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PRESIDENT & CEO

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Representative Henry A. Waxman  
Chairman  
Committee on Energy and Commerce  
2125 Rayburn House Office Bldg.  
Washington, D.C. 20510

Representative Joe Barton  
Ranking Member  
Committee on Energy and Commerce  
2322A Rayburn House Office Bldg.  
Washington, D.C. 20510

Representative Edward J. Markey  
Chairman  
Subcommittee on Energy and  
Environment  
2125 Rayburn House Office Bldg.  
Washington, D.C. 20510

Representative Nathan Deal  
Ranking Member  
Subcommittee on Energy and Environment  
2322A Rayburn House Office Bldg.  
Washington, D.C. 20510

Dear Committee Leadership:

On behalf of the American Council of Engineering Companies (ACEC), we are pleased that the Energy and Commerce Committee is taking up legislation to address the pressing need to fund critical drinking water projects through the reauthorization and expansion of the Drinking Water State Revolving Fund (DWSRF) program.

ACEC is the business association of America's engineering industry, representing 5,700 independent engineering companies throughout the United States. ACEC members are directly engaged in the development of America's infrastructure, and play a particularly critical role in the effort to improve the nation's water and wastewater infrastructure. ACEC member firms represent the broad spectrum of the industry, from very large firms to small, family-owned businesses. Overall, our members employ well over half a million professionals throughout the 50 states and the District of Columbia. Founded in 1910 and headquartered in Washington, D.C., ACEC is a national federation of 51 state and regional organizations.

ACEC strongly supports the goals and funding authorizations for drinking water infrastructure in the Assistance, Quality, and Affordability Act of 2010. The draft bill would provide \$14.7 billion in much-needed assistance and funding for the DWSRF over five years.

## **The Need**

The nation's drinking water infrastructure is aging, forcing local governments and communities to face significant challenges to sustain their achievements in protecting public health. According to the Environmental Protection Agency's 2007 calculations, the nation's water infrastructure will require at least \$335 billion worth of investment over the next 20 years. By 2020, EPA estimated that 45% of all pipes serving water infrastructure facilities will be poor, very poor or elapsed. According to the U.S. Geological Survey, 1.7 trillion gallons of water are lost annually through water distribution systems at a cost of \$2.6 billion. Providing a stable federal investment in our country's drinking water infrastructure will help to ensure that our citizens receive safe and healthy water from their taps.

## **Qualifications-Based Selection (QBS)**

We are encouraged that the committee recognizes the importance of qualifications-based procurement as it applies to engineering for water projects. We are concerned, however, that the bill text proposes to exclude many communities from the requirement that engineering services for SRF-funded projects be procured through the Qualifications-Based Selection (QBS) process. Such an exclusion is inconsistent with the manner in which QBS applies to virtually every federal infrastructure program, and inconsistent with companion legislation already passed by the House of Representatives (HR 1262) that applies QBS to the Clean Water Act SRF program.

The Brooks Architect-Engineers Act, 40 U.S.C. 1101 *et seq.*, requires that engineering firms submit their qualifications to the government entity, that the entity assess the expertise of the firms competing for the project, that the most qualified firms be short-listed, and that the top ranked firm be selected for cost negotiation. If a fair and reasonable price cannot be reached, the agency then negotiates with the second-ranked firm, and so on. By requiring engineering firms to compete first on the basis of their experience and technical expertise, with negotiations on a fair price to follow, the QBS process ensures that tax dollars for engineering services are well invested and that firms with specific environmental skills are considered.

Since its passage in 1972, the Brooks Act has been steadily expanded and now covers virtually all federal infrastructure projects, including transit, highway, aviation, military construction, water resources and Superfund projects. Since the Safe Drinking Water Act is another federally-financed program to the states, it would be a logical extension to apply the Brooks Act to the SRF program.

In addition, 46 states currently have QBS laws and regulations in place modeled after the federal law. QBS is also endorsed by the American Public Works association and is recommended by the American Bar Association in its model procurement code for states and local governments.

We believe that the QBS process would enhance the procurement process for all local governments. Since many communities are already involved with many other funding programs that use QBS, particularly for federal-aid transportation projects, they are already familiar with and prepared to use the same system for SRF-funded projects. Engineering firms have a long history of working closely with municipal clients in utilizing QBS.

Smaller communities in particular benefit from QBS because they often lack the technical capabilities to develop a detailed scope of work on which to base accurate cost estimates for the project. By procuring through QBS, the local government has the benefit of working with a highly qualified firm to fully develop a detailed project scope that will allow government officials to make informed decisions on project outcomes, alternative design solutions and cost before signing a contract and moving forward.

QBS has also been shown to help government procurement managers control overall project costs. A study released in late 2009 by the University of Colorado and Georgia Tech found that "QBS-based projects exhibit better measures than the national average in terms of both lower construction costs and lower schedule growth." The same study found that QBS lowers project risk for owners, particularly on complex projects, and results in better project outcomes and more satisfied owners.

For these reasons, we respectfully urge the Committee to revise Section 11 of the bill and apply QBS equally to all projects funded through the SRF program.

On behalf of the member firms of ACEC, thank you for your consideration on this important matter, and we look forward to working with you to improve the nation's water infrastructure. Should any additional information be required, please contact Diane Shea, ACEC's Director of Environmental and Energy Programs, at 202-327-7474 or [dshea@acec.org](mailto:dshea@acec.org). Thank you for your leadership and support.

Sincerely,



David A. Raymond  
President & CEO