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DMB: HIRING ARCHITECTS, ENGINEERS, SURVEYORS, ETC.

House Bill 5883 as introduced First Analysis (5-1-02)

Sponsor: Rep. David Mead
Committee: Commerce

THE APPARENT PROBLEM:

Supporters of the qualifications-based selection of professional services (known as QBS) say that even though that system is an alternative to the "lowest bidder" selection system, it can nevertheless be the more cost-effective of the two methods. Under the QBS method, say advocates, professional firms, such as engineers, architects, and surveyors, are selected to work on a project based on their qualifications to carry out the kind of work the project demands, and not simply on the basis of price. As one supporter has said, "The QBS process saves the [entity doing the selecting] time and money through an organized approach that gets the design professional on board early enough to improve project planning [and] minimize total project cost, helps to prevent costly mistakes, and helps the client develop a project that fits their budget and schedule needs". On the other hand, accepting the lowest bid can lead to additional costs if the bidder is not as qualified, lacks creativity or problem-solving capacity, and has underbid the project through inexperience. Lower quality work on a construction project can also result in higher operational costs in the future. Under QBS, price enters into the process later, after a qualified firm or firms have been selected. Advocates of QBS say it is required for federal projects, is mandated in numerous states, and is used by many local units of government, as well as by the Michigan Department of Transportation. Legislation has been introduced that would require the QBS system for contracting certain professional services by the state's Department of Management and Budget.

THE CONTENT OF THE BILL:

The bill would amend the Management and Budget Act to add provisions creating a process for the Department of Management and Budget's selection of architects, professional engineers, professional surveyors, and firms of architects, engineers, and surveyors for state agency capital outlay projects or facilities. The selection of such professionals and firms would have to be based on the appropriate

qualifications for the type of professional services required by the DMB.

The bill would impose the following requirements.

- The DMB would have to prepare a written description of the proposed services to be used as the basis of negotiation, taking into account the estimated value, scope, complexity, and professional nature of the services to be rendered. Notification of the written description for services would be provided to professionals and firms under procedures established by the department. The department could not establish a maximum overhead rate or other payment formula designed to eliminate architects, professional engineers, professional surveyors, or qualified firms from contention or to restrict competition.
- Upon receiving proposals based on those written descriptions, the department would have to select at least three architects, professional engineers, professional surveyors, or qualified firms determined to be the most qualified to provide services for the project and rank them in order of qualifications to provide services regarding the specific request.
- The department would have to notify in writing the professional or firm determined most qualified to negotiate a contract for services for the project at fair and reasonable compensation and establish procedures for notifying those determined not to be qualified for the project.
- If the department was unable to negotiate a satisfactory contract with the professional or firm determined most qualified, negotiations would be terminated, and the department would have to negotiate with the firm determined to be the next most qualified. If those negotiations were terminated (for failure to reach a satisfactory contract), the department would negotiate with the third professional or firm. If the department was unable to negotiate a satisfactory contract with any of the three selected as most qualified, it would have to give

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written notice to those affected, reevaluate the services requested, and then proceed to determine the next most qualified professional or firm following the same procedures for notification and negotiation as provided earlier.

- If fewer than three architects, professional engineers, professional surveyors, or qualified firms submitted a response to a DMB proposal, the department could negotiate a contract with all those who responded.

MCL 18.1237 and 18.1237b

BACKGROUND INFORMATION:

The advocates for this bill, known as the Michigan QBS Coalition, have a web site. It can be found at www.qbs-mi.org.

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

Advocates of qualifications-based selection (or QBS) have said that this process of selecting engineering, architectural, and surveying services "is based on the premise that when a construction project is undertaken, the selection of a design professional firm is one of the most important events in the process. Selection of a qualified design professional has a positive influence on the entire course of a project as it relates to financial aspects, feasibility, public response, design, functional efficiency, construction costs, operating costs, and maintenance costs during the project's life". When a firm is selected because it is the most qualified for the job, rather than the low bidder, project costs may actually be reduced. The House Committee on Commerce was provided with several examples of significant savings that have resulted in major public works projects due to the creativity and talents of expert engineering services. This bill would mandate the use of QBS by the Department of Management and Budget for employing firms of engineers, architects, and surveyors. It anticipates a process whereby the department would first select the three top qualifying firms among bidders. If the negotiations with the first firm were successful, it would be employed, but if not, the department would move on to the second and then, if necessary, the third. Advocates say the Michigan Department of Transportation uses this

method successfully. It is required in many states (perhaps 38) and by the federal government. Many local units of government endorse its use. It makes sense for the DMB to use it as well.

Response:

Reportedly, the DMB uses a variety of methods to select contractors, using both qualifications and cost as criteria. (Cost is said to count 20 percent.) This is said to give department staff flexibility in deciding what process to use given the kind of project, the timeline for the project, and other factors. Isn't this kind of flexibility preferable to the mandating of one kind of selection process? According to department officials, the department is in the process of very substantial reworkings of departmental practices in a wide variety of areas, including contracting. This bill should be reviewed to ensure that it does not hamstring attempts to improve department operations. It should also be reviewed in order to determine whether it might slow down contracting for major public works projects and drive up costs.

Against:

Some concerns have been expressed about the effect of QBS on newly created firms and minority firms, who may not have extensive experience in a given line of work and never get to the front of the line under this selection system. Additional concerns have been expressed that large out-of-state firms will have the advantage over in-state firms if the competition is not price-based. There have also been concerns about the hiring of subcontractors and whether they too would be subject to the same kind of selection. The bill is silent on this. Whatever system is in place, some people believe it ought to be open, fair, and accountable, to encourage objective judgments and to reduce litigation.

Response:

Industry specialists say that newer firms, and minority firms, can join with more established firms. These kinds of partnerships can provide the experience younger or less experienced firms need to build expertise and a record of accomplishment. Moreover, representatives of engineering firms say that they often go through "debriefings" when they have finished out of the running for a project under a QBS selection and this helps them understand what is required of them to become better qualified for major public works projects. Under QBS, moreover, all of the firms enter the competition knowing how the system works. Litigation and resentment are more likely in a competitive price bidding system where the low bidder does not win the contract.

POSITIONS:

The American Council of Engineering Companies/Michigan supports the bill. (4-30-02)

The city engineer and director of utilities from the City of Big Rapids testified in support of the bill. (4-30-02)

The Department of Management and Budget has no official position on the bill at present. (4-30-02)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.