Technical Innovation		x	(0 - 5)	=	
• Meeting schedules and deadlines		x	(0 - 5)	=	
• Controlling costs/adhering to budget		x	(0 - 5)	=	
• Communication/Cooperation		x	(0 - 5)	=	
V. Past Performance (if any) for this Client			(0 - 5)	=	

Total Score =

* Suggested rating scale: 1 = Poor, 2 = Fair, 3 = Good, 4 = Excellent, 5 = Superior

** These weighting factors should be adjusted for each project, according to the needs and priorities of the public authority.

Appendix D

Design Firm Reference Check (Model Form)

Name of Design Firm _____

Project Referenced _____

Owner _____ Person contacted _____

Address _____ Telephone _____

1. When was your project completed? _____

2. What services did the firm provide? (design, construction observation, etc.) _____

3. Name of firm's representative you worked with most closely _____

	Poor (1 pt.)	Fair (2 pts.)	Good (3 pts.)	Excellent (4pts.)	Superior (5pts.)
4. Please rate the overall quality of work performed by the firm.					
5. Please rate the technical innovation shown by the firm in the design of the project.					
6. Please rate the firm's performance in terms of meeting schedules and deadlines					
7. Please rate the firm's performance in terms of controlling costs and adhering to the budget					
8. Please rate the firm's overall attitude and ability to communicate and work cooperatively					

Enter the ratings from questions 4-7 directly on the Evaluation Form for Statement of Qualifications (Appendix C), part IV., "References."

Appendix E
Memo to Firms Selected
for Further Consideration
(Model Form)

TO: (Name of firm selected for further consideration)

FROM: (Project owner's representative)

SUBJECT: (Project name)

Your firm has been short-listed and will receive further consideration for a contract to provide _____ services on our project.
(engineering, architectural, etc.)

The other firms selected for further consideration are:

1) _____

2) _____

You are requested to submit a technical proposal for the design work necessary to implement this project. Technical proposals will be evaluated on the following criteria: understanding of the project requirements; technical design alternatives; the project management schedule, including cost control techniques; the project design team, including key project personnel; your firm's plan for communications throughout the project; and methods of determining compensation for the required services.

Technical proposals are due on _____ at _____, and should be addressed to _____
(date) (time)

_____. _____ copies should be submitted.
(name of owner's representative) (number)

(The following language may be included if interviews or site tours are planned.)

Before making the final selection, we would like to interview representatives of each of the short-listed firms. Each firm will be allowed 45 minutes to make its presentation and answer questions. The interview for your firm is scheduled for _____ on _____ at _____.
(time) (date) (location)

Your interview team should consist of at least one principal of the firm and the person who would serve as the project manager for our project. Your team should consist of no more than _____ members.
(number)

All firms will be provided an opportunity to tour the project site prior to the submission of technical proposals. To arrange a tour, please call me no later than _____.
(date)

Appendix F

Evaluation Form for Short-Listed Firms (Model Form)

Name of Project _____

Name of Design Firm _____

Name of Evaluator _____

	Possible Points	Points Awarded
1. Grasp of Project Requirements Firm's analysis, interview preparation & level of interest.	20	_____
2. Design Approach/Methodology Technical alternatives, creativity, problem-solving ability.	20	_____
3. Project Management Proposed project schedule, cost controls.	15	_____
4. Project Design Team Sub-consultants who would be made part of project design team.	15	_____
5. Key Project Personnel Qualifications & experience of project manager, other key personnel.	15	_____
6. Firm Responsiveness Plan for progress reports, general attitude and ability to communicate.	5	_____
7. Interview Score Did the firm respond effectively to issues and questions raised during the interview?	5	_____
8. Compensation Method of determining compensation, billing procedures.	5	_____
	TOTAL	_____

Appendix G

Final Evaluation Tally Sheet (Model Form)

	Firm A	Firm B	Firm C
Interviewer 1	_____	_____	_____
Interviewer 2	_____	_____	_____
Interviewer 3	_____	_____	_____
Interviewer 4	_____	_____	_____
Interviewer 5	_____	_____	_____
Total Score			
Average Score			

OKLAHOMA STATE CONSULTANTS ACT

(Effective January 1, 2020)

§61-60. Mandatory consultant and construction contract forms -Exceptions.

All state agencies, boards, commissions, offices, institutions, and other governmental bodies of this state, and all individuals representing such entities, except the Department of Transportation, the Oklahoma Turnpike Authority, the Oklahoma State Regents for Higher Education and its constituent institutions, the Commissioners of the Land Office and CompSource Oklahoma provided CompSource Oklahoma is operating pursuant to a pilot program authorized by Sections 3316 and 3317 of Title 74 of the Oklahoma Statutes, shall use construction manager, consultant and construction contract forms that the State Facilities Director of the Department of Real Estate Services of the Office of Management and Enterprise Services requires to award and execute contracts for designs to construct, renovate, alter, repair, maintain, or improve real property or fixtures of real property of the state. The State Facilities Director may authorize, in writing, exceptions to the use of construction manager, consultant and construction contract forms for specific projects.

Added by Laws 1982, c. 70, § 1. Amended by Laws 1983, c. 304, § 46, eff. July 1, 1985; Laws 2000, c. 363, § 2, emerg. eff. June 6, 2000; Laws 2001, c. 399, § 1, emerg. eff. June 4, 2001; Laws 2002, c. 294, § 6, eff. Nov. 1, 2002; Laws 2006, c. 271, § 5, eff. July 1, 2006; Laws 2009, c. 454, § 3; Laws 2012, c. 304, § 305; Laws 2013, c. 302, § 1, eff. Nov. 1, 2013; Laws 2016, c. 71, § 1.

§61-61. Definitions.

As used in Sections 61 through 65 of this title:

1. "Chief administrative officer" means an individual responsible for directing the administration of a state agency. The term does not mean one or all of the individuals that make policy for a state agency;
2. "Construction manager" means an individual, firm, corporation, association, partnership, copartnership, or any other legal entity on the Office of Management and Enterprise Services Construction and Properties (OMES-CAP) registration list and possessing the qualifications to provide services of construction management which include, but are not necessarily limited to, design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration;
3. "Consultant" means an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or other individuals or legal entities possessing specialized credentials and qualifications as may be needed to evaluate, plan or design and/or provide construction administration and/or construction inspection services for any construction or a public work improvement project;
4. "Director" means the Director of the Office of Management and Enterprise Services;

5. "Department" means the Department of Real Estate Services of the Office of Management and Enterprise Services;
6. "Office" means the Office of Management and Enterprise Services;
7. "Project" means studies, evaluations, plans or designs for facility evaluations or public work improvements, except the transportation facilities under the jurisdiction of the Department of Transportation or the Oklahoma Turnpike Authority:
- a. to construct, renovate, alter, repair, maintain, or improve real property or fixtures of real property, and
 - b. that does not constitute "construction" as defined by the Public Building Construction and Planning Act;
8. "State agency" means an agency, office, officer, bureau, board, counsel, court, commission, institution, unit, division, body or house of the executive or judicial branches of state government, whether elected or appointed, excluding only political subdivisions of the state, the Oklahoma State Regents for Higher Education and its constituent institutions and the Commissioners of the Land Office;
9. "Facilities Director" or "SFD" means the State Facilities Director of the Department of Real Estate Services of the Office of Management and Enterprise Services; and
10. "Political subdivision" means any local governmental body formed pursuant to the laws of this state, including, but not limited to, school districts, career technology centers, cities, counties, public trusts, public authorities, commissions or other local governmental bodies exercising their authority to contract with construction managers and/or consultants. The term also means any quasi-governmental and nongovernmental organizations contracting with construction managers and/or consultants using public funds or on behalf of a political subdivision.
- Added by Laws 1974, c. 156, § 1. Amended by Laws 1981, c. 346, § 1, eff. Jan. 1, 1982; Laws 1983, c. 304, § 47, eff. July 1, 1985; Laws 2000, c. 363, § 3, emerg. eff. June 6, 2000; Laws 2001, c. 399, § 2, emerg. eff. June 4, 2001; Laws 2002, c. 294, § 7, eff. Nov. 1, 2002; Laws 2006, c. 271, § 6, eff. July 1, 2006; Laws 2012, c. 304, § 306; Laws 2013, c. 302, § 2, eff. Nov. 1, 2013; Laws 2016, c. 71, § 2; Laws 2019, c. 299, § 1, eff. Jan. 1, 2020.

§61-62. Construction managers and consultants - Registration and selection.

A. The Department of Real Estate Services of the Office of Management and Enterprise Services shall maintain a file of all persons and entities interested in and capable of performing construction management and consultant services for state agencies. The file shall include registration forms and information submitted by construction managers and consultants pursuant to rules promulgated by the Office of Management and Enterprise Services. Pursuant to rules promulgated by the Office, the Department shall determine whether a construction manager or consultant qualifies for registration and shall notify the construction manager or consultant within twenty (20) days of receipt of a request for registration. Construction managers and consultants shall re-register for each successive calendar year with the Department.

B. The requisitioning state agency shall define the scope of a proposed project. The scope shall identify project components, phases and timetables and shall include detailed project descriptions. The state agency may request the Department to assist with scope development. The state agency shall send the scope and a requisition for construction management or consultant services, signed by an authorized official, to the Department. The Department shall review the scope and approve it before the state agency issues a solicitation.

C. The state agency shall issue a solicitation to construction managers or consultants that are registered with the Department and capable of providing the services the state agency desires. The solicitation shall, at a minimum, contain:

1. Description and scope of the project;
2. Estimated construction cost or available funds, anticipated starting date, and completion date the state agency desires for the project;
3. Certification of funds available for the construction manager or consultant fee, including federal, state or other participation;
4. Closing date for construction manager or consultant to give notice of interest to the state agency; and
5. Additional data the state agency requires from the construction manager or consultant. The closing date for submission of construction manager or consultant notice of interest for consideration shall be within thirty (30) days of the date of the notice the state agency issues.

D. After the closing date, the Department shall provide information from the construction managers' or consultants' files to the state agency. Should there be an inadequate expression of interest in the project, the state agency and Department personnel shall confer to add construction managers or consultants for consideration.

E. The state agency shall review the information the Department provides and shall select no less than three and no more than five construction managers or consultants per contract for interviews. The review shall include consideration of factors from the information the Department supplies including, but not limited to:

1. Professional qualifications for the type of work contemplated;
2. Capacity for completing the project in the specified time period; and
3. Past performance on projects of a similar nature.

F. The Department shall advise the state agency of the methods to be used to conduct an evaluation, interview, selection, contract negotiation, and fee negotiation processes pursuant to rules promulgated by the Office of Management and Enterprise Services.

G. 1. Upon completion of contract negotiation with the highest qualified construction manager or consultant, which contract shall include a fair and reasonable fee, the Department shall approve and award the contract.

2. If the Department and the first-choice construction manager or consultant cannot reach an agreement, the negotiations shall terminate and negotiations with the second-choice construction manager or consultant shall commence. If the Department and the second-choice construction manager or consultant cannot reach an agreement, the negotiations shall terminate and negotiations with the third-choice construction manager or consultant shall commence. If the Department and the

third-choice construction manager or consultant cannot reach an agreement, then all negotiations shall terminate. Should the Department be unable to negotiate a satisfactory contract with any of the three selected construction managers or consultants, the Department shall select additional construction managers or consultants in order of their competency and qualifications and shall continue negotiations in accordance with the provisions of this section until an agreement is reached.

H. Any plans developed pursuant to the process for selection of a contractor for construction of a facility authorized pursuant to Section 183 of Title 73 of the Oklahoma Statutes shall become the property of the State of Oklahoma as a condition of the award of the final contract for construction of the facility.

I. For all state agencies subject to the Public Facilities Act, Sections 202 through 213 of this title, the Department shall perform the necessary procurement actions on behalf of a requisitioning agency as enumerated in subsections B through H of this section:

1. Determine or approve the agency's scope of a project and required services as provided in the Public Facilities Act;
2. Issue solicitations for construction manager and consultant services;
3. Conduct evaluations, interviews, selection, contract negotiation, and fee negotiation processes; and
4. Provide contract management services after award of a construction management or consultant contract.

J. In the selection of a consultant, all political subdivisions of this state shall select a consultant based upon the professional qualifications and technical experience of the consultant. The subdivision shall negotiate a contract with the highest qualified consultant, provided that a fee can be negotiated that is fair and reasonable to both parties. In the event a reasonable fee cannot be negotiated with the selected consultant, the subdivision may negotiate with other consultants in order of their qualifications.

K. In the selection of a construction manager, all political subdivisions of this state shall:

1. Extend consideration to construction managers from the file maintained by the Department of Real Estate Services of the Office of Management and Enterprise Services. Political subdivisions are not limited in the number of construction manager candidates from whom they intend on seeking proposals;
2. Evaluate the candidates' professional qualifications, licensing, registration, certifications, technical abilities and past experience relevant to the contemplated project. Only firms recognized as qualified construction managers by the Department of Real Estate Services of the Office of Management and Enterprise Services pursuant to this section may be considered for selection as a construction manager. The subdivision shall use procedures as described in this section and the Public Construction Management Act for Political Subdivisions or may adopt procedures established by the Office of Management and Enterprise Services for state agencies; and
3. The political subdivision shall select a construction manager based upon the professional qualifications and technical experience of the construction manager. The political subdivision shall negotiate a contract with the highest qualified construction manager, provided that a fee can be negotiated that is fair and reasonable to both parties. In the event a reasonable fee

cannot be negotiated with the selected construction manager, the political subdivision may negotiate with other construction managers in order of their qualifications.

Added by Laws 1974, c. 156, § 2. Amended by Laws 1981, c. 346, § 2, eff. Jan. 1, 1982; Laws 1983, c. 304, § 48, eff. July 1, 1985; Laws 1989, c. 300, § 14, operative July 1, 1989; Laws 1997, c. 133, § 82, eff. July 1, 1997; Laws 2000, c. 363, § 4, emerg. eff. June 6, 2000; Laws 2001, c. 298, § 1, emerg. eff. May 31, 2001; Laws 2002, c. 294, § 8, eff. Nov. 1, 2002; Laws 2006, c. 271, § 7, eff. July 1, 2006; Laws 2012, c. 304, § 307; Laws 2013, c. 302, § 3, eff. Nov. 1, 2013; Laws 2019, c. 299, § 2, eff. Jan. 1, 2020.

§61-62.1. Contracts to be in accordance with Public Building Construction and Planning Act.

Except as provided by Sections 61 and 62 of this title and in addition to other statutory requirements, all construction manager, consultant, and construction contracts shall be in accordance with the provisions of the Public Building Construction and Planning Act.

Added by Laws 1983, c. 304, § 168, eff. July 1, 1983. Amended by Laws 2000, c. 363, § 5, emerg. eff. June 6, 2000; Laws 2006, c. 271, § 8, eff. July 1, 2006.

§61-62.2. Contracts for minor services.

The Construction and Properties Division of the Office of Management and Enterprise Services may enter into contracts with construction managers and consultants registered with the Division for the purpose of providing minor services to state agencies. The contracts shall provide for services on an as-needed basis and shall not exceed One Hundred Thousand Dollars (\$100,000.00) per construction manager or consultant during one (1) year. The requisitioning state agency shall reimburse the Division for the fee of the construction manager or consultant that provides the services.

Added by Laws 2000, c. 363, § 6, emerg. eff. June 6, 2000. Amended by Laws 2002, c. 294, § 9, eff. Nov. 1, 2002; Laws 2006, c. 271, § 9, eff. July 1, 2006; Laws 2012, c. 304, § 308.

§61-63. Ownership and control of plans, etc.

All drawings, plans, specifications, reports, and models made by a construction manager or consultant for a state agency shall be the property of this state, and shall be delivered to the Department of Real Estate Services of the Office of Management and Enterprise Services. The state agency shall file such plans with the Department for inclusion in a library system to be maintained by the Department. Any state agency shall have access for review to any plans or specifications filed with the Department.

Added by Laws 1974, c. 156, § 3. Amended by Laws 1983, c. 304, § 49, eff. July 1, 1983; Laws 2000, c. 363, § 7, emerg. eff. June 6, 2000; Laws 2002, c. 294, § 10, eff. Nov. 1, 2002; Laws 2006, c. 271, § 10, eff. July 1, 2006; Laws 2012, c. 304, § 309; Laws 2013, c. 302, § 4, eff. Nov. 1, 2013.

§61-64. Misdemeanor offenses - Punishment.

Any construction manager or consultant or person doing architectural, surveying or engineering work for the State of Oklahoma, their agents, servants or employees, who shall receive gratuity from any contractor or builder of any public building or works, or solicit, receive or make any political

contribution from or to a contractor or builder of any public building or works, or who attempts to interfere with the competitive bidding process of the State of Oklahoma in any manner, is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), and by imprisonment in the county jail for not less than six (6) months nor more than one (1) year. Any contractor or builder of any public building or works, their agents, servants or employees, who shall offer any gratuity or political contribution to any construction manager or consultant doing architectural, surveying or engineering work for the State of Oklahoma, or who attempts to interfere with the competitive bidding process of the State of Oklahoma in any manner, is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), and by imprisonment in the county jail for not less than six (6) months nor more than one (1) year.

Added by Laws 1974, c. 156, § 4. Amended by Laws 2002, c. 294, § 11, eff. Nov. 1, 2002; Laws 2006, c. 271, § 11, eff. July 1, 2006.

§61-65. Application of act - Emergencies.

A. In addition to the conditions prescribed pursuant to subsections C and D of this section, the provisions of Section 62 of this title shall not apply whenever the Department of Real Estate Services of the Office of Management and Enterprise Services with concurrence of the chief administrative officer of the public agency affected declares that an emergency exists. The construction manager or consultant shall be selected by the State Facilities Director of the Department of Real Estate Services of the Office of Management and Enterprise Services. The resulting construction manager or consultant contract shall not exceed Fifty Thousand Dollars (\$50,000.00). The reasons for the emergency shall be recorded in the official records of the Department.

B. Emergency as used in this section shall be limited to conditions resulting from any of the following:

1. A sudden unexpected happening or unforeseen occurrence if it is impossible for the provisions of Section 62 of this title to be observed because of the time factor and if the public health or safety is endangered; and
2. A condition or situation which, if allowed to continue, would lead to economic loss to the state or to further damage of state property.

C. The provisions of Section 62 of this title shall not apply to the process for construction of a correctional facility whenever the State Board of Corrections informs the Department that an emergency condition threatens the security of the state correctional system, including inmate population growth, and the condition requires expeditious treatment for the review, approval and bid process as it relates to construction or expansion of correctional facilities. The Department and the Department of Corrections are authorized to implement an expedited competitive bid process for the contracting of construction managers or consultants and construction of new or expanded correctional facilities that adequately respond to the emergency. The State Board of Corrections shall provide written notification to the Governor, the Speaker of the House of Representatives and to the President Pro Tempore of the Senate of the emergency conditions.

D. The provisions of Section 62 of this title shall not apply to CompSource Oklahoma if CompSource Oklahoma is operating pursuant to a pilot program authorized by Sections 3316 and 3317 of Title 74 of the Oklahoma Statutes.

Added by Laws 1978, c. 201, § 21, emerg. eff. April 14, 1978. Amended by Laws 1983, c. 304, § 50, eff. July 1, 1983; Laws 1997, c. 133, § 83, eff. July 1, 1997; Laws 2002, c. 294, § 12, eff. Nov. 1, 2002; Laws 2006, c. 271, § 12, eff. July 1, 2006; Laws 2009, c. 454, § 4; Laws 2012, c. 304, § 310; Laws 2013, c. 302, § 5, eff. Nov. 1, 2013.

The American Council of Engineering Companies of Oklahoma advocates the use of Qualifications-Based Selection by public agencies and private consumers of professional engineering, architectural and/or land surveying services because it is the most widely recommended method for obtaining quality professional design services, and because quality design is more likely to result in a constructed project that is highly economical to build, maintain and operate over its useful life.