



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1023/PT

CMH:wlj:ph

p2

Stays

DOA:.....Bong, BB0345 – Procurement reforms

FOR 2013-2015 BUDGET – NOT READY FOR INTRODUCTION

1 AN ACT *done for us*; relating to: the budget.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE PROCUREMENT

Current law generally authorizes state agencies to purchase materials, supplies, or equipment under certain circumstances. With some exceptions, purchases for which the estimated cost exceeds \$50,000 require bids to be invited or proposals to be solicited. Also, under current law, if a state agency enters into or renews a contract for services that involves an estimated expenditure of more than \$25,000, the agency must conduct either a uniform cost-benefit analysis, for a new contract, or a continued appropriateness review, for a contract renewal. This bill raises the threshold to \$50,000 for either and exempts the following services: services that must, by law, be performed by contract; services incidental to the purchase of a commodity; services that must be provided per a contract, license, or warranty; services that cannot be performed by state employees because the state lacks the required infrastructure; services that are expected to be completed within 12 months; and Web-based software application services that are delivered and managed remotely.

Current law requires DOA to certify a business as a disabled veteran-owned business, a woman-owned business, or a minority business, but has different requirements for each certification. For instance, DOA may certify a business as a minority business if another state agency, a municipality, the federal government,

an American Indian tribe, or, if it uses substantially the same procedures as DOA would use, a private business certifies the business as such. This bill makes the certification practice consistent by permitting DOA to certify a business as a disabled veteran-owned business or a woman-owned business if one of the entities listed above certifies it as such. Under current law, for the purpose of certifying a business as a disabled veteran-owned business, the disabled veteran must be verified by DVA as a veteran, be a Wisconsin resident, and have an award from the federal Department of Veterans Affairs of a service-connected disability rating of at least 30 percent. This bill changes that percent to 20 percent.

Under current law, DOA must maintain a list of entities that are ineligible for state contracts because they have violated a state procurement contract or a statute governing state procurement. This bill requires DOA to include on the list an entity that has been debarred from contracting with the federal government or any other state agency.

Under current law, in a report ^{success of the} that DOA submits to the governor and the legislature, DOA must document the division of legal services success in reducing the state's use of contracted employees. This bill eliminates that requirement from the report.

Under current law, DOA, or any agency to which DOA has delegated the authority, may maintain a list of persons who must be notified of bids or competitive sealed proposals solicited by DOA or another agency for state procurement. This bill allows only DOA to maintain the bidders list.

For further information see the *state* 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.** 16.004 (15) (bm) [↓] of the statutes is repealed.

2 **SECTION 2.** 16.283 (1) (b) 3. of the statutes is amended to read:

3 16.283 (1) (b) 3. A person who is in receipt of an award from the U.S.
4 department of veterans affairs of a service-connected disability rating under 38 USC
5 1114 or 1134 of at least ~~30~~ 20 percent.

6 **SECTION 3.** 16.283 (3) (b) of the statutes is renumbered 16.283 (3) (b) 1m.

7 **SECTION 4.** 16.283 (3) (b) 2m. of the statutes is created to read:

8 16.283 (3) (b) 2m. The department may, without conducting an investigation,
9 certify a business, financial adviser, or investment firm having its principal place of

1 business in this state and currently performing a useful business function if the
2 business, financial advisor, or investment firm is certified, or otherwise classified, as
3 a disabled veteran–owned business, financial advisor, or investment firm by an
4 agency or municipality of this or another state, a federally recognized American
5 Indian tribe, or the federal government, or by a private business with expertise in
6 certifying disabled veteran–owned businesses if the business uses substantially the
7 same procedures the department uses in making a determination under subd. 1m.

8 **SECTION 5.** 16.283 (3) (c) of the statutes is amended to read:

9 16.283 (3) (c) The department may charge each business, financial adviser, or
10 investment firm applying for certification under this section a fee of not more than
11 \$50 per biennium to cover the department's expenses in making the certification
12 determination.

13 **SECTION 6.** 16.283 (3) (d) of the statutes is amended to read:

14 16.283 (3) (d) If a business, financial adviser, or investment firm applying for
15 certification under this section fails to provide the department with sufficient
16 information to enable the department to conduct an investigation under par. (b) 1m.
17 or does not qualify for certification under par. (b), the department shall deny the
18 application. A business, financial adviser, or investment firm whose application is
19 denied may, within 30 days after the date of the denial, appeal in writing to the
20 secretary. The secretary shall enter his or her final decision within 30 days after
21 receiving the appeal.

22 **SECTION 7.** 16.285 (1) (b) of the statutes is amended to read:

23 16.285 (1) (b) The department shall implement a program for the certification
24 of woman–owned businesses. The department ~~shall compile and periodically update~~
25 ~~a list of businesses certified under this section and shall make the list available to~~

1 the public on the Internet may, without conducting an investigation, certify a
2 business currently performing a useful business function in this state as a
3 woman-owned business if the business is certified, or otherwise classified, as a
4 woman-owned business by an agency or municipality of this or another state, a
5 federally recognized American Indian tribe, or the federal government, or by a
6 private business with expertise in certifying woman-owned businesses if the
7 business uses substantially the same process as the department promulgates by rule
8 for implementing this subsection.

9 SECTION 8. 16.285 (2) of the statutes is amended to read:

10 16.285 (2) The department shall develop, maintain, and keep current a
11 computer database of businesses in the state that are owned by women, containing
12 demographic statistics and information on the types of industries represented, sales
13 volume and growth rates, generation of jobs by both new and existing businesses,
14 and any other relevant characteristics. The department shall compile and
15 periodically update a list of businesses certified under sub. (1) and make the list
16 available to the public on the Internet.

17 SECTION 9. 16.287 (2) (c) of the statutes is amended to read:

18 16.287 (2) (c) The department, without investigation, may certify a business
19 incorporated in this state or having its principal place of business in this state if the
20 business is certified or otherwise classified as a minority business by an agency or
21 municipality of this or another state, a federally recognized American Indian tribe,
22 or the federal government, or by a private business with expertise in certifying
23 minority businesses if the private business uses substantially the same procedures
24 as those used by the department in making a determination under par. (b).

25 SECTION 10. 16.287 (2) (dm) of the statutes is amended to read:

1 16.287 (2) (dm) The department may charge each business applying for
2 certification under par. (d) a fee of not more than \$50 per biennium to cover the
3 department's expenses in making the certification determination.

4 **SECTION 11.** 16.287 (2) (e) of the statutes is amended to read:

5 16.287 (2) (e) If a business refuses to provide the department with sufficient
6 information to enable it to conduct an investigation under par. (b) or if the business
7 does not qualify for certification under par. (b), (c) or (d), the department shall deny
8 the application. A business whose application is denied may, within 30 days after
9 the date of the denial, appeal in writing to the secretary. The secretary shall enter
10 his or her final decision within 30 days after receiving the appeal.

11 **SECTION 12.** 16.70 (2) of the statutes is amended to read:

12 16.70 (2) "Authority" means a body created under ²³⁸subch. II of ch. 114 or subch.
13 III of ch. 149 or under ch. 231, 232, 233, 234, ~~236~~, 237, or 279.

****NOTE: I don't see an "authority" created under ch. 236.

****NOTE: I did not create a definition of "debarment." The draft uses the term in s. 16.705 (9). That appearance, however, uses the standard dictionary usage of "debar" so a definition is not necessary and it does not seem to use the definition provided in the instructions as the department does not debar an entity from contracting with the federal government. Please let me know if I am misinterpreting the request.

14 **SECTION 13.** 16.70 (2j) of the statutes is created to read:

15 16.70 (2j) "Commodity" means materials, supplies, or equipment, but does not
16 include a service.

****NOTE: Please make sure you want this definition to apply in ss. 16.75 (3t) (b) and (c) and 16.752 (12) (d). Also see the NOTE following SECTION 28.

17 **SECTION 14.** 16.70 (3) of the statutes is amended to read:

18 16.70 (3) "Contractual services" includes all services, materials to be furnished
19 by a service provider in connection with services, and any limited trades work
20 involving less than \$30,000 to be done for or furnished to the state or any agency, but

1 does not include maintenance or support that is incidental to the purchase of a
2 commodity.

3 SECTION 15. 16.70 (3j) of the statutes is created to read:

4 16.70 (3j) “Delegated agency” means an agency that has a designated
5 purchasing agent to whom the department has delegated the authority to purchase
6 under s. 16.71 (1).[↓]

7 SECTION 16. 16.70 (8) of the statutes is amended to read:

8 16.70 (8) “Municipality” means a county, city, village, town, school district,
9 board of school directors, sewer district, drainage district, technical college district,
10 authority, or any other public or quasi-public corporation, officer, board or other body
11 having the authority to award public contracts.

12 SECTION 17. 16.70 (13m) of the statutes is created to read:

13 16.70 (13m) “Standard specification” means a requirement or qualification
14 that is chemical, physical, or both chemical and physical that describes the
15 commodity or service to be purchased but is not a trade name.

16 SECTION 18. 16.701 (title) of the statutes is amended to read:

17 **16.701 (title) Subscription service and procurement system.**

18 SECTION 19. 16.701 (1m) of the statutes is created to read:

19 16.701 (1m) The department may provide an electronic procurement system
20 to manage all aspects of procurement under this subchapter. The electronic
21 procurement system may supplement or supplant the subscription service under
22 sub. (1). If the department provides an electronic procurement system under this
23 subsection, the department may require that an agency use the system. The
24 department may assess agencies and vendors for the costs of the system under this
25 subsection in accordance with a method the department develops.

1 SECTION 20. 16.701 (2) of the statutes is amended to read:

2 16.701 (2) The department may permit prospective vendors to provide product
3 or service information through the service established under sub. (1) or through the
4 system provided under sub. (1m). The department may prescribe fees or establish
5 fees through a competitive process for the use of the service or system under this
6 subsection.

***NOTE: Please review this subsection.

7 SECTION 21. 16.7015 of the statutes is amended to read:

8 **16.7015 Bidders list.** The department may maintain a bidders list. ~~Any~~
9 ~~agency to which the department delegates purchasing authority under s. 16.71 (1)~~
10 ~~may maintain a bidders list if authorized by the delegation.~~ The bidders list shall
11 include the names and addresses of all persons who request to be notified of bids or
12 competitive sealed proposals, excluding those to be awarded under s. 16.75 (1) (c) or
13 (2m) (c), that are solicited by the department ^{plain} ~~or other agency~~ ^{delegated} for the procurement of
14 materials, supplies, equipment or contractual services under this subchapter. Any ^{bidders}

15 list ~~maintained by the department~~ may include the names and addresses of any
16 person who requests to be notified of bids or competitive sealed proposals that are
17 solicited by any agency. The department ^{plain} ~~or other agency~~ ^{delegated} shall notify each person on
18 ~~its~~ ^{the bidders} list of all bids or competitive sealed proposals that are solicited by the department
19 ~~or other agency~~ ^{delegated}. The department ^{plain} ~~or other agency~~ may remove any person from ~~its~~ ^{the bidders}
20 ^{plain} list for cause. ^{plain}

21 SECTION 22. 16.705 (1r) (a) of the statutes is amended to read:

22 16.705 (1r) (a) Contractual services that are not available to be performed
23 within the United States or its territories or possessions.

***NOTE: When other statutes use "within the United States" they mean within the geographical boundaries so I did not add the text as it doesn't seem to change the

meaning but may question if there is a distinction when this phrase is used as opposed to when it is not (21 times in the statutes), leading to confusion. If, by the change, you intend a specific meaning change that is different from that in the other occurrences of "within the United States" throughout the statutes, we should be specific here.

SECTION 23. 16.705 (2) of the statutes, as affected by 2011 Wisconsin Act 32,

is renumbered 16.705 (2) (a) and amended to read:

or a delegated agency

16.705 (2) (a) The department shall promulgate rules for the procurement of contractual services by the department ~~and its designated agents~~, including but not limited to rules prescribing approval and monitoring processes for contractual service contracts; except as provided in par. (b), a requirement for agencies, except for the University of Wisconsin System, to conduct a uniform cost-benefit analysis of each proposed contractual service procurement involving an estimated expenditure of more than ~~\$25,000~~ \$50,000 in accordance with standards prescribed in the rules; and, except as provided in par. (b), a requirement for agencies, except for the University of Wisconsin System, to review periodically, and before any renewal, the continued appropriateness of contracting under each contractual services agreement involving an estimated expenditure of more than \$25,000 \$50,000.

(c) Each officer requesting approval to engage any person to perform contractual services shall submit to the department written justification for such contracting which shall include a description of the contractual services to be procured, justification of need, justification for not contracting with other agencies, a specific description of the scope of contractual services to be performed, and justification for the procurement process if a process other than competitive bidding is to be used. The department may not approve any contract for contractual services unless it is satisfied that the justification for contracting conforms to the requirements of this section and ss. 16.71 to 16.77.

1
2
3
MS
8-1

1 **SECTION 24.** 16.705 (2) (b) of the statutes is created to read:

2 16.705 (2) (b) A cost-benefit analysis or continued appropriateness review is
3 not required for the following services:

4 1. Services that federal or state law requires to be performed by contract.

5 2. Services that are incidental to the purchase of a commodity.

6 3. Services that must be provided per a contract, license, or warranty, by the
7 original equipment manufacturer or publisher.

8 4. Services that cannot be performed by state employees because the state lacks
9 the required infrastructure.

10 5. Services that are expected to be completed within 12 months.

11 6. Web-based software application services that are delivered and managed
12 remotely.

13 **SECTION 25.** 16.705 (7) of the statutes is amended to read:

14 16.705 (7) The department shall review evaluations submitted under sub. (6)
15 and promulgate rules prescribing procedures to assure that future contracts for
16 contractual services are not awarded to contractors whose past performance is found
17 to be unsatisfactory, to the extent feasible.

****NOTE: The instructions request to add "The department may use the procedure under s. 16.80 for this purpose." Is s. 16.80 being created in another draft? Or do you mean the procedures required to be promulgated as rules under s. 16.705 (9)? Or do you mean something else?

18 **SECTION 26.** 16.705 (9) of the statutes is amended to read:

19 16.705 (9) The department shall maintain a list of persons that are or have
20 been a party to a contract with the state under this subchapter who have violated a
21 provision of this subchapter or a contract under this subchapter or who have been
22 debarred from contracting with the federal government or any agency. The parties
23 on the list are ineligible for state contracts and no state contract may be awarded to

1 a party on the ineligible list. The department may remove any party from the
 2 ineligible list if the department determines that the party's practices comply with
 3 this subchapter and ~~provide~~ the party provides adequate safeguards against future
 4 violations of this subchapter or contracts under this subchapter or, if the person was
 5 on the list due to debarment, the person is no longer debarred. The department shall
 6 promulgate rules that provide procedures to implement this subsection.

****NOTE: "Agency" is a defined term so I deleted "state." If by "any state agency" you mean an entity in another state, please let me know so we can change the language.

****NOTE: I did not amend s. 16.71 (2) to strike "of administration." The term "of administration" is in the provision because "the department of corrections" is also in the provision. Keeping "of administration" eliminates the chance of confusion, especially in the occurrence following "the department of administration." I know that inconsistencies exist in this subchapter but, insofar as possible, we shouldn't repeat errors. I also did not understand the instruction to "repeal language that has already been modified in the previous budget bill." Section 16.71 (2) was not included in Act 32.

7 **SECTION 27.** 16.71 (3) of the statutes is amended to read:

8 **16.71 (3)** ~~If The department, department of revenue, or delegated agency shall~~
 9 comply with the requirements under s. 565.25 if the department makes or delegates
 10 to the department of revenue or to any other ^{plain space} ~~designated purchasing agent under sub.~~
 11 ~~(1) delegated agency~~ the authority to make a major procurement, as defined in s.
 12 565.01 (4), for the department of revenue, ~~the department, department of revenue,~~
 13 ~~or designated purchasing agent shall comply with the requirements under s. 565.25.~~

14 **SECTION 28.** 16.72 (2) (a) of the statutes is renumbered 16.72 (2) (a) 1. and
 15 amended to read:

16 **16.72 (2) (a) 1.** The department shall prepare standard specifications, as far as
 17 possible, for all state purchases. ~~By "standard specifications" is meant a~~
 18 ~~specification, either chemical or physical or both, prepared to describe in detail the~~
 19 ~~article which the state desires to purchase, and trade names shall not be used~~
 20 statewide except those purchases under subd. 2. On the formulation, adoption and

1 modification of any standard specifications, the department of ~~administration~~ shall
2 also seek and be accorded without cost, the assistance, advice, and cooperation of
3 other agencies and officers.

4 3. Each specification adopted under subd. 1. or 2. for any ~~commodity~~ purchase
5 shall, insofar as possible, satisfy the requirements of any and all agencies which use
6 it in common.

****NOTE: Given the new definition of "commodity," this use of "commodity" does
not include a service so I changed the term to "purchase." Please let me know if that is
not your intent.

7 **SECTION 29.** 16.72 (2) (a) 2. of the statutes is created to read:

8 16.72 (2) (a) 2. Delegated agencies shall adopt standard specifications for all
9 delegated purchases.

10 **SECTION 30.** 16.72 (2) (b) of the statutes is amended to read:

11 16.72 (2) (b) Except as provided in ss. 16.25 (4) (b), 16.751, and 565.25 (2) (a)
12 4., the department or delegated agency shall prepare or review specifications for all
13 materials, supplies, equipment, other permanent personal property and contractual
14 services not purchased under standard specifications. Such "nonstandard
15 specifications" may be generic or performance specifications, or both, prepared to
16 describe in detail the article which the state desires to purchase either by its physical
17 properties or by its programmatic utility. When appropriate for such nonstandard
18 items or services, trade names may be used to identify what the state department or
19 delegated agency requires, but wherever possible 2 or more trade names shall be
20 designated and the trade name of any Wisconsin producer, distributor or supplier
21 shall appear first.

22 **SECTION 31.** 16.72 (2) (c) of the statutes is amended to read:

1 16.72 (2) (c) To the extent possible, the department or delegated agency shall
2 write specifications so as to permit the purchase of materials manufactured in the
3 United States, as defined in s. 16.754 (1). (b)

4 **SECTION 32.** 16.72 (2) (e) (intro.) of the statutes is amended to read:

5 16.72 (2) (e) (intro.) In writing the specifications under this subsection, the
6 department ~~and any other designated purchasing agent~~ under s. 16.71 (1) or
7 delegated agency shall incorporate requirements for the purchase of products made
8 from recycled materials and recovered materials if their use is technically and
9 economically feasible. Each authority other than the University of Wisconsin
10 Hospitals and Clinics Authority, the Lower Fox River Remediation Authority, and
11 the Health Insurance Risk-Sharing Plan Authority, in writing specifications for
12 purchasing by the authority, shall incorporate requirements for the purchase of
13 products made from recycled materials and recovered materials if their use is
14 technically and economically feasible. The specifications shall include requirements
15 for the purchase of the following materials:

16 **SECTION 33.** 16.72 (2) (f) of the statutes is amended to read:

17 16.72 (2) (f) In writing specifications under this subsection, the department,
18 ~~any other designated purchasing agent~~ under s. 16.71 (1) delegated agency, and each
19 authority other than the University of Wisconsin Hospitals and Clinics Authority,
20 the Lower Fox River Remediation Authority, and the Health Insurance
21 Risk-Sharing Plan Authority shall incorporate requirements relating to the
22 recyclability and ultimate disposition of products and, wherever possible, shall write
23 the specifications so as to minimize the amount of solid waste generated by the state,
24 consistent with the priorities established under s. 287.05 (12). All specifications
25 under this subsection shall discourage the purchase of single-use, disposable

1 products and require, whenever practical, the purchase of multiple-use, durable
2 products.

3 **SECTION 34.** 16.72 (4) (a) of the statutes is amended to read:

4 16.72 (4) (a) Except as provided in ss. 16.71 and 16.74 or as otherwise provided
5 in this subchapter and the rules promulgated under s. 16.74 and this subchapter, all
6 supplies, materials, equipment, and contractual services shall be purchased for and
7 furnished to any agency only upon requisition to the department. The department
8 shall prescribe the form, contents, number, and disposition of requisitions and shall
9 promulgate rules as to time and manner of submitting such requisitions for
10 processing. No Except as provided in ss. 16.71 and 16.74 or as otherwise provided
11 in this subchapter and the rules promulgated under s. 16.74 and this subchapter, no
12 agency or officer may engage any person to perform contractual services without the
13 specific prior approval of the department for each such engagement. Purchases of
14 supplies, materials, equipment, or contractual services by the legislature, the courts,
15 or legislative service or judicial branch agencies do not require approval under this
16 paragraph.

17 **SECTION 35.** 16.72 (4m) of the statutes is repealed.

18 **SECTION 36.** 16.73 (1m) of the statutes is created to read:

19 16.73 (1m) The department or a delegated agency may allow municipalities to
20 participate in state procurement solicitations and use any current state contract.

21 **SECTION 37.** 16.75 (1) (b) 1. and 3. of the statutes, as affected by 2011 Wisconsin
22 Act 32 are consolidated, renumbered 16.75 (1) (b) and amended to read:

23 16.75 (1) (b) ~~Except as provided in subd. 2., when~~ When the estimated cost
24 exceeds \$25,000 \$50,000, the department or delegated agency shall invite bids to be
25 submitted. ~~3. If subd. 1. or 2. requires bids~~ are to be solicited, the department or

INS
13-21

1 delegated agency either shall solicit sealed bids to be opened publicly at a specified
2 date and time, or shall solicit bidding by auction to be conducted electronically at a
3 specified date and time. Whenever bids are invited, due notice inviting bids shall be
4 published as a class 2 notice, under ch. 985 or posted on the Internet at a site
5 determined or approved by the department. The bid opening or auction shall occur
6 at least 7 days after the date of the last insertion of the notice or at least 7 days after
7 the date of posting on the Internet. The notice shall specify whether sealed bids are
8 invited or bids will be accepted by auction, and shall give a clear description of the
9 materials, supplies, equipment, or contractual services to be purchased, the amount
10 of any bond, share draft, check, or other draft to be submitted as surety with the bid
11 or prior to the auction, and the date and time that the public opening or the auction
12 will be held.

***NOTE: Under this bill, the department of administration is the only entity to award contracts based on bids (I didn't add "delegated agency" to s. 16.75 (1) (a) 1., for instance) even though delegated agencies may invite them. But delegated agencies may solicit competitive sealed proposals and award them. Please confirm that this is what you intend.

13 **SECTION 38.** 16.75 (1) (b) 2. of the statutes, as created by 2011 Wisconsin Act
14 32, is repealed.

15 **SECTION 39.** 16.75 (1) (c) of the statutes is amended to read:

16 16.75 (1) (c) Except as provided in sub. (7), when the estimated cost is \$25,000
17 \$50,000 or less, the award may be made in accordance with simplified procedures
18 established by the department for such transactions.

19 **SECTION 40.** 16.75 (2m) (a) of the statutes is amended to read:

20 16.75 (2m) (a) Except as otherwise required by law, if the secretary or his or
21 her designee determines that the use of competitive sealed bidding is not practicable
22 or not advantageous to this state, the department or delegated agency may solicit

INSJ
14-19

1 competitive sealed proposals. Each request for competitive sealed proposals shall
2 state the relative importance of price and other evaluation factors.

3 **SECTION 41.** 16.75 (2m) (b) 1. and 3. of the statutes, as affected by 2011
4 Wisconsin Act 32 are consolidated, renumbered 16.75 (2m) (b) and amended to read:

5 16.75 (2m) (b) ~~Except as provided in subd. 2., when~~ When the estimated cost
6 exceeds ~~\$25,000~~ \$50,000, the department or delegated agency may invite
7 competitive sealed proposals. 3. If competitive sealed proposals are to be invited, the
8 department or delegated agency shall publish a class 2 notice under ch. 985 or post
9 notice on the Internet at a site determined or approved by the department. The
10 notice shall describe the materials, supplies, equipment, or contractual services to
11 be purchased, the intent to make the procurement by solicitation of proposals rather
12 than by solicitation of bids, any requirement for surety and the date the proposals
13 will be opened, which shall be at least 7 days after the date of the last insertion of
14 the notice or at least 7 days after the date of posting on the Internet.

15 **SECTION 42.** 16.75 (2m) (b) 2. of the statutes, as created by 2011 Wisconsin Act
16 32, is repealed.

17 **SECTION 43.** 16.75 (2m) (c) of the statutes is amended to read:

18 16.75 (2m) (c) When the estimated cost is ~~\$25,000~~ \$50,000 or less, the
19 department or delegated agency may award the order or contract in accordance with
20 simplified procedures established by the department for such transactions.

21 **SECTION 44.** 16.75 (2m) (d) of the statutes is amended to read:

22 16.75 (2m) (d) For purposes of clarification, the department or delegated
23 agency may discuss the requirements of the proposed order or contract with any
24 person who submits a proposal and shall permit any offerer to revise his or her
25 proposal to ensure its responsiveness to those requirements.

1 **SECTION 45.** 16.75 (2m) (e) of the statutes is amended to read:

2 16.75 (2m) (e) The department or delegated agency shall determine which
3 proposals are reasonably apt to be awarded the order or contract and shall provide
4 each offerer of such a proposal a fair and equal opportunity to discuss the proposal.
5 The department or delegated agency may negotiate with each offerer in order to
6 obtain terms that are advantageous ~~to this state~~. Prior to the award of the order or
7 contract, any offerer may revise his or her proposal. The department or delegated
8 agency shall keep a written record of all meetings, conferences, oral presentations,
9 discussions, negotiations, and evaluations of proposals under this section.

10 **SECTION 46.** 16.75 (2m) (f) of the statutes is amended to read:

11 16.75 (2m) (f) In opening, discussing, and negotiating proposals, the
12 department or delegated agency may not disclose any information that would reveal
13 the terms of a competing proposal.

14 **SECTION 47.** 16.75 (2m) (g) of the statutes is amended to read:

15 16.75 (2m) (g) After receiving each offerer's best and final offer, the department
16 or delegated agency shall determine which proposal is most advantageous and shall
17 award the order or contract to the person who offered it. The department's
18 department or delegated agency shall base its determination ~~shall be based~~ only on
19 price and the other evaluation factors specified in the request for proposals. The
20 department or delegated agency shall state in writing the reason for the award and
21 shall place the statement in the contract file. This paragraph does not apply to
22 procurements under s. 16.751.

23 **SECTION 48.** 16.75 (3t) (c) (intro.) of the statutes is amended to read:

24 16.75 (3t) (c) (intro.) The department of corrections shall periodically provide
25 to the department of administration a current list of all materials, supplies,

1 equipment, or contractual services, excluding commodities, that are supplied by
2 prison industries, as created under s. 303.01. The department of administration
3 shall distribute the list to all ~~designated purchasing agents under s. 16.71 (1)~~
4 delegated agencies. Except as otherwise provided in sub. (6) (am), prior to seeking
5 bids or competitive sealed proposals with respect to the purchase of any materials,
6 supplies, equipment, or contractual services enumerated in the list, the department
7 of administration or ~~any other designated purchasing agent under s. 16.71 (1)~~
8 delegated agency shall offer prison industries the opportunity to supply the
9 materials, supplies, equipment, or contractual services if the department of
10 corrections is able to provide them at a price that is equal to or lower than one which
11 may be obtained through competitive bidding or competitive sealed proposals and is
12 able to conform to the specifications. If the department of administration or ~~other~~
13 ~~purchasing agent~~ delegated agency is unable to determine whether the price of
14 prison industries is equal to or lower than one obtained through competitive bidding
15 or competitive sealed proposals, it may solicit bids or competitive proposals before
16 awarding the order or contract. This paragraph does not apply to the printing of the
17 following forms:

18 **SECTION 49.** 16.75 (5) ↓ of the statutes is amended to read:

19 16.75 (5) The department or delegated agency may require of bidders, persons
20 making proposals under sub. (2m) or contractors such sureties as, in its judgment,
21 are deemed advisable and may decide as to their responsibility and competency. The
22 department or delegated agency may require a contractor to provide a bond
23 furnished by a surety company authorized to do business in this state, for the proper
24 performance of each contract.

25 **SECTION 50.** 16.75 (6) (c) ↓ of the statutes is amended to read:

Use 27
if acting as the governor's designee

1 16.75 (6) (c) If the governor or the secretary determines that it is in the best
2 interest of this state to do so, he or she may, ~~with the approval of the governor,~~ waive
3 the requirements of subs. (1) to (5) and may purchase supplies, ~~material materials,~~
4 equipment, or contractual services, other than printing and stationery, from a
5 private source other than a source specified in par. (b). Except as provided in sub.
6 (2g) (c), if the cost of the purchase is expected to exceed ~~\$25,000~~ \$50,000, the
7 department shall first publish a class 2 notice under ch. 985 or post a notice on the
8 Internet at the site determined or approved by the department under sub. (1) (b)
9 describing the materials, supplies, equipment, or contractual services to be
10 purchased, stating the intent to make the purchase from a private source without
11 soliciting bids or competitive sealed proposals and stating the date on which the
12 contract or purchase order will be awarded. The date of the award shall be at least
13 7 days after the date of the last insertion or the date of posting on the Internet.

14 SECTION 51. 16.75 (6) (d) [↓] of the statutes is amended to read:

15 16.75 (6) (d) If the governor or the secretary determines that it is in the best
16 interest of this state to do so, he or she may issue a general waiver of the
17 requirements of subs. (1) to (5) permitting the purchase of specified materials,
18 supplies, equipment, or contractual services, except printing and stationery, from a
19 private source. A general waiver may be issued for any period up to one year. The
20 governor [↓] or secretary may impose any necessary or appropriate condition or
21 restriction on the waiver. if acting as the governor's designee, the

22 SECTION 52. 16.75 (8) (a) 1. [↓] of the statutes is amended to read:

23 16.75 (8) (a) 1. The department, any ~~other designated purchasing agent under~~
24 ~~s. 16.71 (1)~~ [↓] delegated agency, any agency making purchases under s. 16.74, and each
25 authority other than the University of Wisconsin Hospitals and Clinics Authority,

1 the Lower Fox River Remediation Authority, and the Health Insurance
2 Risk-Sharing Plan Authority shall, to the extent practicable, make purchasing
3 selections using specifications developed under s. 16.72 (2) (e) to maximize the
4 purchase of materials utilizing recycled materials and recovered materials.

5 **SECTION 53.** 16.75 (9) of the statutes is amended to read:

6 16.75 (9) The department, any ~~other designated purchasing agent under s.~~
7 ~~16.71 (1) delegated agency~~, any agency making purchases under s. 16.74, and any
8 authority other than the University of Wisconsin Hospitals and Clinics Authority,
9 the Lower Fox River Remediation Authority, and the Health Insurance
10 Risk-Sharing Plan Authority shall, to the extent practicable, make purchasing
11 selections using specifications prepared under s. 16.72 (2) (f).

12 **SECTION 54.** 16.75 (10e) (a) of the statutes is amended to read:

13 16.75 (10e) (a) In this subsection, “energy consuming equipment” means any
14 equipment that is designed for heating, ventilation, air conditioning, water heating
15 or cooling, lighting, or refrigeration, ~~or any other function~~, and that consumes energy.

16 **SECTION 55.** 16.75 (10e) (b) of the statutes is amended to read:

17 16.75 (10e) (b) If s. 16.855 (10s) (a) provides an applicable standard for the type
18 of ~~agency~~ energy consuming equipment being purchased and the purchase will cost
19 more than \$5,000 per unit the department, any ~~other designated purchasing agent~~
20 ~~under s. 16.71 (1) delegated agency~~, any agency making purchases under s. 16.74,
21 and any authority may not purchase that type of energy consuming equipment
22 unless the specifications for the equipment meet the applicable standards. If there
23 is an applicable standard under s. 16.855 (10s) (a), but the energy consuming
24 equipment meeting that standard is not reasonably available, the department,
25 ~~purchasing agent~~ delegated agency, agency, or authority shall ensure, for purchases

1 over \$5,000 per unit, that the energy consuming equipment that is purchased
2 maximizes energy efficiency to the extent technically and economically feasible. The
3 department, ~~purchasing agent~~ delegated agency, agency, or authority shall not
4 determine that energy consuming equipment that meets the applicable standard
5 under s. 16.855 (10s) (a) either is not reasonably available on the basis of cost alone
6 or is not cost-effective unless the difference in the cost of the purchase and
7 installation of the equipment that meets the standard and the equipment that would
8 otherwise be installed is greater than the difference in the cost of operating the
9 equipment that meets the standard and the equipment that would otherwise be
10 installed over the anticipated life of the equipment.

11 **SECTION 56.** 16.75 (10m) of the statutes is amended to read:

12 16.75 (10m) The department, any ~~other designated purchasing agent~~ under s.
13 16.71 (1) delegated agency, any agency making purchases under s. 16.74, and any
14 authority shall not enter into any contract or order for the purchase of materials,
15 supplies, equipment, or contractual services with a person if the name of the person,
16 or the name of an affiliate of that person, is certified to the department by the
17 secretary of revenue under s. 77.66.

18 **SECTION 57.** 20.505 (1) (kf) of the statutes is amended to read:

19 20.505 (1) (kf) *Procurement services.* For administration of the department's
20 procurement functions under subch. IV of ch. 16. All moneys received from state
21 agencies under s. 16.71 (6) for procurement services provided by the department to
22 the agencies ~~and from assessments for procurement savings realized by the agencies~~
23 receiving those services.

****NOTE: I am not sure which vendor fees you want to add to this appropriation.
The fees under s. 16.701 are allocated under s. 25.61 for the VendorNet fund.

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1023/p2ins
CMH:.....

1
2
3
4
5
6
7
8
9
10
11
12
13
14

Insert 8-1

SECTION ~~16~~ 16.705 (1) of the statutes is amended to read:

16.705 (1) The department or its agents a delegated agency may contract for services which can be performed more economically or efficiently by such contract. The department shall, by rule, prescribe uniform procedures for determining whether services are appropriate for contracting under this subsection.

History: 1977 c. 196 s. 31; Stats. 1977 s. 16.705; 1981 c. 20; 1983 a. 27; 1985 a. 29 s. 3200 (1); 1985 a. 332 s. 251 (1); 1987 a. 186; 1989 a. 125; 1999 a. 105; 2003 a. 33 ss. 201, 9160; 2005 a. 89, 142, 431; 2009 a. 28, 136; 2011 a. 10, 32, 266.

SECTION ~~16~~ 16.705 (1r) (intro.) of the statutes is amended to read:

16.705 (1r) ^(intro.) Notwithstanding s. 16.75 (2m) and (3m), and except as provided in s. 16.75 (2) (b) and (7), the department and its agents or a delegated agency may purchase contractual services only if those services are performed within the United States, which, notwithstanding s. 990.01 (40) and (44), includes only the 50 states and the District of Columbia. This requirement does not apply to any of the following:

History: 1977 c. 196 s. 31; Stats. 1977 s. 16.705; 1981 c. 20; 1983 a. 27; 1985 a. 29 s. 3200 (1); 1985 a. 332 s. 251 (1); 1987 a. 186; 1989 a. 125; 1999 a. 105; 2003 a. 33 ss. 201, 9160; 2005 a. 89, 142, 431; 2009 a. 28, 136; 2011 a. 10, 32, 266.

15
16
17
18
19
20
21
22

Insert 13-21

SECTION ~~16~~ 16.73 (5) of the statutes, as affected by 2013 Wisconsin Act 32, is amended to read:

16.73 (5) After the department designates the board of regents of the University of Wisconsin System or designates the University of Wisconsin-Madison as its purchasing agent for any purpose under s. 16.71 (1) a delegated agency, the board or the University of Wisconsin-Madison may enter into a contract to sell any

1 materials, supplies, equipment or contractual services purchased by the board or the
 2 University of Wisconsin-Madison to the University of Wisconsin Hospitals and
 3 Clinics Authority, and may contract with the University of Wisconsin Hospitals and
 4 Clinics Authority for the joint purchase of any materials, supplies, equipment or
 5 contractual services if the sale or purchase is made consistently with that delegation
 6 and with this subchapter.

History: 1983 a. 27; 1985 a. 29 s. 3200 (1); 1989 a. 335; 1995 a. 27; 1999 a. 150 s. 672; 2001 a. 16; 2011 a. 32.

7 ~~SECTION 16.75~~ SECTION 16.75 (1) (a) 1. of the statutes is amended to read:

8 16.75 (1) (a) 1. All orders awarded or contracts made by the department or a
 9 delegated agency for all materials, supplies, equipment, and contractual services to
 10 be provided to any agency, except as otherwise provided in par. (c) and subs. (2), (2g),
 11 (2m), (3m), (3t), (6), (7), (8), (9), (10e), and (10m) and ss. 16.705 (1r), 16.73 (4) (a),
 12 16.751, 16.754, 16.964 (8), 50.05 (7) (f), 153.05 (2m) (a), and 287.15 (7), shall be
 13 awarded to the lowest responsible bidder, taking into consideration life cycle cost
 14 estimates under sub. (1m), when appropriate, the location of the agency, the
 15 quantities of the articles to be supplied, their conformity with the specifications, and
 16 the purposes for which they are required and the date of delivery.

History: 1975 c. 224; 1977 c. 418, 419; 1979 c. 34, 221, 314, 340, 355; 1979 c. 361 s. 112; 1981 c. 121 s. 20; 1983 a. 27 ss. 91, 93 to 99; 1983 a. 333 ss. 3g, 3r to 4b, 6; 1983 a. 368, 390; 1985 a. 29 ss. 122m to 124, 3200 (1); 1985 a. 180; 1987 a. 27, 119, 142, 147, 186, 399, 403; 1989 a. 31, 335, 345, 359; 1991 a. 39, 170; 1993 a. 16, 414; 1995 a. 27 ss. 368 to 382, 9116 (5); 1995 a. 225, 227, 244, 289, 432; 1997 a. 3; 1999 a. 9, 44, 197; 2001 a. 16, 38; 2003 a. 33; 2005 a. 22, 25, 74, 141, 335; 2007 a. 20 ss. 102 to 103h, 9121 (6) (a); 2007 a. 97; 2009 a. 136, 180, 299; 2011 a. 32; 2011 a. 260 s. 80, 81.

17 ~~SECTION 16.75~~ SECTION 16.75 (1) (a) 2. of the statutes is amended to read:

18 16.75 (1) (a) 2. If a vendor is not a Wisconsin producer, distributor, supplier or
 19 retailer and the department determines that the state, foreign nation or subdivision
 20 thereof in which the vendor is domiciled grants a preference to vendors domiciled in
 21 that state, nation or subdivision in making governmental purchases, the
 22 department, a delegated agency, and any agency making purchases under s. 16.74
 23 shall give a preference over that vendor to Wisconsin producers, distributors,

1 suppliers and retailers, if any, when awarding the order or contract. The department
2 may enter into agreements with states, foreign nations and subdivisions thereof for
3 the purpose of implementing this subdivision.

History: 1975 c. 224; 1977 c. 418, 419; 1979 c. 34, 221, 314, 340, 355; 1979 c. 361 s. 112; 1981 c. 121 s. 20; 1983 a. 27 ss. 91, 93 to 99; 1983 a. 333 ss. 3g, 3r to 4b, 6; 1983 a. 368, 390; 1985 a. 29 ss. 122m to 124, 3200 (1); 1985 a. 180; 1987 a. 27, 119, 142, 147, 186, 399, 403; 1989 a. 31, 335, 345, 359; 1991 a. 39, 170; 1993 a. 16, 414; 1995 a. 27 ss. 368 to 382, 9116 (5); 1995 a. 225, 227, 244, 289, 432; 1997 a. 3; 1999 a. 9, 44, 197; 2001 a. 16, 38; 2003 a. 33; 2005 a. 22, 25, 74, 141, 335; 2007 a. 20 ss. 102 to 103h, 9121 (6) (a); 2007 a. 97; 2009 a. 136, 180, 299; 2011 a. 32; 2011 a. 260 ss. 80, 81.

4

5 Insert 14-19

6 SECTION ~~6~~ 16.75 (1m) of the statutes is amended to read:

7 16.75 (1m) The department or a delegated agency shall award each order or
8 contract for materials, supplies or equipment on the basis of life cycle cost estimates,
9 whenever such action is appropriate. Each authority other than the University of
10 Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation
11 Authority, the Wisconsin Aerospace Authority, and the Health Insurance
12 Risk-Sharing Plan Authority shall award each order or contract for materials,
13 supplies or equipment on the basis of life cycle cost estimates, whenever such action
14 is appropriate. The terms, conditions and evaluation criteria to be applied shall be
15 incorporated in the solicitation of bids or proposals. The life cycle cost formula may
16 include, but is not limited to, the applicable costs of energy efficiency, acquisition and
17 conversion, money, transportation, warehousing and distribution, training,
18 operation and maintenance and disposition or resale. The department shall prepare
19 documents containing technical guidance for the development and use of life cycle
20 cost estimates, and shall make the documents available to ^{interested parties including} local governmental units.

History: 1975 c. 224; 1977 c. 418, 419; 1979 c. 34, 221, 314, 340, 355; 1979 c. 361 s. 112; 1981 c. 121 s. 20; 1983 a. 27 ss. 91, 93 to 99; 1983 a. 333 ss. 3g, 3r to 4b, 6; 1983 a. 368, 390; 1985 a. 29 ss. 122m to 124, 3200 (1); 1985 a. 180; 1987 a. 27, 119, 142, 147, 186, 399, 403; 1989 a. 31, 335, 345, 359; 1991 a. 39, 170; 1993 a. 16, 414; 1995 a. 27 ss. 368 to 382, 9116 (5); 1995 a. 225, 227, 244, 289, 432; 1997 a. 3; 1999 a. 9, 44, 197; 2001 a. 16, 38; 2003 a. 33; 2005 a. 22, 25, 74, 141, 335; 2007 a. 20 ss. 102 to 103h, 9121 (6) (a); 2007 a. 97; 2009 a. 136, 180, 299; 2011 a. 32; 2011 a. 260 ss. 80, 81.

21

22 Insert 16-23

1 **SECTION ~~16.75~~ 16.75 (3m) (b) 1.** of the statutes is amended to read:

2 16.75 (3m) (b) 1. The department, a delegated agency, and any agency making
3 purchases under s. 16.74 shall attempt to ensure that 5 percent of the total amount
4 expended under this subchapter in each fiscal year is paid to minority businesses.

History: 1975 c. 224; 1977 c. 418, 419; 1979 c. 34, 221, 314, 340, 355; 1979 c. 361 s. 112; 1981 c. 121 s. 20; 1983 a. 27 ss. 91, 93 to 99; 1983 a. 333 ss. 3g, 3r to 4b, 6; 1983 a. 368, 390; 1985 a. 29 ss. 122m to 124, 3200 (1); 1985 a. 180; 1987 a. 27, 119, 142, 147, 186, 399, 403; 1989 a. 31, 335, 345, 359; 1991 a. 39, 170; 1993 a. 16, 414; 1995 a. 27 ss. 368 to 382, 9116 (5); 1995 a. 225, 227, 244, 289, 432; 1997 a. 3; 1999 a. 9, 44, 197; 2001 a. 16, 38; 2003 a. 33; 2005 a. 22, 25, 74, 141, 335; 2007 a. 20 ss. 102 to 103h, 9121 (6) (a); 2007 a. 97; 2009 a. 136, 180, 299; 2011 a. 32; 2011 a. 260 ss. 80, 81.

5 **SECTION ~~16.75~~ 16.75 (3m) (b) 2.** of the statutes is amended to read:

6 16.75 (3m) (b) 2. The department, a delegated agency, and any agency making
7 purchases under s. 16.74 shall make efforts to ensure that a portion of the total
8 amount expended under this subchapter in each fiscal year is paid to disabled
9 veteran-owned businesses.

History: 1975 c. 224; 1977 c. 418, 419; 1979 c. 34, 221, 314, 340, 355; 1979 c. 361 s. 112; 1981 c. 121 s. 20; 1983 a. 27 ss. 91, 93 to 99; 1983 a. 333 ss. 3g, 3r to 4b, 6; 1983 a. 368, 390; 1985 a. 29 ss. 122m to 124, 3200 (1); 1985 a. 180; 1987 a. 27, 119, 142, 147, 186, 399, 403; 1989 a. 31, 335, 345, 359; 1991 a. 39, 170; 1993 a. 16, 414; 1995 a. 27 ss. 368 to 382, 9116 (5); 1995 a. 225, 227, 244, 289, 432; 1997 a. 3; 1999 a. 9, 44, 197; 2001 a. 16, 38; 2003 a. 33; 2005 a. 22, 25, 74, 141, 335; 2007 a. 20 ss. 102 to 103h, 9121 (6) (a); 2007 a. 97; 2009 a. 136, 180, 299; 2011 a. 32; 2011 a. 260 ss. 80, 81.

10 **SECTION ~~16.75~~ 16.75 (3m) (b) 3.** of the statutes is amended to read:

11 16.75 (3m) (b) 3. Except as provided under sub. (7), the department, a
12 delegated agency, and any agency making purchases under s. 16.74 may purchase
13 materials, supplies, equipment, and contractual services from any minority business
14 or disabled veteran-owned business, or a business that is both a minority business
15 and a disabled veteran-owned business, submitting a qualified responsible
16 competitive bid that is no more than 5 percent higher than the apparent low bid or
17 competitive proposal that is no more than 5 percent higher than the most
18 advantageous proposal. In administering the preference for minority businesses or
19 disabled veteran-owned businesses established in this paragraph, the department,
20 a delegated agency, and any agency making purchases under s. 16.74 shall maximize
21 the use of minority businesses or disabled veteran-owned businesses which are

1 incorporated under ch. 180 or which have their principal place of business in this
2 state.

History: 1975 c. 224; 1977 c. 418, 419; 1979 c. 34, 221, 314, 340, 355; 1979 c. 361 s. 112; 1981 c. 121 s. 20; 1983 a. 27 ss. 91, 93 to 99; 1983 a. 333 ss. 3g, 3r to 4b, 6; 1983 a. 368, 390; 1985 a. 29 ss. 122m to 124, 3200 (1); 1985 a. 180; 1987 a. 27, 119, 142, 147, 186, 399, 403; 1989 a. 31, 335, 345, 359; 1991 a. 39, 170; 1993 a. 16, 414; 1995 a. 27 ss. 368 to 382, 9116 (5); 1995 a. 225, 227, 244, 289, 432; 1997 a. 3; 1999 a. 9, 44, 197; 2001 a. 16, 38; 2003 a. 33; 2005 a. 22, 25, 74, 141, 335; 2007 a. 20 ss. 102 to 103h, 9121 (6) (a); 2007 a. 97; 2009 a. 136, 180, 299; 2011 a. 32; 2011 a. 260 ss. 80, 81.

3

4 Insert 20-23

5 ~~§~~ SECTION 20.505 (1) (kf) of the statutes is amended to read:

6 20.505 (1) (kf) *Procurement services.* For administration of the department's
7 procurement functions under subch. IV of ch. 16. All moneys received from state
8 agencies under s. 16.71 (6) for procurement services provided by the department to
9 the agencies and, from assessments for procurement savings realized by the agencies
10 receiving those services, and from agencies and vendors under s. 16.701 (1m) for
11 costs of the electronic procurement system under that section.

History: 1971 c. 108, 125, 215; 1971 c. 270 s. 104; 1973 c. 90 and supp., 157, 305; 1975 c. 39 ss. 179 to 184f, 735 (5); 1975 Ex. Order No. 24; 1975 c. 224, 397; 1977 c. 29; 1977 c. 196 ss. 70, 131; 1977 c. 377 s. 30; 1977 c. 418 s. 929 (1), (55); 1979 c. 32 s. 92 (5); 1979 c. 34, 175, 221; 1979 c. 355 s. 241; 1979 c. 361; 1981 c. 20 ss. 400b to 421, 2202 (57) (b); 1981 c. 44 s. 3; 1981 c. 62, 121; 1981 c. 202 s. 23; 1981 c. 314, 374, 391; 1983 a. 27 ss. 439 to 456, 2202 (1); 1983 a. 36, 187, 282, 371, 393; 1985 a. 29, 31, 57, 120, 296, 297, 332; 1987 a. 27 ss. 296n, 296q, 297b, 297d, 299a to 299r, 300a, 301a, 418 to 432; 1987 a. 142, 147, 342, 399; 1989 a. 31, 56, 107, 122, 336, 339, 345, 366; 1991 a. 39 s. 469, 593q to 614; 1991 a. 105, 269, 315; 1993 a. 16 ss. 470g, 470m, 470r, 488 to 506m; 1993 a. 33, 75, 193, 349, 358, 374, 414, 437, 477, 491; 1995 a. 27, 56, 201, 216, 225, 227, 370, 403; 1997 a. 3; 1997 a. 27 ss. 199, 227 to 229m, 233, 666g to 692, 9456 (3m); 1997 a. 237, 283; 1999 a. 5; 1999 a. 9 ss. 508 to 587d, 9401 (2zt), (2zu); 1999 a. 24, 52, 105, 113, 148, 185; 2001 a. 16 ss. 684d, 685d, 800 to 905; 2001 a. 104 ss. 21, 141; 2001 a. 109; 2003 a. 33 ss. 364d, 365d, 369d, 370d, 374d, 376d, 378d, 380d to 384d, 567 to 615f, 639, 640, 642d to 644, 2811 to 2813; 2003 a. 48 ss. 10, 11; 2003 a. 84; 2003 a. 139 ss. 9 to 12; 2003 a. 206 s. 23; 2003 a. 326; 2005 a. 25 ss. 389 to 429m, 2493, 2494, 2495, 9401, 9409; 2005 a. 60, 124, 141, 142, 253, 344, 414, 433; 2007 a. 20 ss. 323, 326, 516e to 542g, 9121 (6) (a); 2007 a. 226; 2009 a. 11, 28, 302, 318; 2011 a. 29, 32 ss. 406, 421m, 435m to 446m, 716m to 747c, 755, 759 to 766; 2011 a. 166, 260.

12 ~~§~~ SECTION 25.61 of the statutes is amended to read:

13 **25.61 VendorNet fund.** There is created a separate nonlapsible trust fund
14 designated as the VendorNet fund consisting of all revenues accruing to the state
15 from fees assessed under s. 16.701 (1) ^{and (2)} and from gifts, grants, and bequests made for
16 the purposes of s. 16.701 (1) ^{and (2)} and moneys transferred to the fund from other funds.

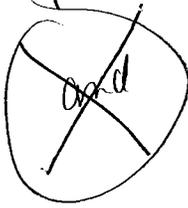
History: 1995 a. 27, 351; 1997 a. 36; 1999 a. 9; 2001 a. 16; 2003 a. 321.

17

18 Insert 21-2

19 ~~§~~ STATE PROCUREMENT.

1 (a) *Contracts for services*. The treatment of sections 16.705 (1r) (intro.) and (9) ✓ ✓
2 and 16.75 (1) (a) 1. ✓ and 2. ✓, (b) 1. ✓, 2. ✓, and 3. ✓, and (c), (1m) ✓, (2m) (a) ✓, (b) 1. ✓, 2. ✓, and 3. ✓
3 (c) ✓, (d) ✓, (e) ✓, (f) ✓, and (g) ✓, (3m) (b) 1. ✓, 2. ✓, and 3. ✓, (3t) (c) (intro.) ✓, (5) ✓, (6) (c) ✓ and (d) ✓, (8) (a) ✓
4 1. ✓, (9) ✓, (10e) (a) ✓ and (b) ✓, and (10m) ✓ of the statutes first applies to bids or proposals
5 solicited on the effective date of this paragraph.





State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-1023/P2
CMH:wlj:rs

P3

stays

DOA:.....Bong, BB0345 - Procurement reforms

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

don't cut

PWK

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

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

STATE PROCUREMENT

Current law generally authorizes state agencies to purchase materials, supplies, or equipment under certain circumstances. With some exceptions, purchases for which the estimated cost exceeds \$50,000 require bids to be invited or proposals to be solicited. Also, under current law, if a state agency enters into or renews a contract for services that involves an estimated expenditure of more than \$25,000, the agency must conduct either a uniform cost-benefit analysis, for a new contract, or a continued appropriateness review, for a contract renewal. This bill raises the threshold to \$50,000 for either and exempts the following services: services that must, by law, be performed by contract; services incidental to the purchase of a commodity; services that must be provided per a contract, license, or warranty; services that cannot be performed by state employees because the state lacks the required infrastructure; services that are expected to be completed within 12 months; and Web-based software application services that are delivered and managed remotely.

Current law requires DOA to certify a business as a disabled veteran-owned business, a woman-owned business, or a minority business, but has different requirements for each certification. For instance, DOA may certify a business as a minority business if another state agency, a municipality, the federal government,

an American Indian tribe, or, if it uses substantially the same procedures as DOA would use, a private business certifies the business as such. This bill makes the certification practice consistent by permitting DOA to certify a business as a disabled veteran-owned business or a woman-owned business if one of the entities listed above certifies it as such. Under current law, for the purpose of certifying a business as a disabled veteran-owned business, the disabled veteran must be verified by DVA as a veteran, be a Wisconsin resident, and have an award from the federal Department of Veterans Affairs of a service-connected disability rating of at least 30 percent. This bill changes that percent to 20 percent.

Under current law, DOA must maintain a list of entities that are ineligible for state contracts because they have violated a state procurement contract or a statute governing state procurement. This bill requires DOA to include on the list an entity that has been debarred from contracting with the federal government or any other state agency.

Under current law, in a report that DOA submits to the governor and the legislature, DOA must document the success of the division of legal services in reducing the state's use of contracted employees. This bill eliminates that requirement from the report.

Under current law, DOA, or any agency to which DOA has delegated the authority, may maintain a list of persons who must be notified of bids or competitive sealed proposals solicited by DOA or another agency for state procurement. This bill allows only DOA to maintain the bidders list.

For further information see the *state* 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.** 16.004 (15) (bm) of the statutes is repealed.

2 **SECTION 2.** 16.283 (1) (b) 3. of the statutes is amended to read:

3 16.283 (1) (b) 3. A person who is in receipt of an award from the U.S.
4 department of veterans affairs of a service-connected disability rating under 38 USC
5 1114 or 1134 of at least ~~30~~ 20 percent.

6 **SECTION 3.** 16.283 (3) (b) of the statutes is renumbered 16.283 (3) (b) 1m.

7 **SECTION 4.** 16.283 (3) (b) 2m. of the statutes is created to read:

8 16.283 (3) (b) 2m. The department may, without conducting an investigation,
9 certify a business, financial adviser, or investment firm having its principal place of

1 business in this state and currently performing a useful business function if the
2 business, financial advisor, or investment firm is certified, or otherwise classified, as
3 a disabled veteran–owned business, financial advisor, or investment firm by an
4 agency or municipality of this or another state, a federally recognized American
5 Indian tribe, or the federal government, or by a private business with expertise in
6 certifying disabled veteran–owned businesses if the business uses substantially the
7 same procedures the department uses in making a determination under subd. 1m.

8 **SECTION 5.** 16.283 (3) (d) of the statutes is amended to read:

9 16.283 (3) (d) If a business, financial adviser, or investment firm applying for
10 certification under this section fails to provide the department with sufficient
11 information to enable the department to conduct an investigation under par. (b) 1m.
12 or does not qualify for certification under par. (b), the department shall deny the
13 application. A business, financial adviser, or investment firm whose application is
14 denied may, within 30 days after the date of the denial, appeal in writing to the
15 secretary. The secretary shall enter his or her final decision within 30 days after
16 receiving the appeal.

17 **SECTION 6.** 16.285 (1) (b) of the statutes is amended to read:

18 16.285 (1) (b) The department shall implement a program for the certification
19 of woman–owned businesses. The department ~~shall compile and periodically update~~
20 ~~a list of businesses certified under this section and shall make the list available to~~
21 ~~the public on the Internet~~ may, without conducting an investigation, certify a
22 business currently performing a useful business function in this state as a
23 woman–owned business if the business is certified, or otherwise classified, as a
24 woman–owned business by an agency or municipality of this or another state, a
25 federally recognized American Indian tribe, or the federal government, or by a

1 private business with expertise in certifying woman-owned businesses if the
2 business uses substantially the same process as the department promulgates by rule
3 for implementing this subsection.

4 SECTION 7. 16.285 (2) of the statutes is amended to read:

5 16.285 (2) The department shall develop, maintain, and keep current a
6 computer database of businesses in the state that are owned by women, containing
7 demographic statistics and information on the types of industries represented, sales
8 volume and growth rates, generation of jobs by both new and existing businesses,
9 and any other relevant characteristics. The department shall compile and
10 periodically update a list of businesses certified under sub. (1) and make the list
11 available to the public on the Internet.

12 SECTION 8. 16.287 (2) (c) of the statutes is amended to read:

13 16.287 (2) (c) The department, without investigation, may certify a business
14 incorporated in this state or having its principal place of business in this state if the
15 business is certified or otherwise classified as a minority business by an agency or
16 municipality of this or another state, a federally recognized American Indian tribe,
17 or the federal government, or by a private business with expertise in certifying
18 minority businesses if the private business uses substantially the same procedures
19 as those used by the department in making a determination under par. (b).

20 SECTION 9. 16.287 (2) (e) of the statutes is amended to read:

21 16.287 (2) (e) If a business refuses to provide the department with sufficient
22 information to enable it to conduct an investigation under par. (b) or if the business
23 does not qualify for certification under par. (b), (c) or (d), the department shall deny
24 the application. A business whose application is denied may, within 30 days after

1 the date of the denial, appeal in writing to the secretary. The secretary shall enter
2 his or her final decision within 30 days after receiving the appeal.

3 **SECTION 10.** 16.70 (2) of the statutes is amended to read:

4 16.70 (2) “Authority” means a body created under subch. II of ch. 114 or subch.
5 III of ch. 149 or under ch. 231, 232, 233, 234, 237, 238, or 279.

6 **SECTION 11.** 16.70 (2j) of the statutes is created to read:

7 16.70 (2j) “Commodity” means materials, supplies, or equipment, but does not
8 include a service.

9 **SECTION 12.** 16.70 (3) of the statutes is amended to read:

10 16.70 (3) “Contractual services” includes all services, materials to be furnished
11 by a service provider in connection with services, and any limited trades work
12 involving less than \$30,000 to be done for or furnished to the state or any agency, but
13 does not include maintenance or support that is incidental to the purchase of a
14 commodity.

15 **SECTION 13.** 16.70 (3j) of the statutes is created to read:

16 16.70 (3j) “Delegated agency” means an agency that has a designated
17 purchasing agent to whom the department has delegated the authority to purchase
18 under s. 16.71 (1).

19 **SECTION 14.** 16.70 (8) of the statutes is amended to read:

20 16.70 (8) “Municipality” means a county, city, village, town, school district,
21 board of school directors, sewer district, drainage district, technical college district,
22 authority, or any other public or quasi-public corporation, officer, board or other body
23 having the authority to award public contracts.

24 **SECTION 15.** 16.70 (13m) of the statutes is created to read:

1 16.70 (13m) “Standard specification” means a requirement or qualification
2 that is chemical, physical, or both chemical and physical that describes the
3 commodity or service to be purchased but is not a trade name.

4 **SECTION 16.** 16.701 (title) of the statutes is amended to read:

5 **16.701 (title) Subscription service and procurement system.**

6 **SECTION 17.** 16.701 (1m) of the statutes is created to read:

7 16.701 (1m) The department may provide an electronic procurement system
8 to manage all aspects of procurement under this subchapter. The electronic
9 procurement system may supplement or supplant the subscription service under
10 sub. (1). If the department provides an electronic procurement system under this
11 subsection, the department may require that an agency use the system. The
12 department may assess agencies and vendors for the costs of the system under this
13 subsection in accordance with a method the department develops.

14 **SECTION 18.** 16.701 (2) of the statutes is amended to read:

15 16.701 (2) The department may permit prospective vendors to provide product
16 or service information through the service established under sub. (1) or through the
17 system provided under sub. (1m). The department may prescribe fees or establish
18 fees through a competitive process for the use of the service or system under this
19 subsection.

20 **SECTION 19.** 16.7015 of the statutes is amended to read:

21 **16.7015 Bidders list.** The department may maintain a bidders list. ~~Any~~
22 ~~agency to which the department delegates purchasing authority under s. 16.71 (1)~~
23 ~~may maintain a bidders list if authorized by the delegation.~~ The bidders list shall
24 include the names and addresses of all persons who request to be notified of bids or
25 competitive sealed proposals, excluding those to be awarded under s. 16.75 (1) (c) or

1 (2m) (c), that are solicited by the department or ~~other~~ delegated agency for the
2 procurement of materials, supplies, equipment, or contractual services under this
3 subchapter. Any bidders list maintained by the department may include the names
4 and addresses of any person who requests to be notified of bids or competitive sealed
5 proposals that are solicited by any agency. The department or ~~other~~ delegated
6 agency shall notify each person on ~~its~~ the bidders list of all bids or competitive sealed
7 proposals that are solicited by the department or ~~other~~ delegated agency. The
8 department or ~~other~~ agency may remove any person from ~~its~~ the bidders list for
9 cause.

10 **SECTION 20.** 16.705 (1) of the statutes is amended to read:

11 16.705 (1) The department or ~~its agents~~ a delegated agency may contract for
12 services which can be performed more economically or efficiently by such contract.
13 The department shall, by rule, prescribe uniform procedures for determining
14 whether services are appropriate for contracting under this subsection.

15 **SECTION 21.** 16.705 (1r) (intro.) of the statutes is amended to read:

16 16.705 (1r) (intro.) Notwithstanding s. 16.75 (2m) and (3m), and except as
17 provided in s. 16.75 (2) (b) and (7), the department ~~and its agents~~ or a delegated
18 agency may purchase contractual services only if those services are performed
19 within the United States, ~~which, notwithstanding s. 990.01 (40) and (44), includes~~
20 only the 50 states and the District of Columbia. This requirement does not apply to
21 any of the following:

22 **SECTION 22.** 16.705 (2) of the statutes, as affected by 2011 Wisconsin Act 32,
23 is renumbered 16.705 (2) (a) and amended to read:

24 16.705 (2) (a) The department shall promulgate rules for the procurement of
25 contractual services by the department ~~and its designated agents~~ or a delegated

1 agency, including but not limited to rules prescribing approval and monitoring
2 processes for contractual service contracts; except as provided in par. (b), a
3 requirement for agencies, except for the University of Wisconsin System, to conduct
4 a uniform cost-benefit analysis of each proposed contractual service procurement
5 involving an estimated expenditure of more than ~~\$25,000~~ \$50,000 in accordance with
6 standards prescribed in the rules; and, except as provided in par. (b), a requirement
7 for agencies, except for the University of Wisconsin System, to review periodically,
8 and before any renewal, the continued appropriateness of contracting under each
9 contractual services agreement involving an estimated expenditure of more than
10 ~~\$25,000~~ \$50,000.

11 (c) Each officer requesting approval to engage any person to perform
12 contractual services shall submit to the department written justification for such
13 contracting which shall include a description of the contractual services to be
14 procured, justification of need, justification for not contracting with other agencies,
15 a specific description of the scope of contractual services to be performed, and
16 justification for the procurement process if a process other than competitive bidding
17 is to be used. The department may not approve any contract for contractual services
18 unless it is satisfied that the justification for contracting conforms to the
19 requirements of this section and ss. 16.71 to 16.77.

20 **SECTION 23.** 16.705 (2) (b) of the statutes is created to read:

21 16.705 (2) (b) A cost-benefit analysis or continued appropriateness review is
22 not required for the following services:

- 23 1. Services that federal or state law requires to be performed by contract.
- 24 2. Services that are incidental to the purchase of a commodity.

1 3. Services that must be provided per a contract, license, or warranty, by the
2 original equipment manufacturer or publisher.

3 4. Services that cannot be performed by state employees because the state lacks
4 the required infrastructure.

5 5. Services that are expected to be completed within 12 months.

6 6. Web-based software application services that are delivered and managed
7 remotely.

8 **SECTION 24.** 16.705 (9) of the statutes is amended to read:

9 16.705 (9) The department shall maintain a list of persons that are or have
10 been a party to a contract with the state under this subchapter who have violated a
11 provision of this subchapter or a contract under this subchapter or who have been
12 debarred from contracting with the federal government or any agency. The parties
13 on the list are ineligible for state contracts and no state contract may be awarded to
14 a party on the ineligible list. The department may remove any party from the
15 ineligible list if the department determines that the party's practices comply with
16 this subchapter and ~~provide~~ the party provides adequate safeguards against future
17 violations of this subchapter or contracts under this subchapter or, if the person was
18 on the list due to debarment, the person is no longer debarred. The department shall
19 promulgate rules that provide procedures to implement this subsection.

20 **SECTION 25.** 16.71 (3) of the statutes is amended to read:

21 16.71 (3) ~~If~~ The department, department of revenue, or delegated agency shall
22 comply with the requirements under s. 565.25 if the department makes or delegates
23 to the department of revenue or to any other designated purchasing agent under sub.
24 (1) delegated agency the authority to make a major procurement, as defined in s.

1 565.01 (4), for the department of revenue, ~~the department, department of revenue,~~
2 ~~or designated purchasing agent shall comply with the requirements under s. 565.25.~~

3 **SECTION 26.** 16.72 (2) (a) of the statutes is renumbered 16.72 (2) (a) 1. and
4 amended to read:

5 16.72 (2) (a) 1. The department shall prepare standard specifications, as far as
6 possible, for all state purchases. ~~By “standard specifications” is meant a~~
7 ~~specification, either chemical or physical or both, prepared to describe in detail the~~
8 ~~article which the state desires to purchase, and trade names shall not be used~~
9 ~~statewide except those purchases under subd. 2.~~ On the formulation, adoption and
10 modification of any standard specifications, the department of administration shall
11 also seek and be accorded without cost, the assistance, advice, and cooperation of
12 other agencies and officers.

13 3. Each specification adopted under subd. 1. or 2. for any commodity purchase
14 shall, insofar as possible, satisfy the requirements of any and all agencies which use
15 it in common.

16 **SECTION 27.** 16.72 (2) (a) 2. of the statutes is created to read:

17 16.72 (2) (a) 2. Delegated agencies shall adopt standard specifications for all
18 delegated purchases.

19 **SECTION 28.** 16.72 (2) (b) of the statutes is amended to read:

20 16.72 (2) (b) Except as provided in ss. 16.25 (4) (b), 16.751, and 565.25 (2) (a)
21 4., the department or delegated agency shall prepare or review specifications for all
22 materials, supplies, equipment, other permanent personal property and contractual
23 services not purchased under standard specifications. Such “nonstandard
24 specifications” may be generic or performance specifications, or both, prepared to
25 describe in detail the article which the state desires to purchase either by its physical

1 properties or by its programmatic utility. When appropriate for such nonstandard
2 items or services, trade names may be used to identify what the state department or
3 delegated agency requires, but wherever possible 2 or more trade names shall be
4 designated and the trade name of any Wisconsin producer, distributor or supplier
5 shall appear first.

6 **SECTION 29.** 16.72 (2) (c) of the statutes is amended to read:

7 16.72 (2) (c) To the extent possible, the department or delegated agency shall
8 write specifications so as to permit the purchase of materials manufactured in the
9 United States, as defined in s. 16.754 (1) (b).

10 **SECTION 30.** 16.72 (2) (e) (intro.) of the statutes is amended to read:

11 16.72 (2) (e) (intro.) In writing the specifications under this subsection, the
12 department ~~and any other designated purchasing agent under s. 16.71 (1) or~~
13 delegated agency shall incorporate requirements for the purchase of products made
14 from recycled materials and recovered materials if their use is technically and
15 economically feasible. Each authority other than the University of Wisconsin
16 Hospitals and Clinics Authority, the Lower Fox River Remediation Authority, and
17 the Health Insurance Risk-Sharing Plan Authority, in writing specifications for
18 purchasing by the authority, shall incorporate requirements for the purchase of
19 products made from recycled materials and recovered materials if their use is
20 technically and economically feasible. The specifications shall include requirements
21 for the purchase of the following materials:

22 **SECTION 31.** 16.72 (2) (f) of the statutes is amended to read:

23 16.72 (2) (f) In writing specifications under this subsection, the department,
24 any ~~other designated purchasing agent under s. 16.71 (1)~~ delegated agency, and each
25 authority other than the University of Wisconsin Hospitals and Clinics Authority,

1 the Lower Fox River Remediation Authority, and the Health Insurance
2 Risk-Sharing Plan Authority shall incorporate requirements relating to the
3 recyclability and ultimate disposition of products and, wherever possible, shall write
4 the specifications so as to minimize the amount of solid waste generated by the state,
5 consistent with the priorities established under s. 287.05 (12). All specifications
6 under this subsection shall discourage the purchase of single-use, disposable
7 products and require, whenever practical, the purchase of multiple-use, durable
8 products.

9 **SECTION 32.** 16.72 (4) (a) of the statutes is amended to read:

10 16.72 (4) (a) Except as provided in ss. 16.71 and 16.74 or as otherwise provided
11 in this subchapter and the rules promulgated under s. 16.74 and this subchapter, all
12 supplies, materials, equipment, and contractual services shall be purchased ~~for and~~
13 ~~furnished to any agency~~ only upon requisition to the department. The department
14 shall prescribe the form, contents, number, and disposition of requisitions and shall
15 promulgate rules as to time and manner of submitting such requisitions for
16 processing. ~~No~~ Except as provided in ss. 16.71 and 16.74 or as otherwise provided
17 in this subchapter and the rules promulgated under s. 16.74 and this subchapter, no
18 agency or officer may engage any person to perform contractual services without the
19 specific prior approval of the department for each ~~such~~ engagement. Purchases of
20 supplies, materials, equipment, or contractual services by the legislature, the courts,
21 or legislative service or judicial branch agencies do not require approval under this
22 paragraph.

23 **SECTION 33.** 16.72 (4m) of the statutes is repealed.

24 **SECTION 34.** 16.73 (1m) of the statutes is created to read:

1 16.73 (1m) The department or a delegated agency may allow municipalities to
2 participate in state procurement solicitations and use any current state contract.

3 **SECTION 35.** 16.73 (5) of the statutes, as affected by 2013 Wisconsin Act 32, is
4 amended to read:

5 16.73 (5) After the department designates the board of regents of the
6 University of Wisconsin System or designates the University of Wisconsin–Madison
7 as ~~its purchasing agent for any purpose under s. 16.71 (1)~~ a delegated agency, the
8 board or the University of Wisconsin–Madison may enter into a contract to sell any
9 materials, supplies, equipment or contractual services purchased by the board or the
10 University of Wisconsin–Madison to the University of Wisconsin Hospitals and
11 Clinics Authority, and may contract with the University of Wisconsin Hospitals and
12 Clinics Authority for the joint purchase of any materials, supplies, equipment or
13 contractual services if the sale or purchase is made consistently with that delegation
14 and with this subchapter.

15 **SECTION 36.** 16.75 (1) (a) 1. of the statutes is amended to read:

16 16.75 (1) (a) 1. All orders awarded or contracts made by the department or a
17 delegated agency for all materials, supplies, equipment, and contractual services to
18 be provided to any agency, except as otherwise provided in par. (c) and subs. (2), (2g),
19 (2m), (3m), (3t), (6), (7), (8), (9), (10e), and (10m) and ss. 16.705 (1r), 16.73 (4) (a),
20 16.751, 16.754, 16.964 (8), 50.05 (7) (f), 153.05 (2m) (a), and 287.15 (7), shall be
21 awarded to the lowest responsible bidder, taking into consideration life cycle cost
22 estimates under sub. (1m), when appropriate, the location of the agency, the
23 quantities of the articles to be supplied, their conformity with the specifications, and
24 the purposes for which they are required and the date of delivery.

25 **SECTION 37.** 16.75 (1) (a) 2. of the statutes is amended to read:

1 16.75 (1) (a) 2. If a vendor is not a Wisconsin producer, distributor, supplier or
2 retailer and the department determines that the state, foreign nation or subdivision
3 thereof in which the vendor is domiciled grants a preference to vendors domiciled in
4 that state, nation or subdivision in making governmental purchases, the
5 department, a delegated agency, and any agency making purchases under s. 16.74
6 shall give a preference over that vendor to Wisconsin producers, distributors,
7 suppliers and retailers, if any, when awarding the order or contract. The department
8 may enter into agreements with states, foreign nations and subdivisions thereof for
9 the purpose of implementing this subdivision.

10 **SECTION 38.** 16.75 (1) (b) 1. and 3. of the statutes, as affected by 2011 Wisconsin
11 Act 32 are consolidated, renumbered 16.75 (1) (b) and amended to read:

12 16.75 (1) (b) ~~Except as provided in subd. 2., when~~ When the estimated cost
13 exceeds \$25,000 ~~\$50,000~~, the department or delegated agency shall invite bids to be
14 submitted. ~~3. If subd. 1. or 2. requires bids~~ are to be solicited, the department or
15 delegated agency either shall solicit sealed bids to be opened publicly at a specified
16 date and time, or shall solicit bidding by auction to be conducted electronically at a
17 specified date and time. Whenever bids are invited, due notice inviting bids shall be
18 published as a class 2 notice, under ch. 985 or posted on the Internet at a site
19 determined or approved by the department. The bid opening or auction shall occur
20 at least 7 days after the date of the last insertion of the notice or at least 7 days after
21 the date of posting on the Internet. The notice shall specify whether sealed bids are
22 invited or bids will be accepted by auction, and shall give a clear description of the
23 materials, supplies, equipment, or contractual services to be purchased, the amount
24 of any bond, share draft, check, or other draft to be submitted as surety with the bid

1 or prior to the auction, and the date and time that the public opening or the auction
2 will be held.

3 **SECTION 39.** 16.75 (1) (b) 2. of the statutes, as created by 2011 Wisconsin Act
4 32, is repealed.

5 **SECTION 40.** 16.75 (1) (c) of the statutes is amended to read:

6 16.75 (1) (c) Except as provided in sub. (7), when the estimated cost is \$25,000
7 \$50,000 or less, the award may be made in accordance with simplified procedures
8 established by the department for such transactions.

9 **SECTION 41.** 16.75 (1m) of the statutes is amended to read:

10 16.75 (1m) The department or a delegated agency shall award each order or
11 contract for materials, supplies or equipment on the basis of life cycle cost estimates,
12 whenever such action is appropriate. Each authority other than the University of
13 Wisconsin Hospitals and Clinics Authority, the Lower Fox River Remediation
14 Authority, the Wisconsin Aerospace Authority, and the Health Insurance
15 Risk-Sharing Plan Authority shall award each order or contract for materials,
16 supplies or equipment on the basis of life cycle cost estimates, whenever such action
17 is appropriate. The terms, conditions and evaluation criteria to be applied shall be
18 incorporated in the solicitation of bids or proposals. The life cycle cost formula may
19 include, but is not limited to, the applicable costs of energy efficiency, acquisition and
20 conversion, money, transportation, warehousing and distribution, training,
21 operation and maintenance and disposition or resale. The department shall prepare
22 documents containing technical guidance for the development and use of life cycle
23 cost estimates, and shall make the documents available to interested parties,
24 including local governmental units.

25 **SECTION 42.** 16.75 (2m) (a) of the statutes is amended to read:

1 16.75 (2m) (a) Except as otherwise required by law, if the secretary or his or
2 her designee determines that the use of competitive sealed bidding is not practicable
3 or not advantageous to this state, the department or delegated agency may solicit
4 competitive sealed proposals. Each request for competitive sealed proposals shall
5 state the relative importance of price and other evaluation factors.

6 **SECTION 43.** 16.75 (2m) (b) 1. and 3. of the statutes, as affected by 2011
7 Wisconsin Act 32 are consolidated, renumbered 16.75 (2m) (b) and amended to read:

8 16.75 (2m) (b) ~~Except as provided in subd. 2., when~~ When the estimated cost
9 exceeds ~~\$25,000~~ \$50,000, the department or delegated agency may invite
10 competitive sealed proposals. ~~3.~~ If competitive sealed proposals are to be invited, the
11 department or delegated agency shall publish a class 2 notice under ch. 985 or post
12 notice on the Internet at a site determined or approved by the department. The
13 notice shall describe the materials, supplies, equipment, or contractual services to
14 be purchased, the intent to make the procurement by solicitation of proposals rather
15 than by solicitation of bids, any requirement for surety and the date the proposals
16 will be opened, which shall be at least 7 days after the date of the last insertion of
17 the notice or at least 7 days after the date of posting on the Internet.

18 **SECTION 44.** 16.75 (2m) (b) 2. of the statutes, as created by 2011 Wisconsin Act
19 32, is repealed.

20 **SECTION 45.** 16.75 (2m) (c) of the statutes is amended to read:

21 16.75 (2m) (c) When the estimated cost is ~~\$25,000~~ \$50,000 or less, the
22 department or delegated agency may award the order or contract in accordance with
23 simplified procedures established by the department for such transactions.

24 **SECTION 46.** 16.75 (2m) (d) of the statutes is amended to read:

1 16.75 (2m) (d) For purposes of clarification, the department or delegated
2 agency may discuss the requirements of the proposed order or contract with any
3 person who submits a proposal and shall permit any offerer to revise his or her
4 proposal to ensure its responsiveness to those requirements.

5 **SECTION 47.** 16.75 (2m) (e) of the statutes is amended to read:

6 16.75 (2m) (e) The department or delegated agency shall determine which
7 proposals are reasonably apt to be awarded the order or contract and shall provide
8 each offerer of such a proposal a fair and equal opportunity to discuss the proposal.
9 The department or delegated agency may negotiate with each offerer in order to
10 obtain terms that are advantageous to this state. Prior to the award of the order or
11 contract, any offerer may revise his or her proposal. The department or delegated
12 agency shall keep a written record of all meetings, conferences, oral presentations,
13 discussions, negotiations, and evaluations of proposals under this section.

14 **SECTION 48.** 16.75 (2m) (f) of the statutes is amended to read:

15 16.75 (2m) (f) In opening, discussing, and negotiating proposals, the
16 department or delegated agency may not disclose any information that would reveal
17 the terms of a competing proposal.

18 **SECTION 49.** 16.75 (2m) (g) of the statutes is amended to read:

19 16.75 (2m) (g) After receiving each offerer's best and final offer, the department
20 or delegated agency shall determine which proposal is most advantageous and shall
21 award the order or contract to the person who offered it. The department's
22 department or delegated agency shall base its determination shall be based only on
23 price and the other evaluation factors specified in the request for proposals. The
24 department or delegated agency shall state in writing the reason for the award and

1 shall place the statement in the contract file. This paragraph does not apply to
2 procurements under s. 16.751.

3 **SECTION 50.** 16.75 (3m) (b) 1. of the statutes is amended to read:

4 16.75 (3m) (b) 1. The department, a delegated agency, and any agency making
5 purchases under s. 16.74 shall attempt to ensure that 5 percent of the total amount
6 expended under this subchapter in each fiscal year is paid to minority businesses.

7 **SECTION 51.** 16.75 (3m) (b) 2. of the statutes is amended to read:

8 16.75 (3m) (b) 2. The department, a delegated agency, and any agency making
9 purchases under s. 16.74 shall make efforts to ensure that a portion of the total
10 amount expended under this subchapter in each fiscal year is paid to disabled
11 veteran-owned businesses.

12 **SECTION 52.** 16.75 (3m) (b) 3. of the statutes is amended to read:

13 16.75 (3m) (b) 3. Except as provided under sub. (7), the department, a
14 delegated agency, and any agency making purchases under s. 16.74 may purchase
15 materials, supplies, equipment, and contractual services from any minority business
16 or disabled veteran-owned business, or a business that is both a minority business
17 and a disabled veteran-owned business, submitting a qualified responsible
18 competitive bid that is no more than 5 percent higher than the apparent low bid or
19 competitive proposal that is no more than 5 percent higher than the most
20 advantageous proposal. In administering the preference for minority businesses or
21 disabled veteran-owned businesses established in this paragraph, the department,
22 a delegated agency, and any agency making purchases under s. 16.74 shall maximize
23 the use of minority businesses or disabled veteran-owned businesses which are
24 incorporated under ch. 180 or which have their principal place of business in this
25 state.

1 **SECTION 53.** 16.75 (3t) (c) (intro.) of the statutes is amended to read:

2 16.75 (3t) (c) (intro.) The department of corrections shall periodically provide
3 to the department of administration a current list of all materials, supplies,
4 equipment, or contractual services, excluding commodities, that are supplied by
5 prison industries, as created under s. 303.01. The department of administration
6 shall distribute the list to all ~~designated purchasing agents under s. 16.71 (1)~~
7 delegated agencies. Except as otherwise provided in sub. (6) (am), prior to seeking
8 bids or competitive sealed proposals with respect to the purchase of any materials,
9 supplies, equipment, or contractual services enumerated in the list, the department
10 of administration or ~~any other designated purchasing agent under s. 16.71 (1)~~
11 delegated agency shall offer prison industries the opportunity to supply the
12 materials, supplies, equipment, or contractual services if the department of
13 corrections is able to provide them at a price that is equal to or lower than one which
14 may be obtained through competitive bidding or competitive sealed proposals and is
15 able to conform to the specifications. If the department of administration or ~~other~~
16 ~~purchasing agent~~ delegated agency is unable to determine whether the price of
17 prison industries is equal to or lower than one obtained through competitive bidding
18 or competitive sealed proposals, it may solicit bids or competitive proposals before
19 awarding the order or contract. This paragraph does not apply to the printing of the
20 following forms:

21 **SECTION 54.** 16.75 (5) of the statutes is amended to read:

22 16.75 (5) The department or delegated agency may require of bidders, persons
23 making proposals under sub. (2m) or contractors such sureties as, in its judgment,
24 are deemed advisable and may decide as to their responsibility and competency. The
25 department or delegated agency may require a contractor to provide a bond

1 furnished by a surety company authorized to do business in this state, for the proper
2 performance of each contract.

3 **SECTION 55.** 16.75 (6) (c) of the statutes is amended to read:

4 16.75 (6) (c) If the governor, if acting as the governor's designee, or the secretary
5 determines that it is in the best interest of this state to do so, he or she may, ~~with the~~
6 ~~approval of the governor,~~ waive the requirements of subs. (1) to (5) and may purchase
7 supplies, ~~material~~ materials, equipment, or contractual services, other than printing
8 and stationery, from a private source other than a source specified in par. (b). Except
9 as provided in sub. (2g) (c), if the cost of the purchase is expected to exceed \$25,000
10 \$50,000, the department shall first publish a class 2 notice under ch. 985 or post a
11 notice on the Internet at the site determined or approved by the department under
12 sub. (1) (b) describing the materials, supplies, equipment, or contractual services to
13 be purchased, stating the intent to make the purchase from a private source without
14 soliciting bids or competitive sealed proposals and stating the date on which the
15 contract or purchase order will be awarded. The date of the award shall be at least
16 7 days after the date of the last insertion or the date of posting on the Internet.

17 **SECTION 56.** 16.75 (6) (d) of the statutes is amended to read:

18 16.75 (6) (d) If the governor or, if acting as the governor's designee, the
19 secretary determines that it is in the best interest of this state to do so, he or she may
20 issue a general waiver of the requirements of subs. (1) to (5) permitting the purchase
21 of specified materials, supplies, equipment, or contractual services, except printing
22 and stationery, from a private source. A general waiver may be issued for any period
23 up to one year. The governor or, if acting as the governor's designee, the secretary
24 may impose any necessary or appropriate condition or restriction on the waiver.

25 **SECTION 57.** 16.75 (8) (a) 1. of the statutes is amended to read:

1 16.75 (8) (a) 1. The department, any ~~other designated purchasing agent under~~
2 ~~s. 16.71 (1) delegated agency~~, any agency making purchases under s. 16.74, and each
3 authority other than the University of Wisconsin Hospitals and Clinics Authority,
4 the Lower Fox River Remediation Authority, and the Health Insurance
5 Risk-Sharing Plan Authority shall, to the extent practicable, make purchasing
6 selections using specifications developed under s. 16.72 (2) (e) to maximize the
7 purchase of materials utilizing recycled materials and recovered materials.

8 **SECTION 58.** 16.75 (9) of the statutes is amended to read:

9 16.75 (9) The department, any ~~other designated purchasing agent under s.~~
10 ~~16.71 (1) delegated agency~~, any agency making purchases under s. 16.74, and any
11 authority other than the University of Wisconsin Hospitals and Clinics Authority,
12 the Lower Fox River Remediation Authority, and the Health Insurance
13 Risk-Sharing Plan Authority shall, to the extent practicable, make purchasing
14 selections using specifications prepared under s. 16.72 (2) (f).

15 **SECTION 59.** 16.75 (10e) (a) of the statutes is amended to read:

16 16.75 (10e) (a) In this subsection, “energy consuming equipment” means any
17 equipment that is designed for heating, ventilation, air conditioning, water heating
18 or cooling, lighting, or refrigeration, ~~or any other function~~, and that consumes energy.

19 **SECTION 60.** 16.75 (10e) (b) of the statutes is amended to read:

20 16.75 (10e) (b) If s. 16.855 (10s) (a) provides an applicable standard for the type
21 of agency energy consuming equipment being purchased and the purchase will cost
22 more than \$5,000 per unit the department, any ~~other designated purchasing agent~~
23 ~~under s. 16.71 (1) delegated agency~~, any agency making purchases under s. 16.74,
24 and any authority may not purchase that type of energy consuming equipment
25 unless the specifications for the equipment meet the applicable standards. If there

1 is an applicable standard under s. 16.855 (10s) (a), but the energy consuming
2 equipment meeting that standard is not reasonably available, the department,
3 ~~purchasing agent~~ delegated agency, agency, or authority shall ensure, for purchases
4 over \$5,000 per unit, that the energy consuming equipment that is purchased
5 maximizes energy efficiency to the extent technically and economically feasible. The
6 department, ~~purchasing agent~~ delegated agency, agency, or authority shall not
7 determine that energy consuming equipment that meets the applicable standard
8 under s. 16.855 (10s) (a) either is not reasonably available on the basis of cost alone
9 or is not cost-effective unless the difference in the cost of the purchase and
10 installation of the equipment that meets the standard and the equipment that would
11 otherwise be installed is greater than the difference in the cost of operating the
12 equipment that meets the standard and the equipment that would otherwise be
13 installed over the anticipated life of the equipment.

14 **SECTION 61.** 16.75 (10m) of the statutes is amended to read:

15 **16.75 (10m)** The department, any ~~other designated purchasing agent~~ under s.
16 **16.71 (1)** delegated agency, any agency making purchases under s. 16.74, and any
17 authority shall not enter into any contract or order for the purchase of materials,
18 supplies, equipment, or contractual services with a person if the name of the person,
19 or the name of an affiliate of that person, is certified to the department by the
20 secretary of revenue under s. 77.66.

21 **SECTION 62.** 20.505 (1) (kf) of the statutes is amended to read:

22 **20.505 (1) (kf)** *Procurement services.* For administration of the department's
23 procurement functions under subch. IV of ch. 16. All moneys received from state
24 agencies under s. 16.71 (6) for procurement services provided by the department to
25 the agencies ~~and~~, from assessments for procurement savings realized by the agencies

1 receiving those services, and from agencies and vendors under s. 16.701 (1m) for
2 costs of the electronic procurement system under that section.

3 **SECTION 63.** 25.61 of the statutes is amended to read:

4 **25.61 VendorNet fund.** There is created a separate nonlapsible trust fund
5 designated as the VendorNet fund consisting of all revenues accruing to the state
6 from fees assessed under s. 16.701 (1) and (2) and from gifts, grants, and bequests
7 made for the purposes of s. 16.701 (1) and (2) and moneys transferred to the fund from
8 other funds.

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

10 (1) STATE PROCUREMENT.

11 (a) *Contracts for services.* The treatment of sections 16.705 (1r) (intro.) and (9)
12 and 16.75 (1) (a) 1. and 2., (b) 1., 2., and 3., and (c), (1m), (2m) (a), (b) 1., 2., and 3.,
13 (c), (d), (e), (f), and (g), (3m) (b) 1., 2., and 3., (3t) (c) (intro.), (5), (6) (c) and (d), (8) (a)
14 1., (9), (10e) (a) and (b), and (10m) of the statutes first applies to bids or proposals
15 solicited on the effective date of this paragraph.

16 (b) *Cost-benefit analyses.* The renumbering and amendment of section 16.705
17 (2) of the statutes and the creation of section 16.705 (2) (b) of the statutes first apply
18 to cost-benefit analyses and continued appropriateness reviews required on the
19 effective date of this paragraph.

20

(END)