



The Right to Petition the Government

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William E. Simon, the former Secretary of the Treasury under the Nixon and Ford administrations, discussing voter apathy, said, “Bad politicians are sent to Washington by good people who don’t vote”. It is easy to believe that the things that are happening in politics are beyond our control and there is no reason to get involved. We have a constitutional right to petition the government for the redress of grievances. We should not give back that right simply by not availing ourselves of it.

There are many issues that ACEC and CASE are tracking at the federal and state levels that have a direct effect on the business of structural engineering. ACEC and the various practice coalitions, like CASE, form one of the largest lobbying groups in the nation and are very effective in presenting the views of the engineering community to Congress and the state legislatures.

The reason why structural engineers must petition the government can be seen in these four issues; The 3 percent withholding mandate, Qualifications Based Selection, resisting efforts of government to do design work in-house, and funding for programs that will aid the public through better design. Let us explore these issues in detail.

Set to take effect in 2012, the *Tax Increase Prevention and Reconciliation Act of 2005* mandates that all federal, state and local governments withhold three percent from fees paid to engineering firms for goods and services, ostensibly to prevent tax evasion. Instead of providing greater enforcement against tax cheats, this bill would penalize all engineering firms doing business with all levels of government. There are many unintended consequences to this bill. The cost to government just to implement this requirement is estimated to run into the billions of dollars. Cash flow issues may affect firms as they try to complete the project with only 97% of the negotiated fee, and firms may be required to increase billing rates to make up for this requirement. Firms that sub-contract to other design firms may feel pressure from their clients to reduce fees to ameliorate its effect on the Prime firm.

Fortunately, the complaints of ACEC to this bill has led over 200 House and Senate members to co-sponsor HR 275 and S. 292 that would repeal this mandate. All engineering firms that do business with government should pay close attention to these corrective pieces of legislation.

Qualifications Based Selection of design work has been in the federal law via the *Brooks Act* since 1972 and is required in 46 states. QBS requires that engineering firms be selected based on their qualifications to effectively do the job with fees negotiated after selection. Opponents of QBS believe that the cheapest firm can perform just as well as a more qualified one. QBS protects the public welfare by ensuring that design of the public infrastructure is only done by qualified firms. Smaller firms that have experience in a niche market are protected by QBS from larger firms that can underbid in a fee-shopping environment. QBS enhances the design outcome by putting qualified and experienced designers on the job that can bring innovative and time and cost-saving ideas to the project. For public work, the taxpayer is best served by design firms that are selected by qualifications rather than price.

ACEC and the state member organizations are constantly on the lookout for legislation that tries to limit this procurement approach. This year, Texas saw just such an attempt by a mis-guided legislator. With the help of Texas CEC, and other engineering and architecture organizations, this attempt was defeated. Some federal agencies are not as aware of this law as they should be. If your firm is asked by an agency to provide fee quotes along with your qualifications proposal, you should immediately remind them of the Brooks Act and ask ACEC for help.

Another procurement issue that affects engineering firms is the tendency of some federal and state agencies to engage in commercial activities that are traditionally done by the private sector. The present administration seems to be leaning toward restricting the ability of agencies to contract out for services by issuing restrictive regulations that place additional requirements on contracts, making them more expensive to oversee. This view overlooks the wide range of experience in the private sector that, by its competitive nature, brings down the cost of design and construction of projects. Agencies that contract out can quickly adapt to changing workloads by contracting only for services needed at the time. Agencies that try to keep more work in house lose all of those advantages, often leading to inefficient use of the work force and the stifling of innovation. The press often reports the cost differential between private sector work and work done by government employees by comparing the billing rate of the private sector firm to the raw salary costs of the government. This ignores the indirect costs that also affect the government, but are hidden in another budget.

The *FAIR Act* sets forth the principle that the government should not compete against its citizens by providing design services within the government. ACEC lobbies against any legislation or executive order that violates this principle.

Funding for research projects is limited. The structural engineering community should lobby for funds for research in such fields as seismic design, “green” construction, and hurricane hazard mitigation and many others. “The squeaky wheel gets the grease” is an apropos phrase that suits this issue. Congress needs to know the issues that affect the public safety and welfare, and where research dollars could be most effectively spent to achieve this aim.

Please go to ACEC.org and click on “Advocacy” to read more about these and many other issues that affect the broader engineering community. Those that are not members of ACEC and CASE should consider joining to add your voice to those already lobbying on your behalf. Get involved in politics at the local, state or national level and make a difference. ■

