



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2019 Assembly Bill 285</b>	<b>Assembly Amendments 2 and 5 and Assembly Amendment 1 to Assembly Amendment 5</b>
<i>Memo published: June 27, 2019</i>	<i>Contact: Ethan Lauer, Staff Attorney</i>

### **2019 ASSEMBLY BILL 285**

**Current law** generally requires the Department of Transportation (DOT) to award a contract for a highway improvement project<sup>1</sup> to the lowest competent and responsible bidder. [s. 84.06 (2) (a), Stats.]

**2019 Assembly Bill 285** provides that if DOT receives a single bid from a competent bidder for a highway improvement project, and if the bid exceeds 110 percent of the estimated reasonable value of the work under the contract, DOT must reject the single bid and readvertise the contract in a manner likely to increase the number of bids.

The bill creates one exception to the requirement to reject and readvertise a single bid. DOT may award the contract to the single bidder if it determines that readvertising the contract would adversely affect public safety and if the Joint Committee on Finance (JCF) approves the award.

### **ASSEMBLY AMENDMENT 2**

Assembly Amendment 2 adds new provisions to the bill.

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<sup>1</sup> A “highway improvement” generally means construction, reconstruction, rehabilitation, and processes incidental to building, fabricating, or bettering a highway, but not routine maintenance and work related to signage, lighting, and pavement markings. [s. 84.06 (1), Stats.]

### **Competitive Bidding Threshold for Certain Local Contracts**

The amendment raises the threshold at which sealed, competitive bidding is required for local public works or for purchasing supplies and materials by a county, town, city, village, or the Metropolitan Milwaukee Sewerage District, from \$25,000 to \$50,000. The increased threshold would not apply to contracts for construction, repair, or maintenance of certain local highways.

### **Local Transportation Projects Using Federal or State Funds**

The amendment repeals and recreates verbatim a provision included in 2017 Wisconsin Act 368, as follows.

The provision requires DOT, if disbursing aid to a political subdivision for a project, to notify the political subdivision whether the aid includes federal moneys and the project components for which federal moneys must be paid, if any. Under the provision, "project" means the development, construction, repair, or improvement of a local road or a local bridge.<sup>2</sup>

The provision prohibits DOT from requiring a political subdivision to comply with any portion of DOT's facilities development manual, other than design standards, for any project that meets all of the following criteria:

- The project proposal is reviewed and approved by a professional engineer or by the highway commissioner for the county in which the project will be located.
- The project is conducted by a political subdivision with no expenditure of federal money.

The provision also requires that any local project, as defined under the provision, funded in whole or in part with state funds under the surface transportation urban program, the surface transportation rural program, or the local bridge program be let through competitive bidding and by contract to the lowest responsible bidder, pursuant to certain provisions under current law related to bids.

The provision as contained in 2017 Wisconsin Act 368 takes effect, and first applies to projects let and aid disbursed, on July 1, 2019.

### **ASSEMBLY AMENDMENT 5**

Assembly Amendment 5 makes a number of changes to the bill and to current law regarding the process of awarding a contract for a highway improvement project.

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<sup>2</sup> The provision defines "local roads" as streets under the authority of cities or villages, county trunk highways, or town roads, and defines "local bridge" as a bridge that is not on the state trunk highway system or on marked routes of the state trunk highway system designated as connecting highways.

### **Exemption for Emergency Repair**

The amendment provides that the requirement in the bill to reject and readvertise after receipt of a single bid does not apply in the case of a contract for emergency repair of a highway that has been closed, or is being jeopardized, by extraordinary damage due to flood, failure, or other extraordinary condition.

### **New Exceptions Based on Cost and Schedule, and Modified Role of JCF in Contract Awards**

The amendment adds two exceptions to the restriction on DOT awarding a contract to a single bidder, and it modifies the role of JCF in the approval process. Instead of allowing DOT to award a contract to a single bidder only if it determines that rejection would affect public safety, the amendment also allows such award to be made if rejection would affect project cost or project schedule. And instead of requiring approval of JCF in every instance, the amendment provides a passive review period of 14 working days after DOT files with JCF a request to award a contract. After the review period, DOT may proceed with the award unless the cochairs of JCF notify DOT that they have scheduled a meeting of JCF to review the request. In that event, DOT may award the contract only as approved, or modified and approved, by JCF.

### **Quarterly Reports to JCF**

The amendment requires DOT to report quarterly to JCF regarding any single bids awarded or rejected.

### **Use of Updated Contract Estimates**

The amendment requires DOT to review and update the estimates used in a contract proposal within two weeks of the date when bids are due, and it requires DOT to take into account any such updates when determining whether a bid exceeds the estimated reasonable value of the work under the contract.

### **ASSEMBLY AMENDMENT 1 TO ASSEMBLY AMENDMENT 5**

Assembly Amendment 1 to Assembly Amendment 5 modifies a provision of Assembly Amendment 5 and adds a new provision.

### **Limitation on Updating Contract Estimates**

The amendment maintains the requirement that DOT review and update the estimates used in a contract proposal within two weeks of the date when bids are due, but restricts DOT from so reviewing and updating within 24 hours before bids are due.

### **Confidentiality of Information Submitted to JCF**

Under **Assembly Amendment 5**, DOT is required to submit to JCF a request to award a contract to a single bidder and also quarterly reports regarding any single bids awarded or rejected. **Assembly Amendment 1 to Assembly Amendment 5** establishes the confidentiality of

all records and information submitted by DOT to JCF under Assembly Amendment 5, and also of all records and information derived from those records and information. The aforementioned records and information are exempt from disclosure in response to an open records request. Finally, a violation by a state employee of these confidentiality requirements is grounds for dismissal.

### **BILL HISTORY**

Representative Thiesfeldt introduced Assembly Amendment 2 on June 12, 2019. Representative Sanfelippo introduced Assembly Amendment 5 on June 14, 2019. On June 18, 2019, the Assembly Committee on Transportation recommended adoption of Assembly Amendment 2 by a vote of Ayes, 7; Noes 6, adoption of Assembly Amendment 5 by a vote of Ayes, 8; Noes 5, and passage of Assembly Bill 285, as amended, by a vote of Ayes, 8; Noes, 5.

Representative Sanfelippo introduced Assembly Amendment 1 to Assembly Amendment 5 on June 19, 2019.

On June 20, 2019, the Assembly adopted Assembly Amendment 2, Assembly Amendment 1 to Assembly Amendment 5, and Assembly Amendment 5, as amended, on voice votes. The Assembly then passed the bill, as amended, on a vote of Ayes 61; Noes 35.

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