State of Wisconsin
2009 – 2010 LEGISLATURE

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2009 SENATE BILL 442

January 7, 2010 – Introduced by Senators PLALE, DECKER, KREITLOW, TAYLOR, LASSA, HANSEN, WIRCH, LEHMAN, SCHULTZ and KEDZIE, cosponsored by Representatives MOLEPSKE JR., CLARK, TOWNSEND, GUNDERSON, A. OTT, KERKMAN, HONADEL, ZIPPERER and GOTTLIEB. Referred to Committee on Ethics Reform and Government Operations.

AN ACT ***to create*** 66.0902 of the statutes; **relating to:** requiring local units of government to use the qualifications–based selection process for certain public 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.

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:

SECTION 1. 66.0902 of the statutes is created to read:

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

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

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

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

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

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

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

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

(h) "Photogrammetric services" means 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.

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

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

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

1. 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. The state government provides some amount of financial assistance to the project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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)