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A POLICY STATEMENT
prepared for the Governor's Commission on Waste, Fraud and Abuse

STATE CONSULTING CONTRACTS
*Dealing with waste and abuse
in outsourcing of public works*

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INTRODUCTION

The State Engineering Association (SEA) represents 1,100 engineers and other professionals in engineering related occupations, working in 13 state agencies and the University system. For years, SEA has worked to identify wasteful, inefficient practices in the procurement and delivery of state services. For example, SEA was instrumental in the creation of 2005 Wisconsin Act 89, a law intended to make more transparent the fiscal impact and policy choices in the contracting out of state work.

SEA has made it a priority to identify waste and mismanagement in state government, working on a nonpartisan basis to point out inefficiencies. SEA has continued to analyze wasteful practices in outsourcing to consultants, findings that have been backed by independent analysis, including third parties, the Legislative Fiscal Bureau and the Legislative Audit Bureau.

SEA has focused on agencies with engineering and technical staff but has most closely examined the state Department of Transportation (WisDOT), which manages the state's largest and most visible array of engineering staff, services and related projects.

With respect to the governor's mandate to identify waste, fraud and abuse in state government programs and state appropriations, SEA urges the Commission to examine current practices in outsourcing with an eye toward reforms that **we believe could save tens of millions of dollars per year while delivering better service.**

OVERVIEW

Nothing in principle is wrong with employing consultants to do the state's work. Outsourcing is sometimes necessary and even advisable. However, taxpayers deserve better when consulting contracts are demonstrably more expensive and in other ways less efficient than doing the work in-house.

Concern over the misuse of outsourcing is not new. In fact, it has been recognized as a problem in the state's management of its resources for at least 25 years (May 2, 1985, State of Wisconsin budget office memorandum). More recently, in 2008, the Pew Center on the States identified outsourcing of public work as a problem in Wisconsin state government.

According to the Pew Center, one former Wisconsin Department of Revenue manager complained that the state has been willing to spend money on outside "experts" but won't spend money needed to retain qualified personnel needed to run programs. **Given the recent uptick in early retirements of state employees, and increasing staff vacancies, this problem arguably has now grown more acute.**

Too frequently, public works are outsourced because state managers state they lack in-house resources to complete a task within budget or on time. This is sometimes understandable. However, it is not understandable when the state reduces its public staff to save dollars in the short run, only to pay consultants much more for handling a work overload. **This does not represent strategic, long-term, budget-conscious thinking.**

In the past eight years, Wisconsin state government has moved further in the wasteful direction of outsourcing more public work to consultants. A Legislative Fiscal Bureau report noted that consulting contracts for transportation engineering alone soared from \$116.3 million in 2004 to \$252 million in 2009.

While the state's consulting budget has exploded; less work per tax dollar has been getting done. **An analysis by the WisDOT early in the Doyle administration showed that state engineers were at least 18 percent more cost-effective in delivering such services compared to consultants.** That general conclusion has been confirmed in several succeeding studies, yet the trend toward increased consulting has continued.

However, despite 2005 Act 89, agencies have persisted in making questionable decisions with respect to outsourcing. The law, which has survived several efforts to scale back or eliminate, basically requires state agencies to perform a written cost-benefit analysis before approving certain contracts worth more than \$25,000. SEA reviews monthly Act 89 reports required whenever some agencies outsource certain kinds of work.

These Act 89 monthly agency reports strongly suggest that agency decisions are sometimes reverse-engineered to reach a predetermined outcome in favor of outsourcing. Even where an agency takes its statutory duties seriously, that agency remains under no compulsion to choose the least expensive option when deciding whether to outsource work.

A March 2009 study commissioned by SEA and conducted by Edward Beimborn, an emeritus University of Wisconsin – Milwaukee civil engineering professor, analyzed 2005 Act 89 and its application by various state agencies, the Department of Transportation in particular.

Building on the results of earlier studies – including one by the DOT itself – this study ([attached](#)) provides further statistical evidence that contracting out too often costs the state more than using in-house staff. The study also makes the point that agencies sometimes inaccurately underestimate both the cost of allowing consultant staffs to use state facilities and the cost of necessary state oversight of consultant work.

The study concluded that the use of consultants does not save money for the state and instead demonstrated that engineering costs were about \$5 million more than necessary for 362 Wisconsin Department of Transportation projects that the study analyzed.

The SEA-sponsored study made a number of recommendations, among them improvements to the law so that agencies will review contracted projects after completion to assess actual, not just projected, costs. A measure to strengthen the law in this and other ways died in the last session of the Legislature.

A subsequent report from the Legislative Audit Bureau amplified the Beimborn study. The May 2009 report found that **WisDOT outsourced 125 construction engineering projects over 16 months, even though it determined that the engineering contractors would cost \$1.2 million more than state workers. Auditors also found that Wisconsin outsources for construction engineering more often than other Upper Midwest states.**

WISC-TV News in Madison did its own analysis of Act 89 reports in May 2011 and reported that in the first four months of this year, **WisDOT paid an additional \$13.8 million to consultants beyond what it would have cost to complete the work relying upon the department's engineers.**

Meanwhile, apples-to-oranges comparisons of public- and private-sector costs fail to take into account the full, real-world bill for outsourcing. For example, **some consultants enjoy free parking in state lots and free long-term office space in state buildings. They also use state computers and phones without charge, and have even been recognized at “state employee appreciation” luncheons.**

Indeed, to all outward appearances, these consultants look, act and are treated (with the exception of civil service rules) like state employees, some maintaining full-time occupancy in state office buildings for years as they work on one contract after another without intermission. The only clear distinction between them and state employees is that they cost more, due to high turnover requiring more costly training; and that they are exempt from following open records laws.

This situation amounts to the creation within government of a nearly permanent **shadow work force**, which is almost indistinguishable from state staff, except that it is paid far more and is much less accountable. Consultants are largely invisible to public tracking and ordinary civil service checks and balances. This arrangement also creates greater bureaucracy with hidden administrative costs. **Many state work hours are**

spent overseeing and completing consultant projects, hours not captured in the overall cost of the consultant's work.

According to a spreadsheet provided by WisDOT to SEA via a recent open records request, **the state office building on Barstow Ave. in Waukesha has about 120 cubicles allocated for the use of consulting engineers.** WisDOT said it is unsure how many of these cubicles actually are occupied by consultants at any given time. However, casual observation suggests that some of the consultants working at Barstow remain in place for months or years without break, moving from one contract directly to the next.

SEA continues to collect additional information on such uses of state office space.

Beyond that is another, potentially more disturbing development: **The state has already moved so heavily into consulting that in some cases, one private consultant is hired to monitor the work of another consultant, and vice versa, leading to potential conflicts of interest on projects that affect public health and safety.** For instance, WisDOT hired a consultant to count cracks on new highways to ensure the original paving contractor re-paved them as required under contract warranties.

Oversight duties remaining to state employees are meanwhile compromised. **Declines in staff expertise and manpower due to cutbacks and resignations mean the state also loses the ability to maintain a base workforce capable of thoroughly monitoring consultant contracts, as well as formulating and maintaining quality standards.** Anecdotal evidence from SEA-represented employees suggests that oversight is often rushed for lack of resources. Thus, a consultant's error or non-performance may go unnoticed, later re-surfacing as a design issue or performance failure. Potentially, these defects may even become public-safety issues.

IMPACT OF OUTSOURCING ON SKILLED PUBLIC STAFF

SEA members are among the increasing number of state employees who have chosen to retire or quit their jobs prematurely. Engineering professionals have migrated to work for consulting firms because they are offered positions at 25% to 30% greater compensation. Consultants can afford to pay these kind of salaries because of the high hourly rates they charge the state. This disparity is likely to increase, given the state's efforts to obtain further state employee compensation give-backs and wage caps.

Past furloughs, lay-offs and other state employee give-backs clearly led to lower morale, made worse when those employees were tasked with training consultants who are compensated at much higher rates.

Third-party research strongly suggests that public workers in Wisconsin are not overly compensated based on the work they do, but, rather, under-compensated, even taking benefits and not just wages into account. **The bottom line is that, overall, public-sector workers earn about five percent less in net total compensation than similar private-sector workers do.** [Economic Policy Institute, 2011, www.epi.org/publications/entry/6759]

It is worth noting that SEA-represented employees are in an occupation that requires a technical degree and professional certification. That means in terms of private-sector wage disparities, SEA-represented technical professionals lag even more than typical state employees in other professions and bargaining units.

Nor are consultants who are under contract to the state prevented from raising their fees. Given moves to further scale back state employee compensation, the comparative premium on consulting costs is only likely to widen.

Difficulty in retaining veteran professionals and attracting new talent is such that **state agencies now depend more and more on so-called Hiring Above Minimum incentives.** These are somewhat effective yet also skew wage structures, in some cases creating more disgruntled veterans who were offered no such salary perks.

STATE AGENCY REORGANIZATION THAT EMPHASIZES OUTSOURCING

WisDOT last year began quiet pursuit of a new and apparently hurried plan to move the agency aggressively toward a so-called "all oversight" model for transportation engineering projects. **This plan – which received no legislative review -- represented a major reorganization of the agency, in which state engineering staff would no longer take a hands-on role in designing and implementing transportation projects.** Since state employees set the engineering standards for such work, loss of staff expertise may limit the state's ability to keep up with technical innovation standards.

Under the all-oversight plan, the role of critical state employees would be newly limited to paper review of the work of consultants, whose numbers and billings to the state likely would increase. Of course, oversight of consultants is essential, but this role shift was structured in a way that would further de-professionalize the state's engineering work force. Preservation of that work force is the key to protecting taxpayer interest in infrastructure projects at a time when using every taxpayer dollar wisely is critical.

It seems clear that initiatives like the all-oversight model will, absent reform, serve to further increase contracting for engineering services. What other inefficiencies and improprieties might result when even more outsourcing occurs, and when there are even fewer state employees to oversee that consulting?

Disturbing is the only way to characterize an exchange at one internal briefing session, in which a WisDOT manager told SEA-represented staffers that the agency's goal in mounting this new plan was not to save money, but to get work done at any cost.

Spending more money doesn't ensure equal or greater quality. State employees have a long-term focus necessary to ensure that state engineering standards keep pace with newer technology and materials. If consultants with short-term profit focus are given these critical tasks, long-term infrastructure quality may be jeopardized.

SEA members observed this trend in WisDOT's local-program structure created under an earlier reorganization by the Doyle administration. Costs rose while service to local units of government fell. That reorganization cut a significant number of DOT positions -- 365 in 2004 alone – and did not produce positive results.

To take just one example: WisDOT signed a **\$164,692** contract with consulting firm HNTB Corp. to maintain its inventory of road signs. Tax dollars paid one of the state's busiest contractors to do a job a permanent state employee could have done in-house at a cost the agency said would have been only **\$51,700**. **The HNTB employee assigned to perform the work was a former state employee who, as a consultant, sat in the same state office, using the same state equipment, as he did while working for the state.**

In WisDOT's Southeast Region alone, where important and massive highway and rail engineering projects are underway and other large projects are slated for early starts, the all-oversight plan would have major implications for how the state employs about 160 engineers and technical specialists. And it is in the Southeast Region where WisDOT has seemed most aggressive in implementing all-oversight. Under the reorganization, Southeast Region project development was supposed to shift within months to the new program-delivery model. Result: Additional consultants would have to be hired.

It is worth noting that many of the consulting contracts WisDOT lets out are of the no-bid variety. Furthermore, some contracting decisions occur without detailed documentation. That is, the awarding of contracts may be done based on oral orders, meaning there is no clear paper trail as to how or by whom the contract was awarded.

Another problem with relying more on consultants and minimizing hands-on supervision by state staff is that oversight is compromised. As mentioned, in a number of instances WisDOT has allowed consultants to supervise one another's work in ways that are ethically conflicted -- **consultant A oversees consultant B on one project**

while, on another project, consultant B oversees consultant A.

WisDOT has regularly argued that further outsourcing is necessary because it does not have sufficient in-house staff to carry out the many projects on its calendar. Interestingly, DOT managers have in the past orally suggested that the all-oversight plan would mean the elimination of a number of engineering staff vacancies. Given that the Audit Bureau has confirmed SEA's and WisDOT's own analysis that there is a cost-efficiency problem with outsourcing, WisDOT's plan to quietly do more of it was nothing short of eye-popping.

A WisDOT official last year told a legislative committee that the agency would not ask to hire "even one engineer" more than what is currently authorized, because the agency wanted to retain "flexibility." That is, if WisDOT hires an engineer and then work levels decline, the agency prefers not to have to lay off excess staff. Meanwhile, the construction program has more than doubled in recent years while the number of state engineers has declined. There simply has not been a decline in program size that would justify a "flexibility" rationale.

It is worth noting that similar "all oversight" approaches earlier were tried in the transportation departments of several other states, with uneconomic results.

Other than WisDOT, the most notable issue with consultants has involved information technology projects across state government, which appear to be running into similar problems with rampant growth, higher than expected costs and unsatisfactory project results.

A PRESCRIPTION FOR REFORM

What follows is not an exhaustive list; it merely represents the many changes that will be necessary to revert from what – at least in WisDOT – has moved closer and closer to a nearly 100 percent outsourced work model. Reversing this trend is vital to the future of rational public policy planning and service delivery. Without in-house expertise, the state would lose its ability to establish new engineering standards and respond to changes in design engineering because of new materials and equipment.

Beyond mere fiscal irresponsibility, the state has come very close to a point of no return where, if we do not staff up our in-house engineering staff quickly, our transportation infrastructure will be in the hands of very politically connected consultants who have quite different agendas. Contracting out all or most work that involves any public safety component must, in light of calamities like the tunnel collapse in Boston's Big Dig or the failure of the I-35 bridge in Minnesota, be considered irresponsible. Outsourcing public responsibility for Wisconsin's vital transportation infrastructure is a risky business model that puts public infrastructure, along with citizens themselves and our state economy, in greater jeopardy.

SEA notes the following four critical issues, and makes the recommendations seen in bold-face:

1. Act 89 does not provide any standards for estimating costs, and costing exercise often are done using assumptions or procedures that justify what the state wishes to do, rather than pursuing cost efficiency. Neither is any effort made to compare actual costs once the project is completed with the estimated costs prepared for purposes of Act 89. Also, some agencies are exempt from Act 89 reporting on contracts. For example, Section 23.41(5) appears to exempt all DNR construction and service contract work. The Department of Health and Family Services, meanwhile, apparently does not file Act 89 contracting reports, and in the past has cited Section 16.87(2) in justification of its non-compliance.

Meanwhile, the Department of Administration is under s.13.172(3) required to submit an annual report to the governor and legislature "concerning the number, value and nature of contractual service procurements authorized for each agency during the preceding fiscal year. The report shall also include, with respect to contractual service procurements by agencies for the preceding fiscal year: (a) A summary of the cost-benefit

analyses completed by agencies in compliance with rules promulgated by the department under sub. (2).(b) Recommendations for elimination of unneeded contractual service procurements and for consolidation or re-solicitation of existing contractual service procurements.” Yet, WisDOT engineering work is **not** listed in the DOA reports.

Further, despite contract language obliging WisDOT to meet with SEA to review the agency's Act 89 reports quarterly, the process quickly fell apart after an initial meeting revealed that the agency did not appear to be following the spirit of the law. Indeed, the apparent lack of any serious analysis by the agency regarding its own contracting reports led SEA to commission the Beimborn study.

RECOMMENDATION: Act 89 should be strengthened and reconciled with possibly conflicting language in other statutes to make performance-evaluation and cost-evaluation functions throughout state government more statistical, consistent, complete and clear. The goal of this would be to provide managers, lawmakers and the public with more transparent and useful information. In particular, cost comparisons should take into account all hidden or imputed costs, such as overhead for consultant use of state equipment, office space and other resources, and the cost of public employee staff hours needed to procure, train and manage consultant work. Any contract review exemptions under Act 89 should be reviewed and deleted, if agencies cannot make reasonable arguments for continuing them. Critics have argued Act 89 makes agencies work harder, but if that extra effort saves even more tax dollars, then the act serves its intended purpose.

2. Unless the mismatch between public employee staffing and expertise and project needs is reconciled, managers will continue to outsource, whatever the cost, in order to complete assigned projects.

RECOMMENDATION: As a matter of sound public policy, the state should reform its planning processes to better match resources with expected program and project needs. A disincentive for unlimited, ad hoc use of consultants could involve agency caps on consulting costs in future budgets. Exceeding that cap would only be possible with the approval of the Joint Finance Committee. The state should also conduct a comprehensive, recurring, strategic staffing plan that anticipates program needs and budgets and allocates sufficient, skill-appropriate staff positions to minimize or eliminate wasteful outsourcing.

The state should set a goal of outsourcing not more than 30% of any work in an agency. The state should plan a transition plan over the next several budgets to move back towards this goal. There should also be a throttling mechanism in all agencies so that if a program area is going to grow, then there is also added staff resources consistent with that growth.

3. Numerous instances reported by SEA-represented state employees describe situations where engineers have been discouraged or precluded from strict enforcement of road construction standards.

RECOMMENDATION: A documented civil-service complaint process should be created to ensure that the state is following professional standards, and not allowing momentary policy concerns or managerial convenience to skew uncontrollably and without examination toward inefficiency and expediency.

4. Political contributions received from consultants, including but not limited to road-building contractors are problematic, especially in view of the above items. It is therefore almost inevitable that – instead of seeking efficiencies in the spending of state funds – managers and lawmakers may on occasion instead be more concerned with rewarding contributors. At WisDOT, for example, contracts have been entered into at the district level, but the districts often have been told by the central office who should get a consulting contract.

RECOMMENDATION: Contracts let without competing bids should be formally and rigorously

scrutinized, and the Government Accountability Board or Audit Bureau should be required to produce an annual report comparing campaign contributions with contract awards, on a dollar-per-dollar basis. Lawmakers also should consider following the example set by some other states, which limit or prohibit state contractors from making political donations.

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