



SHAE SORTWELL

STATE REPRESENTATIVE • 2nd ASSEMBLY DISTRICT

Hearing Testimony
Assembly Committee on State Affairs
November 1, 2023
Assembly Bill 42

Chairman Swearingen and members of the Assembly Committee on State Affairs – thank you for giving me the opportunity to speak on AB 42, relating to the selection of architects and engineers for state projects.

Under current law, the secretary of the Department of Administration (DOA) is required to establish a committee for each state construction project under the department's supervision, except certain emergency projects, for the purpose of selecting an architect or engineer for the project.

The Legislature revised the project cost thresholds for different categories of capital projects through 2017 Act 237. While Act 237 raised the limits for projects defined as “minor” (those with an estimated cost below \$7,400,000), the threshold for architectural/engineering (A/E) firms with only one architect/engineer “as a responsible member of the firm” was not revised.

Currently, the threshold for one-person A/E firms is set at \$1 million in DOA’s administrative code [Wis. Admin. Code § Adm. 20.02(6)(a) and (e)], but is not addressed in statute. This threshold has been in place since June 1, 2006, when it was raised from \$250,000 through the rulemaking process.

One million dollars does not go as far as it used to. The cost threshold that applies to one-person A/E firms effectively prevents them from competing for state projects that they are qualified to complete in accordance with the policies and procedures set by DOA’s Division of Facilities Development and Management (DFDM). Many of these firms have documented experience of completing projects of a similar cost, complexity, and scope in the private sector. As construction costs continue to increase over time, the number of projects posted by DFDM that don’t exceed \$1 million is becoming increasingly rare.

Under current law, the selection committee designated by the DOA secretary must use a request-for-proposal process established by the department to select an A/E firm if the estimated cost of a construction project is \$7,400,000 or more.

AB 42 prohibits DOA selection committees from refusing to select a one-person A/E firm for a state project that has an estimated cost of less than \$2,000,000, but DOA is allowed to increase the threshold up to \$7,400,000.

This policy change was recommended to me by my constituent, from whom you have received written testimony. As a professional 1-person A/E firm in the industry, I trust his judgment with what needs updating to make the sector more competitive, especially for the smallest of businesses.



SHAE SORTWELL

STATE REPRESENTATIVE * 2nd ASSEMBLY DISTRICT

Last session, this legislation passed both chambers with bipartisan support. However, the governor vetoed the bill, citing the threshold as too high. Senator Stroebel and I reintroduced this bill and accommodated the governor's veto by lowering the threshold, while still leaving flexibility for the department as costs increase over time.

I appreciate the opportunity to testify on this legislation and would gladly answer any questions the committee may have.



DUEY STROEBEL

STATE SENATOR • 20TH DISTRICT

Testimony on AB 42

November 1, 2023

Thank you Chairman Swearingen and committee members for holding today's public hearing on Assembly Bill 42, a bill I authored with Representative Sortwell with the aim of increasing competition in the selection of architectural and engineering (A/E) firms for state projects.

For a bit of background, DOA is required to establish a selection committee for each state project for the purpose of selecting an architect or engineer, with an exception for certain emergency projects.¹ While statute requires a selection committee to use a request-for-proposal (RFP) process for projects with an estimated cost of \$7.4 million or more to select an architectural or engineering (A/E) firm, the threshold at which an A/E firm with a single responsible member can be considered for selection is set in DOA's administrative code and limited to projects with an estimated cost below \$1 million.² The current threshold appears to have been in place since 2006, when it was raised from \$250,000 through the rulemaking process.³ 2017 Act 237 established or revised the cost thresholds for different categories of capital projects, but the \$1 million threshold for A/E firms with a single responsible member was not one of them.

AB 42 prohibits DOA selection committees from refusing to select an A/E firm for a state project with an estimated cost of less than \$2 million on the sole basis of the firm having only one responsible member. The bill would provide DOA with the discretion to increase this threshold up to the \$7.4 million.

One million dollars does not go as far today as it did in 2006. As construction costs continue to increase over time, the number of projects posted by DOA's Division of Facilities Development and Management (DFDM) that do not exceed \$1 million have become increasingly rare. This has had the effect of arbitrarily preventing A/E firms with one responsible member from competing for state projects that they may otherwise be qualified to complete.

It is not uncommon for consulting architects or engineers to spend a portion of their careers gaining experience at larger firms and familiarizing themselves with the ins and outs of the policies and procedures governing state projects before eventually launching their own firms. There are plenty of scenarios in which an architect or engineer operating as the single responsible member of a firm not only has documented experience completing projects of a comparable or higher cost, complexity and scope in the private sector, but may be as qualified or even more qualified than a firm with multiple responsible members as a result of having worked closely with DFDM staff in the past to successfully carry out various state projects.

Thank you again for your time and consideration of AB 42.

¹ Wis. Stat. § 16.867

² Wis. Admin. Code § Adm. 20.02(6)(a) and (e)

³ Clearinghouse Rule 05-069 (CR 05-069)



Electrical Design
& Consulting

November 1, 2023

Thank you, legislators, for considering changing the restrictive policy of awarding Architect and Engineering (A/E) contracts by the Department of Administration to A/E firms having a single responsible member.

My name is Daniel J. Hanson. I have worked as a consulting engineer since 1982. I received an Associates Degree in Architectural Technology from Northeast Wisconsin Technical College in 1981, and gained my first employment in the consulting engineering industry in 1982. In 1989 I passed the required State of Wisconsin examinations and became a Designer of Engineering Systems. From 1982 to 2009 I worked for three A/E consulting engineering firms. The total numbers of employees of these firms ranged from 10 to several hundred. I was an invested Owner with two of these firms. In December 2009 I organized an LLC and became self-employed.

Over my nearly 40-years in the A/E consulting industry I have had the opportunity to work on dozens of State of Wisconsin projects managed by the Department of Administration's Division of Facilities Development and Management (DFDM). DFDM work is attractive to A/E's for many reasons. A few that come to mind:

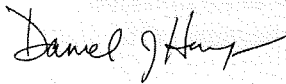
1. Solicitations for an A/E's interest in DOA/DFDM projects is fairly consistent – usually occurring monthly.
2. If preliminarily selected, the A/E has an opportunity to visit the project site and conference with the DFDM project manager to better determine the scope and budget before submitting a fee proposal.
3. DFDM staff are knowledgeable and in many cases have spent parts of their careers in the A/E consulting industry. This familiarity helps build a collaborative relationship between the DFDM and the A/E – promoting a successful project.
4. Unless there are extenuating circumstances, the A/E knows their invoices will be paid in 30-days.

Currently language in the Department of Administration Chapter 20 (Adm 20.01 (6), along with Statue 16.867, prevents DOA from awarding an A/E firm with a single responsible member a project whose estimated construction value exceeds \$1,000,000.00. It appears the language in Adm 20.01 (6) was adopted in 2006 (it may precede 2006, but that is the date on the document currently available on the State's website). I am asking the legislature to change the limit of

\$1,000,000.00 - if for no other reason than \$1,000,000.00 today does not go as far as it did in 2006.

One might wonder why a limit based on the estimated construction value was ever made policy. Certainly an individual operating as a single responsible member of a firm may be as qualified or even more qualified than a firm with multiple responsible members. In fact, I will argue a firm with a single responsible member is likely to provide better services for the taxpayers of Wisconsin because as a single responsible member firm there is much more to lose in future opportunities with DOA/DFDM than a multiple member firm. I've worked for firms with multiple responsible member, and while at those firms designed and managed projects on my own whose constructed value exceeded \$4,000,000 in electrical work alone. Having worked for firms with multiple responsible members, I know that often the person representing the firm (submitting the firm's interest in a particular project) is seldom the individual who is actually involved with the day-to-day activities of the project. In a firm with a single responsible member, the single responsible member is more than likely also the firm's owner, and as such has a personal vested interest to remain active and knowledgeable of all the firm's projects. I believe maintaining the current policy of denying award of projects with estimated construction values exceeding \$1,000,000.00 to firms with a single responsible member is discriminatory, and in some cases promotes awarding DFDM projects to less qualified firms. I urge the legislature to change this restrictive policy.

Sincerely,



Daniel J. Hanson
Principal