

SELECTION PROCESS FOR CERTAIN SERVICES

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Senate Bill 642 as enrolled

Sponsor: Sen. Jim Ananich

House Committee: Regulatory Reform

Senate Committee: Economic and Small Business Development

Complete to 2-2-23

Analysis available at

<http://www.legislature.mi.gov>

(Pocket vetoed 1-11-23)

SUMMARY:

Senate Bill 642 would amend section 237b of the Management and Budget Act to add specifications related to how the state government must advertise for and select architectural, engineering, or surveying services needed for proposed projects.

Section 237b currently requires the selection of architects, professional engineers, professional surveyors, and *qualified firms* to be made in accordance with competitive, qualifications-based selection processes and procedures for the relevant services by the Department of Technology, Management, and Budget (DTMB).

The bill instead would require the selection of the above professionals and *qualified firms*, for the relevant services, to be made in accordance with competitive, qualifications-based selection processes and procedures as described below for DTMB and all *state agencies*.

The bill would newly define *qualified firm* to 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. (*Architectural services*, *engineering services*, and *land surveying services* would have the same meanings in section 237b as they do in Article 20 of the Occupational Code.)

As defined in the act, *state agency* means a department, board, commission, office, agency, authority, or other unit of state government. It does not include an institution of higher education, a community college, or (for purposes of section 237b) the legislative branch of government. The act provides that state agency includes the judicial branch of government for purposes of authorizing, planning, construction, and funding a *capital outlay* project, including construction of a facility to house offices or functions necessary for the operation of the judicial branch of government. (*Capital outlay* means a project or facility financed in whole or in part with state funds, including lease purchase agreements, to demolish, construct, renovate, or equip a building or facility for which total project costs exceed \$1.0 million.)

Under the bill, if a proposed project by a state agency required architectural services, engineering services, or land surveying services, 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 the firm's statement of qualifications and performance data. The published notice would also have to state the general scope and nature of the proposed project and include contact information for a representative of DTMB or the state agency who can provide further details of the proposed project.

In procuring required services for the proposed project, DTMB or the state agency would have to evaluate the statements of interest, statements of qualifications, and performance data submitted by qualified firms, considering all the following:

- The qualified firm's qualifications.
- The ability of the qualified firm's professional personnel.
- The qualified firm's past record and experience.
- Any other qualifications-based factors that DTMB or the state agency determines are applicable.

DTMB or the state agency could conduct discussions with and require presentations by any qualified firm being considered to provide the required services for the proposed project.

Based on the evaluations, discussions, and presentations, DTMB or the state agency would have to select the qualified firms considered the most highly qualified to provide the required services for the proposed project and then rank the selected firms in order based on the qualifications described above.

DTMB or the state agency would have to enter into contract negotiations with the highest-ranked qualified firm at compensation that DTMB or the state agency determined to be fair and reasonable, taking into account the estimated value, scope, complexity, and professional nature of the services to be provided.

If DTMB or the 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. Negotiations with the next most highly ranked qualified firm would then begin and continue until an agreement was reached or the process was terminated.

If a satisfactory contract could not be negotiated with any of the selected qualified firms, DTMB or the state agency would have to reevaluate the architectural services, engineering services, or land surveying services requested, including the estimated value, scope, complexity, and fee requirements.

DTMB or the state agency could waive the requirements described above under either of the following conditions:

- DTMB or the state agency determines that an emergency situation exists and a qualified firm must be selected in an expeditious manner.
- The cost of the architectural services, engineering services, or land surveying services for a project is less than \$250,000.

MCL18.1237b

BACKGROUND AND BRIEF DISCUSSION:

Section 637 of the Management and Budget Act provides that, for state agency capital outlay projects or facilities, DTMB is responsible for the development, oversight, review, and approval of program statements, studies, designs, plans, management, specifications, contract documents, construction management, and construction, relative to the acquisition, construction, lease purchase, improvement, demolition, or other capital outlay projects for state agencies for which an appropriation or other authorization has been made.

Section 637 requires DTMB to approve the award, selection, and employment of architects, professional engineers, construction managers, and other design or construction professional services contractors, subject to section 237b (described above) and subject to civil service rules, to do both of the following:

- Prepare program statements, studies, designs, plans, and specifications for the construction of, repairing of, making additions to, remodeling or demolition of, lease purchase of, or acquisition of state facilities.
- Administer construction work, including resident inspectors, on-site management, and supervision of construction projects.

According to testimony offered by DTMB, Michigan uses a “best value” system rather than a straight “low-bid” system when determining which vendor to select for a service. The evaluation process is weighted, with 80% based on performance quality and other qualification and 20% based on estimated hours and cost to complete the work.

The department opposes the bill overall, arguing that estimated hours should be a part of the information required during the vendor selection process, while design firms oppose adding this requirement, preferring instead to have it be determined during the contract negotiation process.

FISCAL IMPACT:

Senate Bill 642 would have no fiscal impact on the state or local units of government.

Qualifications-based selection has been shown in studies to offset savings from low-bid or best value procurement processes and also significantly reduce long-term costs in the construction of projects and the maintenance of facilities through various life-cycle costs. However, the bill would largely codify much of the current procurement process used by DTMB when evaluating and selecting contracted services and would not likely result in additional savings.

Pocket veto 1-11-23:

If the governor does not sign a bill within 14 days after getting it and the legislature has adjourned to end the legislative session, the bill does not take effect and is said to have been “pocket vetoed.” Unlike a regular veto, a pocket veto does not oblige the governor to provide the legislature with his or her objections to the bill.

Senate Bill 642 was pocket vetoed on January 11, 2023, when it was still unsigned 14 days after being presented to the governor on December 28, 2022. The legislature also adjourned *sine die* (without day) to end the legislative session on December 28.

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