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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

Senate Bill 295

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

November 02, 2007 Referred to Committee on Labor, Elections and Urban Affairs.

March 5, 2008

PUBLIC HEARING HELD

Present: (4) Senators Coggs, Wirch, Lehman and Grothman.

Absent: (1) Senator A. Lasee.

Appearances For

- Jeff Plale — Senator
- Mark Gottlieb — Representative
- Carol Godiksen — American Council of Engineering Companies of Wisconsin
- Rosalie Morgan — EMCS, Inc.
- Stan Sugden — Ruckert & Mielke
- Rick Norris — Norris & Associates
- Thomas Walker — Wisconsin Transportation Builders
- Michael Garlich — Collins Engineers
- William Babcock — Wisconsin Society of Architects
- Glen Schwalbach — Probit Consulting

Appearances Against

- Curt Witynski — League of Wisconsin Municipalities

Appearances for Information Only

- None.

Registrations For

- Yash Wadhwa — Strand Associates

Registrations Against

- Dave Krahn — Waukesha County

- Sheri Krause — Wisconsin Association of School Boards
- John Forester — School Administrators Alliance
- Chris Thiel — Milwaukee Public Schools

Registrations for Information Only

- None.

March 13, 2008

Failed to pass pursuant to Senate Joint Resolution 1.

Adam Plotkin
Committee Clerk





SB 295
?

**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



Plotkin, Adam

From: Christopher Thiel [thielcj@milwaukee.k12.wi.us]

Sent: Tuesday, March 04, 2008 2:25 PM

To: Plotkin, Adam

Subject: MPS opposition to SB 295

Adam,

MPS is opposed to Senate Bill 295 for a number of reasons, including those cited below by managers in our Facilities and Maintenance Division. Of particular concern is the effect that this bill would have on our historically underutilized business program and the district's ability to honor our administrative policy numbered 3.10:

http://www2.milwaukee.k12.wi.us/governance/rulespol/policies/PDF/CH03/3_10.pdf

In addition, this is clearly a local control issue. We have highly qualified professionals who are engaged in this process to look out for the best interests of all involved, including the local taxpayer.

Please excuse the rough form of the comments, I received them this afternoon and wanted to get them to you directly.

Thanks,

Chris

Concerns 1:

Cost should remain a criteria for evaluating RFP's. It provides a gauge as to the value of work being requested. It is rare, but if all proposals come back significantly above what is budgeted, why go through the process, get to the negotiations and then find out you cannot afford the service? Doesn't make sense. Also, what about the fiscal responsibility component of the process? Too large of a gap between hard bid/low bid and RFP/no cost control/comparison until you make a final selection

In terms of the amendment, I think cost needs to be a criteria that is evaluated initially. We should be the entity to determine how important the cost is to the service we are looking for. If we feel that experience, size of the firm, etc.. is the driver, then that "driver" will carry a higher percentage than cost in the criteria used for analysis/evaluation

Concerns 2:

I would find it very difficult to evaluate proposals for service for most of our maintenance projects based solely on performance, as the nature of the work varies greatly. Although the consultants that I requested mechanical proposals from this past year were all considered qualified based on previous performance, their fees varied greatly – some by as much as almost 50%!

My largest concern would be that ranking experience only is totally arbitrary – unless each firm has provided the exact same services as being requested, you are not comparing apples to apples across the board; however, it does give you an opportunity to gauge their experience against their fees.

The fees also give you a gauge as to where the actual project cost may be – if the fees exceed our estimated cost, the project may be too expensive to proceed and we have to review whether we missed something in the scope or they included something they shouldn't have, which happens more than you can imagine.

How does a new company get any business when they don't have any experience to include in the proposals? This becomes especially problematic when we are pushing towards more HUB firms.

I vote no.



Plotkin, Adam

From: John D. Forester [john.forester@wsaa.org]
Sent: Wednesday, March 05, 2008 9:15 AM
To: Sen.Lasee; Sen.Grothman; Sen.Lehman; Sen.Wirch; Sen.Coggs
Subject: Senate Bill 295
Attachments: 030508 Testimony.dot

Dear Senators:

I am unable to attend today's public hearing before the Senate Committee on Labor, Elections and Urban Affairs. Please find attached the SAA's brief position statement opposing SB 295. Thank you.

John D. Forester

Director of Government Relations
School Administrators Alliance (SAA)
4797 Hayes Road
Madison, WI 53704
608-242-1370
608-242-1290 (fax)
www.wsaa.org



School Administrators Alliance

Representing the interests of Wisconsin school children

DATE: March 5, 2008
TO: Senate Committee on Labor, Elections and Urban Affairs
FROM: John D. Forester, Director of Government Relations
RE: Senate Bill 295

I am unable to attend today's public hearing before the Senate Committee on Labor, Elections and Urban Affairs. Please allow me this opportunity to comment on Senate Bill 295.

The School Administrators Alliance (SAA) strongly opposes SB 295, relating to requiring local units of government to use the qualification-based selection (QBS) process for certain public works consulting contracts.

SB 295, if adopted, would require municipalities, counties and school districts to use the Qualification-Based Selection (QBS) process to hire engineering, architectural or other consultants when the value of the services is \$250,000 or more and state money is used to some extent on the project. The SAA supports selecting such consultants using quality of experience and scope of services in the selection criteria. However, SB 295 does not allow the proposed fee to be included in the proposal for services, thereby prohibiting the consideration of cost in the selection criteria.

I am unaware of other services (especially in excess of \$250,000) purchased by school districts without first considering the cost to the taxpayer before selecting the practitioner. School districts should continue to select these consulting services based on both quality and price to provide the best overall value for our taxpayers.

Please join me in opposing SB 295. If you should have any questions or require additional information on the SAA's position, please contact me at 608-242-1370 or john.forester@wsaa.org. Thank you.



Testimony of Stanley R. Sugden, P.E.

Senate Substitute Amendment 1, to 2007 Senate Bill 295

Senate Committee on Labor, Elections, and Urban Affairs

March 5, 2008 – 11:00 AM - Room 201 SE

My name is Stanley R. Sugden and I am here on behalf of the American Council of Engineering Companies of Wisconsin in support of QBS Senate Substitute Amendment 1, to 2007 Senate Bill 295. I am a Professional Engineer and work for Ruekert & Mielke, Inc. a 140 person consulting engineering firm located in Waukesha. I am very familiar with the various methods government agencies have utilized to select consultants as the past 22 years of my engineering career has been spent serving City, Village, Town and County government.

SB 295-SSA1 embodies the nationally recognized process to properly select a consultant in a competitive setting that will work to ensure you get the best value for our public taxpayer expenditures. The most important decision for the success of a public project is the selection of the architectural or engineering firm. This action will determine the quality and cost of a project, the life cycle cost of a project and the satisfaction of the project users. Well-intended, but ill-informed public opinion is that professional services can be obtained by the bidding process, which will result in taxpayer savings. Nothing could be further from the reality of what actually happens when a consultant's selection is based on which firm has the lowest fee.

There are many examples of poor quality designs, cost overruns, litigation, unfulfilled owner expectations which were caused by public owners bidding professional services and the reasons usually fall into one or more of the following recurring themes:

- Public owners seek professional consultants to help them with scoping, designing and overseeing the construction of a project because they do not have the expertise to undertake the project themselves. Because of this, most requests for proposals are lacking in the full definition of what is needed or expected from the design professionals, it is impossible to have a level playing field to compare bids.
- Without a complete and comprehensive outline of what is being requested from the design professional, the firm who offers the least amount of effort will be the low bidder and be awarded the project.
- Firms with more experience who would have been able to fully evaluate more cost effective approaches, new technology or other life cycle cost benefit alternatives know they wouldn't have the lowest price and either don't submit a proposal or they submit a proposal using their most inexperienced design staff using standard design practices and

conservative standard designs all of which will add costs to the final construction cost of the project. As an example, we were selected using QBS for an interceptor project in a community in Southeastern Wisconsin. After studying the route, we developed a plan to relocate the sewer with a resulting cost savings to the city of \$300,000. If we had been selected based on price, there is no way we could have taken the time and effort to find ways to save the taxpayers' money.

- Firms selected based on price understand there is no real benefit for any extra effort to save the owner money or to offer cost saving alternatives since their firm will only be considered for future projects if they again are the lowest bidder. Communities lose the ability to build a relationship with a consultant who acts as a trusted advisor and uses his or her talents to do great work such that they will be recommended for future work. As an example, in another community in Southeastern Wisconsin we were selected based on qualifications to design a large storm water project which would cost \$2.2 million. We spent extra time and effort researching and successfully entered a competition and obtained a \$1.7 million grant for the project. If we had been selected based on price, there would have been no effort to find the community these extra funds.
- Low bid design firms cannot provide more detailed and specific plans and specifications as that would take extra time and effort and they wouldn't get the job. Yet construction contractors have continually stated that that plans lacking detail will result in higher bids due to protective contingencies that must be included to cover the unknowns. It's either that or the contractor will submit costly "extra" claims during the construction process for things that weren't well defined.
- Public works projects need to last much longer than a commercial venture where first cost is important and you have what we call "throw away buildings". Consideration needs to be given to the long-term operation, repair and maintenance, which will be a continuing taxpayer cost. Therefore quality is important and the design should not be minimized.

If cost control and the best use of our taxpayers' dollars is what we are trying to achieve, this bill will go a long way toward accomplishing that goal. Professional fees usually represent less than 2% of a project's overall life cycle cost, which includes the design, construction, operation, and maintenance costs. By using QBS and selecting the most qualified and competent consultant in many cases even that cost is offset by project savings through the expertise and creativity of the selected consultant.

QBS is a competitive selection process and in fact, I would argue that it improves our industry to the overall benefit of the public. Since the QBS selection process includes an evaluation of a consultant's past performance, to be successful you need to work hard to please your client, develop relationships, look for cost saving measures and represent the best interests of the community you are working for. The QBS process makes firms work toward providing higher quality service. It requires that the firms put their best teams on the project and that the firm

fully understands the client's needs and has the best plan to meet them. Bidding services requires none of the above, and in fact takes the decision-making, and the ability to select the most qualified firm out of the hands of the elected officials.

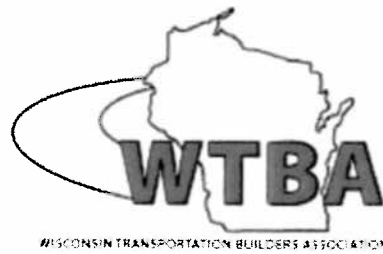
The American Public Works Association, which represents the public agencies in the U.S., has continuously supported QBS. They have published many guidelines on the merits and use of QBS with the latest being, "APWA Red Book on Qualifications-Based Selection, Guidelines for Public Agencies", dated August 2006. It states, "Competitive bidding for engineering and architectural services is not in the best public interest, because it may easily lead to employment of a lesser qualified or least qualified firm (rather than the best qualified as should be the objective)".

The Federal Government in 1972 passed the Brooks Act, which required the selection of architects and engineers on the basis of their qualifications. Since that time, nearly every State has passed similar legislation. It's time for Wisconsin to take action to better protect our taxpayer dollars and pass this proposed legislation. I don't see this as a mandate, but rather an opportunity for the Legislature to take action to get the maximum value for our tax dollars.

We appreciate the opportunity to comment on this very important piece of legislation and would be happy to answer any questions you may have or provide any additional information you may require.



03-05-2008



WTBA Testimony

Senate Committee on Labor, Elections, and Urban Affairs

Public Hearing on SB - 295

**Tom Walker, Director of Government Affairs
March 5, 2008**

Good morning, Chairman Coggs and members of the Committee. Thank you for the opportunity to testify on SB-295 today.

WTBA is a statewide organization of more than 260 contractors, consultants, and associated businesses. Our members design, build, rehabilitate, improve, reconstruct, expand and modernize every form of transportation infrastructure, including state and local roads and bridges, airports, railroads, and bicycle and pedestrian infrastructure.

I want to emphasize that WTBA is testifying today in support of both our contractor and consultant members. We strongly agree on how this bill should best be drafted, and why it should be enacted.

I am testifying in strong support of the required use of a qualifications-based selection process by local governments for choosing engineering consultants and other professional services.

Both local governments and contractors depend on well crafted plans. A quality plan will result in the best product for the community at the lowest cost.

With quality plans, projects will proceed expeditiously: there are shorter construction times and few change orders are required. The better the plan, the sharper the contractor's pencil becomes, as the risk of surprises is limited.

It is absurd to use the low-bid process to select a consultant, because there is no plan to bid on, simply a concept. The details are worked out in negotiations, and the owner can still go the next firm if a mutually fair price cannot be negotiated.

Conversely, quality plans are the foundation of the low-bid system for selecting contractors.

Let me go into more detail on this issue. When price is required to be a component of a consultant's response, the only alternatives for good consultants

in some cases are using inexperienced staff that are paid less, or to reduce the essential work involved in the contract to the price of the contract....or pass on the proposal.

In many such cases as a result, critical issues can be overlooked; optimal testing of site conditions can be compromised; utility exploration and relocation can be inadequate; or biddability and constructability reviews can be minimized or eliminated. Each of these problems – and others – can often lead to higher bids and costly change orders. QBS may in some cases cost more on the front end, but will cost less over the life of project.

Some concerns have been raised about whether this bill will help or hinder participation by disadvantaged firms in these consulting opportunities.

We believe that this bill will result in more participation by these companies.

2) → Today's responsible consultant industry has a strong record of using DBE's beyond project goals. This kind of work provides great training and experience, with lower risk than typically faced by construction sub-contractors. Low-bid consultant contracts will be a barrier for disadvantaged firms.

Finally, I want to acknowledge that WTBA had significant concerns with SB-295 as originally drafted. However, SA-1 as proposed by Senator Plale fully addresses those concerns. WTBA appreciates his willingness to work with us on these important issues.

In summary, we fully support SA-1 to SB-295, and urge the Committee to approve it.

I would be pleased to respond to any questions.

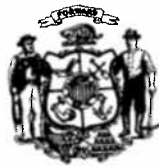
1) Change orders (lowered)

QBS more qual.

consultant vs. commodity

scrivens / natural tendency to feel prices matter





MARK GOTTLIEB

Speaker Pro Tempore
Wisconsin State Assembly

**Testimony of Representative Mark Gottlieb
Senate Bill 295
Senate Committee on Labor, Elections and Urban Affairs
March 5, 2008**

Chairman Coggs and Members of the Committee:

Thank you for the opportunity to testify before you today on Senate Bill 295, 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 (LGU) 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, Senator Plale and I introduced Senate Bill 295 requiring a LGU 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 LGU and all consultants submitting proposals for the project fail to produce an agreed upon contract.

Senate Bill 295 also stipulates that if a LGU 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

STATE REPRESENTATIVE • 60TH DISTRICT

emergency, QBS is not required for selecting consultants in the repair or reconstruction of that public work.

Senator Plale has introduced Senate Amendment 1 to SB 295. This amendment mirrors the substitute amendment that was adopted for its companion, Assembly Bill 553, in the Assembly Committee on Urban and Local Affairs. I urge the committee to adopt the substitute amendment.

In brief, Substitute Amendment 1 to SB 295 makes the following substantive changes:

- Revises the definition of project to clarify the public work or building is a project of the LGU, clarifies what the required services of a consultant are for, and clarifies that the consultant's services are separate from services that would trigger low-bid statutory requirements.
- Deletes sections 1-6 and 8-10 of the original bill to clarify the relationship between the proposed QBS process and current competitive bidding requirements.
- Revises the definition of consultant to include "photogrammetric surveying services".
- LGUs will now be able to directly enter into contract negotiations with a consultant without having to gather proposals from other consultants if there is a previous "established relationship", rather than utilizing in the original bill the "established relationship" exception only if the LGU has already entered into a contract with a consultant under the QBS process.

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 LGU 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 LGUs 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 LGU 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 LGU cannot negotiate a price, the LGU 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, Senate Bill 295 brings some accountability into the process because it requires the use of QBS if a LGU 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.



Testimony of Senator Jeff Plale
Senate Bill 295
Senate Committee on Labor, Elections, and Urban Affairs
March 5, 2008

Chairperson Coggs and Members of the Committee:

Thank you for the opportunity to testify before you today on Senate Bill 295, relating to limiting the use of the lowest responsible bidder process and requiring local units of government to use the qualifications-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 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 lower price, is not in the best interest of the taxpayers.

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VALUE*

With this in mind, I introduced Senate Bill 295 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 the 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.

Senate Bill 295 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.

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



Testimony of

Rosalie F. Morgan

President

EMCS, Inc.

on

2007 ~~Senate~~ Bill 295 Substitute Amendment 1

Before

Senate Committee on Labor, Elections, and Urban Affairs

Madison, Wisconsin

March 5, 2008

Dear Mr. Chairman and Members of the Committee:

It is an honor and a privilege to be here today. Thank you for the opportunity to discuss Senate Bill 295 Substitute Amendment 1 and the importance of selecting design professionals under a procedure that is based on quality and competence. My name is Rosalie F. Morgan and I wish to offer my support for Senate Bill 295 Substitute Amendment 1. I am a registered professional engineer. In 1983 I founded EMCS, Inc.; an engineering consulting business located in the City of Milwaukee. In 25 years, EMCS has grown to a staff of 30 which includes engineers and surveyors providing engineering design, planning and construction inspection for entities such as Wisconsin Department of Transportation, Milwaukee Metropolitan Sewerage District, utilities, local governments, developers and property owners around Wisconsin.

Quality-based selection (QBS) is the optimal method for selecting engineering and architectural design professionals. By making superior qualifications and experience the paramount basis for selection, QBS moves beyond focusing on the lowest price, and instead focuses on obtaining the best value—allowing agencies to select the most highly qualified firm to work on their projects.

“Qualifications-based Selection” describes a general competitive contracting process that includes public announcement of projects, full and open competition, and careful review of firms’ capabilities, experience, technical skills and personnel.

Qualifications-Based Selection or QBS is the industry standard to ensure that qualified professionals are chosen to design roads, bridges, schools, and all government facilities. The QBS process makes the qualifications of a design team the first consideration in the selection process before any price negotiation begins.

Selection of professional engineers as prime consultants and subcontractors should be based on the qualifications of the engineering firm. Qualifications—including training, experience, capabilities, personnel, and workloads—should be evaluated when selecting an engineering firm.

Qualifications-Based Selection (QBS) is straightforward and includes a three step process. In the first step, consulting firms are invited to submit qualifications to perform work for a specific assignment. Firms are ranked based on the qualifications which are submitted for the specific assignment. In the next step, the top ranked firm develops a scope with the client/owner. In the third step, an acceptable fee is negotiated for the scope as defined in the previous step. If an

acceptable fee cannot be negotiated, the top ranked firm is eliminated from consideration and the second ranked firm precedes through the final two steps. If this is also unsuccessful, the second ranked firm is eliminated from consideration and the third ranked firm enters the process. At all times, the owner is in control of both the scope and the fee. However, the owner gets the benefit of the consultant's insight and experience in developing the scope.

The federal government has been using innovative contracting methods for professional design services since 1972, when qualifications-based selection became the procurement method for architectural and engineering work. All branches of the Federal government, the Army Corp of Engineers, the U.S. Navy, the U.S. Air Force, HUD, DOD, DOE and NASA, to name a few, use Qualifications-Based Selection (QBS).

Construction of any physical facility, is a complicated and highly technical process. Yet, at the outset of most construction projects, owners do not fully comprehend the complexities of the projects they envision and the wide range of design and construction services that will be required in order to transform their vision into reality.

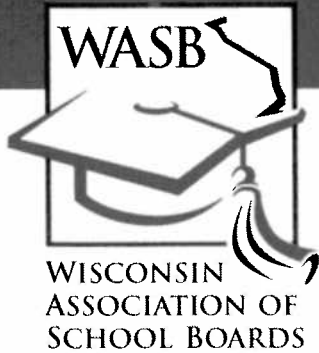
Simply stated, procurement of design services is a very specialized type of contracting because of the difficulty in creating a scope of work upon which to bid. These services involve many intangibles such as technical knowledge, health and safety considerations, aesthetic judgment and creative thought – talent that cannot easily be determined by selecting on price bids.

Some questions have been brought forth about how the QBS selection process might affect opportunities for small, minority and woman-owned consulting firms. In Southeastern Wisconsin this is especially important. The Wisconsin Department of Transportation which uses a qualification based selection process for procuring engineering services is a good resource in response to these concerns. In fact, the percentage of participation of small, minority and woman-owned engineering firms in the delivery of Department of Transportation design, planning and construction inspection efforts has been consistently higher than that of small, minority and woman-owned construction contractors who are required to bid for their work against much larger firms. Data collected in the last five years indicates that approximately 13% of all firms available for planning, design and construction inspection services are disadvantaged business enterprises yet these firms were awarded approximately 20% of all work for the department. This has not been the case on work awarded based by selecting on price bids for construction contracting.

In conclusion, Mr. Chairman/Ladies & Gentlemen, let me state that I hope these observations will assist the Committee in further understanding the value and nature of A/E selection. Making superior quality and experience paramount in the selection process allows agencies to chose qualified professionals to design roads, bridges, schools, and all government facilities. I appreciate the opportunity to appear before you today and will be happy to answer any questions you may have.

Thank you.





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JOHN H. ASHLEY, EXECUTIVE DIRECTOR

TO: Senate Labor, Elections and Urban Affairs Committee
FROM: Sheri Krause, Legislative Services Coordinator
DATE: March 5, 2008
RE: Senate Bill 295, related to requiring local units of government to use the qualifications-based selection process for certain public works consulting contracts.

The **Wisconsin Association of School Boards (WASB)** opposes **Senate Bill 295** because it would mandate school boards to use a particular process for selecting certain public works consultants contracts and explicitly prohibit school boards from considering a consultant's costs or fees during the initial selection process.

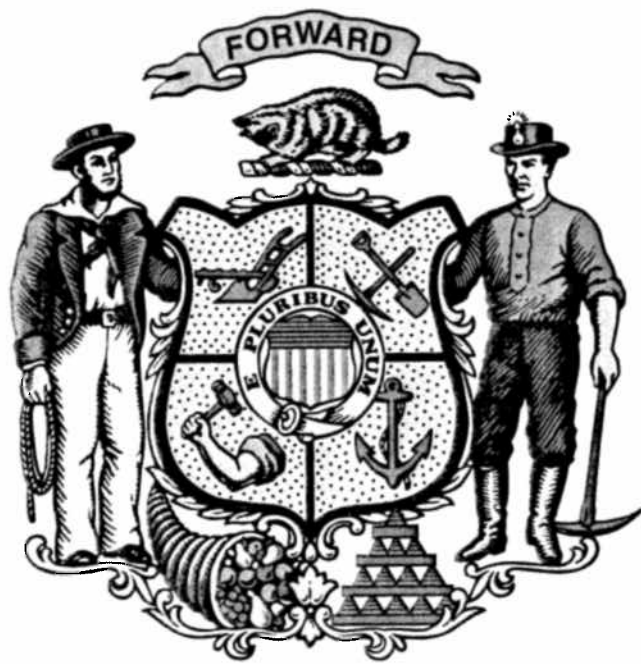
Local school boards are elected to be the fiscal agents for their districts. They are very concerned that explicitly prohibiting them from seeking information on costs or fees during any hiring process and prohibiting them from varying a selection process based on local needs will interfere with their ability to govern in as fiscally responsible manner as possible.

When hiring a contractor or employee, school boards determine the process and take into consideration experience, competence, quality of work, cost and other criteria. Members have indicated that considering costs when evaluating contracts for services is often extremely valuable. It allows boards to gauge experience against fees and expedites the selection process.

School boards make every effort to ensure that the contracts they sign are written in the best interest of their students and their taxpayers. They are very concerned that statutorily precluding the consideration of costs during the initial selection process for a public works consultant and statutorily requiring a particular selection process for that consultant will not result in contracts that are in the best interest of students and taxpayers.

In addition, concerns have been raised by Milwaukee Public Schools (MPS) about the potential for SB 295 to impact its ability to comply with historically underutilized business (HUB) requirements. HUB requires that a certain percentage of total contract dollars be allocated for work to be done by firms that are owned, controlled and managed by minority, women or small business owners. There are concerns that many firms certified as HUBs will not have comparative experience to be competitive in a selection process based solely on the qualifications as described in this bill.

For these reasons, the WASB urges your opposition to SB 295. Thank you.





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To: Senate Committee on Labor, Elections and Urban Affairs
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: March 5, 2008
Re: **SB 295/AB 553, Requiring Municipalities to Use Qualifications-Based Selection Process in Certain Contracts**

The League of Wisconsin Municipalities opposes SB 295/AB 553. The bill requires municipalities to use a qualifications-based selection (QBS) process when selecting engineering or architectural consultants for public construction projects that exceed \$250,000 in cost and are funded in part by the state.

SB 295/AB 553 creates a consultant selection process that actually prohibits municipalities from inquiring about proposed fees or costs.

While municipalities support and often use QBS, we oppose mandating the process even under the limited circumstances specified in the bill. We have the following specific concerns:

- ◆ The bill explicitly prohibits asking about price in phase one of the selection process. Many communities currently use a QBS plus cost process for selecting engineering and other professional consultants. We are opposed to eliminating price considerations entirely from the first stage of the selection process.
- ◆ Some of our members are concerned that the bill places municipalities in a relatively weak position to negotiate a contract once a firm is selected. Unlike DOT, municipalities are not regularly involved in projects that necessitate the selection of consulting engineers. The selected engineering firm need not be worried about developing a long term relationship and winning future contracts as it negotiates with the municipality.
- ◆ The process seems to favor and benefit established and larger firms and would for the most part foreclose the ability of start-ups or fledgling consulting firms with limited performance histories to compete for municipal work.
- ◆ Small and medium sized communities with less staff and resources will find it difficult and expensive to comply with the QBS process spelled out in the bill.

The bottom line is that municipalities should have flexibility to choose professional consultants in the manner that best meets their needs. There is no need to change current law.

For the above reasons we urge you to not recommend passage of SB 295/AB 553. Thanks for considering our comments.

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AIA Wisconsin

A Society of The American Institute of Architects



M E M O

MAR 07 2008

DATE: MARCH 6, 2008
TO: SENATE COMMITTEE ON LABOR, ELECTIONS & URBAN AFFAIRS
FROM: WILLIAM BABCOCK, HON. AIA EXECUTIVE DIRECTOR *WMB*
RE: 2007 SENATE BILL 295 – QBS

On behalf of the members of AIA Wisconsin, the state society of The American Institute of Architects, thank you for holding a public hearing on 2007 Senate Bill 295.

This proposed legislation relates to the use of a qualifications-based selection (QBS) process for the selection of architects, professional engineers and other design professionals for local public works projects. As a public service, AIA Wisconsin has been assisting local governments and school districts across the state establish a QBS process to find the best architects and engineers for their building projects since 1986. We have helped over 1,000 owners and have received many positive testimonials in support of the QBS process.

Thank you for your consideration of this important and positive legislation that will benefit local officials and taxpayers in Wisconsin. We encourage you to recommend passage of Senate Substitute Amendment 1 to Senate Bill 295.

WMB/mo