

ENGINEERING...  
It's Practically Amazing.

# Consultants' Competitive Negotiation Act



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## What does CCNA mean?

- Consultants' Competitive Negotiation Act\*

## What does QBS mean?

- Qualifications-based selection of professional services



\* §287.055(1), Fla. Stat. (2010).



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## Public Procurement Law\*

- Basic intent – fair and open competition
  - Reduces opportunity and appearance of favoritism
  - Inspires public confidence that contracts are awarded equitably
- Uniform procedures and documentation are essential to curb improprieties and ensure ethical process



\* §287.001, Fla. Stat. (2010).



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# To whom does CCNA apply?\*

to professional services provided by:

- Engineers
- Surveyors
- Architects
- Landscape Architects



\* §287.055(2)(a), Fla. Stat. (2010).



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## Who must use CCNA for procurement?

All Government Agencies, including City, County and State governmental agencies, political subdivisions and school boards and school districts for:

- Studies where compensation exceeds \$35,000, and in construction where the cost of construction compensation exceeds \$325,000<sup>1</sup>
- Continuing contracts where, in the case of studies, compensation does not exceed \$200,000 and, in the case of construction, the cost of construction compensation does not exceed \$2 million<sup>2</sup>



- Based on threshold amounts 10/2010

<sup>1</sup> §287.055(3)(a)(1), Fla. Stat. (2010); <sup>2</sup> §287.055(2)(g), Fla. Stat. (2010)



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## Continuing Contracts

The law stipulates that consulting firms providing professional services under continuing contracts shall not be required to bid against each other

On June 7, 2010, the Attorney General's office provided a formal opinion on a Collier County price based procurement process: "nothing in section 287.055 F.S. would extend the authority to negotiate price as a factor in the competitive selection and negotiation process except by using the project-by-project evaluation process mandated in section 287.055, F.S."\*



\* 20 Op. Att'y Gen. (2010).



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## Why use CCNA for procurement?

- It's the LAW since 1973...
- The Owner selects the best-qualified firm
- Promotes team approach between Owner and Design professional
- Encourages technological innovation





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- The Owner is not limited to the low bidder\*
- CCNA process safeguards the public against abuses of the low-bid system\*
- Provides life-cycle savings and total “least cost” for a project\*



\* §287.055(4)(b), Fla. Stat. (2010); §287.055(5)(a), Fla. Stat. (2010).



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# History

- 1972 – The Federal “Brooks” Law signed
  - Codified into federal law the qualifications-based selection process for A/E services
- 1973 – became Florida Law
- 1984 Competition in Contracting Act





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**If your engineering solicitation language is similar to the following, then the RFP/RFQ likely violates the CCNA** (Section 287.055, Chapter 287, Title 19 Florida Statute):

- “Billing Rates ~ Include a copy of the most current billing rates for individuals who may be assigned to this project.”
- “Fee proposal is worth 5 points in your evaluation.”



*continued...*



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**If your engineering solicitation language is similar to the following, then the RFP/RFQ likely violates the CCNA** (Section 287.055, Chapter 287, Title 19 Florida Statute):

- “Request for engineering services hourly rate.”
- “Lump sum price.”
- “Balance and reasonableness of proposed unit pricing/professional hourly rates.”
- “Cost or Pricing”

More information concerning QBS and CCNA can be found at [fleng.org](http://fleng.org)  
or by calling the Florida Engineering Society at: **(850) 224-7121**





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## Why not use low-bid?

- To those not familiar with our industry, low-bid may seem logical

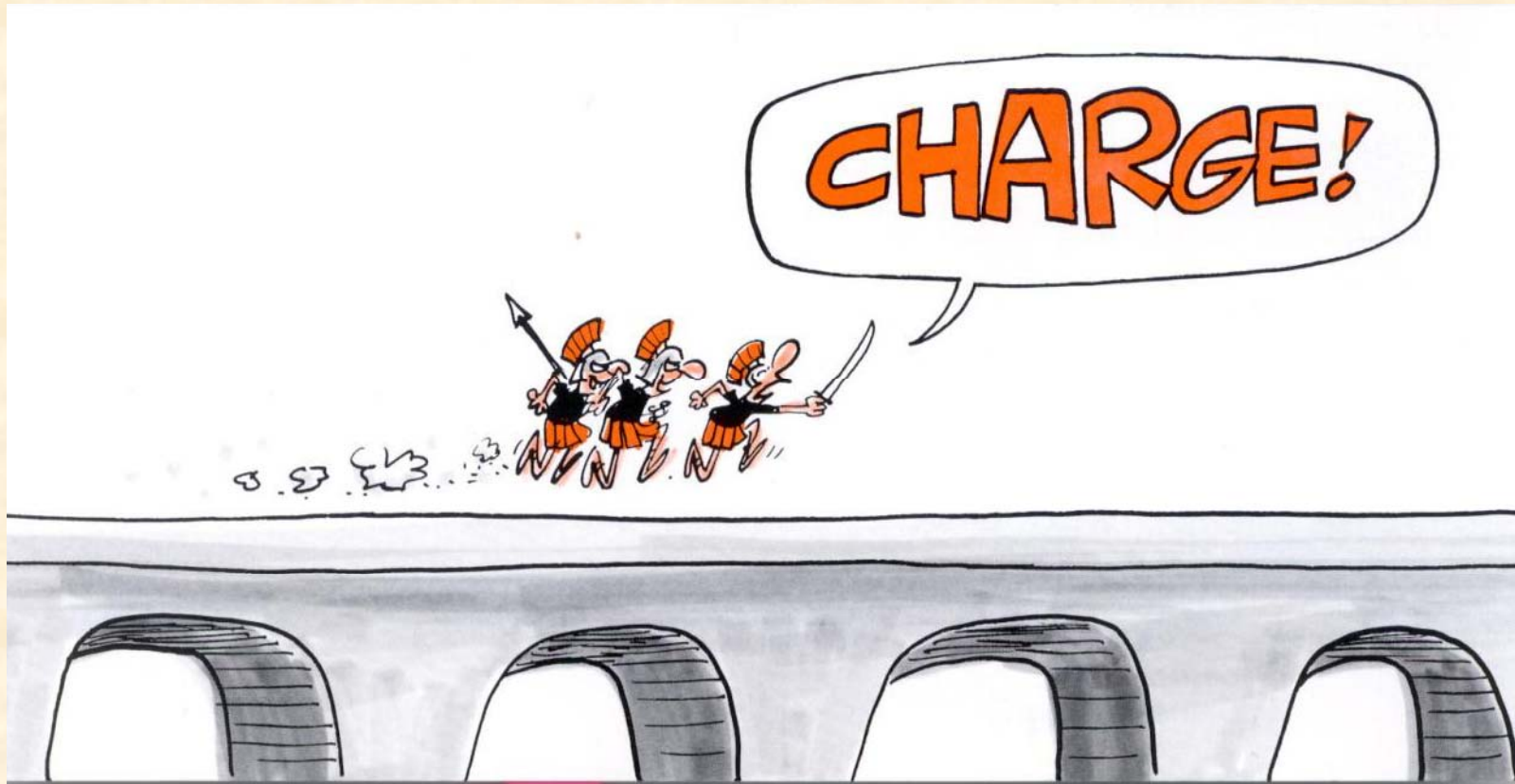




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THE BRIDGE IS OURS!





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# The Reality of Bidding...

- Low-bidding frequently leads to inferior results and can actually increase overall project costs





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**The cost of A/E services is typically less than 1% of the project life-cycle costs.**

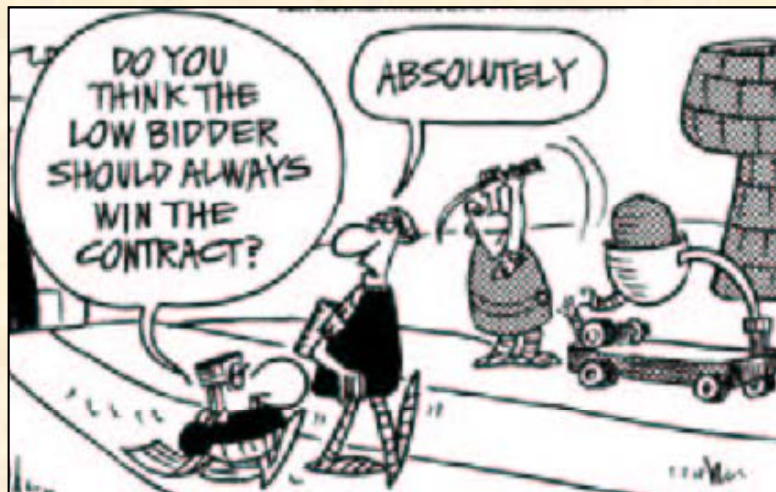




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# Why select based on qualifications?

- Each project requires a unique approach
- Selecting the design professional with the appropriate knowledge, skill, reputation, past performance and technical competence assures a successful quality project





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# Quality-Based Selection (QBS): The Process

## ■ Selecting a Design Firm\*:

- An owner identifies the general scope of work and develops a selection schedule.
- The owner issues a request for qualifications.
- The owner evaluates statements of qualifications.
- The owner determines a short-list of qualified firms to interview.
- The owner conducts interviews and ranks the firms.



\* 40 U.S.C.A. §1103 (West 2010).



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## QBS: The Process

### ■ Negotiating a Contract\*:

- The owner invites the top-ranked firm to assist in defining a detailed scope of work.
- The design firm develops and submits to the owner a detailed fee proposal, based on the agreed upon scope of work.
- If the proposed fee is not acceptable, the owner and designer work to modify the scope, schedule and budget to determine if an agreement on fee can be achieved.



\* 40 U.S.C.A. §1104 (West 2010).



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## QBS: The Process\*

- If an agreement cannot be reached with the top-ranked firm, negotiations are ended and new ones begin with the next most qualified firm.
- An agreement covering the above is executed.
- Firms involved in the selection process are given post-selection feedback.



\* 40 U.S.C.A. §1104 (West 2010).



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## Why QBS?

- Life Cycle Cost Considerations
- Team Building
- Technology/Innovation
- Reduced Changes
- Flexible Contract Approaches
- Competition Among Best Performers;  
Not Low Bidders



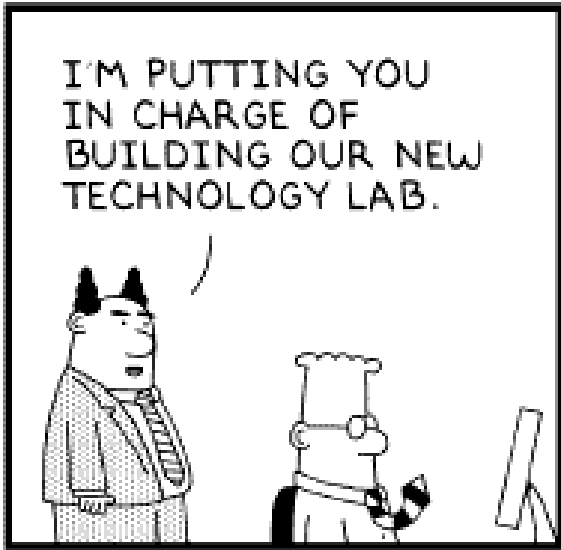


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I'M PUTTING YOU  
IN CHARGE OF  
BUILDING OUR NEW  
TECHNOLOGY LAB.



PICK THE CONTRACTOR  
WITH THE LOWEST BID.  
I DON'T FORESEE ANY  
PROBLEMS WITH THAT  
STRATEGY.



SO, YOUR BID SAYS  
YOU'LL DO THE JOB  
FOR "...A CHANCE  
TO GNAW ON WOOD."





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# Common Misconceptions

“QBS eliminates price as a selection criteria”

- **False:** Price is a factor! Price becomes a factor only after the most qualified firm has been identified and a detailed scope of work has been jointly developed by the owner and design professional.





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# Common Misconceptions

“QBS is a waste of taxpayer money”

- **False:** In fact, low-bid is more expensive because it leads to increased change orders and high project maintenance costs. Furthermore, QBS ensures the public gets a high quality and safe design.





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# Common Misconceptions

“QBS takes longer”

- **False:** QBS fosters teamwork between the client and engineering and facilitates construction, leading to faster project delivery





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## Similarities of CCNA and QBS:

- Both have a basis in law.
  - QBS is mandated for Federal Procurement in “The Brooks Act: Federal Government Selection of Architects and Engineers” [a 1972 amendment to the Federal Property and Administrative Service Act of 1949].<sup>1</sup>
  - CCNA is addressed under a 1973 State of Florida Law [Sec. 287.055].<sup>2</sup>



<sup>1</sup> §287.055, Fla. Stat. (2010); <sup>2</sup> 40 U.S.C.A. §1101-1104 (West 2010).



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## Similarities of CCNA and QBS:

- Both, QBS and CCNA require the evaluation of no fewer than three firms regarding a proposed project or contract.\*
  - The firm deemed most qualified, based on an evaluation of demonstrated competence and professional qualifications is selected.
  - Negotiations commence with the most qualified firm. Should the agency be unable to negotiate a satisfactory contract with that firm, negotiations are formally terminated. Negotiations then commence with the second most qualified firm. (This can continue to the third most qualified firm, if deemed necessary).



\* §287.055(4)(b), Fla. Stat. (2010); 40 U.S.C.A. §1103 (West 2010).



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## Federal Initiatives

- ACEC secured QBS language in new federal procurement regulations and pending water legislation.
- Ongoing defense of QBS with federal agencies.





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# Resources

## **ACEC's Online QBS Resource Center**

<http://www.acec.org/advocacy>

## **FICE's Online CCNA Resource Center**

<http://www.fleng.org/FICE/ficelegis.cfm>





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