



## 2007 ASSEMBLY BILL 811

February 15, 2008 - Introduced by Representatives MOULTON, VAN ROY, BERCEAU, MURSAU, KAUFERT, GUNDERSON, MOLEPSKE, HAHN, MUSSER, ALBERS, TOWNSEND, HONADEL and VUKMIR, cosponsored by Senators LASSA, S. FITZGERALD, COGGS, COWLES and OLSEN. Referred to Committee on Small Business.

1     **AN ACT** *to renumber and amend* 16.75 (3m) (a), 16.75 (3m) (b), 16.75 (3m) (c)  
2         4., 16.75 (3m) (c) 5., 16.75 (4) (a), 16.75 (4) (b), 16.75 (4) (c), 16.75 (4) (d) and  
3         16.755 (5); **to amend** 13.48 (29), 15.107 (2), 16.701 (1), 16.75 (3m) (c) 1., 2. and  
4         3., 16.755 (intro.), (1) and (4), 16.855 (1), 16.855 (22) and 560.035 (1) (b); and **to**  
5         **create** 16.75 (3m) (a) 1., 16.75 (3m) (a) 4., 16.75 (3m) (b) 2. and 3., 16.75 (3m)  
6         (c) 4. b., 16.75 (3m) (c) 5. b., 16.755 (4m), 16.755 (5) (a), (b), (c), (d) and (e), 16.855  
7         (10L) and 560.0345 of the statutes; **relating to:** awarding procurements to  
8         woman-owned businesses, veteran-owned businesses, minority businesses,  
9         and small businesses.

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### ***Analysis by the Legislative Reference Bureau***

Currently, minority-owned businesses that are certified by the Department of Commerce receive certain preferences in governmental procurement. State agencies must attempt to ensure that 5 percent of the total amount expended for state procurements in each fiscal year is paid to minority-owned businesses. With certain limited exceptions, state agencies that are subject to requirements to make purchases through competitive bidding or competitive sealed proposals may accept a bid or proposal from a minority-owned business that is no more than 5 percent

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higher than the apparent low bid or most advantageous proposal. This bill expands the definition of minority-owned businesses for this purpose to include a business that is owned by a person with a disability.

This bill also creates similar preferences, under which state agencies must attempt to ensure that, of the total amount expended for state procurements in each fiscal year, 25 percent is paid to small businesses, 5 percent is paid to woman-owned businesses certified by the Department of Commerce, and 5 percent is paid to veteran-owned businesses certified by the Department of Veterans Affairs. Under the bill, with certain limited exceptions, the current authorization to accept bids or proposals submitted by minority-owned businesses that are no more than 5 percent higher than the apparent low bid or most advantageous proposal is extended to apply to bids or proposals submitted by small businesses, woman-owned businesses, and veteran-owned businesses.

Under current law, in the Department of Administration, there is a Counsel on Small Business, Veteran-Owned Business and Minority Business Opportunities. This bill adds woman-owned business owners to the council and adds other requirements to its duties including the promotion of locally produced products.

This bill also requires the Department of Commerce to maintain a Web site to help agencies making purchases comply with the procurement preferences by listing veteran-owned businesses, woman-owned businesses, minority businesses, and small businesses, the locations of each business, and the products and services offered by each business.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 13.48 (29) of the statutes is amended to read:

2           13.48 (29) SMALL PROJECTS. Except as otherwise required under s. 16.855 (10L)  
3           or (10m), the building commission may prescribe simplified policies and procedures  
4           to be used in lieu of the procedures provided in s. 16.855 for any project that does not  
5           require prior approval of the building commission under sub. (10) (a).

6           **SECTION 2.** 15.107 (2) of the statutes is amended to read:

7           15.107 (2) COUNCIL ON SMALL BUSINESS, VETERAN-OWNED BUSINESS, WOMAN-OWNED  
8           BUSINESS, AND MINORITY BUSINESS OPPORTUNITIES. There is created in the department  
9           of administration a council on small business, veteran-owned business,

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1 ~~woman-owned business~~, and minority business opportunities consisting of 13 7  
2 members, appointed nominated by the secretary of administration governor, and  
3 with the advise and consent of the senate appointed, for 3-year terms, with  
4 representation as follows: ~~at least 2 shall be owners or employees of small businesses~~  
5 ~~at least 51% owned by one or more members of a racial minority group; at least one~~  
6 ~~shall be an owner or employee of a small business at least 51% owned by one or more~~  
7 ~~handicapped persons; at least one shall be an owner or employee of a small business~~  
8 ~~operated on a nonprofit basis for the rehabilitation of disabled persons; at least 2, as~~  
9 ~~defined in s. 16.75 (3m) (a) 2.; one shall be owners or employees~~ an owner of a  
10 ~~veteran-owned businesses~~ business, as defined in s. 16.75 (4) (d); ~~at least one shall~~  
11 ~~be a representative of the department of commerce; and at least one shall be a~~  
12 ~~consumer member~~ (3m) (a) 3.; 2 shall be owners of woman-owned businesses, as  
13 defined in s. 16.75 (3m) (a) 4.; and 2 shall be owners of minority businesses, as defined  
14 in s. 16.75 (3m) (a) 1m. No member may serve for more than 2 consecutive full terms.  
15 The secretary of administration, or a department employee who is the secretary's  
16 designee, shall serve as the council's nonvoting secretary.

17 **SECTION 3.** 16.701 (1) of the statutes is amended to read:

18 16.701 (1) The department ~~may~~ shall provide a subscription service containing  
19 current information of interest to prospective vendors concerning state procurement  
20 opportunities. ~~If the department provides the service, the department~~ and shall  
21 assist small businesses, as defined in s. 16.75 (4) (e) (3m) (a) 2., who are prospective  
22 vendors in accessing and using the service by providing facilities or services to the  
23 businesses. The department may charge a fee for any such service. The department  
24 shall prescribe the amount of any fee by rule.

**ASSEMBLY BILL 811****SECTION 4**

1           **SECTION 4.** 16.75 (3m) (a) of the statutes is renumbered 16.75 (3m) (a) (intro.)  
2 and amended to read:

3           16.75 **(3m)** (a) (intro.) In this subsection, “minority:

4           1m. “Minority business” means a business certified by the department of  
5 commerce under s. 560.036 (2) or a business that is at least 51 percent owned by a  
6 person with a disability.

7           **SECTION 5.** 16.75 (3m) (a) 1. of the statutes is created to read:

8           16.75 **(3m)** (a) 1. “Designated business” means a minority business, small  
9 business, woman-owned business, or veteran-owned business.

10          **SECTION 6.** 16.75 (3m) (a) 4. of the statutes is created to read:

11          16.75 **(3m)** (a) 4. “Woman-owned business” means a business certified by the  
12 department of commerce under s. 560.035.

13          **SECTION 7.** 16.75 (3m) (b) of the statutes is renumbered 16.75 (3m) (b) 1. and  
14 amended to read:

15          16.75 **(3m)** (b) 1. The department and any agency making purchases under s.  
16 16.74 shall ~~attempt to ensure that 5% of the total amount expended under this~~  
17 ~~subchapter in each fiscal year is paid to minority~~ give preference to designated  
18 businesses. Except as provided under subd. 3. and sub. (7), the department or agency  
19 may purchase materials, supplies, equipment and contractual services from any  
20 minority designated business submitting a qualified responsible competitive bid  
21 that is no more than 5% higher than the apparent low bid or competitive proposal  
22 that is no more than 5% higher than the most advantageous offer proposal. In  
23 administering the preference for minority designated businesses established in this  
24 paragraph, the department and any agency making purchases under s. 16.74 shall

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1 maximize the use of minority designated businesses which are incorporated under  
2 ch. 180 or which have their principal place of business in this state.

3 **SECTION 8.** 16.75 (3m) (b) 2. and 3. of the statutes are created to read:

4 16.75 **(3m)** (b) 2. The department and any agency making purchases under s.  
5 16.74 shall attempt to ensure that of the total amount expended under this  
6 subchapter in each fiscal year, 25 percent is paid to small businesses, 5 percent is  
7 paid to minority businesses, 5 percent is paid to woman-owned businesses, and 5  
8 percent is paid to veteran-owned businesses.

9 3. The department and any agency making purchases under s. 16.74 may  
10 purchase materials, supplies, equipment, and contractual services from any  
11 designated business submitting a qualified responsible competitive bid that is no  
12 more than 10 percent higher than the apparent low bid or competitive proposal that  
13 is no more than 10 percent higher than the most advantageous proposal if not more  
14 than 3 years have passed since the designated business was certified, if the  
15 designated business is a woman-owned or veteran-owned business, or since the  
16 designated business qualified as a minority business or small business.

17 **SECTION 9.** 16.75 (3m) (c) 1., 2. and 3. of the statutes are amended to read:

18 16.75 **(3m)** (c) 1. After completing any contract under this subchapter, the  
19 contractor shall report to the agency that awarded the contract any amount of the  
20 contract that was subcontracted to minority businesses, any amount of the contract  
21 that was subcontracted to woman-owned businesses, any amount of the contract  
22 that was subcontracted to veteran-owned businesses, and any amount of the  
23 contract that was subcontracted to small businesses.

24 2. Each agency shall report to the department at least semiannually, or more  
25 often if required by the department, the total amount of money it has expended for

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1 contracts and orders awarded to minority businesses and the number of contacts  
2 with minority businesses in connection with proposed purchases, the total amount  
3 of money it has expended for contracts and orders awarded to woman-owned  
4 businesses and the number of contacts with woman-owned businesses in connection  
5 with proposed purchases, the total amount of money it has expended for contracts  
6 and orders awarded to veteran-owned businesses and the number of contacts with  
7 veteran-owned businesses in connection with proposed purchases, and the total  
8 amount of money it has expended for contracts and orders awarded to small  
9 businesses and the number of contacts with small businesses in connection with  
10 proposed purchases.

11 3. The department shall maintain and annually publish data on state  
12 purchases from minority businesses, woman-owned businesses, veteran-owned  
13 businesses, and small businesses, including amounts expended and the percentage  
14 of total expenditures awarded to minority businesses each type of business.

15 **SECTION 10.** 16.75 (3m) (c) 4. of the statutes is renumbered 16.75 (3m) (c) 4.  
16 (intro.) and amended to read:

17 16.75 **(3m)** (c) 4. (intro.) The department shall annually prepare and submit  
18 a report to the governor and to the chief clerk of each house of the legislature, for  
19 distribution to the appropriate standing committees under s. 13.172 (3), on all of the  
20 following:

21 a. With regard to minority businesses, the total amount of money paid to and  
22 of indebtedness or other obligations underwritten by minority businesses, minority  
23 financial advisers and minority investment firms under the requirements of this  
24 subsection and ss. 16.855 (10m), 16.87 (2), 25.185, 84.075 and 565.25 (2) (a) 3. and

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1 on this state's progress toward achieving compliance with par. (b) and ss. 16.855  
2 (10m) (a) and (10n), 16.87 (2), 25.185 and 84.075 (1).

3 **SECTION 11.** 16.75 (3m) (c) 4. b. of the statutes is created to read:

4 16.75 (3m) (c) 4. b. With regard to small businesses, woman-owned businesses,  
5 and veteran-owned businesses, this state's progress toward achieving compliance  
6 with par. (b) and s. 16.855 (10L) (a).

7 **SECTION 12.** 16.75 (3m) (c) 5. of the statutes is renumbered 16.75 (3m) (c) 5. a.  
8 and amended to read:

9 16.75 (3m) (c) 5. a. In determining whether a purchase, contract, or subcontract  
10 complies with the goal established under par. (b) or s. 16.855 (10m), 16.87 (2), or  
11 25.185, the department shall include only amounts paid directly to minority  
12 businesses, minority financial advisers, and minority investment firms certified by  
13 the department of commerce under s. 560.036 (2).

14 **SECTION 13.** 16.75 (3m) (c) 5. b. of the statutes is created to read:

15 16.75 (3m) (c) 5. b. In determining whether a purchase, contract, or subcontract  
16 complies with the goal established under par. (b) or s. 16.855 (10L), the department  
17 may include only amounts paid directly to woman-owned businesses,  
18 veteran-owned businesses, and small businesses.

19 **SECTION 14.** 16.75 (4) (a) of the statutes is renumbered 16.75 (3m) (d) and 16.75  
20 (3m) (d) (intro.), 1., 2., 3. and 5., as renumbered, are amended to read:

21 16.75 (3m) (d) (intro.) The department shall encourage the participation of  
22 minority businesses, woman-owned businesses, small businesses, and  
23 veteran-owned businesses in the statewide purchasing program by ensuring that  
24 there are no undue impediments to such participation and by actively encouraging  
25 minority businesses, woman-owned businesses, small businesses, and

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1 veteran-owned businesses to play an active role in the solicitation of purchasing  
2 business by agencies. To that end the department shall:

3 1. Maintain comprehensive lists of minority businesses, woman-owned  
4 businesses, small businesses, and of veteran-owned businesses located in this state  
5 which have indicated a willingness to provide materials, supplies, equipment, or  
6 contractual services to the state.

7 2. Develop ways of simplifying specifications and terms so that they will not  
8 impose unnecessary administrative burdens on minority businesses, woman-owned  
9 businesses, small businesses, and veteran-owned businesses located in this state  
10 which submit bids or proposals to the state.

11 3. Assist minority businesses, woman-owned businesses, small businesses,  
12 and veteran-owned businesses located in this state in complying with the state's  
13 competitive bidding and competitive proposal procedures.

14 5. By October 1 of each year, submit a report to the council on small business,  
15 veteran-owned business, woman-owned business, and minority business  
16 opportunities which evaluates the performance of small businesses located in this  
17 state in submitting bids or proposals to the state and makes recommendations for  
18 increased involvement of such businesses in submitting competitive bids and  
19 proposals under this section.

20 **SECTION 15.** 16.75 (4) (b) of the statutes is renumbered 16.75 (3m) (e) and  
21 amended to read:

22 16.75 (3m) (e) The department shall seek the cooperation and assistance of the  
23 department of commerce in the performance of its duties under par. (a) (d).

24 **SECTION 16.** 16.75 (4) (c) of the statutes is renumbered 16.75 (3m) (a) 2. and  
25 amended to read:



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1           16.75 (3m) (a) 2. ~~In this section and s. 16.755, “small~~ “Small business” means  
2 a business which has had less than \$1.5 \$2.5 million in gross annual sales, or had  
3 fewer than 25 full-time employees, in the most recent calendar or fiscal year.

4           **SECTION 17.** 16.75 (4) (d) of the statutes is renumbered 16.75 (3m) (a) 3. and  
5 amended to read:

6           16.75 (3m) (a) 3. ~~In this subsection and s. 16.755, “veteran-owned~~  
7 “Veteran-owned business” means a small business, ~~as defined in par. (e),~~ that is  
8 certified by the department of veterans affairs as being at least 51% owned by one  
9 or more veterans, as defined in s. 45.01 (12).

10           **SECTION 18.** 16.755 (intro.), (1) and (4) of the statutes are amended to read:

11           **16.755 Council on small business, veteran-owned business,**  
12 **woman-owned business, and minority business opportunities.** (intro.) The  
13 council on small business, veteran-owned business, woman-owned business, and  
14 minority business opportunities shall:

15           (1) Review the extent of small business, veteran-owned business,  
16 woman-owned business, and minority business participation, as required under s.  
17 16.75 (3m) (d), in purchasing by this state and its agencies.

18           (4) Advise the department concerning methods of improved compliance with  
19 any aspect of its duties under s. 16.75 (4) (a) (3m) (d).

20           **SECTION 19.** 16.755 (4m) of the statutes is created to read:

21           16.755 (4m) Promote the awareness and consumption of locally produced  
22 products.

23           **SECTION 20.** 16.755 (5) of the statutes is renumbered 16.755 (5) (intro.) and  
24 amended to read:

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1           16.755 (5) (intro.) Annually, submit ~~a report containing any recommendations~~  
2 regarding the matters described in subs. (1) to (4) to the governor and the chief clerk  
3 of each house of the legislature, for distribution to the legislature under s. 13.172 (2),  
4 a report containing all of the following:

5           **SECTION 21.** 16.755 (5) (a), (b), (c), (d) and (e) of the statutes are created to read:

6           16.755 (5) (a) Any recommendations regarding the matters described in subs.  
7 (1) to (4).

8           (b) Evaluation of compliance with the requirements of s. 16.75 (3m) (b).

9           (c) Any recommendations related to bidding procedures to meet or exceed the  
10 requirements under s. 16.75 (3m) (b).

11           (d) Evaluation of how vendor payments interact with 31 USC 3902.

12           (e) Evaluation of any impact VendorNet has on the competitive bidding of state  
13 contracts.

14           **SECTION 22.** 16.855 (1) of the statutes is amended to read:

15           16.855 (1) The department shall let by contract to the lowest qualified  
16 responsible bidder all construction work when the estimated construction cost of the  
17 project exceeds \$40,000, except for construction work authorized under s. 16.858 and  
18 except as provided in sub. (10L) or (10m) or s. 13.48 (19). If a bidder is not a Wisconsin  
19 firm and the department determines that the state, foreign nation or subdivision  
20 thereof in which the bidder is domiciled grants a preference to bidders domiciled in  
21 that state, nation or subdivision in making governmental purchases, the department  
22 shall give a preference over that bidder to Wisconsin firms, if any, when awarding the  
23 contract, in the absence of compelling reasons to the contrary. The department may  
24 enter into agreements with states, foreign nations and subdivisions thereof for the  
25 purpose of implementing this subsection.

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1           **SECTION 23.** 16.855 (10L) of the statutes is created to read:

2           16.855 **(10L)** (a) In awarding a construction contract when the estimated  
3 construction cost of the project exceeds \$40,000 but is less than \$100,000, the  
4 department shall attempt to ensure all of the following:

5           1. That 5 percent of the total amount expended in each fiscal year is awarded  
6 to contractors and subcontractors that are veteran-owned businesses, as defined in  
7 s. 16.75 (3m) (a) 3.

8           2. That 5 percent of the total amount expended in each fiscal year is awarded  
9 to contractors and subcontractors that are woman-owned businesses, as defined in  
10 s. 16.75 (3m) (a) 4.

11           3. That 5 percent of the total amount expended in each fiscal year is awarded  
12 to contractors and subcontractors that are small businesses, as defined in s. 16.75  
13 (3m) (a) 2.

14           (b) The department may award any contract to a business under par. (a) that  
15 submits a qualified responsible bid that is no more than 5 percent higher than the  
16 apparent low bid.

17           (c) Upon completion of any contract, the contractor shall report to the  
18 department any amount of the contract that was subcontracted to a business under  
19 par. (a).

20           (d) The department shall maintain and annually publish data on contracts  
21 awarded to businesses under par. (a).

22           **SECTION 24.** 16.855 (22) of the statutes is amended to read:

23           16.855 **(22)** The provisions of this section, except ~~sub.~~ subs. (10L) and (10m),  
24 do not apply to construction work for any project that does not require the prior  
25 approval of the building commission under s. 13.48 (10) (a) if the project is

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1 constructed in accordance with policies and procedures prescribed by the building  
2 commission under s. 13.48 (29). If the estimated construction cost of any project is  
3 at least \$40,000, and the building commission elects to utilize the procedures  
4 prescribed under s. 13.48 (29) to construct the project, the department shall provide  
5 adequate public notice of the project and the procedures to be utilized to construct  
6 the project on a publicly accessible computer site.

7 **SECTION 25.** 560.0345 of the statutes is created to read:

8 **560.0345 Listing of designated businesses for state procurement.** The  
9 department shall maintain a Web site to help the department of administration and  
10 any agency making purchases under s. 16.74 comply with the requirements of s.  
11 16.75 (3m) (b). The Web site shall include all of the following:

12 (1) An up-to-date listing of veteran-owned businesses, as defined under s.  
13 16.75 (3m) (a) 3., the locations of each business, and the products and services each  
14 business offers.

15 (2) An up-to-date listing of woman-owned businesses, as defined under s.  
16 16.75 (3m) (a) 4., the locations of each business, and the products and services each  
17 business offers. The department may use the same Web site to comply with the  
18 requirement in this subsection and the Internet-listing requirement under s.  
19 560.035 (1) (b).

20 (3) An up-to-date listing of minority businesses, as defined under 16.75 (3m)  
21 (a) 1m., the locations of each business, and the products and services each business  
22 offers.

23 (4) An up-to-date listing of small businesses, as defined under s. 16.75 (3m)  
24 (a) 2., the locations of each business, and the products and services each business  
25 offers.

