

2009 DRAFTING REQUEST

Bill

Received: **04/28/2009**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Louis Molepske Jr (608) 267-9649**

By/Representing: **Lloyd**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Local Gov't - munis generally
Local Gov't - counties**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Molepske@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Qualification-based selection process for certain local government projects that require a consultant

Instructions:

See attached. Redraft 2007 ASA 1 to AB 553 (LRB s0277 and -1737)

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 04/28/2009	jdye 04/29/2009		_____			S&L
/1	mshovers 09/21/2009	jdye 09/22/2009	jfrantze 04/29/2009	_____	mbarman 04/29/2009	sbasford 04/29/2009	S&L
/2			rschlue 09/22/2009	_____	cduerst 09/22/2009	cduerst 09/22/2009	

FE Sent For: "12" @ intro, 1/14/10

<END>

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/1		<i>1/2 9/22 jld</i>	jfrantze 04/29/2009	_____	mbarman 04/29/2009	sbasford 04/29/2009	

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04/29/09
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1/1	mshovers	1/4/29 jld	Jp	J			
1/1	MES	4/28/09	4/29	4/29			

FE Sent For:

<END>

Barman, Mike

From: LRB.Legal
Sent: Tuesday, April 28, 2009 3:35 PM
To: Shovers, Marc
Subject: FW: Bill Draft Request - Redraft of 07-ASA1 to AB 553 - Requiring local units of government to use qualifications-based selection process for certain public works consulting contracts
Attachments: AB553-ASA1.pdf

From: Clark, Lloyd
Sent: Tuesday, April 28, 2009 3:33 PM
To: LRB.Legal
Subject: Bill Draft Request - Redraft of 07-ASA1 to AB 553 - Requiring local units of government to use qualifications-based selection process for certain public works consulting contracts

April 28, 2009

Requester: Rep. Molepske

Please redraft 07- ASA1 to AB 553 - An Act to amend 33.22 (1), 59.52 (29) (a), 60.47 (3), 60.77 (6) (a), 61.55, 62.15 (1), 88.62 (1), 200.11 (5) (d) and 200.47 (2) (a); and to create 66.0902 of the statutes; 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.

This substitute amendment requires the use of a new method for the selection of a consultant by any city, village, town, or county (political subdivision), including

a first class city, which is presently only Milwaukee, special purpose district, including a school district, or subunit (local governmental unit) if the consultant is

required for a project that relates to certain public works contracts including the inspection of local bridges. Generally, under the substitute amendment, a local

governmental unit is required to hire a consultant for a project based only on the consultant's qualifications.

A consultant is defined under the substitute amendment as a person who provides architectural services, engineering services, land surveying services,

landscape architecture services, photogrammetric services, or professional geology services for a project. A project under the substitute amendment is a project of a local

governmental unit that requires a consultant and relates to the planning, study, design, or construction inspection or administration of the public work or building,

04/28/2009

the total cost of which is estimated by a local governmental unit to be at least \$250,000 and that will be funded to some extent by the state government. A

consultant's services on a project are separate, however, from the contract for the actual construction, repair, remodeling, or improvement of the public work or

building. The value estimate and state funding requirements do not apply to local bridge inspections, however.

The substitute amendment 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 substitute amendment do not apply to a project that is needed to protect public health or welfare due to an emergency situation. Also

under the substitute amendment, a local governmental unit may enter into a contract with a consultant with whom it has an established relationship, and who

has previously provided similar services, without evaluating proposals from other consultants.

URGENT

LLOYD CLARK

OFFICE OF REPRESENTATIVE LOUIS J. MOLEPSKE, JR.
CHAIR - COMMITTEE ON JOBS, THE ECONOMY, AND SMALL BUSINESS
608-267-9649
888-534-0071

04/28/2009



-2797//
LRB-0473/L
MES/ld:rs KEEP

R MNR

2009 BILL

WANTED:
Wed
4/29

reagan

✓

1 AN ACT to create 66.0902 of the statutes; relating to: requiring local units of
2 government to use the qualifications-based selection process for certain public
3 works consulting contracts.

Analysis by the Legislative Reference Bureau

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

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

OVER
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BILL

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, a local governmental unit may enter into a contract with a consultant with whom it has an established relationship, and who has previously provided similar services, without evaluating proposals from other consultants.

For further information see the *state and 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.** 66.0902 of the statutes is created to read:

2 **66.0902 Qualifications-based selection; engineering, architecture,**
3 **and land surveying contracts. (1) DEFINITIONS.** In this section:

4 (a) "Architectural services" means the provision of services that consist of the
5 practice of architecture, as defined in s. 443.01 (5).

6 (b) "Consultant" means any person who provides architectural services,
7 engineering services, land surveying services, landscape architecture services,
8 photogrammetric services, or professional geology services.

9 (c) "Engineering services" means the provision of services that consist of the
10 practice of professional engineering, as defined in s. 443.01 (6).



BILL

1 (d) "Landscape architecture services" means the provision of services that
2 consist of landscape architecture, as defined in s. 443.01 (3r).

3 (e) "Land surveying services" means the provision of services that consist of
4 land surveying, as defined in s. 443.01 (4).

5 (f) "Local governmental unit" means a political subdivision of this state, a
6 special purpose district in this state, an agency or corporation of a political
7 subdivision or special purpose district, or a combination or subunit of any of the
8 foregoing charged with procuring the services of a consultant.

9 (g) "Photogrammetric services" means activities associated with measuring,
10 locating, and preparing maps, charts, or other graphical or digital presentations
11 depicting natural or man-made features, phenomena, and legal boundaries of the
12 earth including surveys, maps, charts, remote sensing data, and images, and aerial
13 photographic services.

14 (h) "Professional geology services" means the provision of services that consist
15 of the practice of professional geology, as defined in s. 470.01 (2).

16 (i) "Project" means any project of a local governmental unit that is related to
17 a public work or building to which all of the following apply:

18 1. The total cost of the complete project is estimated by the governing body of
19 the local governmental unit to be at least \$250,000.

20 2. The state government provides some amount of financial assistance to the
21 project.

22 3. The services of a consultant are required for the planning, study, design, or
23 construction inspection or administration of the public work or building, but are
24 separate from the contract for the actual construction, repair, remodeling, or
25 improvement of the public work or building.

OVER
↓

BILL**SECTION 1**

1 (2) QUALIFICATIONS-BASED SELECTION. (a) Except as provided in sub. (4), for any
2 project undertaken by a local governmental unit, the consultant that must be hired
3 may be selected only on the basis of the consultant's qualifications, as determined
4 under this subsection.

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

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

13 1. Its specialized experience, capabilities, and technical competence to meet the
14 project requirements.

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

17 3. Its proposed approach to meet the project requirements and its proposed
18 methods of project management.

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

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

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



BILL

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

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

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

18 (c) If a local governmental unit has an established relationship with a
19 consultant who previously has provided similar services to the local governmental
20 unit, the local governmental unit may solicit a proposal for another project directly
21 from that consultant without soliciting proposals from other consultants.

22 (5) LOCAL BRIDGE INSPECTIONS. If a local authority hires a consultant for
23 inspecting highway bridges under s. 84.17 (3) (b), the provisions of this section apply
24 to the hiring of the consultant, except that the provisions specified in sub. (1) (i) 1.
25 and 2. do not apply.

OVER
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Barman, Mike

From: Molepske, Louis
Sent: Wednesday, April 29, 2009 8:27 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-2797/1 Topic: Qualification-based selection process for certain local government projects that require a consultant

Thank you....

Please Jacket LRB 09-2797/1 for the ASSEMBLY.

Shovers, Marc

From: Clark, Lloyd
Sent: Monday, September 21, 2009 2:21 PM
To: Shovers, Marc
Subject: RE: LRB-2797/1

You got it.

From: Shovers, Marc
Sent: Monday, September 21, 2009 2:19 PM
To: Clark, Lloyd
Subject: RE: LRB-2797/1

Thanks, Lloyd. Yes, please send the jacket back.

Marc

From: Clark, Lloyd
Sent: Monday, September 21, 2009 2:18 PM
To: Shovers, Marc
Subject: RE: LRB-2797/1

Marc,

Do you want me to send the jacket back?

I appreciate the help and all the work.

Lloyd

From: Shovers, Marc
Sent: Monday, September 21, 2009 2:17 PM
To: Clark, Lloyd
Subject: RE: LRB-2797/1

Hi Lloyd:

I don't think I ever received the request, but I'll have a /2 prepared for LRB -2797, which will be identical to LRB -1905/3. Thanks.

Marc

Marc E. Shovers

Managing Attorney

9/21/2009

Legislative Reference Bureau
Phone: (608-266-0129)
E-Mail: marc.shovers@legis.wisconsin.gov

From: Clark, Lloyd
Sent: Monday, September 21, 2009 1:46 PM
To: Shovers, Marc
Subject: LRB-2797/1

Hi Mark,

After looking through all of my emails, I apparently did not send the request via email (I'm still not ruling out phone). Could you have the Assembly Version LRB-2797 match Sen. Plale's version.

I can send the original jacket back over to you, as we have not moved it as yet.

Thanks,

Lloyd

From: Shannon-Bradley, Summer
Sent: Monday, September 21, 2009 12:42 PM
To: Clark, Lloyd
Subject: RE: QBS amendment

Lloyd:

I think you are referring to the most recent draft of the bill. I attached it to this e-mail.

Please let me know if you have anymore questions. Thanks.

Summer

Summer R. Shannon-Bradley
Office of Senator Jeff Plale
(608) 266-7505
State Capitol, 313 South
P.O. Box 7882
Madison, WI 53707-7882

From: Clark, Lloyd
Sent: Monday, September 21, 2009 10:56 AM
To: Shannon-Bradley, Summer
Subject: QBS amendment

9/21/2009

Hey Summer, could you shoot me a copy of the QBS amendment? Susie told me about them and I thought that I had requested them from Mark, but either I didn't or he missed it. Just want to look at them and run them past Louis.

Thanks!

LLOYD CLARK

OFFICE OF REPRESENTATIVE LOUIS J. MOLEPSKE, JR.
CHAIR - COMMITTEE ON JOBS, THE ECONOMY, AND SMALL BUSINESS
608-267-9649
888-534-0071



RMNR

2009 BILL

regr

X

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BILL

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14 governmental unit, in which the public health or welfare of the local governmental
15 unit is endangered. Whenever the governing body of the local governmental unit
16 determines by majority vote at a regular or special meeting that an emergency no
17 longer exists, this paragraph no longer applies.

18 (c) If a local governmental unit has an established relationship with a
19 consultant who previously has provided similar services to the local governmental
20 unit, the local governmental unit may solicit a proposal for another project directly
21 from that consultant without soliciting proposals from other consultants.

22 (5) LOCAL BRIDGE INSPECTIONS. If a local authority hires a consultant for
23 inspecting highway bridges under s. 84.17 (3) (b), the provisions of this section apply
24 to the hiring of the consultant, except that the provisions specified in sub. (1) (i) 1.
25 and 2. do not apply.

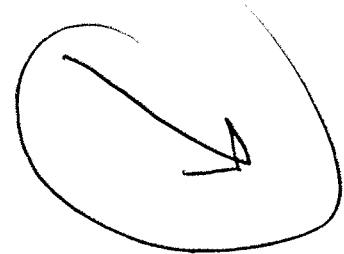
BILL

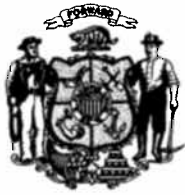
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SECTION 2. Initial applicability.

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

(END)





2009 BILL

1 AN ACT to create 66.0902 of the statutes; relating to: requiring local units of
2 government to use the qualifications-based selection process for certain public
3 works consulting contracts.

Analysis by the Legislative Reference Bureau

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

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



BILL

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, level of efforts, 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, level of efforts, 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 retain a consultant 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, a local governmental unit may enter into a contract with a consultant with whom it has an established relationship, and who has previously provided similar services, without evaluating proposals from other consultants.

For further information see the *state and 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.** 66.0902 of the statutes is created to read:

2 **66.0902 Qualifications-based selection; engineering, architecture,**
3 **and land surveying contracts. (1) DEFINITIONS.** In this section:

4 (a) "Architectural services" means the provision of services that consist of the
5 practice of architecture, as defined in s. 443.01 (5).

6 (b) "Consultant" means any person who provides architectural services,
7 engineering services, land surveying services, landscape architecture services,
8 photogrammetric services, or professional geology services.

9 (c) "Engineering services" means the provision of services that consist of the
10 practice of professional engineering, as defined in s. 443.01 (6).



BILL

1 (d) "Landscape architecture services" means the provision of services that
2 consist of landscape architecture, as defined in s. 443.01 (3r).

3 (e) "Land surveying services" means the provision of services that consist of
4 land surveying, as defined in s. 443.01 (4).

5 (f) "Level of effort" means the number of hours a consultant spends, or purposes
6 to spend, on a project, broken down by the number of hours spent on the specific tasks
7 of the project.

8 (g) "Local governmental unit" means a political subdivision of this state, a
9 special purpose district in this state, an agency or corporation of a political
10 subdivision or special purpose district, or a combination or subunit of any of the
11 foregoing charged with procuring the services of a consultant.

12 (h) "Photogrammetric services" means activities associated with measuring,
13 locating, and preparing maps, charts, or other graphical or digital presentations
14 depicting natural or man made features, phenomena, and legal boundaries of the
15 earth including surveys, maps, charts, remote sensing data, and images, and aerial
16 photographic services.

17 (i) "Political subdivision" means any city, village, town, or county.

18 (j) "Professional geology services" means the provision of services that consist
19 of the practice of professional geology, as defined in s. 470.01 (2).

20 (k) "Project" means any project of a local governmental unit that is related to
21 a public work or building to which all of the following apply:

22 1. The total cost of the complete project is estimated by the governing body of
23 the local governmental unit to be at least \$250,000.

24 2. The state government provides some amount of financial assistance to the
25 project.



BILL

1 3. The services of a consultant are required for the planning, study, design, or
2 construction inspection or administration of the public work or building, but are
3 separate from the contract for the actual construction, repair, remodeling, or
4 improvement of the public work or building.

5 **(2) QUALIFICATIONS-BASED SELECTION.** (a) Except as provided in sub. (4), for any
6 project undertaken by a local governmental unit, the consultant that must be hired
7 may be selected only on the basis of the consultant's qualifications, as determined
8 under this subsection.

9 (b) A local governmental unit shall develop a procedure to solicit proposals from
10 consultants for projects, and shall rank the proposals according to the qualifications
11 of the consultants. The proposals may not include any fees or costs for the proposed
12 project, and the local governmental unit may not solicit fee, level of effort, or cost
13 information from consultants except as provided in sub. (3).

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

17 1. Its specialized experience, capabilities, and technical competence to meet the
18 project requirements.

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

21 3. Its proposed approach to meet the project requirements and its proposed
22 methods of project management.

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

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



BILL


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

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

10 **(4) EXCEPTIONS.** (a) If a local governmental unit is unable to enter into a
11 contract with a consultant under sub. (3), it may retain a consultant for the project
12 under any other method that is authorized by law.

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

21 (c) If a local governmental unit has an established relationship with a
22 consultant who previously has provided similar services to the local governmental
23 unit, the local governmental unit may solicit a proposal for another project directly
24 from that consultant without soliciting proposals from other consultants.



Barman, Mike

From: Barman, Mike
Sent: Tuesday, September 22, 2009 2:10 PM
To: Molepske, Louis
Subject: RE: Draft Review: LRB 09-2797/2 Topic: Qualification-based selection process for certain local government projects that require a consultant

Our records show that we "Jacketed" this draft for you around 11:00 AM this morning. If the "Jacket" does not turn up please contact the drafting attorney to have it re-drafted under a new number.

Please let me know if I can be of further assistance.

Mike Barman (Senior Program Assistant)
State of Wisconsin - Legislative Reference Bureau
Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

From: Molepske, Louis
Sent: Tuesday, September 22, 2009 2:02 PM
To: LRB.Legal
Cc: Clark, Lloyd; Farnsworth, Kathy
Subject: Draft Review: LRB 09-2797/2 Topic: Qualification-based selection process for certain local government projects that require a consultant

Thanks...

Please Jacket LRB 09-2797/2 for the ASSEMBLY.