



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2019 Senate Bill 284</b>	<b>Senate Amendments 1 and 2 and Senate Amendment 1 to Senate Amendment 2</b>
<i>Memo published: June 26, 2019</i>	<i>Contact: David Moore, Senior Staff Attorney</i>

### **2019 SENATE BILL 284**

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 Senate 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. This exception allows DOT to award the contract to the single bidder if it determines that readvertising the contract would adversely affect public safety and the Joint Committee on Finance (JCF) approves the award.

### **SENATE AMENDMENT 1**

Senate Amendment 1 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.

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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.]

Senate Amendment 1 also repeals and recreates verbatim a provision included in 2017 Wisconsin Act 368. This 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. 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.

## **SENATE AMENDMENT 2**

Senate Amendment 2 makes a number of changes to the bill and to current law regarding the process of awarding a contract for a highway improvement project.

### **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 co-chairs 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.

### **SENATE AMENDMENT 1 TO SENATE AMENDMENT 2**

Senate Amendment 1 to Senate Amendment 2 modifies the provision of Senate Amendment 2 directing that DOT review and update the estimates used in a contract proposal within two weeks before the date on which the bids must be submitted to provide that this review must be not less than 24 hours before the time at which the bids must be submitted.

Senate Amendment 1 to Senate Amendment 2 provides that all records and information DOT submits to JCF under the bill shall remain confidential and are exempt from disclosure under the public records law. It provides that violation by a state employee of these confidentiality requirements is grounds for dismissal.

### **BILL HISTORY**

Senator Petrowski offered Senate Amendments 1 and 2 and Senate Amendment 1 to Senate Amendment 2 on June 21, 2019. On June 25, 2019, the Senate Committee on Transportation and Veterans Affairs voted to recommend adoption of Senate Amendment 1, Senate Amendment 1 to Senate Amendment 2, and Senate Amendment 2, as amended, all on votes of Ayes, 3; Noes, 2. The committee then voted to recommend adoption of Senate Bill 284, as amended, on a vote of Ayes, 3; Noes, 2.

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