

Legislative Analysis



STATE CONTRACTING SELECTION PROCESS

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House Bill 5654 (H-1) as reported from committee
Sponsor: Rep. Amos O’Neal
Committee: Regulatory Reform
Complete to 6-20-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5654 would amend the Management and Budget Act to modify the requirements for the section of architects for architectural services, professional engineers for engineering services, professional surveyors for land surveying services, and qualified firms for proposed projects of the Department of Technology, Management, and Budget (DTMB) and state agencies for the period between January 1, 2025, and December 31, 2032.

Currently, the act requires selections for these services to be made in accordance with competitive, qualifications-based selection processes and procedures for the type of professional service, as determined by DTMB.

Selecting a qualified firm

Under the bill, from January 1, 2025, to December 31, 2032, in selecting professionals for these services with an estimated cost of \$250,000 or more, DTMB or the relevant 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 published notice would state the general scope and nature of the proposed project for which services are required and include contact information for a representative of the department or state agency who can provide further details of the proposed project.

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 the Occupational Code offers or provides architectural services, engineering services, or land surveying services to the public.

The department or state agency would have to evaluate the statements of interest, statements of qualifications, and performance data submitted by qualified firms. In evaluating a firm for a proposed project, they would have to consider all of the following:

- Qualifications of the firm.
- Ability of the professional personnel of the firm.
- Past record and experience of the firm.
- Any other qualifications-based factors that the department or state agency determines are applicable.

The department or agency could also conduct discussions with and require presentations by any qualified firm being considered to provide the required services.

Negotiating an agreement

Based on the information gathered as required or allowed by the bill, DTMB or the state agency would have to select and rank the qualified firms in order based on their qualifications and enter into contract negotiations with the highest-ranked firm. If the department or agency is unable to negotiate a contract with the firm, the negotiation would be formally terminated and would begin with the next highest-ranked firm. This would continue until an agreement is reached or the process is terminated.

If a no satisfactory contract can be reached with any of the selected firms, the department or state agency would have to reevaluate the services requested, including the estimated value, scope, complexity, and fee requirements.

Waiving requirements

The bill would allow DTMB or a state agency to waive the requirements described above if it determines that an emergency situation exists and a qualified firm must be selected in an expeditious manner. The requirements could also be waived if the proposed project is for energy conservation improvements to state facilities described in section 253 of the act.¹

Report

The bill would require DTMB to submit a report to the legislature annually on January 1 from 2026 to 2033 that includes all of the following information for the immediately preceding year:

- A summary of whether qualified firms that were selected for contracts under the bill offered new ideas, technology, materials, construction techniques, or other innovations.
- A summary of whether projects contracted for under the bill were completed on schedule or otherwise met scheduled deadlines.
- A summary of whether projects contracted for under the bill stayed on budget.
- An analysis of whether there was greater collaboration between the department or state agency, as applicable, and the qualified firm to reduce misunderstandings and project risk compared to projects contracted prior to the bill's implementation.
- An indication of whether design documents of projects contracted for under the bill are considered to be at a high level.

Exemption

The bill's requirements would not apply to selections of contractors if the selections are in compliance with 23 USC 112,² which regulates bidding requirements for state transportation departments.

MCL 18.1237b

BRIEF DISCUSSION:

The bill is similar to Senate Bill 642 of 2021,³ which was pocket vetoed by Governor Whitmer.⁴

¹ <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-18-1253>

² <https://www.law.cornell.edu/uscode/text/23/112>

³ <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2021-SB-0642&QueryID=160300287>

⁴ If the governor does not sign a bill within 14 days after getting it and the legislature has adjourned to end the session, the bill does not take effect and is said to have been "pocket vetoed." Senate Bill 642 was pocket vetoed on January

Supporters of the bill argue that it would help to ensure transparency and equal opportunity in the selection process.

In testimony on Senate Bill 642 last session, DTMB testified that 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 opposed the proposal, arguing that estimated hours should be a part of the information required during the vendor selection process, while design firms opposed adding the requirement, preferring instead to have it be determined during the contract negotiation process.

FISCAL IMPACT:

House Bill 5654 could result in increased costs to the state in the short-term and cost savings to the state in the long-term, for an overall indeterminate fiscal impact. The state could see increases in state contracting costs for architectural, engineering, and surveying services for state design and construction projects if qualified, lower-priced firms are passed over in favor of more qualified and higher-priced firms. The bill would largely codify much of the current procurement process used by DTMB when evaluating and selecting contracted services, but costs would not be included among the required factors for evaluating firms in the competitive bid process for proposed state projects as they are under current procurement practices.

DTMB reports that a majority of design contracts go to those firms that provided the lowest cost proposal. Additionally, DTMB reports that a review of state architecture and engineering service projects over \$250,000 since 2014 showed an error and omissions rate of 0.15% of the related construction costs, well below the 3% to 5% rate industry standard that would lead to corrective action. Considering this, DTMB does not believe there would be significant cost savings through error reduction and believes that the bill would likely lead to increased costs to the state in the short and long terms.

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.

Any potential short-term cost increase would affect any state department or agency that contracts for projects utilizing these services. In FY 2021-22, the state Design and Construction office under DTMB oversaw approximately 550 active projects with a total project value of approximately \$1.2 billion.

Additionally, DTMB may incur additional costs related to the bill’s annual reporting requirement if existing staff is not able to adequately organize and report the required information.

The bill would have no fiscal impact on local units of government.

11, 2023, when still unsigned having been presented to the governor on December 28, 2022, which was also the date the legislature adjourned sine die (without day) to end the legislative session.

POSITIONS:

A representative of the American Council of Engineering Companies of Michigan and the Michigan Section of the American Society of Civil Engineers testified in support of the bill. (6-11-24)

The following entities indicated support for the bill:

- American Society of Architects (6-11-24)
- Cincar Consulting Group (6-11-24)
- Gowrightman (6-11-24)
- Great Lakes Chapter of the International Institute of Building Enclosure Consultants (6-11-24)
- HED Design (6-11-24)
- HNTB Corporation (6-11-24)
- Hubbell, Roth, & Clark (6-11-24)
- Johnson Controls (6-18-24)
- Michigan Society of Professional Engineers (6-11-24)
- Michigan Society of Professional Surveyors (6-11-24)
- OHM Advisors (6-11-24)
- Sedgewick & Ferweda Architects (6-11-24)
- SME USA (6-11-24)
- Somat Engineering Inc. (6-11-24)
- Wade Trim (6-11-24)
- WSP Michigan (6-11-24)
- WSP USA (6-11-24)

The Department of Technology, Management, and Budget indicated opposition to the bill. (6-18-24)

Legislative Analyst: Alex Stegbauer

■ 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.