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**Consultants' Competitive  
Negotiation Act**





# CCNA – What Does It Mean?

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## What does CCNA mean?

- ▶ Consultants' Competitive Negotiation Act\*

## What does QBS mean?

- ▶ Qualifications-based selection of professional services

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# Public Procurement Law\*

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- ▶ 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

§287.055(2)(g), Fla. Stat. (2020)

# To Whom Does CCNA Apply?\*

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to professional services provided by:

- ▶ **Engineers**
- ▶ **Surveyors**
- ▶ **Architects**
- ▶ **Landscape Architects**

§287.055(2)(g), Fla. Stat. (2020)

# CCNA for Procurement

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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 \$500,000 and, in the case of construction, the cost of construction compensation does not exceed \$4 million<sup>2</sup>

<sup>1</sup> §287.055(3)(a)(1), Fla. Stat. (2010); <sup>2</sup> §287.055(2)(g), Fla. Stat. (2020)

# Continuing Contracts

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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).

# 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
- ▶ 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

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- ▶ 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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# Important CCNA Information

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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...*

# Important CCNA Information

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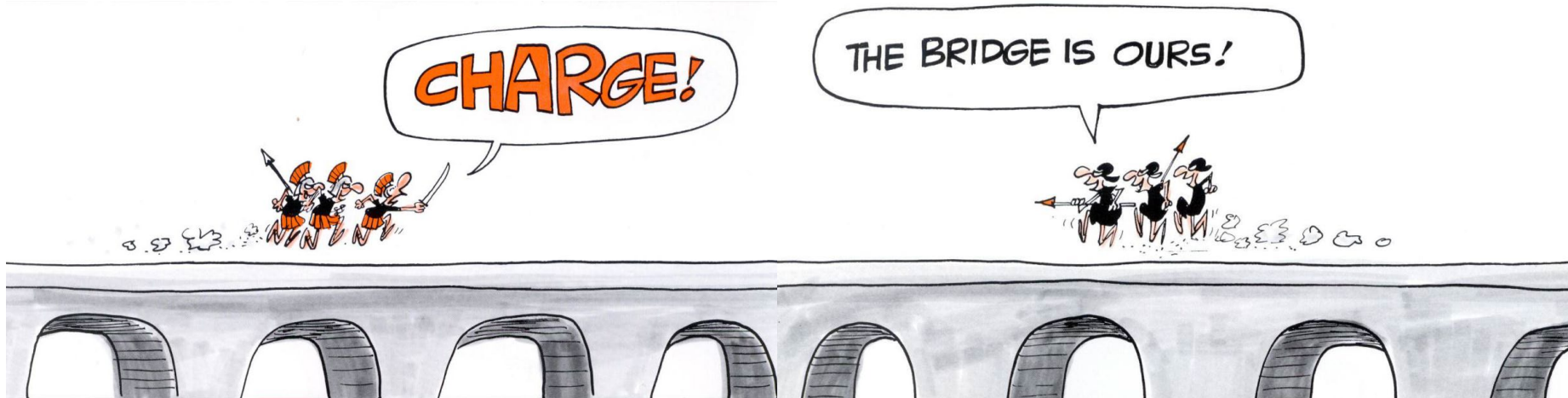
If your engineering solicitation language is similar to the following, then the RFP/RFQ likely violates the **CCNA** (Section 287.055, Chapter 287, Title 19 Florida Statute):

- ▶ “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*

# Why Not Use Low-Bid?

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



# 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?

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- ▶ 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

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## ▶ **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).



# Quality-Based Selection (QBS): The Process

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## ▶ **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).

# Quality-Based Selection (QBS): The Process

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- ▶ 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).

# Why Quality-Based Selection (QBS)?

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

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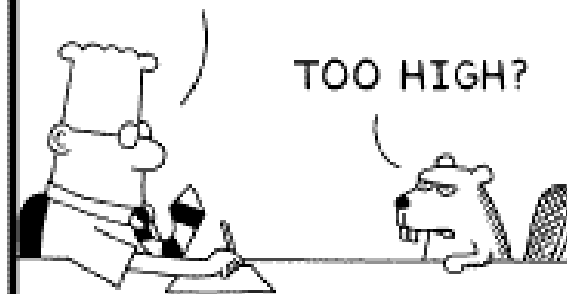
I'M PUTTING YOU  
IN CHARGE OF  
BUILDING OUR NEW  
TECHNOLOGY LAB.



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."



TOO HIGH?

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# Common Misconceptions of QBS

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“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 of QBS

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“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 of QBS

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## “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

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- ▶ **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).



# Similarities of CCNA and QBS

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- ▶ **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).

# Federal Initiatives

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- ▶ 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

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## ACEC's Online QBS Resource Center

<https://www.acecfl/advocacy/CCNA-QBS>

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