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Senate Bill 642 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Jim Ananich
Senate Committee: Economic and Small Business Development
House Committee: Regulatory Reform

Date Completed: 8-18-22

RATIONALE

Qualifications-based selection (QBS) is a procurement process in which architects, engineers, surveyors, and other professional firms compete for a given project based on their qualifications and past experiences rather than the cost of their bid. Qualifications-based selection was established by the Brooks Act of 1972 and has since been used for all Federal design work. Some people believe QBS ensures public safety, encourages creativity, improves delivery time, increases property value, and minimizes the potential for conflict and litigation. Accordingly, it has been suggested that Michigan adopt QBS for projects proposed by State agencies requiring architectural, engineering, or land surveying services.

CONTENT

The bill would amend the Management and Budget Act to do the following:

- **Specify that, if a proposed project by a State agency required architectural services, engineering services, or land surveying services, the Department of Technology, Management, and Budget (DTMB) or a State agency would have to publish a notice requesting a statement of interest in the proposed project by any qualified firm, along with a statement of qualifications and performance data from that firm.**
- **Prescribe criteria by which the DTMB or a State agency would have to evaluate a qualified firm for a proposed project that required any of the services listed above.**
- **Allow the DTMB or a State agency to conduct discussions with, and require presentations by, a qualified firm being considered to provide any of the services described above for a proposed project.**
- **Require the DTMB or State agency to negotiate with the highest-ranked qualified firm at compensation it determined to be fair and reasonable.**
- **Specify that, if the DTMB or a State agency were unable to negotiate a satisfactory contract with any of the selected qualified firms, the DTMB or State agency would have to reevaluate the required services, including the estimated value, scope, complexity, and fee requirements.**
- **Allow the DTMB or a State agency to waive the bill's requirements if it determined that an emergency situation existed, and a qualified firm had to be selected in an expeditious manner or if the cost of the required services for a project were less than \$250,000.**

Under the Act, the selection of architects, professional engineers, professional surveyors, and qualified firms must be made in accordance with competitive, qualifications-based selection processes and procedures for the type of professional service required by the DTMB. Under the bill, the selection of architects *for architectural services*, professional engineers *for engineering services*, professional surveyors *for land surveying services*, and qualified firms would have to be made in accordance with competitive, qualifications-based selection processes and procedures for *the DTMB and all State agencies* as described below.

("Qualified firm" would mean a sole proprietorship, partnership, corporation, or limited liability company through which a person licensed as an architect, professional engineer, or professional surveyor under Article 20 of the Occupational Code offers or provides architectural services, engineering services, or land surveying services to the public.)

If a proposed project by a State agency required architectural services, engineering services, or land surveying services, the DTMB or the State agency would have to publish a notice requesting a statement of interest in the proposed project by any qualified firm, along with a statement of qualifications and performance data from that qualified firm. The notice would have to state the general scope and nature of the proposed project for which services were required and would have to include contact information for a representative of the DTMB or State agency who could provide further details of the proposed project.

In procuring architectural services, engineering services, or land surveying services for a proposed project, the DTMB or the State agency would have to evaluate the statements of interest, statements of qualifications, and performance data submitted by qualified firms. In evaluating a qualified firm for the proposed project, the DTMB or the State agency would have to consider all the following:

- The qualified firm's qualifications.
- Ability of the professional personnel of the qualified firm.
- The firm's past record and experience.
- Any other qualifications-based factors that the DTMB or State agency determined to be applicable.

The bill would allow the DTMB or State agency to conduct discussions with and require presentations by any qualified firm being considered to provide the required architectural services, engineering services, or land surveying services for the proposed project. Based on the evaluations, discussions, and presentations, the DTMB or State agency would have to select those qualified firms considered the most highly qualified to provide the required services for the proposed project.

The DTMB or State agency would have to rank those qualified firms selected in order based on the qualifications prescribed in the bill. The DTMB or State agency would have to negotiate a contract with the highest-ranked qualified firm at compensation that the DTMB or State agency determined to be fair and reasonable. The DTMB or State agency would have to consider the estimated value, scope, complexity, and professional nature of the services to be rendered. If the DTMB or State agency were unable to negotiate a satisfactory contract with the highest-ranked qualified firm, negotiations with that firm would have to be formally terminated. The DTMB or State agency would have to begin negotiations with the next most highly ranked qualified firm and continue until an agreement was reached or the process was terminated. If the DTMB or State agency were unable to negotiate a satisfactory contract with any of the selected qualified firms, the DTMB or State agency would have to reevaluate the services requested, including the estimated value, scope, complexity, and fee requirements.

The bill would allow the DTMB or State agency to waive the bill's requirements if the DTMB or State agency determined that an emergency situation existed and a qualified firm had to be selected in an expeditious manner or if the cost of the architectural services, engineering services, or land surveying services for a project were less than \$250,000.

("Architectural services" would mean the practice of architecture as defined in Section 2001 of the Occupational Code: professional services, such as consultation, investigation, evaluation, planning, design, or review of material and completed phases of work in construction, alteration, or repair in connection with a public or private structure, building, equipment, works, or project if the professional service requires the application of a principle of architecture or architectural design.

"Engineering services" would mean the practice of professional engineering as defined in Section 2001 of the Occupational Code: professional services, such as consultation, investigation, evaluation, planning, design, or review of material and completed phases of work in construction, alteration, or repair in connection with a public or private utility, structure, building, machine, equipment, process, work, or project, if the professional service requires the application of engineering principles or data.

"Land surveying services" would mean the practice of professional surveying as that defined in Section 2001 of the Occupational Code: providing professional services such as consultation, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location, size, shape, or physical features of the earth, improvements on the earth, the space above the earth, or any part of the earth, and the utilization and development of these facts and interpretations into an orderly survey map, plan, report, description, or project.)

MCL 18.1237b

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Qualifications-based selection ensures public health and safety because the most qualified firm for a specific project will get the job. This means that buildings and other infrastructure projects built by a firm selected by QBS will be built efficiently, will last longer, will accrue less maintenance costs throughout its life cycle, and ultimately will be of a higher quality to ensure the safety of those served by the project. According to testimony from the Senate Committee on Economic and Small Business Development, 45 states have followed in the footsteps of the Federal government and adopted QBS for state design work. Therefore, Michigan should also adopt QBS for design projects.

Qualifications-based selection would allow the State to get the most value from the money spent on a given project. While the firm selected might not be the one with the cheapest initial bid, the quality of the project should ensure that less maintenance is needed and that the project will ultimately last for a longer duration of time. Furthermore, QBS would allow the State or property owner leading a given project the ability to discuss a project with a firm before officially hiring that firm. This collaboration gives the owner more control in the design process and ensures the project will fit the original intention.

Opposing Argument

Qualifications-based selection does not factor in the total estimated hours a professional firm needs for a specified project. The DTMB currently uses a total value procurement procedure to select a firm for a State project. As with QBS, 80% of the evaluation criteria is based on qualification, experience, and the strength of a given project proposal. However, the remaining 20% of the evaluation criteria is the estimated time required by a professional firm to provide their services. Therefore, the State should not move forward with adopting QBS unless the total estimated hours for a project is included in the evaluation criteria.

Legislative Analyst: Olivia Ponte

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco, Jr.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.