

2007 SENATE BILL 295

November 2, 2007 – Introduced 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. Referred to Committee on Labor, Elections and Urban Affairs.

1 **AN ACT to amend** 33.22 (1), 59.52 (29) (a), 60.47 (3), 60.77 (6) (a), 61.55, 62.15
2 (1), 88.62 (1), 200.11 (5) (d) and 200.47 (2) (a); and **to create** 66.0902 of the
3 statutes; **relating to:** limiting the use of the lowest responsible bidder process
4 and requiring local units of government to use the qualification-based selection
5 process for certain public works consulting contracts.

Analysis by the Legislative Reference Bureau

In general under current law, before a contract for public construction with a value between \$5,000 and \$25,000 may be let by a second, third, or fourth class city or a village, town, or county (political subdivision), the political subdivision's governing body must give a class 1 notice of the proposed construction. Also under current law, before certain contracts for public construction may be let by a political subdivision, a town sanitary district commission, or a sewerage district, certain other requirements, such as a lowest responsible bidder requirement, must be met. The public construction contracting requirements that apply to a city also apply, generally, to a technical college district board and a federated public library system.

This bill requires the use of a new method for any political subdivision, including a first class city, which is presently only Milwaukee, special purpose district, including a school district, or subunit (local governmental unit) to enter into a contract for certain public works contracts, including the inspection of local bridges, that require the use of a consultant. Generally, under the bill, a local governmental unit is required to hire a consultant for a project based only on the consultant's qualifications.

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A consultant is defined under the bill as a person who provides architectural services, engineering services, land surveying services, landscape architecture services, or professional geology services for a project. A project is defined as a contract for the planning, study, design, construction, repair, remodeling, or improvement of a public work or building with a value estimated by a local governmental unit to be at least \$250,000 and that will be funded to some extent by the state government. The value estimate and state funding requirements do not apply to local bridge inspections, however.

The bill requires a local governmental unit to create a procedure to solicit proposals from consultants for projects, but the proposals may not contain any information on proposed fees or costs. The local governmental unit must rank the consultants based on the consultants' qualifications as described in their proposals. The proposals must contain certain information about the consultants, including their specialized experience, capabilities, and technical competence; their quality of work and ability to meet schedules; and their proposed method of project management.

After the local governmental unit ranks the consultants, it must enter into negotiations with the highest ranked consultant to finalize the terms of the contract, including the fees and costs. If the local governmental unit and consultant are unable to reach an agreement, the local governmental unit must enter into negotiations with the next highest ranked consultants, in order of their ranking, until a contract is finalized. If no agreement is reached with any of the consultants, the local governmental unit may solicit bids for the project under any other allowable method.

The provisions created in the bill do not apply to a project that is needed to protect public health or welfare due to an emergency situation. Also under the bill, if a local governmental unit enters into a contract with a consultant as provided in the bill, the local governmental unit may solicit a proposal directly from that consultant for a future project without evaluating proposals from other consultants.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 33.22 (1) of the statutes is amended to read:
2 33.22 (1) Any district organized under this chapter may select a name for the
3 district, sue and be sued, make contracts, accept gifts, purchase, lease, devise or
4 otherwise acquire, hold, maintain or dispose of property, disburse money, contract
5 debt and do any other acts necessary to carry out a program of lake protection and

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1 rehabilitation. ~~All~~ Except as provided in s. 66.0902 (2), all contracts in excess of
2 \$2,500 for the performance of any work or the purchase of any materials shall be let
3 by the commissioners to the lowest responsible bidder in the manner they prescribe.

4 **SECTION 2.** 59.52 (29) (a) of the statutes is amended to read:

5 59.52 **(29)** (a) ~~All~~ Except as provided in s. 66.0902 (2), any public work,
6 including any contract for the construction, repair, remodeling or improvement of
7 any public work, building, or furnishing of supplies or material of any kind where the
8 estimated cost of such work will exceed \$25,000 shall be let by contract to the lowest
9 responsible bidder. Any public work, the estimated cost of which does not exceed
10 \$25,000, shall be let as the board may direct. If the estimated cost of any public work
11 is between \$5,000 and \$25,000, the board shall give a class 1 notice under ch. 985
12 before it contracts for the work or shall contract with a person qualified as a bidder
13 under s. 66.0901 (2). A contract, the estimated cost of which exceeds \$25,000, shall
14 be let and entered into under s. 66.0901, except that the board may by a
15 three-fourths vote of all the members entitled to a seat provide that any class of
16 public work or any part thereof may be done directly by the county without
17 submitting the same for bids. This subsection does not apply to public construction
18 if the materials for such a project are donated or if the labor for such a project is
19 provided by volunteers. This subsection does not apply to highway contracts which
20 the county highway committee or the county highway commissioner is authorized by
21 law to let or make.

22 **SECTION 3.** 60.47 (3) of the statutes is amended to read:

23 60.47 **(3)** CONTRACTS TO LOWEST RESPONSIBLE BIDDER. ~~The~~ Except as provided in
24 s. 66.0902 (2), the town board shall let a public contract for which advertising for

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1 proposals is required under sub. (2) (b) to the lowest responsible bidder. Section
2 66.0901 applies to public contracts let under sub. (2) (b).

3 **SECTION 4.** 60.77 (6) (a) of the statutes is amended to read:

4 60.77 (6) (a) ~~Let~~ Except as provided in s. 66.0902 (2), let contracts for any work
5 or purchase that involves an expenditure of \$25,000 or more to the lowest responsible
6 bidder in the manner prescribed by the commission. Section 66.0901 applies to
7 contracts let under this paragraph.

8 **SECTION 5.** 61.55 of the statutes is amended to read:

9 **61.55 Contracts involving over \$25,000; how let; exception.** All Except
10 as provided in s. 66.0902 (2), all contracts for public construction, in any such village,
11 exceeding \$25,000, shall be let by the village board to the lowest responsible bidder
12 in accordance with s. 66.0901 insofar as said section may be applicable. If the
13 estimated cost of any public construction exceeds \$5,000, but is not greater than
14 \$25,000, the village board shall give a class 1 notice, under ch. 985, of the proposed
15 construction before the contract for the construction is executed. This provision does
16 not apply to public construction if the materials for such a project are donated or if
17 the labor for such a project is provided by volunteers, and this provision and s. 281.41
18 are not mandatory for the repair and reconstruction of public facilities when damage
19 or threatened damage thereto creates an emergency, as determined by resolution of
20 the village board, in which the public health or welfare of the village is endangered.
21 Whenever the village board by majority vote at a regular or special meeting declares
22 that an emergency no longer exists, this exemption no longer applies.

23 **SECTION 6.** 62.15 (1) of the statutes is amended to read:

24 62.15 (1) **CONTRACTS; HOW LET; EXCEPTION FOR DONATED MATERIALS AND LABOR.** All
25 Except as provided in s. 66.0902 (2), all public construction, the estimated cost of

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1 which exceeds \$25,000, shall be let by contract to the lowest responsible bidder; all
2 other public construction shall be let as the council may direct. If the estimated cost
3 of any public construction exceeds \$5,000 but is not greater than \$25,000, the board
4 of public works shall give a class 1 notice, under ch. 985, of the proposed construction
5 before the contract for the construction is executed. This provision does not apply to
6 public construction if the materials for such a project are donated or if the labor for
7 such a project is provided by volunteers. The council may also by a vote of
8 three-fourths of all the members-elect provide by ordinance that any class of public
9 construction or any part thereof may be done directly by the city without submitting
10 the same for bids.

11 **SECTION 7.** 66.0902 of the statutes is created to read:

12 **66.0902 Qualification-based selection; engineering, architecture, and**
13 **land surveying contracts. (1) DEFINITIONS.** In this section:

14 (a) “Architectural services” means the provision of services that consist of the
15 practice of architecture, as defined in s. 443.01 (5).

16 (b) “Consultant” means any person who provides architectural services,
17 engineering services, land surveying services, landscape architecture services, or
18 professional geology services.

19 (c) “Engineering services” means the provision of services that consist of the
20 practice of professional engineering, as defined in s. 443.01 (6).

21 (d) “Landscape architecture services” means the provision of services that
22 consist of landscape architecture, as defined in s. 443.01 (3r).

23 (e) “Land surveying services” means the provision of services that consist of
24 land surveying, as defined in s. 443.01 (4).

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1 (f) “Local governmental unit” means a political subdivision of this state, a
2 special purpose district in this state, an agency or corporation of a political
3 subdivision or special purpose district, or a combination or subunit of any of the
4 foregoing charged with the duty of receiving bids for and awarding any project.

5 (g) “Professional geology services” means the provision of services that consist
6 of the practice of professional geology, as defined in s. 470.01 (2).

7 (h) “Project” means any project related to a public work or building to which all
8 of the following apply:

9 1. The value of the project is estimated by the governing body of the local
10 governmental unit to be at least \$250,000.

11 2. The state government provides some amount of financial assistance to the
12 project.

13 3. The services of a consultant are required for the planning, study, design,
14 construction, repair, remodeling, or improvement of the public work or building.

15 **(2) QUALIFICATION-BASED SELECTION.** (a) Except as provided in sub. (4), for any
16 project undertaken by a local governmental unit, the consultant that must be hired
17 may be selected only on the basis of the consultant’s qualifications, as determined
18 under this subsection.

19 (b) A local governmental unit shall develop a procedure to solicit proposals from
20 consultants for projects, and shall rank the proposals according to the qualifications
21 of the consultants. The proposals may not include any fees or costs for the proposed
22 project, and the local governmental unit may not solicit fee or cost information from
23 consultants except as provided in sub. (3).

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1 (c) To determine the qualifications of a consultant, the local governmental unit
2 shall require that a proposal submitted for a project contain at least all of the
3 following information about the consultant:

4 1. Its specialized experience, capabilities, and technical competence to meet the
5 project requirements.

6 2. Its resources that are available to perform the required work, including any
7 specialized services, within the time limits specified by the local governmental unit.

8 3. Its proposed approach to meet the project requirements and its proposed
9 methods of project management.

10 4. The quality of its past work, its ability to meet schedules, and its cost control
11 and contract administration practices.

12 5. Its proximity to, and familiarity with, the project location.

13 **(3) NEGOTIATION.** (a) Following the receipt and ranking of the proposals, a local
14 governmental unit shall negotiate with the highest ranked consultant to specify the
15 terms of the contract, including costs and fees.

16 (b) If the local governmental unit and the selected consultant are unable to
17 negotiate a contract at a fee that is acceptable to the local governmental unit, the
18 local governmental unit shall terminate negotiations with the consultant by written
19 notification. Subject to sub. (4), the local governmental unit shall then commence
20 negotiations with as many of the other consultants as necessary, as provided in this
21 subsection and in the order of their ranking, until a contract is entered into.

22 **(4) EXCEPTIONS.** (a) If a local governmental unit is unable to enter into a
23 contract with a consultant under sub. (3), it may solicit bids for the project under any
24 other method that is authorized by law.

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1 (b) The procedures and requirements for selecting consultants under this
2 section do not apply for the repair and reconstruction of any public work or building
3 when damage or threatened damage to the public work or building creates an
4 emergency, as determined by resolution of the governing body of the local
5 governmental unit, in which the public health or welfare of the local governmental
6 unit is endangered. Whenever the governing body of the local governmental unit
7 determines by majority vote at a regular or special meeting that an emergency no
8 longer exists, this paragraph no longer applies.

9 (c) If a local governmental unit enters into a contract with a consultant under
10 this section, the local governmental unit may solicit a proposal for another project
11 directly from that consultant and may proceed directly to negotiation under sub. (3)
12 without soliciting proposals from other consultants. If the local governmental unit
13 is unable to enter into a contract with a consultant under this paragraph, the local
14 governmental unit shall solicit proposals from consultants as provided in this
15 section.

16 **(5) LOCAL BRIDGE INSPECTIONS.** If a local authority hires a consultant for
17 inspecting highway bridges under s. 84.17 (3) (b), the provisions of this section apply
18 to the hiring of the consultant, except that the provisions specified in sub. (1) (h) 1.
19 and 2. do not apply.

20 **SECTION 8.** 88.62 (1) of the statutes is amended to read:

21 **88.62 (1)** The drainage board may authorize the drainage district to do its own
22 work or the board may enter into contracts to have the work done. The board may
23 advertise for bids and shall do so in all cases where the work to be done will cost in
24 excess of \$10,000. When the board is required to advertise for bids, the board shall
25 publish a class 2 notice, under ch. 985, and other notices that the board considers

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1 appropriate, and the work shall be let, except as provided in s. 66.0902 (2), to the
2 lowest responsible bidder unless in the board's opinion the bid is unreasonably high
3 and a lower bid can be obtained. The board may continue the letting of the work from
4 time to time, and may reject any or all bids.

5 **SECTION 9.** 200.11 (5) (d) of the statutes is amended to read:

6 200.11 (5) (d) *Bids.* Whenever plans and specifications for any facilities have
7 been completed and approved by the commission and by any other agency which
8 must approve the plans and specifications, and the commission has determined to
9 proceed with the work of the construction thereof, it shall advertise by a class 2 notice
10 under ch. 985, for bids for the construction of the facilities. ~~Contracts~~ Except as
11 provided in s. 66.0902 (2), contracts for the work shall be let to the lowest responsible
12 bidder, or the agency may reject any and all bids and if in its discretion the prices
13 quoted are unreasonable, the bidders irresponsible or the bids informal, it may
14 readvertise the work or any part of it. All contracts shall be protected by such bonds,
15 penalties and conditions as the district shall require. The commission may itself do
16 any part of any of the works.

17 **SECTION 10.** 200.47 (2) (a) of the statutes is amended to read:

18 200.47 (2) (a) Except as provided in par. (b) and s. 66.0902 (2), all work done
19 and all purchases of supplies and materials by the commission shall be by contract
20 awarded to the lowest responsible bidder complying with the invitation to bid, if the
21 work or purchase involves an expenditure of \$20,000 or more. If the commission
22 decides to proceed with construction of any sewer after plans and specifications for
23 the sewer are completed and approved by the commission and by the department of
24 natural resources under ch. 281, the commission shall advertise by a class 2 notice

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1 under ch. 985 for construction bids. All contracts and the awarding of contracts are
2 subject to s. 66.0901.

3 **SECTION 11. Initial applicability.**

4 (1) This act first applies to a project, the proposals for which are solicited on the
5 effective date of this subsection.

6 (END)