

SENATE LOCAL GOVERNMENT COMMITTEE

SENATE BILL 237

ALLOW CONSIDERATION OF PROPOSED FEE IN SELECTING DESIGN SERVICES

For the record, I am Jay Skoog, Executive Director of the American Council of Engineering Companies of Montana, representing consulting engineer firms throughout the state of Montana. I offer this testimony on behalf of our member firms.

This bill is about Qualifications Based Selection.....also known as QBS.

*Qualifications-based selection is a method of procuring engineering and architectural services that makes superior qualifications and experience the paramount basis for selection. QBS serves as the "model law" in the American Bar Association's "Model Procurement Code for State and Local Governments". QBS is also endorsed by the major construction industry associations including the American General Contractors, American Council of Engineering Companies, American Institute of Architects, and others.*

In addition, the **American Public Works Association (APWA)**, a national association of public works officials representing local governments strongly supports QBS. The APWA's stated position is:

**"The American Public Works Association believes that the public interest is best served when governmental agencies select architects, engineers, and related professional technical consultants for projects and studies through Qualifications Based Selection (QBS) procedures. Basing selections on qualifications and competence, rather than price, fosters greater creativity and flexibility, and minimizes the potential for disputes and litigation."**

QBS protects the taxpayer and helps to ensure public health and safety. It is the preferred procurement process throughout the U.S., required by the federal government, 44 states, and hundreds of municipalities. QBS has consistently resulted in superior design and construction, and in the long run, has saved taxpayers millions of dollars.

Even when QBS is not required, such as in the private sector, it is still the predominant methodology for selection of these services. In fact, this is how our society also selects lawyers, accountants, city managers, and other professionals. We seek out a highly qualified individual or firm based upon experience and references and then negotiate a scope of work and a fee. If we can't reach an agreement then we move onto the next most qualified individual or firm.

Regarding this bill, I would suggest that a more appropriate title would be "An act to repeal Qualifications Based Selection for architectural and engineering services in Montana". That is what this bill actually does. It allows any state or local entity to use low-bid to hire an architect or engineer. Saying that price is "only going to be one consideration or that we will just look at price a little bit" is not practical. Once price is involved in the selection process it becomes an overwhelming influence for both the government body and for the design professionals who try to get the work.

Supporters of this bill say that QBS eliminates price competition, however that is simply not the case. **Price is a factor.** The difference is that price comes into play later in the selection process, after the most qualified firm is selected. The firm and the agency jointly develop the project scope and the firm makes a realistic fee proposal based on that scope. If the agency cannot reach an agreement with the first choice, it has the option to open negotiations with another highly qualified firm. Our member firms realize when they are selected for a project that they must negotiate a fair price for their service or risk losing that project to another highly ranked firm.

The proponents think this bill will save money. That is simply not true.

This bill will not save money, it will likely cost money. Although a small amount of money may be saved in the design phase of the project, the total construction costs and operational costs of the project will increase. Any savings achieved through "cheap" design services will be lost many times over.

How does this happen?

- It happens because a design professional who "bids" on a project will have to make assumptions. The first assumption will be that the only way to get the work is to come in low on price. In order to do that he/she will look at solutions that are "cheap" to design.....rather than solutions which will provide the most cost-effective, long-term solution for the community.
- Design professionals can also "over-engineer" a project with components that are more costly than what is actually needed. This saves the engineer time and expense but it increases the construction and life-cycle costs of a project.
- A design professional can also pass work and risk onto the general contractor. This results in higher construction bids and the total project cost will go up.

Another side-effect of this bill will be that public projects will not be as beautiful. Engineers and architects who "bid" to get work will not spend time and money to make streets and buildings more pleasing to the eye.

While the City of Whitefish put a lot of effort into getting support for this bill, they didn't enjoy a lot of success. Every city and town in Montana received a letter that promised "healthy price competition" for design services. A resolution was included that could be sent back to express support for this bill. Approximately one-hundred cities and towns chose not to support this bill. The Bozeman city council voted unanimously not to support the bill and the Billings city council actually voted to oppose the bill. I believe that some committee members have also heard from St. Ignatius, Virginia City, and perhaps other towns who oppose this bill.

In conclusion, this bill is about gambling. Do we want to allow state and local agencies to gamble taxpayer funds on "cheaper" but less qualified design services, when those services are less than 1% of the life-cycle costs of a project? We believe that this is a gamble that Montana should not take. And we urge you to vote "do not pass" on this bill.

Thank you for this opportunity to provide testimony. If you require additional information, I'd be happy to provide it.