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# Quality Based Selection

## The Best Practice for Selecting Professional Consultants

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# Ontario Association of Architects

- Founded in 1889 at the behest of Ontario's Minister of Education; incorporated by parliament in 1890
- Principle object "to regulate the practice of architecture...in order that the public interest may be served and protected" - *Architects Act*
- Dedicated to promoting and increasing the knowledge, skill and proficiency of members
- Secondary object "to promote public appreciation of architecture"



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# Ontario Association of Architects

Representing nearly 7,000 people

- Nearly 4,300 architects
- Over 1,850 practices
- More than 1,600 intern architects
- Over 750 student associates
- Nearly 150 licensed technologists



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# Why does QBS Matter to OAA?

- A healthy and stable profession
- Public trust and appreciation for architecture
- Climate change and innovation
- Fairness and accountability
- Respond in the interest of the public



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# 15 RFP Alerts in 2018

## RFP/Contract Alert – St. Joseph’s Healthcare Hamilton

### Request for Proposal 09-1819 Architectural Design and Professional Services



Architects should be aware of what are considered inappropriate, unfair and unreasonable conditions in the RFP issued by St. Joseph’s Healthcare Hamilton (SJHH) for the above-noted services.

The contract form contains terms and conditions that may be uninsurable and provide additional risks with unbalanced terms or exceed what the architect is liable for at law. Some of the problematic items in the RFP include:

- requirements in conflict with the provisions of the *Architects Act*;
- uninsurable liabilities and obligations, including overly broad indemnification requirements (7.01);
- set-off clauses that are unreasonable and may affect insurance coverage (4.03);
- contract clauses not appropriate for professional services (numerous locations);
- requirement that the architect “ensure” or “warrant” (guarantee) performance (numerous locations); and
- inconsistencies within and between the RFP and the contract terms and conditions.

Architects should review the entire RFP carefully with their legal counsel, giving due consideration to the professional liability and business risks of the clauses it contains. Responding to this RFP may constitute professional misconduct.

## RFP/Contract Alert – University of Guelph

### Request for Proposal J.C. Hersey Building Addition and Renovations



Architects should be aware of what are considered inappropriate, unfair and unreasonable conditions in the RFP issued by the University of Guelph (UofG) for the above-noted project. UofG has changed some of the terms since the OAA’s review of an RFP in January 2018, however, many of the terms and conditions are still of serious concern.

The RFP uses the obsolete OAA 600-2008 client/architect agreement with extensive supplementary conditions. It contains terms and conditions that may be uninsurable, require the architect to be responsible for work that is not clearly defined, provide additional risks with unbalanced terms or exceed what the architect is liable for at law. Some of the problematic items in the RFP include:

- requirements in conflict with the provisions of the *Architects Act*;
- uninsurable liabilities and obligations, including overly broad indemnification requirements (SC17);
- set-off clauses that are unreasonable and may affect insurance coverage (SC20);
- unreasonable lien clauses (SC22);
- unidentified modifications to Schedule A; and
- inconsistencies within and between the RFP and the contract terms and conditions.

Architects should review the entire RFP carefully with their legal counsel, giving due consideration to the professional liability and business risks of the clauses it contains. Responding to this RFP may constitute professional misconduct.

## RFP/Contract Alert – Humber River Hospital (HRH)

### Requests for Proposals (RFP) # HRH-18-02-02, for the Provision of Architectural Services



Architects should be aware of what are considered inappropriate, unfair and unreasonable conditions in the RFP and included contract conditions issued for the above-noted project. The OAA has communicated with HRH, but has not received any indication that the RFP will be amended.

Some of the problematic items in the RFP include:

- Requirements inappropriate to the provision of professional services (2., 3.2, 5.21, 5.25(q), 5.33, Schedule A, A1.1, A1.7, A2.3, A3.10, A4.6, A5.2);
- Requiring the return of all information of any kind (5.18(d), A5.2);
- Requiring the architect to surrender all rights to the instruments of service and not providing any indemnification (A1.2, A4.1);
- Mandatory binding arbitration (A8.2);
- No or inadequate indemnification of the architect (A1.2);
- Overly broad and uninsurable indemnification requirements that exceed the architect’s liability at law and may not be covered under professional liability insurance (A6.1);
- Not limiting liability to insurance available at time of claim (A6.1);
- Requiring a fixed fee for unknown scope of work (Schedule A, A1.1, A2.5, A3.2, A5.6(g), A6.2, A7.4(c),(d));
- Inconsistent terminology referring to the architect (various);
- Uninsurable requirements (A2.1, A2.4, A3.2, A4.3, A5.4, A5.6(e), A5.6(g), A6.1, A6.4, A6.5);
- Inconsistent or contradictory clauses (1.4, 2, 4, 5.3.2, 5.1.1, 5.1.2, 2.25(j), A1.1, A3.2, A6.2(b));
- Use of undefined or obsolete terms (3.2, various); and
- Requiring insurance that is unavailable in the marketplace (Schedule C).



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# How does QBS work?

- Professionals compete based on qualifications and understanding of the client's needs
- The client ranks the proposals:  
best service and achieving project objectives
- A detailed scope established with preferred proponent: including deliverables, that achieves the client's objectives
- Appropriate fees and schedule: that achieves the client's objectives



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## QBS is not new...

- *1972 Brooks Act* (USA) made it illegal to consider price when hiring architects and engineers for federal contracts
- 46 States have implemented “mini-Brooks Acts”, agencies in 3 others
- Province of Quebec mandated ministries and agencies use QBS for A/E services in October 2008
- Various agencies and municipalities using QBS in Ontario, Canada and USA



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# QBS Federally: Standing Committee

- In June 2009 the House of Commons Standing Committee on Government Operations (OGGO) released *In Pursuit of Balance: Assisting Small and Medium Enterprises In Accessing Federal Procurement*
- Report recommends the government “consider the merits of legislating the use of QBS as the required procurement process”





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## QBS Federally: Infraguide

- 2006 InfraGuide “*Selecting a Professional Consultant*”
- Jointly produced by Government of Canada, National Research Council and Federation of Canadian Municipalities
- Identifies QBS as the “recommended best practice” for procuring A/E design services



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## QBS Federally: Infraguide (Cont'd)

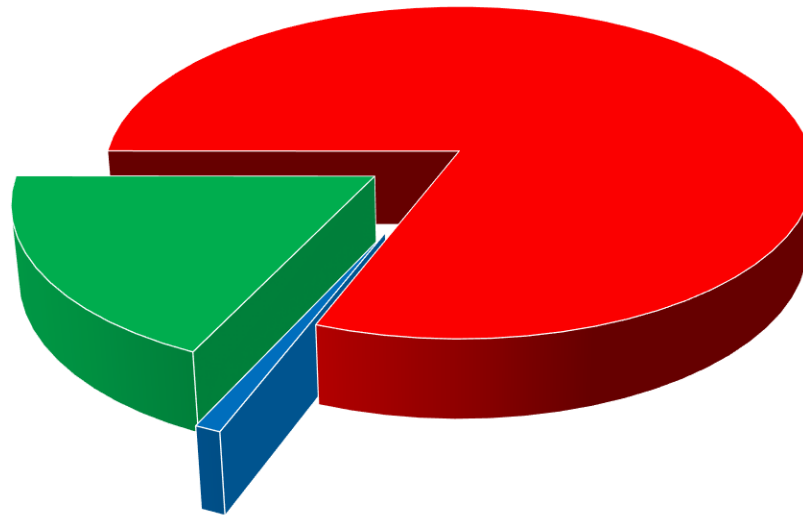
- Any requirement “to bid fees in a proposal call does not achieve the expected outcomes”; instead focuses consultant on minimizing fees to win procurement
- Minimizing fees “a serious problem”; eliminates value-added services (innovation)
- Best value defined as “the most effective, long-term solution to a problem, not the cheapest design”



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# QBS Federally: Infraguide (Cont'd)

Lifecycle Costs: A&E Design 1-2%

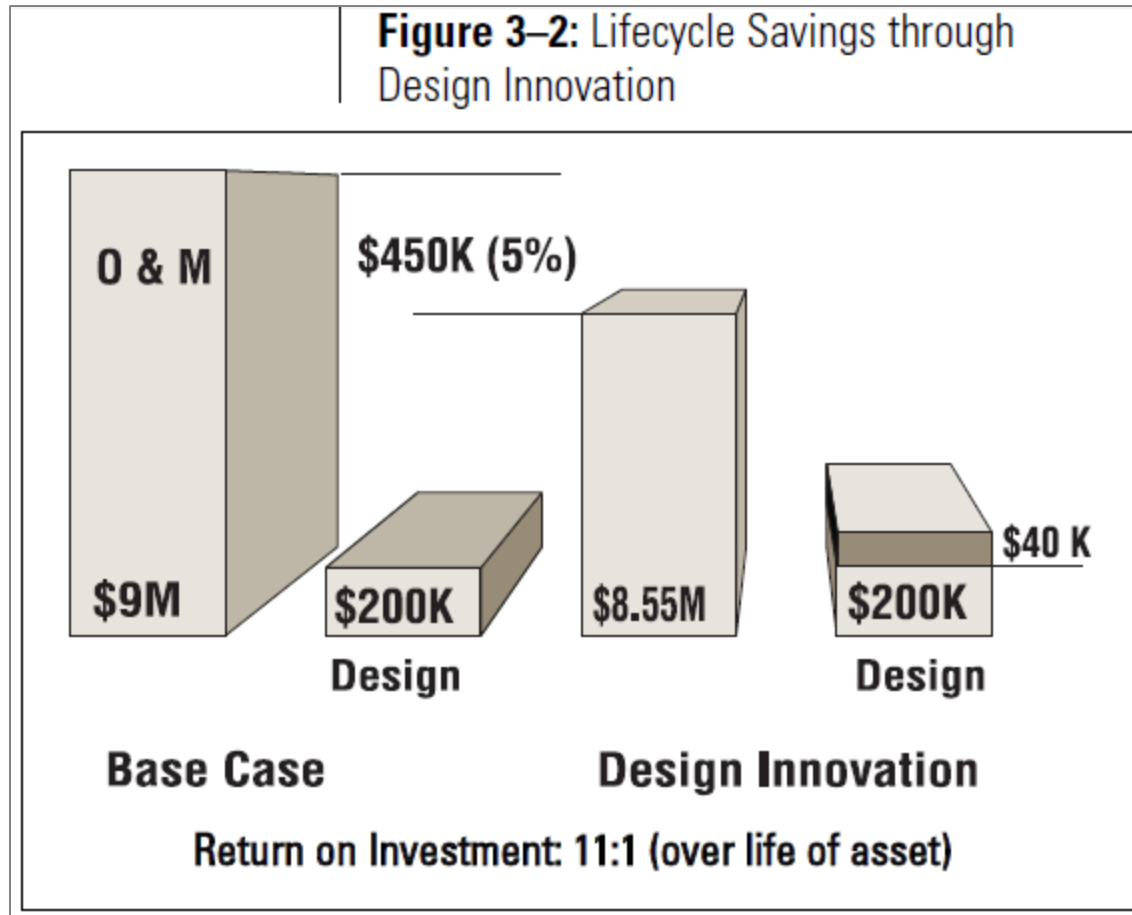


■ A/E   ■ Construction   ■ Operations and Maintenance (O&M)



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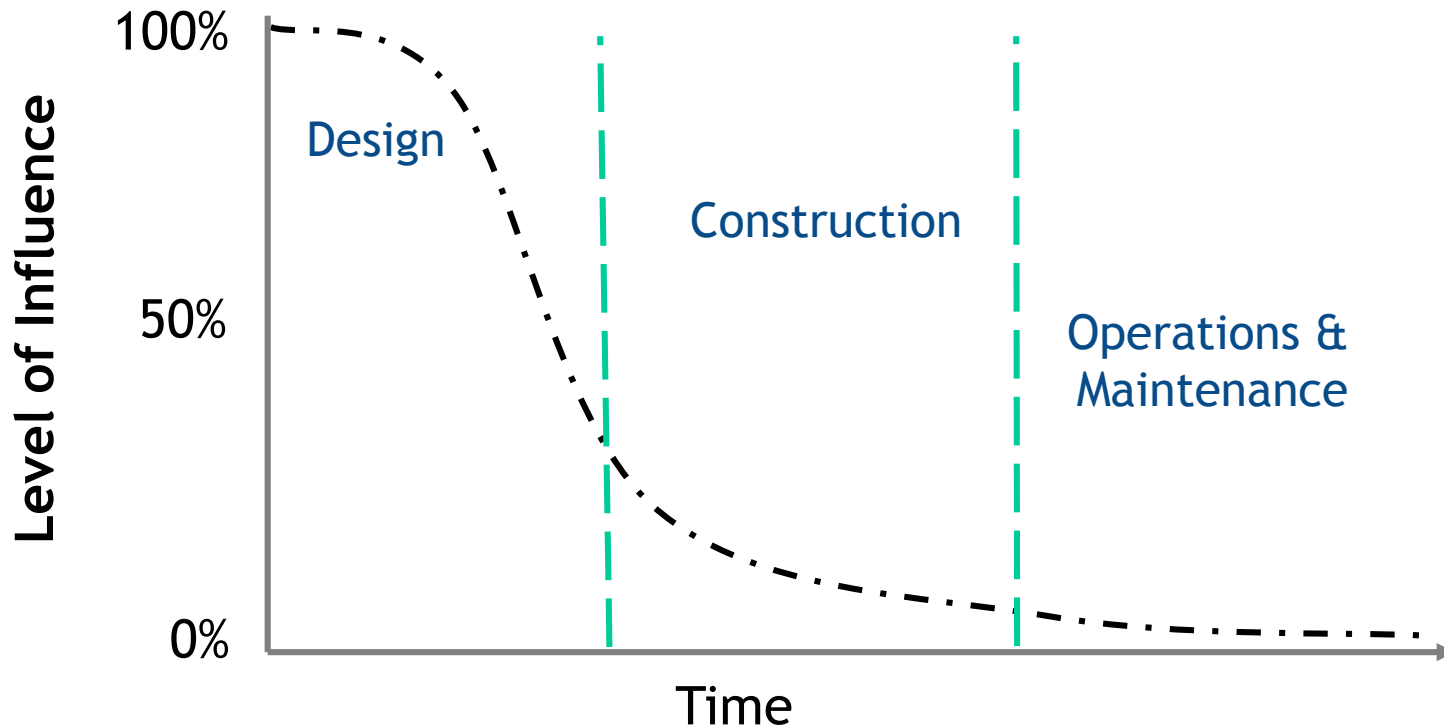
# QBS Federally: Infraguide (Cont'd)





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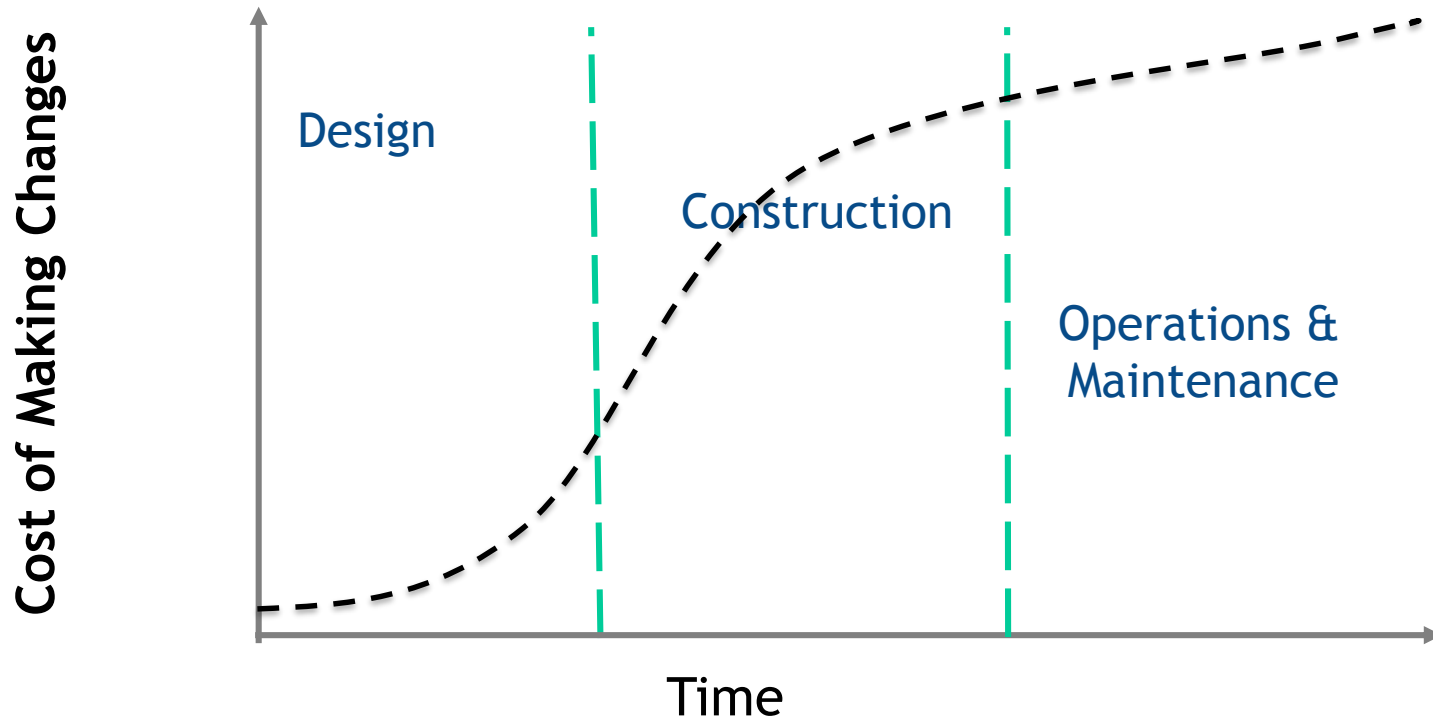
# Opportunities to improve outcome





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# Opportunities to improve outcome





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# 2018 QBS Report

- QBS has cost growth of 0.92%, one-tenth of 9.82% cost growth of low-bid, one third of the 2.47% cost growth of best value procurement (BVP)
- QBS has a faster construction speed than BVP (by 23%) or low-bid (by 6%)
- Extremely high level of quality associated with QBS projects, with designers and owners reporting high levels of success



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## 2018 QBS Report (Cont'd)

- QBS not as susceptible to change order risk as other procurement methods
- QBS not subject to complex pricing analysis, reducing administrative and proposal writing costs
- Enables architects and engineers to innovate





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# Major Studies of QBS

1984, American Institute of Architects (AIA)

- Maryland's A/E selection process "significantly more time-consuming and expensive than Florida's"
- (Maryland subsequently adopts QBS)

2002, Polytechnic University in New York

- "disadvantages of competitive bidding exist even when the best technical proposal wins because the effect of the bidding process remains"



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## 2009 APWA Study

- Georgia Institute of Technology and University of Colorado reviewed over 200 projects across US
- 93% of clients expressed high or very high satisfaction with consultants selected using QBS
- QBS reduced construction cost growth by 70 %
- QBS reduced construction schedule growth by 20%
- QBS provided better ability to address societal issues or stakeholder concerns



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# What's wrong with the lowest price?

- Rewards firms for using fewer resources on behalf of the client  
(e.g. less experienced and less senior staff)
- Penalizes firms with greater appreciation of the client's needs
- Penalizes firms that accurately anticipate complications or that propose innovation
- Increased cost to client  
(more staff time and resources)



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# What's in it for the client?

The client gets:

- Right team for the right job
- More realistic schedules and budgets
- Fewer change orders and disputes
- Better business relationship between client/consultants/contractors/external agencies
- Better service, better quality and better value for taxpayers



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# Recommended by Associations

## QBS Canada

Interior Designers of Canada	Association of Registered Graphic Designers	Association of Consulting Engineering Companies (Manitoba)	Consulting Architects of Alberta
The Royal Architectural Institute of Canada	CSA Group	Association of Professional Engineers and Geoscientists of the Province of Manitoba	Alberta Association of Architects
Canadian Construction Association	Canadian Association of Management Consultants	Association of Consulting Engineering Companies (Ontario)	Consulting Engineers of Ontario
Association of Consulting Engineering Companies (Canada)	Engineers Canada	Association of Consulting Engineering Companies (New Brunswick)	Association of Registered Interior Designers of Ontario
Institute of Communication Agencies	Association of Consulting Engineering Companies (British Columbia)	Association of Consulting Engineering Companies (Nova Scotia)	Ontario Association of Architects
Advertising Association of Winnipeg	Association of Consulting Engineering Companies (Yes2QBS)	Association of Consulting Engineering Companies (Nova Scotia)	Association of Consulting Engineers of Quebec
Society of Graphic Designers of Canada	Association of Consulting Engineering Companies (Alberta)	The Manitoba Association of Architects	Association of Architects in Private Practice of Quebec
	Association of Consulting Engineering Companies (Saskatchewan)	Architectural Institute of British Columbia	

= 100,000's of Professionals



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# So why are we not using QBS?

Belief that scoring on quality = QBS

- Recent example had 52% of score on price
- Moderately qualified team (36/48) with lowest price (52/52) could only be beat by most qualified (48/48) if they lowered their price by 1/3
- Price can become 100% of determining factor even at 70/30, 80/20, 90/10



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## Why are we not using QBS? (Cont'd)

Other factors:

- Non-technical staff vs procurement/industry expertise
- Misunderstanding of trade agreements, procurement policies, etc.



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# Ontario's BPS Procurement Directive

## 3. PRINCIPLES

### Value for Money

Organizations must maximize the value they receive from the use of public funds. *A value-for-money approach aims to deliver goods and services at the optimum total lifecycle cost.*





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# Ontario's BPS Procurement Directive

## 7.2 PROCUREMENT POLICIES AND PROCEDURES

### 7.2.9 Mandatory Requirement #9: Evaluation Criteria

Maximum justifiable weighting must be allocated to the price/cost component of the evaluation criteria.



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## Why are we not using QBS? (Cont'd)

Other factors:

- Mistaken assumption that best value = lowest price
- **Misperception that QBS eliminates price**



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# QBS Federally/Next Steps

- PSPC began a QBS pilot in 2018
- Currently consulting with the OAA and the larger A/E industry to start another PSPC QBS pilot specific for the Ontario Region
- Direction from senior management to “think outside the box” and move this forward
- OAA discussing with provincial government



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# QBS Resources

- QBS documents available on OAA website (currently updating)
- Can connect with procurement officials using QBS
- Can connect with other stakeholders promoting QBS
- OAA available to help support implementation of QBS



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## Questions/Comments?

*“QBS is an invaluable tool for us. It consistently delivers high-quality, on-time infrastructure projects for the citizens of New York.”* - William F. O’Connor, Deputy Commissioner, New York State Office of General Services

*“The whole QBS process was very helpful. My only regret is that I wish we would have adopted it sooner.”* - Rick Manchester, Parks and Recreation Director, City of Two Rivers, WI



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# Contact

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