

It is important to note that under a QBS process, fees are not to be considered when making the initial selection of the best or most qualified architect, engineer, or land surveyor. The fees associated with the selected professional's services are negotiated or disclosed only after the owner selects the most qualified firm for the project. The PSPA applies when a contractor or subcontractor procures professional services in connection with a governmental contract. Thus, if a governmental entity's contract with a contractor requires the professional services of an architect, engineer, or land surveyor, the contractor must select the provider of such services through the QBS process required under Texas Government Code 2254.004. See Op. Tex. Att'y Gen. No. JC-0374.

It is very important for governmental entities to comply with the PSPA. Under Texas Government Code §2254.005, a contract entered into or an arrangement made in violation of the PSPA is void as against public policy. Additionally, the state regulatory agencies for architects, engineers, and land surveyors have adopted rules to prohibit registrants from providing fee information to governmental entities prior to being selected on the basis of demonstrated competence and qualifications. Registrants who violate these rules could be subject to disciplinary action by their regulatory board.

Further information regarding PSPA and QBS can be found at:

Texas Board of Professional Engineers and Land Surveyors:

<https://pels.texas.gov/downloads.htm>

Texas Engineering Practice Act and Rules, Sections 137.53 and 137.79

Texas Board of Architectural Examiners:

<http://www.tbae.state.tx.us/LawsAndEnforcement/StatutesAndRules>

Architects Practice Act and Rules, PSPA, Rule 1.147

The mission of the **Texas Board of Architectural Examiners** (TBAE) is to serve the State of Texas by protecting and preserving the health, safety, and welfare of the Texans who live, work, and play in the built environment through the regulation of the practice of architecture, landscape architecture, and interior design.



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The **Texas Board of Professional Engineers and Land Surveyors** (TBPELS) protects the health, safety, and welfare of the citizens of Texas by licensing competent and qualified Professional Engineers and Land Surveyors. The Board also enforces technical and ethical standards for all licensed Professional Engineers and Land Surveyors.

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What is the Professional Services Procurement Act?



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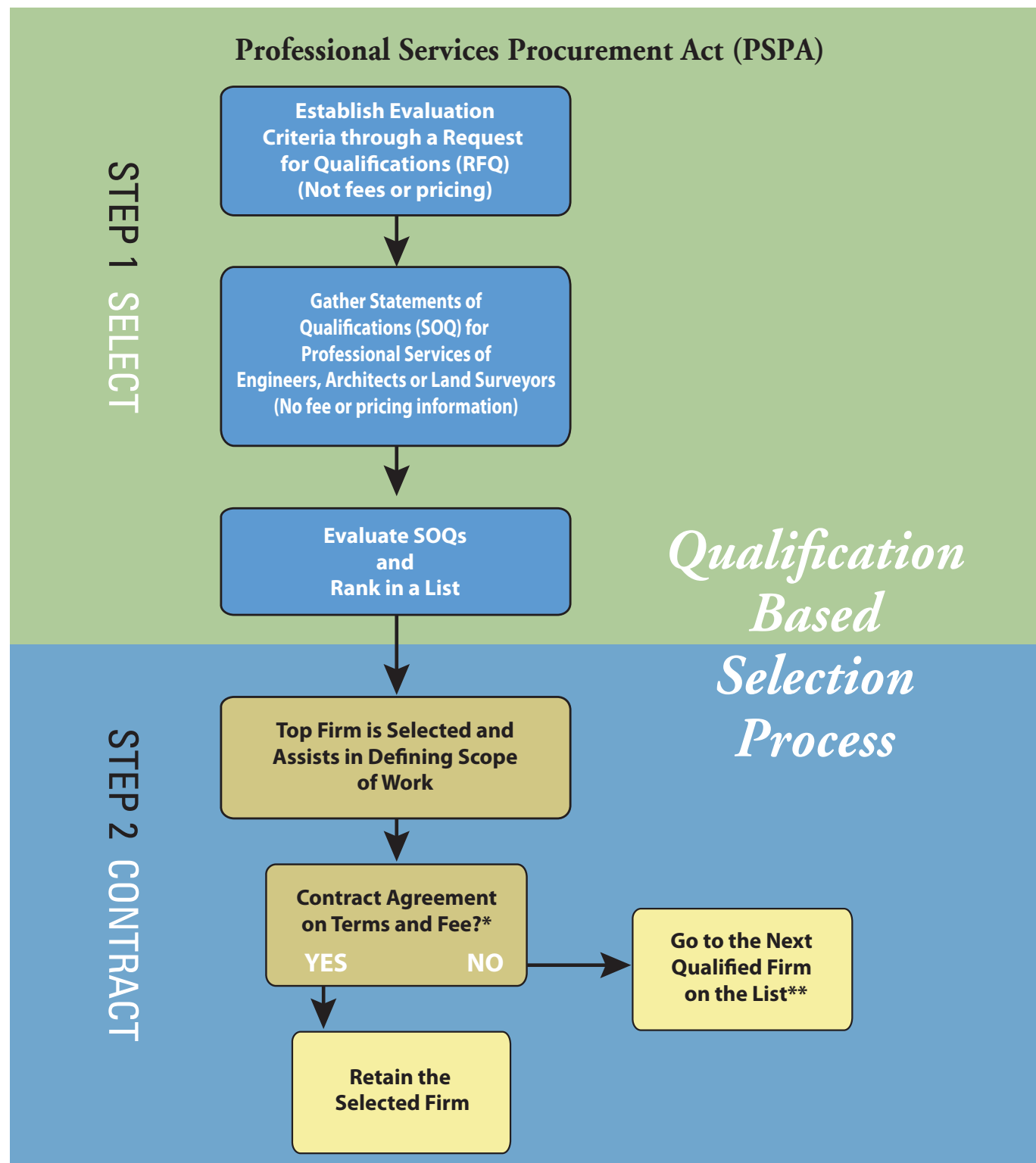
Professional Services Procurement Act (PSPA) – What is it?

The PSPA, or Texas Government Code Chapter 2254, prohibits governmental entities, including cities, counties, school districts, state agencies and other public bodies, from selecting providers of certain professional services on the basis of competitive bidding. With respect to the selection of an architect, engineer, or land surveyor, the PSPA requires a governmental entity to follow the procedure set out in Texas Government Code §2254.004. This procedure, commonly known as Qualifications Based Selection, or QBS, is a two-step process which requires the governmental entity to first select the most highly qualified provider of services, and negotiate a price second.

Qualifications Based Selection of an Architect, Engineer, or Land Surveyor

The first step in the QBS process is the selection of the most highly qualified architect, engineer, or land surveyor. Typically, this begins when the governmental entity issues a Request for Qualifications (RFQ). The RFQ describes the project and selection criteria and invites interested professionals to submit their qualifications to provide the requested services. At this point in the QBS process, the governmental entity is prohibited from considering or requesting information regarding the cost of services. Additionally, architects, engineers, and land surveyors are prohibited from disclosing the cost of services or providing any information from which the cost of services can be derived. After all responses from interested professionals have been received, the governmental entity selects the most highly qualified provider of services, based on demonstrated competence and qualifications.

The second step in the QBS process is to negotiate a fair and reasonable price with the most highly qualified provider of services. This is the first step in which the governmental entity may receive information regarding the cost of services. During this process, the governmental body and selected provider of services will prepare a detailed scope of services and negotiate a fair and reasonable fee. If a satisfactory contract cannot be negotiated with the most highly qualified provider of services, the entity shall formally end negotiations with that provider, select the next most highly qualified provider, and attempt to negotiate a contract with that provider at a fair and reasonable price. This process is continued until the governmental entity has entered into a contract with the selected professional.



*At no time should the fee proposal of one firm be compared to the fee of another. Agreement on fee should be based on the merits and information of one firm at a time.

**Negotiation with only one company or firm at a time may take place to be in compliance with Texas Government Code 2254.004 (b).