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Details:

(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on ... Labor, Elections and Urban
Affairs (SC-LEUA)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Labor, Elections and Urban Affairs

Assembly Bill 553

Relating to: limiting the use of the lowest responsible bidder process and requiring local units of government to use the qualification-based selection process for certain public works consulting contracts.

By Representatives Gottlieb, Smith, Albers, Gunderson, Jeskewitz, Kerkman, Mursau, Nelson, Newcomer, A. Ott, Richards, Stone, Townsend and Moulton; cosponsored by Senators Plale, Decker, Grothman, Hansen, Kanavas, Kedzie and Wirch.

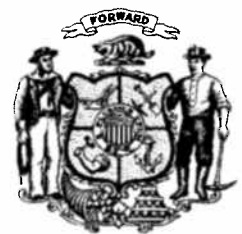
March 07, 2008 Referred to Committee on Labor, Elections and Urban Affairs.

March 13, 2008 Failed to concur pursuant to Senate Joint Resolution 1.

Adam Plotkin
Committee Clerk



WISCONSIN STATE LEGISLATURE



Testimony of Representative Mark Gottlieb
Assembly Bill 553
Assembly Committee on Urban and Local Affairs
February 12, 2008

Members of the Committee:

Thank you for the opportunity to testify before you today on Assembly Bill 553, relating to limiting the use of the lowest responsible bidder process and requiring local units of government to use the qualification-based selection process for certain public works consulting contracts.

Qualifications-Based Selection (QBS) is a process for selecting design professionals through a negotiated process that is based on their competence, experience and qualifications. So there is a clear understanding upfront, I want to emphasize that this bill only addresses the issue of the design phase of a public works project and has nothing to do with local government units bidding out services for the construction phase.

With the implementation of the Brooks Act in 1972, Federal law requires the use of QBS to select architects or engineers in the design for federally-funded projects. Its proven success at the federal level has led forty-six states and a variety of municipalities throughout the country to follow suit in adopting laws and ordinances requiring QBS on state and local projects. QBS is also used by the Wisconsin Departments of Transportation and Administration to select architects and engineers for state highway and building projects. However, there is currently no requirement that local governments use QBS, even on state-funded projects (unless federal funds are involved).

It is a misconception that the lowest price is always the best choice when selecting professionals to plan and design public projects. Design costs typically represent only about one percent of the total lifecycle cost of a public works project. To underestimate the importance of finding the best-qualified designer to reduce the lifecycle costs of a public works project, and automatically select the lowest price, is not in the best interest of the taxpayers.

With this in mind, I introduced Assembly Bill 553 requiring local governments to use QBS to select engineers, architects, land surveyors, landscape architects or professional geologists for public works projects that are over \$250,000 and for which the state provides financial assistance. While the primary emphasis in the selection process is on the designer's qualifications and not lowest price, this bill does not prohibit other bidding

processes if negotiations between the local government unit and all consultants submitting proposals for the project fail to produce an agreed upon contract.

Assembly Bill 553 also stipulates that if a local government unit hires a consultant for local bridge inspections, QBS must be utilized and it negates the thresholds established in the bill for total project cost and state financial assistance. When damage or threatened damage to the public work creates an emergency, QBS is not required for selecting consultants in the repair or reconstruction of that public work.

I'd like to address some of the more common questions that arise when discussing QBS –

1) How do you know you're getting the best deal if you can't consider price when ranking the consultants?

QBS is an efficient and effective process because it requires the government agency and consulting firms to first examine the entire scope of the project, not just the immediate concerns of design cost. Believing low-cost bidding will provide a government body the best deal and a comprehensive review about the scope of the project is counterintuitive because a poorly defined scope of required services can lead to numerous costly change orders, and it can largely limit the ability to search for innovative and alternative approaches.

2) The state has people who deal with QBS everyday. How can smaller, local governments negotiate a good deal if our board/council doesn't have the experience or the proper information before us?

The lack of experience and breadth of knowledge is precisely the reason why local governments should utilize QBS. In the case of towns and smaller villages, major public works projects, like water treatment facilities, that require consultants come few and far between. QBS affords them the unique ability to appropriately address the issue of cost after they first fully understand the entire scope of the project and any innovative alternatives that may be presented to them.

QBS affords a local government unit and all consulting firms involved in the process the opportunity to openly and freely discuss the scope and parameters of a project. Unlike the low-price method, it can dramatically minimize costly change orders. And if the highest-ranked firm and the local government unit cannot negotiate a price, the government unit can move on to the next firm without penalty.

3) Won't some firms be shut out of the process due to their size or lack of experience?

I believe QBS is the most competitive and open procurement process available. Rather than simply requiring the lowest price a firm can offer, this process emphasizes the firm's ability to perform the job. It gives smaller firms the same opportunity as larger and/or well-known firms to demonstrate its design team's qualifications and experiences; whereas under the price-bidding method, small firms may be forced to selectively target

which projects they think they can win due to scarce resources while large firms can spread their costs among a greater number of projects.

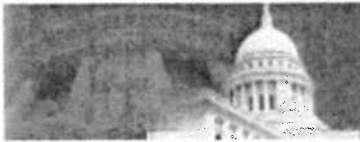
4) Shouldn't local communities be left to decide what is the best method to utilize?

If they are bidding for local projects with local money – absolutely. However, Assembly Bill 553 brings some accountability into the process because it requires the use of QBS if a local government unit has to hire a consulting firm in the design of a public works project that utilizes state financial assistance greater than \$250,000. At a time when the state is facing some serious long-term financial instability, we have a vested interest in knowing state taxpayer dollars are being used in the most efficient and effective manner and QBS is the best proven method to provide the accountability we need.

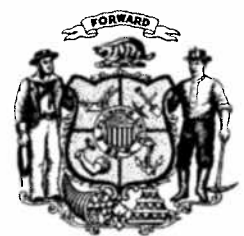
According to the American Council of Engineering Companies and the American Institute of Architects, the following groups support or utilize QBS (it does not necessarily indicate they endorse this legislation):

- American Bar Association
- American Council of Engineering Companies
- American Council of Engineering Companies - Wisconsin
- American Institute of Architects
- American Institute of Architects – Wisconsin
- American Public Works Association
- Associated General Contractors
- Federal Highway Administration
- National Society of Professional Engineers
- U.S. Army Corps of Engineers
- Wisconsin Department of Natural Resources
- Wisconsin Department of Transportation
- Wisconsin Division of State Facilities, DOA
- Wisconsin Towns Association

Thank you and I'd be happy to answer any questions at this time.



WISCONSIN STATE LEGISLATURE





**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2007 Assembly Bill 553	Assembly Substitute Amendment 1
<i>Memo published: February 25, 2008</i>	<i>Contact: Don Dyke, Chief of Legal Services (266-0292)</i>

The substitute amendment makes the following changes to the original bill:

1. Revises the definition of “project,” which generally triggers the qualifications-based selection process, as follows:
 - a. Clarifies that the public work or building is a project “of the local governmental unit.”
 - b. Rather than referring to the estimated “value” of the project, substitutes: “The total cost of the complete project is estimated by the governing body of the local governmental unit to be at least \$250,000.”
2. Revises the “established relationship” exception by triggering the exception when a local governmental unit has an established relationship with a consultant who previously has provided similar services to the local governmental unit, rather than triggering the exception only when a local governmental unit has entered into a contract with a consultant under the proposal’s qualifications-based process.
3. Revises the definition of “consultant” by expressly including a person who provides “photogrammetric surveying services.” The term “photogrammetric surveying services” is defined as: “activities associated with measuring, locating, and preparing maps, charts, or other graphical or digital presentations depicting natural or man made features, phenomena, and legal boundaries of the earth including surveys, maps, charts, remote sensing data, and images, and aerial photographic services.”
4. Clarifies the relationship of the proposed qualifications-based selection process to current competitive bidding requirements by: (a) deleting SECS. 1 – 6 and 8 – 10 of the original bill, which include exception clauses in current competitive bidding provisions to the qualifications-based selection process; (b) deleting, in the definition of “local governmental unit” reference to a local governmental unit “charged with the duty of receiving bids for and awarding any project” and substituting “charged with procuring the services of a consultant”; and (c) revising the element of the definition of “project” which provides that services of a

consultant “are required for the planning, study, design, construction, repair, remodeling, or improvement of the public work or building,” by: (i) deleting “construction, repair, remodeling, or improvement” and substituting “or construction inspection or administration”; and (ii) adding the clarifying qualification that the consultant’s services “are separate from the contract for the actual construction, repair, remodeling, or improvement of the public work or building.”

5. Replaces all references to “qualification-based selection” with “qualifications-based selection.”

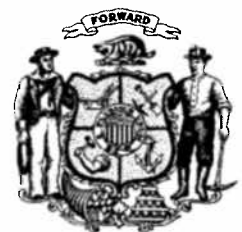
Legislative History

Assembly Substitute Amendment 1 was offered by Representative Gottlieb. The Assembly Committee on Urban and Local Affairs recommended adoption of the substitute amendment by a vote of Ayes, 8; Noes, 0. The committee recommended passage of Assembly Bill 553, as amended, by a vote of Ayes, 6; Noes, 2.

DD:jb:ksm



WISCONSIN STATE LEGISLATURE



SB295

Date?

Please Support AB 553 – Qualifications-Based Selection (QBS)

This bi-partisan bill is being offered by Representative Mark Gottlieb in the Assembly and Senator Jeff Plale in the Senate. This bill mirrors federal requirements for the use of the QBS method of procuring professional architectural and engineering (A/E) services. QBS ensures safe, quality design work while saving taxpayers money, which is why it is currently required across the country.

Why is this bill important?

- The federal Government requires QBS in order to save money and ensure quality design on all projects using federal funding. This bill hopes to capture similar savings by having local government use QBS on certain projects.
- Wisconsin is 1 of only 4 states that does not have QBS legislation on the books.
- In Wisconsin, both the Department of Administration and the Department of Transportation use the QBS process in the selection of engineers and architects with exceptional results.
- Procurement of design services using QBS provides value and saves Wisconsin taxpayers money.
- Cheap design is expensive. Design costs typically represent 1% of the total life-cycle cost of the project. It makes sense to hire the best qualified designer in order to reduce construction costs and longer term operations and maintenance costs.

50th Anniversary



Building Wisconsin One Project at a Time

Qualifications-Based Selection (QBS)

Frequently Asked Questions

What is QBS?

QBS is the acronym for Qualifications-Based Selection, a method of procuring professional architectural and engineering (A/E) services that makes relevant qualifications and experience the paramount basis for selection. It is an accepted, time-tested, fair, and equitable method of selecting design professionals that replaces bidding and results in the best overall value for the project.

Q. Where did QBS come from?

A. The US Congress has long recognized the merits of competitive selection based on qualifications by requiring A/E services [for federal projects] be selected on the basis of competence and unique abilities. It was in the best interest of the taxpayers. In 1972, the US Congress established **US Public Law - 92-582 referred to as the "Brooks Act"**, which states that *"The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices."*

Forty-six states and numerous local governments have followed the lead of the federal government requiring procurement of A/E services based on Qualifications-Based Selection.

Q. How does Qualifications-Based Selection work?

A. The QBS process can be summarized in four steps:

- (1) The owner determines it needs A/E services for a project and invites interested firms to submit their qualifications and experience.
- (2) The owner reviews and evaluates the submissions and either selects an A/E firm or a short list of A/E firms.
- (3) Personal interviews may be conducted with these A/E firms to discuss their philosophy and approach to the project.
- (4) The owner ranks the firms and invites the top firm to negotiate a formal agreement. During negotiation, the scope of the project is further defined. If an agreement cannot be reached, which is unusual, the owner negotiates with the next highest rated firm.

The cost of A/E services is a factor in procurement, just not the only factor.

Why use QBS?

Selecting design professionals is a key component to a successful project. The design team's performance will influence the entire course of the project—financial, feasibility, public response, design, functional efficiency, construction costs, and maintenance costs during the

project's life. It is in the best interest of the public to retain professionals that are hired based on qualifications, not price.

Cheap design is expensive. Studies have shown for a typical public works project the costs, over the life of the facility, are 99% for operation, maintenance, and construction costs, and 1% for design costs. This demonstrates that if the "best-qualified" designer were able to reduce the long-term O&M and/or construction costs, it would be well worth any small increase in design fees.

What are the benefits of QBS?

- It reduces overall costs. The owner's time and money is saved through an organized approach. Involving the design team early in the project improves overall planning and can identify costly errors.
- It produces a better quality project based on the owner's needs and goals. This process fosters innovative, creative, cost-saving, and timesaving approaches to problems. It makes sure that project expectations are clear and minimizes long-term maintenance and repair.
- It allows a fair and open competition based on a uniform set of criteria and information shared equally with interested or invited A/E firms.
- It provides a defensible step-by-step process that allows the owner to select the highest qualified A/E firm based on qualifications specific to the needs of the project.
- It safeguards public interest by allowing the owner to focus on qualifications to achieve the owner's requirements, which will lead to a successful and cost effective construction project rather than just the lowest design cost.
- It allows the owner to maintain control of the design process. The selection of the A/E firm is based upon qualifications. The price is negotiated to be fair to both parties, which encourages teamwork. It gives the owner and A/E firm the chance to define the project scope and to add or subtract options so that the owner's expectations can be met.

QBS is unlike the "bidding" process that requires the A/E firm to only provide the narrow definition of services required in the bid document. With bidding, there is no ability for the owner to be assured the most cost effective solution will be developed. Bidding discourages the design professional from looking at alternatives and "thinking out of the box." Instead the quickest and easiest design answer will be used to minimize design time. The consequence is a design based only on basic standards without concern for construction cost and, more importantly, maintenance and life cycle costs, resulting in the owner not knowing the difference until it's too late.

Is the competition fair?

Q. Is QBS consistent with competitive procedures?

A. Yes, the concept that public procurement should be on a competitive basis is fully met by QBS and negotiation procedures. It is highly competitive among the firms seeking the assignment. Congress' 1984 Competition in Contracting Act explicitly includes procurement of A/E services under the Brooks Act.

Q. Does this process inhibit competition?

A. Not at all. It simply focuses competition for professional services on the most meaningful factors for the specific project: qualifications, competence, previous performance, and availability.

Q. Does QBS eliminate price competition?

A. Not at all. Price is always a factor. The difference is price comes into play later in the selection process, after the highest technically ranked A/E firm is selected and the scope of work is fully defined.

Q. Does bidding for A/E services create more competition?

A. No, the opposite is true. Many of the more qualified firms are not willing to "bid" on projects. Quality-oriented firms are far more interested in QBS opportunities, in part because they can present their best ideas to save the owner money and find approaches to improve the projects.

Q. Does QBS give small firms a fair chance?

A. Yes, QBS encourages competition based on a firm's ability to perform a job. A small firm has the same opportunity to match its design team's experience against a larger firm for the project. The skills, experiences, and specialization of a firm and individuals are considered, not merely the number of employees.

Q. What happens if the owner and A/E firm cannot agree on the fee?

A. The owner is not obligated to contract with the top ranked firm if the two parties cannot agree on the tasks and money. The owner is never required to pay more than it can afford or has budgeted. The owner can simply move to the next firm on the list.

QBS means the owner can negotiate a fair and reasonable price for services. Price is negotiated after the selection of the most competent, qualified professionals. Most importantly, it means our buildings, bridges, roadways, and wastewater treatment facilities will be designed in the most competent and cost effective manner, not only for today, but also for the future.

Who uses QBS?

QBS has long been recognized as the process that best serves the public interest throughout the nation and in many parts of the world.

- The State of Wisconsin procures A/E services through the QBS process (Wis Adm 20.)
- Transportation projects with federal funding require QBS selection of design firms.
- Wisconsin municipalities and counties voluntarily use QBS, recognizing the influence on the entire project cost and outcome.
- The American Public Works Association, a professional association of public agencies, endorses QBS.
- QBS is included in the American Bar Association's model procurement code for state and local governments.
- Private owners use QBS, realizing it generates quality construction documents and realistic contractor bids.

These varied decision makers know QBS projects put the proper emphasis on public health, safety, and quality of life. Taxpayers benefit because QBS fosters the development of innovative, cost-effective design solutions at a fair market value. This consistently results in

lower overall project costs; the minimization of delays, cost overruns and litigation; and reduced operating and ownership costs over the life of the project.

Why legislate QBS?

- To clarify a confusing situation.
It is a common misconception for Wisconsin public owners to believe A/E services must be bid. Professional services related to public works projects should not be confused with construction contractor's work, which typically must be publicly bid. In fact, the League of Wisconsin Municipalities includes information on its website clarifying A/E services do not have to be bid.
- To provide value and save Wisconsin taxpayers money.
The Department of Administration understands the value of QBS. Wisconsin Adm Chapter 20 specifies A/E services shall be selected using a Qualifications-Based Selection. Forty-six states have passed legislation calling for the use of QBS to hire design professionals, and the American Bar Association endorses QBS in its *Model Code for State and Local Government*.

Where can I go to find out more information?

Visit the following websites for helpful resources and reference material.

- QBS Wisconsin website, www.qbswi.org
- American Council of Engineering Companies of Wisconsin (ACEC WI) www.acecwi.org, 608/257-9223
- American Institute of Architects of Wisconsin (AIA Wisconsin) www.aiaw.org, 608/257-8477
- League of Wisconsin Municipalities <http://www.lwm-info.org/legal/faq/faq5.html> - 4