



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1022/P2
CMH:sac&kjf:ph

P3

DOA:.....Bong, BB0313 - Adopt single prime contracting as the default method of contracting for services

FOR 2013-2015 BUDGET - NOT READY FOR INTRODUCTION

✓

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Admgn
AN ACT ...; relating to: the budget. ✓

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE PROCUREMENT

Under current law, with some exceptions, DOA must let by contract to the lowest qualified responsible bidder all construction work when the estimated construction cost of the project exceeds \$50,000 or, if the estimated cost is less, when contracting is in the best interest of the state. This bill requires DOA, for any project that has an estimated construction cost that exceeds \$185,000, to let the project to the lowest qualified responsible bidder through single prime contracting. "Single prime contracting" is a process in which DOA selects all mechanical, electrical, and plumbing contractors, but contracts only with a general prime contractor, who then must contract with the selected mechanical, electrical, and plumbing contractors. This bill also requires DOA to certify persons as qualified and responsible and provides criteria for such certification.

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

1 **SECTION 1.** 13.48 (19) of the statutes is amended to read:

2 13.48 (19) ALTERNATIVES TO STATE CONSTRUCTION. Whenever the building
3 commission determines that the use of innovative types of design and construction
4 processes will make better use of the resources and technology available in the
5 building industry, the building commission may waive any or all of s. 16.855, except
6 s. 16.855 (13) and (14m), if such action is in the best interest of the state and if the
7 waiver is accomplished through formal action of the building commission. The
8 building commission may authorize the lease, lease purchase or acquisition of such
9 facilities constructed in the manner authorized by the building commission. Subject
10 to the requirements of s. 20.924 (1) (i), the building commission may also authorize
11 the lease, lease purchase or acquisition of existing facilities in lieu of state
12 construction of any project enumerated in the authorized state building program.

13 **SECTION 2.** 16.855 (1) of the statutes is renumbered 16.855 (1m) and amended
14 to read:

15 16.855 (1m) 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 \$50,000, except for construction work authorized under s. 16.858 and
18 except as provided in sub. (1r) or (10m) or s. 13.48 (19). If factors other than dollar
19 amounts are required to be evaluated for a project, the department shall specify a
20 formula that will convert the other factors into a dollar value for comparison.

21 (1r) If a bidder is not a Wisconsin firm and the department determines that the
22 state, foreign nation or subdivision thereof in which the bidder is domiciled grants
23 a preference to bidders domiciled in that state, nation or subdivision in making
24 governmental purchases, the department shall give a preference over that bidder to
25 Wisconsin firms, if any, when awarding the contract, in the absence of compelling

1 reasons to the contrary. The department may enter into agreements with states,
2 foreign nations and subdivisions thereof for the purpose of implementing this
3 subsection.

4 **SECTION 3.** 16.855 (1g) of the statutes is created to read:

5 16.855 (1g) In this section:

6 (a) "Mechanical, electrical, or plumbing subcontractor" is a contractor that
7 performs mechanical, electrical, plumbing, or fire protection work and enters into a
8 contract with a general prime contractor to perform their division of work.

9 (b) "Qualified bidder" means a person that the department certifies under sub.
10 (9m) (b) 1.

11 (c) "Qualified responsible bidder" means a person who is a qualified bidder and
12 who is a responsible bidder.

13 (d) "Responsible bidder" means a person that the department certifies under
14 sub. (9m) (b) 2.

15 (e) "Single prime contracting" means contracting through a process in which
16 only a general prime contractor has a contractual relationship with the state and all
17 mechanical, electrical, or plumbing subcontractors are selected by department and
18 are subcontractors to the general prime contractor.

19 **SECTION 4.** 16.855 (2) (a) 5. of the statutes is amended to read:

20 16.855 (2) (a) 5. Date, when and place where plans will be available.

21 **SECTION 5.** 16.855 (2) (a) 6. of the statutes is created to read:

22 16.855 (2) (a) 6. That the department will consider only bids from persons who
23 are responsible bidders and, unless sub. (9m) ^{ar} (a) 2. applies, qualified bidders.

24 **SECTION 6.** 16.855 (9) of the statutes is renumbered 16.855 (9m) (b) 1. c. and
25 amended to read:

1 16.855 (9m) ^{bidders} (b) 1. c. ~~The~~ If the department may require bidders to submit so
 2 requires, the ~~person~~ has submitted a sworn statements statement as to financial
 3 ability, equipment, and experience in construction and require such other
 4 information as may be necessary to determine their ~~the person's~~ ^{bidders} competency.

****NOTE: I did not add "Bidders failing to submit required sworn statements shall be deemed not qualified." to this provision. The introduction to this provision (see in SECTION 7, the (b) 1. introduction), already states that certification as "qualified" hinges upon submission of the statement if DOA requires the statement so the addition would be redundant (and possibly confusing since there are other requirements under that subdivision that would not have this language).

5 SECTION 7 ^{or alpha} 16.855 (9m) ^{INS 4-6} of the statutes is created to read:

6 16.855 (9m) ^(a) 1. The department shall certify ~~persons~~ ^{bidders} as qualified bidders
 7 under par. (b) 1. and responsible bidders under par. (b) 2. and shall administer a
 8 registration process for all ~~contractors~~ ^{bidders} submitting bids on any construction project
 9 under this section. The department shall issue, in a timely manner, a certification
 10 decision on a complete application for certification. A certification under this
 11 subdivision is valid for 2 years except the department may decertify a ~~person~~ ^{bidders} if the
 12 department determines that the ~~person~~ ^{bidders} no longer meets the qualifications under par.
 13 (b) and if the department follows a decertification process developed by rule that
 14 provides to the ~~person~~ ^{bidders} notice, hearing, and a means to appeal.

15 2. Notwithstanding sub. (1m) or (14) (e), the department may waive the
 16 condition of certification as a qualified bidder [✓] if the project is of such magnitude as
 17 to limit competition if the conditions under par. (b) 1. [✓] were required.

18 3. The department shall consider for certification under par. (b) associations
 19 consisting of at least 2 contracting firms that are organized for the purpose of
 20 entering into a construction contract as a single entity if at least one of the
 21 contracting firms is qualified under par. (b) and if the assignment of, and provisions

1 for the continuity of, the various responsibilities within the association are agreed
2 upon before the contract is awarded.

3 (b) 1. To be certified as a qualified bidder, a person must meet all of the following
4 conditions:

5 a. The person has completed at least one project that involved similar work to
6 the work being bid and the project was at least 50 percent of the size or value of the
7 division of the project being bid. If the department determines that more experience
8 is necessary for a particular project, the department may include additional
9 requirements in the specifications and certify persons accordingly.

10 b. The person has access to all necessary equipment and the organizational
11 capacity and technical competence necessary to perform the project work properly
12 and expeditiously.

13 2. To be certified as a responsible bidder, a person must meet all of the following
14 conditions:

15 a. The person maintains a permanent place of business.

16 b. The person submits a sworn statement, upon the department's request, that
17 indicates that the person has adequate financial resources to complete the work
18 being bid, taking into account any other work the person is currently under contract
19 to complete.

20 c. The person is bondable for the term of the proposed contract.

21 d. The person has a record of satisfactorily completing projects. In determining
22 this factor, the department shall consider if the person has completed all contracts
23 in accordance with drawings and specifications specifications; diligently pursued
24 execution of the work and completed contracts according to the time schedule, taking
25 account of extensions granted; fulfilled guarantee requirements of contracts; if the

SECTION 7

1 contract included an affirmative action program requirement, complied with the
2 requirement; and, if the contract included a safety program requirement, complied
3 with the requirement.

4 e. The ~~person~~^{bidder} is not on an ineligible list that the department maintains under
5 s. 16.705 (9) or 16.765 (9) or on a list that another agency maintains for [✓]persons who
6 violated construction-related statutes or administrative rules.

7 f. The ~~person~~^{bidder} has been in business for at least 12 months.

8 g. The ~~person~~^{bidder} is a legal entity and authorized to do business in Wisconsin.

9 h. The ~~person~~^{bidder} has performed at least one other public project for a government
10 entity.

11 i. The ~~person~~^{bidder} can provide information, upon request, to the department on the
12 ~~person's~~^{bidder's} ownership, management, and control.

13 j. In any jurisdiction, the ~~person~~^{bidder} has not been debarred from any government
14 contracts, has not faced discipline under a professional license, or, in the previous 10
15 years, has not been found to have committed tax avoidance or evasion.

****NOTE: Please review this subdivision paragraph. I think that you wanted the
10-year lookback to apply only to tax avoidance or evasion. If you want the lookback to
include debarment or discipline, I will move it.

SECTION 8. 16.855 (10m) (am) 3. of the statutes is amended to read:

16.855 (10m) (am) 3. The department may award any contract to a minority
18 business or disabled veteran-owned business, or a business that is both a minority
19 business and a disabled veteran-owned business, that if the business is a qualified
20 responsible bidder and the business submits a qualified responsible bid that is no
21 more than 5 percent higher than the apparent low bid.

****NOTE: I struck from current law "qualified responsible" from the term "qualified
responsible bid." It seems to me that you want the bidder to be "qualified and responsible"
and I am not sure what a "qualified responsible bid" would be (especially given the new
certification standards created in this bill). Please let me know if you disagree.

1 ~~that it designates. If a project does not require prior approval of the building~~
2 ~~commission under s. 13.48 (10) (a) and bids are required to be solicited under sub.~~
3 ~~(2), the department may take single bids or separate bids on any division of the work~~
4 ~~that it designates. If the department awards contracts by the division of work, the~~
5 ~~department shall award the contracts according to the division of work selected for~~
6 ~~bidding. Except as provided in sub. (10m) (am), the department shall award all~~
7 ~~single prime contracts to the lowest [✓]bidder who is a qualified responsible bidder or~~
8 ~~bidders that result results in the lowest total construction cost for the project.~~

9 SECTION 11. 16.855 (14) (am) of the statutes is created to read:

10 16.855 (14) (am) Except as provided in s. 13.48 (19), the department shall let
11 all construction projects that exceed \$185,000 through single prime contracting.

12 SECTION 12. 16.855 (14) (b) of the statutes is repealed.

13 SECTION 13. 16.855 (14) (bm) of the statutes is created to read:

14 16.855 (14) (bm) If the bid is being let through single prime contracting, bidders
15 for the general prime contractor who are responsible qualified bidders shall submit
16 their bids to the department no later than 7 days after the successful subcontractor
17 bids become available to the public under sub. (13) (b).

18 SECTION ^{or bldg} 14. 16.855 (14) (c) of the statutes is created to read:

19 16.855 (14) (c) The department shall reject any bid for the general prime
20 contractor from a bidder who submits a bid that includes contractors other than the
21 ones selected under sub. (13) (a).

22 SECTION 15. 16.855 (14) (e) of the statutes is created to read:

23 16.855 (14) (e) Within 30 days after the deadline under par. (bm), the
24 department shall notify the successful general prime contractor bidder of its
25 selection. The contractor who is awarded the contract shall enter into contracts with

1 the mechanical, electrical, or plumbing subcontractors selected under par. (13) (a)
2 and shall comply with the requirements under sub. (14m). The department shall
3 make the final bid results available on its Internet site at the time it issues the notice
4 to the successful general prime contractor bidder.

****NOTE: I added "general prime contractor" before "bidder" for clarification. I did not add "notice to proceed" because that is nowhere else in this statute. If you prefer to call the award to the general prime contractor a "notice to proceed," we should do that consistently throughout the statute to avoid confusion. Please let me know if you prefer that so I can redraft.

5 SECTION ^{or delta} (6) 16.855 (14m) of the statutes is created to read:

6 16.855 (14m) (a) The department shall develop a standard contract for a
7 general prime contractor selected under sub. (14) to use and shall include in the
8 contract all of the following:

9 1. A requirement that all subcontractors selected under sub. (13) (a) provide
10 a 100 percent performance bond and a 100 percent payment bond to the benefit of
11 the general prime contractor as the only obligee.

12 2. A delineation of the responsibilities, insurance requirements,
13 indemnification obligations, claims processes, and termination rights and
14 protections of all subcontractors selected under sub. (13) (a).

15 3. A requirement that the general prime contractor is subject to s. 16.528 (2m).

16 4. A schedule for payment from the general prime contractor to a subcontractor
17 that is consistent with sub. (19) (b).

18 (b) Neither a general prime contractor nor a subcontractor selected under sub.
19 (13) (b) may amend a contract developed under par. (a).

****NOTE: I did not add the suggested material to this section because I already added it to s. 13.48 (19). Since it substantively applies to that section, I thought it made more sense there. Please review that section.

1 **SECTION 17.** 16.855 (19) of the statutes is renumbered 16.855 (19) (a) and
2 amended to read:

3 16.855 (19) (a) As the work progresses under any contract for construction of
4 a project the department, from time to time, shall grant to the contractor an estimate
5 of the amount and proportionate value of the work done, which shall entitle the
6 contractor to receive the amount thereof, less the retainage, from the proper fund.
7 The retainage shall be an amount equal to not more than 5% of the estimate until
8 50% of the work has been completed. At 50% completion, no additional amounts shall
9 be retained, and partial payments shall be made in full to the contractor unless the
10 ~~architect or engineer~~ department certifies that the job is not proceeding
11 satisfactorily. At 50% completion or any time thereafter when the progress of the
12 work is not satisfactory, additional amounts may be retained but in no event shall
13 the total retainage be more than 10% of the value of the work completed. Upon
14 substantial completion of the work, ~~an~~ any amount retained ~~may~~ shall be paid to the
15 contractor, less the value of any required corrective work or uncompleted work. For
16 the purposes of this section, estimates may include any fabricated or manufactured
17 materials and components specified, previously paid for by contractor and delivered
18 to the work or properly stored and suitable for incorporation in the work embraced
19 in the contract.

20 (c) This subsection does not apply to contracts awarded under s. 16.858.

21 **SECTION 18.** 16.855 (19) (b) of the statutes is created to read:

22 16.855 (19) (b) As the work progresses under any subcontract under sub. (14)
23 (e) for construction of a project, the general prime contractor shall, upon request of
24 a subcontractor, pay to the subcontractor an amount equal to the proportionate value
25 of the subcontractor's work done, less retainage. The retainage shall be an amount

1 equal to not more than 5 percent of the subcontractor's work completed until 50
2 percent of the subcontractor's work has been completed. At 50 percent completion,
3 no additional amounts may be retained, and partial payments shall be made in full
4 to the subcontractor unless the department certifies that the subcontractor's work
5 is not proceeding satisfactorily. At 50 percent completion or any time thereafter
6 when the progress of the subcontractor's work is not satisfactory, additional amounts
7 may be retained but the total retainage may not be more than 10 percent of the value
8 of the work completed. Upon substantial completion of the subcontractor's work, any
9 amount retained shall be paid to the subcontractor, less the value of any required
10 corrective work or uncompleted work. All payments the general prime contractor
11 makes under this paragraph shall be within 7 calendar days after the date on which
12 the general prime contractor receives payment from the department for the work
13 performed.

14 **SECTION 9101. Nonstatutory provisions; Administration.**

15 (1) GENERAL PRIME CONTRACTOR CONTRACT. When the department of
16 administration develops a contract under section 16.855 (14m) (a) of the statutes, as
17 created by this act, the department shall provide public notice of the contract
18 development, accept written comments, and hold at least one public hearing,
19 allowing for testimony. The building commission must approve the contract before
20 the department may use the contract.

21 **SECTION 9301. Initial applicability; Administration.**

22 ^{at quinn} ① SINGLE PRIME CONTRACTING. The treatment of sections 13.48 (19) and 16.855
23 (1), (1g), (2) (a) 5. and 6., (9), (9m), (10m) (am) 3., (13), and (14) (a), (am), (b), (bm),
24 (c), and (e) of the statutes, the renumbering and amendment of section 16.855 (19)

1 of the statutes, and the creation of section 16.855 (19) (b) of the statutes first apply
2 to bids and proposals that are solicited on the effective date of this subsection.

3 **SECTION 9401. Effective dates; Administration.**

4 (1) SINGLE PRIME CONTRACTING. The treatment of sections 13.48 (19) and 16.855
5 (1), (1g), (2) (a) 5. and 6., (9), (9m), (10m) (am) 3., (13), and (14) (a), (am), (b), (bm),
6 (c), and (e), of the statutes, the renumbering and amendment of section 16.855 (19)
7 of the statutes, the creation of section 16.855 (19) (b) of the statutes, and SECTION
8 9301 ^{or genuine} of this act take effect on January 1, 2014. ^{or delta}

****NOTE: I removed from the delayed effective date the requirement that DOA
develop a standard contract (s. 16.855 (14m); SECTION ^{or delta} of this draft). If all of the other
sections are to take effect then, I think DOA may want to develop the contract and hold
the public hearings before the delayed effective date. Please let me know if I am
misunderstanding the intent.

9

(END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1022/p3ins
CMH:.....

1 Insert 4-6

2 NO
 H (ag) In this subsection, "bidder" includes a potential bidder. ✓



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1022/P3
CMH:sac&kjf:jm

Stays

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24 governmental purchases, the department shall give a preference over that bidder to
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9 (b) "Qualified bidder" means a person that the department certifies under sub.
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12 who is a responsible bidder.

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2 requires, the bidder has submitted a sworn statements statement as to financial
3 ability, equipment, and experience in construction and ~~require~~ such other
4 information as may be necessary to determine their the bidder's competency.

****NOTE: I did not add "Bidders failing to submit required sworn statements shall be deemed not qualified." to this provision. The introduction to this provision (see in SECTION (7), the (b) 1. introduction), already states that certification as "qualified" hinges upon submission of the statement if DOA requires the statement so the addition would be redundant (and possibly confusing since there are other requirements under that subdivision that would not have this language).

5 **SECTION 7.** 16.855 (9m) of the statutes is created to read:

6 16.855 (9m) (ag) In this subsection, "bidder" includes a potential bidder.

7 (ar) 1. The department shall certify bidders as qualified bidders under par. (b)
8 1. and responsible bidders under par. (b) 2. and shall administer a registration
9 process for all bidders submitting bids on any construction project under this section.
10 The department shall issue, in a timely manner, a certification decision on a complete
11 application for certification. A certification under this subdivision is valid for 2 years
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13 bidder no longer meets the qualifications under par. (b) and if the department follows
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17 condition of certification as a qualified bidder if the project is of such magnitude as
18 to limit competition if the conditions under par. (b) 1. were required.

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8 is necessary for a particular project, the department may include additional
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11 capacity and technical competence necessary to perform the project work properly
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18 being bid, taking into account any other work the bidder is currently under contract
19 to complete.

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22 this factor, the department shall consider if the bidder has completed all contracts
23 in accordance with drawings and specifications; diligently pursued
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move
comma
too!

move comma
too

1 SECTION 9. 16.855 (13) of the statutes is repealed and recreated to read:

2 16.855 (13) (a) In any project under this section let under single prime
3 contracting, the department shall ^{identify} select, as provided under par. (b), necessary
4 mechanical, electrical, or plumbing subcontractors who are qualified responsible
5 bidders and a general prime contractor who is submitting a bid under sub. (14) shall
6 include the selected subcontractors.

***NOTE: I combined qualified and responsible (including in the definitions). But I did not understand the suggestion to add "identify and" to "select." I am not sure how DOA would select without identifying and we try to avoid redundancies or superfluous words in the statutes. I added that general prime contractors bids must include these successful subcontractor bidders, but I do not think the language is necessary since, under created s. 16.855 (14) (c), DOA may not select a general subcontractor whose bid does not include these subcontractors (see SECTION 14).

7 (b) For purposes of selecting subcontractors under par. (a), the department
8 shall develop and administer an open and public bidding process and follow the
9 requirements and procedures under sub. (2). Within 48 hours of bid submission, the
10 department shall make available on the department Internet site the names of the
11 bidders and the amount of the bid. No more than 7 days after the deadline for bid
12 submission, the department shall provide public notice of the lowest bidders who are
13 qualified responsible bidders. The department shall make available on its Internet
14 site the bids, including the bid documents, identified under this paragraph as the
15 lowest bidders and they shall be open to public inspection. No other bids ^{under this} may be on
16 the Internet site or open to public inspection. _{paragraph}

17 SECTION 10. 16.855 (14) (a) of the statutes is renumbered 16.855 (14) (d) and
18 amended to read:

19 16.855 (14) (d) ~~If a project requires prior approval of the building commission~~
20 ~~under s. 13.48 (10) (a) and bids are required to be solicited under sub. (2), the~~
21 ~~department shall take both single bids and separate bids on any division of the work~~

1 ~~that it designates. If a project does not require prior approval of the building~~
2 ~~commission under s. 13.48 (10) (a) and bids are required to be solicited under sub.~~
3 ~~(2), the department may take single bids or separate bids on any division of the work~~
4 ~~that it designates. If the department awards contracts by the division of work, the~~
5 ~~department shall award the contracts according to the division of work selected for~~
6 ~~bidding. Except as provided in sub. (10m) (am), the department shall award all~~
7 ~~single prime contracts to the lowest bidder who is a qualified responsible bidder or~~
8 ~~bidders that result results in the lowest total construction cost for the project.~~

9 SECTION 11. 16.855 (14) (am) of the statutes is created to read:

10 16.855 (14) (am) Except as provided in s. 13.48 (19), the department shall let
11 all construction projects that exceed \$185,000 through single prime contracting.

12 SECTION 12. 16.855 (14) (b) of the statutes is repealed.

13 SECTION 13. 16.855 (14) (bm) of the statutes is created to read:

14 16.855 (14) (bm) If the bid is being let through single prime contracting, bidders
15 for the general prime contractor who are responsible qualified bidders shall submit
16 their bids to the department no later than 7 days after the successful subcontractor
17 bids become available to the public under sub. (13) (b).

18 SECTION 14. 16.855 (14) (c) of the statutes is created to read:

19 16.855 (14) (c) The department shall reject any bid for the general prime
20 contractor from a bidder who submits a bid that includes contractors other than the
21 ones selected under sub. (13) (a).

22 SECTION 15. 16.855 (14) (e) of the statutes is created to read:

23 16.855 (14) (e) Within 30 days after the deadline under par. (bm), the
24 department shall notify the successful general prime contractor bidder of its
25 selection. The contractor who is awarded the contract shall enter into contracts with

The award of a contract may not be finalized until
the department ^{approves} approves the required performance bond
and certificate of ^{insurance} insurance.

1 the mechanical, electrical, or plumbing subcontractors selected under par. (13) (a)
2 and shall comply with the requirements under sub. (14m). The department shall
3 make the final bid results available on its Internet site at the time it issues the notice
4 to the successful general prime contractor bidder.

****NOTE: I added “general prime contractor” before “bidder” for clarification. I did not add “notice to proceed” because that is nowhere else in this statute. If you prefer to call the award to the general prime contractor a “notice to proceed,” we should do that consistently throughout the statute to avoid confusion. Please let me know if you prefer that so I can redraft.

5 **SECTION 16.** 16.855 (14m) of the statutes is created to read:

6 16.855 (14m) (a) The department shall develop a standard contract for a
7 general prime contractor selected under sub. (14) to use and shall include in the
8 contract all of the following:

9 1. A requirement that all subcontractors selected under sub. (13) (a) provide
10 a 100 percent performance bond and a 100 percent payment bond to the benefit of
11 the general prime contractor as the only obligee.

12 2. A delineation of the responsibilities, insurance requirements,
13 indemnification obligations, claims processes, and termination rights and
14 protections of all subcontractors selected under sub. (13) (a).

15 3. A requirement that the general prime contractor is subject to s. 16.528 (2m).

16 4. A schedule for payment from the general prime contractor to a subcontractor
17 that is consistent with sub. (19) (b).

18 (b) Neither a general prime contractor nor a subcontractor selected under sub.
19 (13) (b) may amend a contract developed under par. (a).

****NOTE: I did not add the suggested material to this section because I already added it to s. 13.48 (19). Since it substantively applies to that section, I thought it made more sense there. Please review that section.

1 **SECTION 17.** 16.855 (19) of the statutes is renumbered 16.855 (19) (a) and
2 amended to read:

3 16.855 (19) (a) As the work progresses under any contract for construction of
4 a project the department, from time to time, shall grant to the contractor an estimate
5 of the amount and proportionate value of the work done, which shall entitle the
6 contractor to receive the amount thereof, less the retainage, from the proper fund.
7 The retainage shall be an amount equal to not more than 5% of the estimate until
8 50% of the work has been completed. At 50% completion, no additional amounts shall
9 be retained, and partial payments shall be made in full to the contractor unless the
10 ~~architect or engineer~~ department certifies that the job is not proceeding
11 satisfactorily. At 50% completion or any time thereafter when the progress of the
12 work is not satisfactory, additional amounts may be retained but in no event shall
13 the total retainage be more than 10% of the value of the work completed. Upon
14 substantial completion of the work, ~~an~~ any amount retained ~~may~~ shall be paid to the
15 contractor, ~~less the value of any required corrective work or uncompleted work~~. For
16 the purposes of this section, estimates may include any fabricated or manufactured
17 materials and components specified, previously paid for by contractor and delivered
18 to the work or properly stored and suitable for incorporation in the work embraced
19 in the contract.

20 (c) This subsection does not apply to contracts awarded under s. 16.858.

21 **SECTION 18.** 16.855 (19) (b) of the statutes is created to read:

22 16.855 (19) (b) As the work progresses under any subcontract under sub. (14)
23 (e) for construction of a project, the general prime contractor shall, upon request of
24 a subcontractor, pay to the subcontractor an amount equal to the proportionate value
25 of the subcontractor's work done, less retainage. The retainage shall be an amount

1 equal to not more than 5 percent of the subcontractor's work completed until 50
2 percent of the subcontractor's work has been completed. At 50 percent completion,
3 no additional amounts may be retained, and partial payments shall be made in full
4 to the subcontractor unless the department certifies that the subcontractor's work
5 is not proceeding satisfactorily. At 50 percent completion or any time thereafter
6 when the progress of the subcontractor's work is not satisfactory, additional amounts
7 may be retained but the total retainage may not be more than 10 percent of the value
8 of the work completed. Upon substantial completion of the subcontractor's work, any
9 amount retained shall be paid to the subcontractor, less the value of any required
10 corrective work or uncompleted work. All payments the general prime contractor
11 makes under this paragraph shall be within 7 calendar days after the date on which
12 the general prime contractor receives payment from the department for the work
13 performed.

14 **SECTION 9101. Nonstatutory provisions; Administration.**

15 (1) GENERAL PRIME CONTRACTOR CONTRACT. When the department of
16 administration develops a contract under section 16.855 (14m) (a) of the statutes, as
17 created by this act, the department shall provide public notice of the contract
18 development, ^{accept} ~~accept~~ written comments, and hold at least one public hearing,
19 allowing for testimony. The building commission must approve the contract before
20 the department may use the contract.

21 **SECTION 9301. Initial applicability; Administration.**

22 (1) SINGLE PRIME CONTRACTING. The treatment of sections 13.48 (19) and 16.855
23 (1), (1g), (2) (a) 5. and 6., (9), (9m), (10m) (am) 3., (13), and (14) (a), (am), (b), (bm),
24 (c), and (e) of the statutes, the renumbering and amendment of section 16.855 (19)

1 of the statutes, and the creation of section 16.855 (19) (b) of the statutes first apply
2 to bids and proposals that are solicited on the effective date of this subsection.

3 **SECTION 9401. Effective dates; Administration.**

4 (1) SINGLE PRIME CONTRACTING. The treatment of sections 13.48 (19) and 16.855
5 (1), (1g), (2) (a) 5. and 6., (9), (9m), (10m) (am) 3., (13), and (14) (a), (am), (b), (bm),
6 (c), and (e), of the statutes, the renumbering and amendment of section 16.855 (19)
7 of the statutes, the creation of section 16.855 (19) (b) of the statutes, and SECTION
8 9301 (1) of this act take effect on January 1, 2014.

****NOTE: I removed from the delayed effective date the requirement that DOA develop a standard contract (s. 16.855 (14m); SECTION 16 of this draft). If all of the other sections are to take effect then, I think DOA may want to develop the contract and hold the public hearings before the delayed effective date. Please let me know if I am misunderstanding the intent.

9 (END)

Hanaman, Cathlene

From: Bong, Sasha E - DOA <SashaE.Bong@wisconsin.gov>
Sent: Friday, February 08, 2013 2:15 PM
To: Hanaman, Cathlene
Subject: RE: BB0313 (LRB-1022/P3) (draft)

For s. 16.855(14)(b), please remove prime so that it reads "The state is not liable to a contractor for damage..." Though the state has a contract only with the general contractor under single prime contracting, the state may also have contracts with other specialty contractors on a project (e.g., asbestos, controls) for which this provision should apply.

A definition for "notice to proceed" would be "a written, official notice from the department to the winning bidder notifying them that their contract is fully executed and they are authorized to begin work on the project."

However, this definition came with the strong caution that a notice to proceed is not exclusive to single prime contracting. There are concerns that this will be perceived as a new part of the construction project bidding and contracting process, when in actuality, it's not (it's never been defined in statutes). By defining the notice in relation to single prime contracting, to what extent would that affect other types of projects/contracts?

Thanks,

Sasha

From: Hanaman, Cathlene
Sent: Friday, February 08, 2013 10:54 AM
To: Bong, Sasha E - DOA
Subject: RE: BB0313 (LRB-1022/P3) (draft)

I have only these questions.

- Would it be possible to define bidder under s. 16.855(1g) as "a person [assuming the s. 990.01(26) definition] that submits a bid," but still maintain s. 16.855(9m)(ag) to include a potential bidder.
 - The intent of including the definition here is so that s. 16.855(9m)(b)2. j. would apply to an individual or corporation.

I don't understand this. I think "bidder" would mean a person submitting a bid so it doesn't need a definition. And 16.855 (9m) (b) 2. j. would apply to either as drafted.

Section 15: The preference would still be for the end of s. 16.855(14)(e) to read "at the time it issues the notice to proceed to the successful general prime contractor bidder.

- To address your note, the intent is not to call an 'award' a 'notice to proceed,' the terms have distinct roles in the process. A contract may be awarded, but construction will not actually start until the notice to proceed is issued. There are multiple notices that the department issues that are not necessarily connected to awarding a contract.

Since "notice to proceed" does not appear in the statutes, I am wary of putting it here without a definition. I realize it is probably in the rules, but the statutes have different standards. Can we define this term or finish the thought—proceed to what.

Section 12: Do not repeal s. 16.855(14)(b).

Should contractor under that revived paragraph be just the general prime contractor?

From: Bong, Sasha E - DOA [<mailto:SashaE.Bong@wisconsin.gov>]
Sent: Thursday, February 07, 2013 5:19 PM
To: Hanaman, Cathlene

Cc: Kraus, Jennifer - DOA

Subject: FW: BB0313 (LRB-1022/P3) (draft)

Cathlene,

Below are changes for LRB-1022/P3:

Section 3

- Would it be possible to define bidder under s. 16.855(1g) as "a person [assuming the s. 990.01(26) definition] that submits a bid," but still maintain s. 16.855(9m)(ag) to include a potential bidder.
 - The intent of including the definition here is so that s. 16.855(9m)(b)2. j. would apply to an individual or corporation.
- Change s. 16.955(1g)(e) to define "Single prime bidding and contracting" to mean bidding and contracting through...

Section 5: Change s. 16.855(2)(a)6. to "That the department shall consider only bids..."

Section 7: Is there a reason s. 16.855(9m)(b)2.d. has "specifications" twice?

Section 9

- Change s. 16.855(13)(a) to "In any project under this section let under single prime bidding and contracting, the department shall identify..."
- Change the end of s. 16.855(13)(b) to "No other bids under this section may be on the Internet site or open to public inspection."

Section 12: Do not repeal s. 16.855(14)(b).

Section 14: After s. 16.855(14)(c), insert "Award of a contract will not be finalized until the required performance payment bond and certificate of insurance have been received and approved by the department."

Section 15: The preference would still be for the end of s. 16.855(14)(e) to read "at the time it issues the notice to proceed to the successful general prime contractor bidder.

- To address your note, the intent is not to call an 'award' a 'notice to proceed,' the terms have distinct roles in the process. A contract may be awarded, but construction will not actually start until the notice to proceed is issued. There are multiple notices that the department issues that are not necessarily connected to awarding a contract.

Section 9101: Change line 18 to "development, review written comments, and hold at least one public hearing."

Please email or call (266-5468) with any questions or clarifications.

Thanks,

Sasha

Hanaman, Cathlene

From: Bong, Sasha E - DOA <SashaE.Bong@wisconsin.gov>
Sent: Thursday, February 07, 2013 5:19 PM
To: Hanaman, Cathlene
Cc: Kraus, Jennifer - DOA
Subject: FW: BB0313 (LRB-1022/P3) (draft)

Cathlene,

Below are changes for LRB-1022/P3:

*the definition -
ball company
+
individual
person*

Section 3

- Would it be possible to define bidder under s. 16.855(1g) as "a person [assuming the s. 990.01(26) definition] that submits a bid," but still maintain s. 16.855(9m)(ag) to include a potential bidder.
 - The intent of including the definition here is so that s. 16.855(9m)(b)2. j. would apply to an individual or corporation.
- Change s. 16.955(1g)(e) to define "Single prime bidding and contracting" to mean bidding and contracting through...

Section 5: Change s. 16.855(2)(a)6. to "That the department shall consider only bids..."

Section 7: Is there a reason s. 16.855(9m)(b)2.d. has "specifications" twice?

Section 9

- Change s. 16.855(13)(a) to "In any project under this section let under single prime bidding and contracting, the department shall identify..."
- Change the end of s. 16.855(13)(b) to "No other bids under this section may be on the Internet site or open to public inspection."

Section 12: Do not repeal s. 16.855(14)(b).

Section 14: After s. 16.855(14)(c), insert "Award of a contract will not be finalized until the required performance payment bond and certificate of insurance have been received and approved by the department."

Section 15: The preference would still be for the end of s. 16.855(14)(e) to read "at the time it issues the notice to proceed to the successful general prime contractor bidder.

- To address your note, the intent is not to call an 'award' a 'notice to proceed,' the terms have distinct roles in the process. A contract may be awarded, but construction will not actually start until the notice to proceed is issued. There are multiple notices that the department issues that are not necessarily connected to awarding a contract.

Section 9101: Change line 18 to "development, review written comments, and hold at least one public hearing."

Please email or call (266-5468) with any questions or clarifications.

Thanks,

Sasha



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1022/PA
CMH:sac&kjf:rs

P5
e

DOA:.....Bong, BB0313 - Adopt single prime contracting as the default method of contracting for services

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

monaghan act

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE PROCUREMENT

Under current law, with some exceptions, DOA must let by contract to the lowest qualified responsible bidder all construction work when the estimated construction cost of the project exceeds \$50,000 or, if the estimated cost is less, when contracting is in the best interest of the state. This bill requires DOA, for any project that has an estimated construction cost that exceeds \$185,000, to let the project to the lowest qualified responsible bidder through single prime contracting. "Single prime contracting" is a process in which DOA selects all mechanical, electrical, and plumbing contractors, but contracts only with a general prime contractor, who then must contract with the selected mechanical, electrical, and plumbing contractors. This bill also requires DOA to certify persons as qualified and responsible and provides criteria for such certification.

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

1 **SECTION 1.** 13.48 (19) of the statutes is amended to read:

2 13.48 (19) ALTERNATIVES TO STATE CONSTRUCTION. Whenever the building
3 commission determines that the use of innovative types of design and construction
4 processes will make better use of the resources and technology available in the
5 building industry, the building commission may waive any or all of s. 16.855, except
6 s. 16.855 (13) and (14m), if such action is in the best interest of the state and if the
7 waiver is accomplished through formal action of the building commission. The
8 building commission may authorize the lease, lease purchase or acquisition of such
9 facilities constructed in the manner authorized by the building commission. Subject
10 to the requirements of s. 20.924 (1) (i), the building commission may also authorize
11 the lease, lease purchase or acquisition of existing facilities in lieu of state
12 construction of any project enumerated in the authorized state building program.

13 **SECTION 2.** 16.855 (1) of the statutes is renumbered 16.855 (1m) and amended
14 to read:

15 16.855 (1m) 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 \$50,000, except for construction work authorized under s. 16.858 and
18 except as provided in sub. (1r) or (10m) or s. 13.48 (19). If factors other than dollar
19 amounts are required to be evaluated for a project, the department shall specify a
20 formula that will convert the other factors into a dollar value for comparison.

21 (1r) If a bidder is not a Wisconsin firm and the department determines that the
22 state, foreign nation or subdivision thereof in which the bidder is domiciled grants
23 a preference to bidders domiciled in that state, nation or subdivision in making
24 governmental purchases, the department shall give a preference over that bidder to
25 Wisconsin firms, if any, when awarding the contract, in the absence of compelling

1 reasons to the contrary. The department may enter into agreements with states,
2 foreign nations and subdivisions thereof for the purpose of implementing this
3 subsection.

4 **SECTION 3.** 16.855 (1g) of the statutes is created to read:

5 16.855 (1g) In this section:

6 (a) “Mechanical, electrical, or plumbing subcontractor” is a contractor that
7 performs mechanical, electrical, plumbing, or fire protection work and enters into a
8 contract with a general prime contractor to perform their division of work.

9 (b) “Qualified bidder” means a person that the department certifies under sub.
10 (9m) (b) 1.

11 (c) “Qualified responsible bidder” means a person who is a qualified bidder and
12 who is a responsible bidder.

13 (d) “Responsible bidder” means a person that the department certifies under
14 sub. (9m) (b) 2.

15 (e) “Single prime contracting” means bidding and contracting through a
16 process in which only a general prime contractor has a contractual relationship with
17 the state and all mechanical, electrical, or plumbing subcontractors are selected by
18 department and are subcontractors to the general prime contractor.

19 **SECTION 4.** 16.855 (2) (a) 5. of the statutes is amended to read:

20 16.855 (2) (a) 5. Date, when and place where plans will be available.

21 **SECTION 5.** 16.855 (2) (a) 6. of the statutes is created to read:

22 16.855 (2) (a) 6. That the department shall consider only bids from persons who
23 are responsible bidders and, unless sub. (9m) (ar) 2. applies, qualified bidders.

24 **SECTION 6.** 16.855 (9) of the statutes is renumbered 16.855 (9m) (b) 1. c. and
25 amended to read:

1 16.855 (9m) (b) 1. c. ~~The~~ If the department may require bidders to submit so
2 requires or the bidder will be considered unqualified, the bidder has submitted a
3 sworn statements statement as to financial ability, equipment, and experience in
4 construction and ~~require such~~ other information as may be necessary to determine
5 ~~their~~ the bidder's competency.

6 **SECTION 7.** 16.855 (9m) of the statutes is created to read:

7 16.855 (9m) (ag) In this subsection, “bidder” includes a potential bidder.

8 (ar) 1. The department shall certify bidders as qualified bidders under par. (b)
9 1. and responsible bidders under par. (b) 2. and shall administer a registration
10 process for all bidders submitting bids on any construction project under this section.
11 The department shall issue, in a timely manner, a certification decision on a complete
12 application for certification. A certification under this subdivision is valid for 2 years
13 except the department may decertify a bidder if the department determines that the
14 bidder no longer meets the qualifications under par. (b) and if the department follows
15 a decertification process developed by rule that provides to the bidder notice,
16 hearing, and a means to appeal.

17 2. Notwithstanding sub. (1m) or (14) (e), the department may waive the
18 condition of certification as a qualified bidder if the project is of such magnitude as
19 to limit competition if the conditions under par. (b) 1. were required.

20 3. The department shall consider for certification under par. (b) associations
21 consisting of at least 2 contracting firms that are organized for the purpose of
22 entering into a construction contract as a single entity if at least one of the
23 contracting firms is qualified under par. (b) and if the assignment of, and provisions
24 for the continuity of, the various responsibilities within the association are agreed
25 upon before the contract is awarded.

1 (b) 1. To be certified as a qualified bidder, a bidder must meet all of the following
2 conditions:

3 a. The bidder has completed at least one project that involved similar work to
4 the work being bid and the project was at least 50 percent of the size or value of the
5 division of the project being bid. If the department determines that more experience
6 is necessary for a particular project, the department may include additional
7 requirements in the specifications and certify bidders accordingly.

8 b. The bidder has access to all necessary equipment and the organizational
9 capacity and technical competence necessary to perform the project work properly
10 and expeditiously.

11 2. To be certified as a responsible bidder, a bidder must meet all of the following
12 conditions:

13 a. The bidder maintains a permanent place of business.

14 b. The bidder submits a sworn statement, upon the department's request, that
15 indicates that the bidder has adequate financial resources to complete the work
16 being bid, taking into account any other work the bidder is currently under contract
17 to complete.

18 c. The bidder is bondable for the term of the proposed contract.

19 d. The bidder has a record of satisfactorily completing projects. In determining
20 this factor, the department shall consider if the bidder has completed all contracts
21 in accordance with drawings and specifications; diligently pursued execution of the
22 work and completed contracts according to the time schedule, taking account of
23 extensions granted; fulfilled guarantee requirements of contracts; if the contract
24 included an affirmative action program requirement, complied with the

1 requirement; and, if the contract included a safety program requirement, complied
2 with the requirement.

3 e. The bidder is not on an ineligible list that the department maintains under
4 s. 16.705 (9) or 16.765 (9) or on a list that another agency maintains for persons who
5 violated construction-related statutes or administrative rules.

6 f. The bidder has been in business for at least 12 months.

7 g. The bidder is a legal entity and authorized to do business in Wisconsin.

8 h. The bidder has performed at least one other public project for a government
9 entity.

10 i. The bidder can provide information, upon request, to the department on the
11 bidder's ownership, management, and control.

12 j. In any jurisdiction, the bidder, in the previous 10 years, has not been debarred
13 from any government contracts, has not faced discipline under a professional license,
14 ^{e and} or has not been found to have committed tax avoidance or evasion.

15 SECTION 8. 16.855 (10m) (am) 3. of the statutes is amended to read:

16 INS
6-13
17 16.855 (10m) (am) 3. The department may award any contract to a minority
18 business or disabled veteran-owned business, or a business that is both a minority
19 business and a disabled veteran-owned business, that if the business is a qualified
20 responsible bidder and the business submits a qualified responsible bid that is no
more than 5 percent higher than the apparent low bid.

****NOTE: I struck from current law "qualified responsible" from the term "qualified responsible bid." It seems to me that you want the bidder to be "qualified and responsible" and I am not sure what a "qualified responsible bid" would be (especially given the new certification standards created in this bill). Please let me know if you disagree.

21 SECTION 9. 16.855 (13) of the statutes is repealed and recreated to read:

22 16.855 (13) (a) In any project under this section let under single prime
23 contracting, the department shall identify, as provided under par. (b), necessary

1 mechanical, electrical, or plumbing subcontractors who are qualified responsible
2 bidders and a general prime contractor who is submitting a bid under sub. (14) shall
3 include the selected subcontractors.

4 (b) For purposes of selecting subcontractors under par. (a), the department
5 shall develop and administer an open and public bidding process and follow the
6 requirements and procedures under sub. (2). Within 48 hours of bid submission, the
7 department shall make available on the department Internet site the names of the
8 bidders and the amount of the bid. No more than 7 days after the deadline for bid
9 submission, the department shall provide public notice of the lowest bidders who are
10 qualified responsible bidders. The department shall make available on its Internet
11 site the bids, including the bid documents, identified under this paragraph as the
12 lowest bidders and they shall be open to public inspection. No other bids under this
13 paragraph may be on the Internet site or open to public inspection.

14 **SECTION 10.** 16.855 (14) (a) of the statutes is renumbered 16.855 (14) (d) and
15 amended to read:

16 16.855 (14) (d) ~~If a project requires prior approval of the building commission~~
17 ~~under s. 13.48 (10) (a) and bids are required to be solicited under sub. (2), the~~
18 ~~department shall take both single bids and separate bids on any division of the work~~
19 ~~that it designates. If a project does not require prior approval of the building~~
20 ~~commission under s. 13.48 (10) (a) and bids are required to be solicited under sub.~~
21 ~~(2), the department may take single bids or separate bids on any division of the work~~
22 ~~that it designates. If the department awards contracts by the division of work, the~~
23 ~~department shall award the contracts according to the division of work selected for~~
24 ~~bidding. Except as provided in sub. (10m) (am), the department shall award all~~

1 single prime contracts to the lowest bidder who is a qualified responsible bidder or
2 bidders that result results in the lowest total construction cost for the project.

3 SECTION 11. 16.855 (14) (am) of the statutes is created to read:

4 16.855 (14) (am) Except as provided in s. 13.48 (19), the department shall let
5 all construction projects that exceed \$185,000 through single prime contracting.

6 SECTION 12. 16.855 (14) (b) of the statutes is repealed.

7 SECTION 13. 16.855 (14) (bm) of the statutes is created to read:

8 16.855 (14) (bm) If the bid is being let through single prime contracting, bidders
9 for the general prime contractor who are responsible qualified bidders shall submit
10 their bids to the department no later than 7 days after the successful subcontractor
11 bids become available to the public under sub. (13) (b).

12 SECTION 14. 16.855 (14) (c) of the statutes is created to read:

13 16.855 (14) (c) The department shall reject any bid for the general prime
14 contractor from a bidder who submits a bid that includes contractors other than the
15 ones selected under sub. (13) (a). The award of a contract may not be finalized until
16 the department approves the required performance bond and certificate of
17 insurance.

18 SECTION 15. 16.855 (14) (e) of the statutes is created to read:

19 16.855 (14) (e) Within 30 days after the deadline under par. (bm), the
20 department shall notify the successful general prime contractor bidder of its
21 selection. The contractor who is awarded the contract shall enter into contracts with
22 the mechanical, electrical, or plumbing subcontractors selected under par. (13) (a)
23 and shall comply with the requirements under sub. (14m). The department shall
24 make the final bid results available on its Internet site at the time it ^{provides} ~~issues~~ the notice
25 to the successful general prime contractor bidder.

written, official

notifying the contractor that the contract is fully executed and that the contractor is authorized to begin work on the project

****NOTE: I added "general prime contractor" before "bidder" for clarification. I did not add "notice to proceed" because that is nowhere else in this statute. If you prefer to call the award to the general prime contractor a "notice to proceed," we should do that consistently throughout the statute to avoid confusion. Please let me know if you prefer that so I can redraft.

1 **SECTION 16.** 16.855 (14m) of the statutes is created to read:

2 16.855 (14m) (a) The department shall develop a standard contract for a
3 general prime contractor selected under sub. (14) to use and shall include in the
4 contract all of the following:

5 1. A requirement that all subcontractors selected under sub. (13) (a) provide
6 a 100 percent performance bond and a 100 percent payment bond to the benefit of
7 the general prime contractor as the only obligee.

8 2. A delineation of the responsibilities, insurance requirements,
9 indemnification obligations, claims processes, and termination rights and
10 protections of all subcontractors selected under sub. (13) (a).

11 3. A requirement that the general prime contractor is subject to s. 16.528 (2m).

12 4. A schedule for payment from the general prime contractor to a subcontractor
13 that is consistent with sub. (19) (b).

14 (b) Neither a general prime contractor nor a subcontractor selected under sub.
15 (13) (b) may amend a contract developed under par. (a).

****NOTE: I did not add the suggested material to this section because I already added it to s. 13.48 (19). Since it substantively applies to that section, I thought it made more sense there. Please review that section.

16 **SECTION 17.** 16.855 (19) of the statutes is renumbered 16.855 (19) (a) and
17 amended to read:

18 16.855 (19) (a) As the work progresses under any contract for construction of
19 a project the department, from time to time, shall grant to the contractor an estimate
20 of the amount and proportionate value of the work done, which shall entitle the

1 contractor to receive the amount thereof, less the retainage, from the proper fund.
2 The retainage shall be an amount equal to not more than 5% of the estimate until
3 50% of the work has been completed. At 50% completion, no additional amounts shall
4 be retained, and partial payments shall be made in full to the contractor unless the
5 ~~architect or engineer~~ department certifies that the job is not proceeding
6 satisfactorily. At 50% completion or any time thereafter when the progress of the
7 work is not satisfactory, additional amounts may be retained but in no event shall
8 the total retainage be more than 10% of the value of the work completed. Upon
9 substantial completion of the work, ~~an~~ any amount retained ~~may~~ shall be paid to the
10 contractor, less the value of any required corrective work or uncompleted work. For
11 the purposes of this section, estimates may include any fabricated or manufactured
12 materials and components specified, previously paid for by contractor and delivered
13 to the work or properly stored and suitable for incorporation in the work embraced
14 in the contract.

15 (c) This subsection does not apply to contracts awarded under s. 16.858.

16 **SECTION 18.** 16.855 (19) (b) of the statutes is created to read:

17 16.855 (19) (b) As the work progresses under any subcontract under sub. (14)
18 (e) for construction of a project, the general prime contractor shall, upon request of
19 a subcontractor, pay to the subcontractor an amount equal to the proportionate value
20 of the subcontractor's work done, less retainage. The retainage shall be an amount
21 equal to not more than 5 percent of the subcontractor's work completed until 50
22 percent of the subcontractor's work has been completed. At 50 percent completion,
23 no additional amounts may be retained, and partial payments shall be made in full
24 to the subcontractor unless the department certifies that the subcontractor's work
25 is not proceeding satisfactorily. At 50 percent completion or any time thereafter

1 when the progress of the subcontractor's work is not satisfactory, additional amounts
2 may be retained but the total retainage may not be more than 10 percent of the value
3 of the work completed. Upon substantial completion of the subcontractor's work, any
4 amount retained shall be paid to the subcontractor, less the value of any required
5 corrective work or uncompleted work. All payments the general prime contractor
6 makes under this paragraph shall be within 7 calendar days after the date on which
7 the general prime contractor receives payment from the department for the work
8 performed.

9 **SECTION 9101. Nonstatutory provisions; Administration.**

10 (1) GENERAL PRIME CONTRACTOR CONTRACT. When the department of
11 administration develops a contract under section 16.855 (14m) (a) of the statutes, as
12 created by this act, the department shall provide public notice of the contract
13 development, review written comments, and hold at least one public hearing,
14 allowing for testimony. The building commission must approve the contract before
15 the department may use the contract.

16 **SECTION 9301. Initial applicability; Administration.**

17 (1) SINGLE PRIME CONTRACTING. The treatment of sections 13.48 (19) and 16.855
18 (1), (1g), (2) (a) 5. and 6., (9), (9m), (10m) (am) 3., (13), and (14) (a), (am), (b), (bm),
19 (c), and (e) of the statutes, the renumbering and amendment of section 16.855 (19)
20 of the statutes, and the creation of section 16.855 (19) (b) of the statutes first apply
21 to bids and proposals that are solicited on the effective date of this subsection.

22 **SECTION 9401. Effective dates; Administration.**

23 (1) SINGLE PRIME CONTRACTING. The treatment of sections 13.48 (19) and 16.855
24 (1), (1g), (2) (a) 5. and 6., (9), (9m), (10m) (am) 3., (13), and (14) (a), (am), (b), (bm),
25 (c), and (e) of the statutes, the renumbering and amendment of section 16.855 (19)

1 of the statutes, the creation of section 16.855 (19) (b) of the statutes, and SECTION
2 9301 ^{sv} (1) of this act take effect on January 1, 2014.

3 (END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1022/p5ins
CMH:.....

1 Insert 6-15

2 k. In any jurisdiction, in the previous 10 years, the bidder has not ^{been} faced
3 discipline ^a under a professional license and none of the bidder's employees and no
4 member of the bidder's organization has ^{been} ~~faced~~ discipline ^d under a professional
5 license.

6

7 Insert 8-7

8 SECTION 1. 16.855 (14) (b) of the statutes is amended to read:

9 16.855 (14) (b) The state is not liable to a prime contractor for damage from
10 delay caused by another prime contractor if the department takes reasonable action
11 to require the delaying prime contractor to comply with its contract. If the state is
12 not liable under this paragraph, the delayed prime contractor may bring an action
13 for damages against the delaying prime contractor.

History: 1971 c. 125; 1973 c. 47; 1975 c. 39, 199, 390; 1977 c. 418; 1979 c. 34; 1981 c. 20; 1983 a. 27 ss. 104g to 105, 2202 (1); 1983 a. 390 s. 6; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27, 292; 1989 a. 31; 1991 a. 39, 316; 1995 a. 27 ss. 400p, 9126 (19); 1995 a. 227; 1997 a. 27, 306; 1999 a. 150 s. 672; 1999 a. 197; 2001 a. 103; 2003 a. 33, 157; 2005 a. 141, 391; 2007 a. 20 s. 9121 (6) (a); 2009 a. 299; 2011 a. 32; 2011 a. 260 s. 80.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1022/P5
CMH:sac&kjf:jm

DOA:.....Bong, BB0313 - Adopt single prime contracting as the default method of contracting for services

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE PROCUREMENT

Under current law, with some exceptions, DOA must let by contract to the lowest qualified responsible bidder all construction work when the estimated construction cost of the project exceeds \$50,000 or, if the estimated cost is less, when contracting is in the best interest of the state. This bill requires DOA, for any project that has an estimated construction cost that exceeds \$185,000, to let the project to the lowest qualified responsible bidder through single prime contracting. "Single prime contracting" is a process in which DOA selects all mechanical, electrical, and plumbing contractors, but contracts only with a general prime contractor, who then must contract with the selected mechanical, electrical, and plumbing contractors. This bill also requires DOA to certify persons as qualified and responsible and provides criteria for such certification.

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

1 **SECTION 1.** 13.48 (19) of the statutes is amended to read:

2 **13.48 (19) ALTERNATIVES TO STATE CONSTRUCTION.** Whenever the building
3 commission determines that the use of innovative types of design and construction
4 processes will make better use of the resources and technology available in the
5 building industry, the building commission may waive any or all of s. 16.855, except
6 s. 16.855 (13) and (14m), if such action is in the best interest of the state and if the
7 waiver is accomplished through formal action of the building commission. The
8 building commission may authorize the lease, lease purchase or acquisition of such
9 facilities constructed in the manner authorized by the building commission. Subject
10 to the requirements of s. 20.924 (1) (i), the building commission may also authorize
11 the lease, lease purchase or acquisition of existing facilities in lieu of state
12 construction of any project enumerated in the authorized state building program.

13 **SECTION 2.** 16.855 (1) of the statutes is renumbered 16.855 (1m) and amended
14 to read:

15 **16.855 (1m)** 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 \$50,000, except for construction work authorized under s. 16.858 and
18 except as provided in sub. (1r) or (10m) or s. 13.48 (19). If factors other than dollar
19 amounts are required to be evaluated for a project, the department shall specify a
20 formula that will convert the other factors into a dollar value for comparison.

21 **(1r)** If a bidder is not a Wisconsin firm and the department determines that the
22 state, foreign nation or subdivision thereof in which the bidder is domiciled grants
23 a preference to bidders domiciled in that state, nation or subdivision in making
24 governmental purchases, the department shall give a preference over that bidder to
25 Wisconsin firms, if any, when awarding the contract, in the absence of compelling

1 reasons to the contrary. The department may enter into agreements with states,
2 foreign nations and subdivisions thereof for the purpose of implementing this
3 subsection.

4 **SECTION 3.** 16.855 (1g) of the statutes is created to read:

5 16.855 (1g) In this section:

6 (a) “Mechanical, electrical, or plumbing subcontractor” is a contractor that
7 performs mechanical, electrical, plumbing, or fire protection work and enters into a
8 contract with a general prime contractor to perform their division of work.

9 (b) “Qualified bidder” means a person that the department certifies under sub.
10 (9m) (b) 1.

11 (c) “Qualified responsible bidder” means a person who is a qualified bidder and
12 who is a responsible bidder.

13 (d) “Responsible bidder” means a person that the department certifies under
14 sub. (9m) (b) 2.

15 (e) “Single prime contracting” means bidding and contracting through a
16 process in which only a general prime contractor has a contractual relationship with
17 the state and all mechanical, electrical, or plumbing subcontractors are selected by
18 department and are subcontractors to the general prime contractor.

19 **SECTION 4.** 16.855 (2) (a) 5. of the statutes is amended to read:

20 16.855 (2) (a) 5. Date, when and place where plans will be available.

21 **SECTION 5.** 16.855 (2) (a) 6. of the statutes is created to read:

22 16.855 (2) (a) 6. That the department shall consider only bids from persons who
23 are responsible bidders and, unless sub. (9m) (ar) 2. applies, qualified bidders.

24 **SECTION 6.** 16.855 (9) of the statutes is renumbered 16.855 (9m) (b) 1. c. and
25 amended to read:

1 16.855 (9m) (b) 1. c. ~~The~~ If the department may require bidders to submit so
2 requires or the bidder will be considered unqualified, the bidder has submitted a
3 sworn statements statement as to financial ability, equipment, and experience in
4 construction and ~~require such~~ other information as may be necessary to determine
5 ~~their~~ the bidder's competency.

6 **SECTION 7.** 16.855 (9m) of the statutes is created to read:

7 16.855 (9m) (ag) In this subsection, “bidder” includes a potential bidder.

8 (ar) 1. The department shall certify bidders as qualified bidders under par. (b)
9 1. and responsible bidders under par. (b) 2. and shall administer a registration
10 process for all bidders submitting bids on any construction project under this section.
11 The department shall issue, in a timely manner, a certification decision on a complete
12 application for certification. A certification under this subdivision is valid for 2 years
13 except the department may decertify a bidder if the department determines that the
14 bidder no longer meets the qualifications under par. (b) and if the department follows
15 a decertification process developed by rule that provides to the bidder notice,
16 hearing, and a means to appeal.

17 2. Notwithstanding sub. (1m) or (14) (e), the department may waive the
18 condition of certification as a qualified bidder if the project is of such magnitude as
19 to limit competition if the conditions under par. (b) 1. were required.

20 3. The department shall consider for certification under par. (b) associations
21 consisting of at least 2 contracting firms that are organized for the purpose of
22 entering into a construction contract as a single entity if at least one of the
23 contracting firms is qualified under par. (b) and if the assignment of, and provisions
24 for the continuity of, the various responsibilities within the association are agreed
25 upon before the contract is awarded.

1 (b) 1. To be certified as a qualified bidder, a bidder must meet all of the following
2 conditions:

3 a. The bidder has completed at least one project that involved similar work to
4 the work being bid and the project was at least 50 percent of the size or value of the
5 division of the project being bid. If the department determines that more experience
6 is necessary for a particular project, the department may include additional
7 requirements in the specifications and certify bidders accordingly.

8 b. The bidder has access to all necessary equipment and the organizational
9 capacity and technical competence necessary to perform the project work properly
10 and expeditiously.

11 2. To be certified as a responsible bidder, a bidder must meet all of the following
12 conditions:

13 a. The bidder maintains a permanent place of business.

14 b. The bidder submits a sworn statement, upon the department's request, that
15 indicates that the bidder has adequate financial resources to complete the work
16 being bid, taking into account any other work the bidder is currently under contract
17 to complete.

18 c. The bidder is bondable for the term of the proposed contract.

19 d. The bidder has a record of satisfactorily completing projects. In determining
20 this factor, the department shall consider if the bidder has completed all contracts
21 in accordance with drawings and specifications; diligently pursued execution of the
22 work and completed contracts according to the time schedule, taking account of
23 extensions granted; fulfilled guarantee requirements of contracts; if the contract
24 included an affirmative action program requirement, complied with the

1 requirement; and, if the contract included a safety program requirement, complied
2 with the requirement.

3 e. The bidder is not on an ineligible list that the department maintains under
4 s. 16.705 (9) or 16.765 (9) or on a list that another agency maintains for persons who
5 violated construction-related statutes or administrative rules.

6 f. The bidder has been in business for at least 12 months.

7 g. The bidder is a legal entity and authorized to do business in Wisconsin.

8 h. The bidder has performed at least one other public project for a government
9 entity.

10 i. The bidder can provide information, upon request, to the department on the
11 bidder's ownership, management, and control.

12 j. In any jurisdiction, the bidder, in the previous 10 years, has not been debarred
13 from any government contracts and has not been found to have committed tax
14 avoidance or evasion.

15 k. In any jurisdiction, in the previous 10 years, the bidder has not been
16 disciplined under a professional license and none of the bidder's employees and no
17 member of the bidder's organization has been disciplined under a professional
18 license.

19 **SECTION 8.** 16.855 (10m) (am) 3. of the statutes is amended to read:

20 16.855 (10m) (am) 3. The department may award any contract to a minority
21 business or disabled veteran-owned business, or a business that is both a minority
22 business and a disabled veteran-owned business, that if the business is a qualified
23 responsible bidder and the business submits a ~~qualified responsible~~ bid that is no
24 more than 5 percent higher than the apparent low bid.

25 **SECTION 9.** 16.855 (13) of the statutes is repealed and recreated to read:

1 16.855 (13) (a) In any project under this section let under single prime
2 contracting, the department shall identify, as provided under par. (b), necessary
3 mechanical, electrical, or plumbing subcontractors who are qualified responsible
4 bidders and a general prime contractor who is submitting a bid under sub. (14) shall
5 include the selected subcontractors.

6 (b) For purposes of selecting subcontractors under par. (a), the department
7 shall develop and administer an open and public bidding process and follow the
8 requirements and procedures under sub. (2). Within 48 hours of bid submission, the
9 department shall make available on the department Internet site the names of the
10 bidders and the amount of the bid. No more than 7 days after the deadline for bid
11 submission, the department shall provide public notice of the lowest bidders who are
12 qualified responsible bidders. The department shall make available on its Internet
13 site the bids, including the bid documents, identified under this paragraph as the
14 lowest bidders and they shall be open to public inspection. No other bids under this
15 paragraph may be on the Internet site or open to public inspection.

16 **SECTION 10.** 16.855 (14) (a) of the statutes is renumbered 16.855 (14) (d) and
17 amended to read:

18 16.855 (14) (d) ~~If a project requires prior approval of the building commission~~
19 ~~under s. 13.48 (10) (a) and bids are required to be solicited under sub. (2), the~~
20 ~~department shall take both single bids and separate bids on any division of the work~~
21 ~~that it designates. If a project does not require prior approval of the building~~
22 ~~commission under s. 13.48 (10) (a) and bids are required to be solicited under sub.~~
23 ~~(2), the department may take single bids or separate bids on any division of the work~~
24 ~~that it designates. If the department awards contracts by the division of work, the~~
25 ~~department shall award the contracts according to the division of work selected for~~

1 bidding. Except as provided in sub. (10m) (am), the department shall award all
2 single prime contracts to the lowest bidder who is a qualified responsible bidder or
3 bidders that ~~result~~ results in the lowest total construction cost for the project.

4 **SECTION 11.** 16.855 (14) (am) of the statutes is created to read:

5 16.855 (14) (am) Except as provided in s. 13.48 (19), the department shall let
6 all construction projects that exceed \$185,000 through single prime contracting.

7 **SECTION 12.** 16.855 (14) (b) of the statutes is amended to read:

8 16.855 (14) (b) The state is not liable to a ~~prime~~ contractor for damage from
9 delay caused by another ~~prime~~ contractor if the department takes reasonable action
10 to require the delaying ~~prime~~ contractor to comply with its contract. If the state is
11 not liable under this paragraph, the delayed ~~prime~~ contractor may bring an action
12 for damages against the delaying ~~prime~~ contractor.

13 **SECTION 13.** 16.855 (14) (bm) of the statutes is created to read:

14 16.855 (14) (bm) If the bid is being let through single prime contracting, bidders
15 for the general prime contractor who are responsible qualified bidders shall submit
16 their bids to the department no later than 7 days after the successful subcontractor
17 bids become available to the public under sub. (13) (b).

18 **SECTION 14.** 16.855 (14) (c) of the statutes is created to read:

19 16.855 (14) (c) The department shall reject any bid for the general prime
20 contractor from a bidder who submits a bid that includes contractors other than the
21 ones selected under sub. (13) (a). The award of a contract may not be finalized until
22 the department approves the required performance bond and certificate of
23 insurance.

24 **SECTION 15.** 16.855 (14) (e) of the statutes is created to read:

1 16.855 (14) (e) Within 30 days after the deadline under par. (bm), the
2 department shall notify the successful general prime contractor bidder of its
3 selection. The contractor who is awarded the contract shall enter into contracts with
4 the mechanical, electrical, or plumbing subcontractors selected under par. (13) (a)
5 and shall comply with the requirements under sub. (14m). The department shall
6 make the final bid results available on its Internet site at the time it provides the
7 written, official notice to the successful general prime contractor bidder notifying the
8 contractor that the contract is fully executed and that the contractor is authorized
9 to begin work on the project.

10 **SECTION 16.** 16.855 (14m) of the statutes is created to read:

11 16.855 (14m) (a) The department shall develop a standard contract for a
12 general prime contractor selected under sub. (14) to use and shall include in the
13 contract all of the following:

14 1. A requirement that all subcontractors selected under sub. (13) (a) provide
15 a 100 percent performance bond and a 100 percent payment bond to the benefit of
16 the general prime contractor as the only obligee.

17 2. A delineation of the responsibilities, insurance requirements,
18 indemnification obligations, claims processes, and termination rights and
19 protections of all subcontractors selected under sub. (13) (a).

20 3. A requirement that the general prime contractor is subject to s. 16.528 (2m).

21 4. A schedule for payment from the general prime contractor to a subcontractor
22 that is consistent with sub. (19) (b).

23 (b) Neither a general prime contractor nor a subcontractor selected under sub.
24 (13) (b) may amend a contract developed under par. (a).

1 **SECTION 17.** 16.855 (19) of the statutes is renumbered 16.855 (19) (a) and
2 amended to read:

3 16.855 (19) (a) As the work progresses under any contract for construction of
4 a project the department, from time to time, shall grant to the contractor an estimate
5 of the amount and proportionate value of the work done, which shall entitle the
6 contractor to receive the amount thereof, less the retainage, from the proper fund.
7 The retainage shall be an amount equal to not more than 5% of the estimate until
8 50% of the work has been completed. At 50% completion, no additional amounts shall
9 be retained, and partial payments shall be made in full to the contractor unless the
10 architect or engineer department certifies that the job is not proceeding
11 satisfactorily. At 50% completion or any time thereafter when the progress of the
12 work is not satisfactory, additional amounts may be retained but in no event shall
13 the total retainage be more than 10% of the value of the work completed. Upon
14 substantial completion of the work, ~~an~~ any amount retained ~~may~~ shall be paid to the
15 contractor, less the value of any required corrective work or uncompleted work. For
16 the purposes of this section, estimates may include any fabricated or manufactured
17 materials and components specified, previously paid for by contractor and delivered
18 to the work or properly stored and suitable for incorporation in the work embraced
19 in the contract.

20 (c) This subsection does not apply to contracts awarded under s. 16.858.

21 **SECTION 18.** 16.855 (19) (b) of the statutes is created to read:

22 16.855 (19) (b) As the work progresses under any subcontract under sub. (14)
23 (e) for construction of a project, the general prime contractor shall, upon request of
24 a subcontractor, pay to the subcontractor an amount equal to the proportionate value
25 of the subcontractor's work done, less retainage. The retainage shall be an amount

1 equal to not more than 5 percent of the subcontractor's work completed until 50
2 percent of the subcontractor's work has been completed. At 50 percent completion,
3 no additional amounts may be retained, and partial payments shall be made in full
4 to the subcontractor unless the department certifies that the subcontractor's work
5 is not proceeding satisfactorily. At 50 percent completion or any time thereafter
6 when the progress of the subcontractor's work is not satisfactory, additional amounts
7 may be retained but the total retainage may not be more than 10 percent of the value
8 of the work completed. Upon substantial completion of the subcontractor's work, any
9 amount retained shall be paid to the subcontractor, less the value of any required
10 corrective work or uncompleted work. All payments the general prime contractor
11 makes under this paragraph shall be within 7 calendar days after the date on which
12 the general prime contractor receives payment from the department for the work
13 performed.

14 **SECTION 9101. Nonstatutory provisions; Administration.**

15 (1) GENERAL PRIME CONTRACTOR CONTRACT. When the department of
16 administration develops a contract under section 16.855 (14m) (a) of the statutes, as
17 created by this act, the department shall provide public notice of the contract
18 development, review written comments, and hold at least one public hearing,
19 allowing for testimony. The building commission must approve the contract before
20 the department may use the contract.

21 **SECTION 9301. Initial applicability; Administration.**

22 (1) SINGLE PRIME CONTRACTING. The treatment of sections 13.48 (19) and 16.855
23 (1), (1g), (2) (a) 5. and 6., (9), (9m), (10m) (am) 3., (13), and (14) (a), (am), (b), (bm),
24 (c), and (e) of the statutes, the renumbering and amendment of section 16.855 (19)

1 of the statutes, and the creation of section 16.855 (19) (b) of the statutes first apply
2 to bids and proposals that are solicited on the effective date of this subsection.

3 **SECTION 9401. Effective dates; Administration.**

4 (1) SINGLE PRIME CONTRACTING. The treatment of sections 13.48 (19) and 16.855
5 (1), (1g), (2) (a) 5. and 6., (9), (9m), (10m) (am) 3., (13), and (14) (a), (am), (b), (bm),
6 (c), and (e) of the statutes, the renumbering and amendment of section 16.855 (19)
7 of the statutes, the creation of section 16.855 (19) (b) of the statutes, and SECTION
8 9301 (1) of this act take effect on January 1, 2014.

9 (END)