

March 20, 2013

Oregon State Senate
Business and Transportation Committee
Hearing Date: March 21, 2013

RE: Testimony in opposition to Senate Bill 644

Honorable Committee Members:

Thank you for the opportunity to provide written testimony pertaining to Senate Bill 644. I am submitting this testimony as an Oregon citizen and taxpayer and I am not at this time representing any other individual or organization. For background, I am an Oregon registered professional engineer, with over 30 years of experience in civil engineering and project management. I am currently employed as the Capital Projects Engineering Manager for the City of Wilsonville, Oregon. As someone who manages projects that will be affected by SB 644, I believe I have insight into the legislation being proposed under SB 644 that is worth consideration, and I appreciate the opportunity to offer the following professional opinions and observations.

1. SB 644 is, in essence, a continuation of the changes to the Public Contracting Rules of ORS 279C introduced and passed in 2011 as House Bill 3316. HB 3316 was the product of the consulting engineers lobby, and was originally introduced and advertised as simply an addition of photogrammatrists and transportation planners to the procurement rules governing architects, engineers and land surveyors (AE&LS). However, the true intent, and the net result of HB 3316 was to remove the ability of local agencies to consider price and pricing policies in selecting AE&LS services. Unfortunately for the proponents of HB 3316, the Attorney General found that the text of HB 3316, as passed, retained local agency discretion to continue to consider price for direct procurements under \$100,000. The intent of SB 644 is to “fix” that oversight. As with HB 3316, SB 644 is being misrepresented, and has a similar true intent – e.g., to remove local discretion to consider price as an evaluation criteria, but now extending that restriction to all contracts instead of just those above \$100,000. The misrepresentation of HB 3316 was very effective in that local agency project managers such as myself that would be affected by the legislation, and indeed the lobbyists for the League of Cities simply missed it until it was too late. I, and LOC, have been paying better attention since then.

Evidence of the misrepresentation of SB 644 is found by comparing the short title of the Bill to the clear text of proposed Section 8b (and 9b) of the Bill:

Short Title: (Permits contracting agency to directly appoint consultant to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services if estimated value of services is less than \$100,000.)

Proposed Section 8: { + (b) A contracting agency may not solicit or use a consultant's pricing policies and proposals or other pricing information, including the number of hours the consultant proposes for the service required, expenses, hourly rates and overhead as the basis for a direct appointment under paragraph (a) of this subsection. + }

2. As someone who solicits engineering proposals, reviews and evaluates qualifications, and negotiates consulting services contracts on a regular basis, it is my considered professional opinion that HB 3316 has increased the staff time and cost to put professional services contracts in place, as well as increased the overall cost of those contracts. Conversations with other local agency project managers and attorneys indicate they feel likewise. I expect passage of SB 644 will have similar results. Many of us at the local agencies believe the proposed SB 644 is inconsistent with a general philosophy of providing services to the taxpayer in the most efficient and cost effective manner that can be achieved.
3. Proponents of SB 644 (as for HB 3316 before it) would like you to believe that low bid selection of engineering services always results in poor performance, is a ubiquitous and common practice in local government, and thereby warrants legislation to prohibit consideration of price as a selection criteria. In my experience, this is a disingenuous argument in that it presupposes that a consultant selection is made either based on qualification or on price. I have not found that to be true. I have never used price as the sole consideration in selecting a consultant, and I do not know any other local agency project managers who do so either. Proponents will also argue that removing price as a consideration (and basing selections solely on qualifications) will improve the quality of the service. It sounds logical, but I have not found that to be true either, primarily because we do look at qualifications. To the contrary, I have had great success achieving both high quality and reasonable cost by conducting a two-part solicitation. Part 1 consists of a qualifications based short listing of the 2 or 3 most qualified consultants. In part 2, the short listed firms submit pricing bids and compete on cost. The consultants may not like it, but in my opinion the taxpayers receive a very high value for services rendered using this method.
4. What I have seen under HB 3316 is a shift toward larger consultants with more resources and staff (e.g., “better” qualifications) at the expense of smaller consultants. In my opinion, SB 644 will continue that trend, eventually eliminating or severely restricting access of small consultants to local government contracts.
5. Lastly, I would like to comment on the emergency provision of Section 3. I understand this type of provision is common in legislation, but in this case I find it particularly galling and a slap in the face to local government project managers. I challenge the proponents to justify this provision with facts and numbers documenting the impending crisis.

Thank you again for the opportunity to comment. I strongly urge the Committee to kill this bad piece of legislation at its earliest convenience.

Respectfully submitted,

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(Submitted via email)