



September 1995 Special Session

**SENATE AMENDMENT 9,
TO ASSEMBLY BILL 1**

October 5, 1995 - Offered by Senators **RISSER, CHVALA, DECKER** and **SHIBILSKI**.

1 At the locations indicated, amend the engrossed bill as follows:

2 **1.** Page 7, line 2: after that line insert:

3 **“SECTION 3b.** 16.752 (1) (cm) of the statutes is created to read:

4 16.752 (1) (cm) “Professional baseball park district” means a district created
5 under subch. III of ch. 229.

6 **SECTION 3c.** 16.752 (1) (b), (e) 1., (f), (g) and (i) of the statutes are amended to
7 read:

8 16.752 (1) (b) Aid in the identification of materials, supplies, equipment and
9 contractual services to be procured ~~by agencies~~ from work centers by agencies and
10 professional baseball park districts.

11 (e) 1. A summary of materials, supplies, equipment and contractual services
12 purchased ~~by agencies~~ from work centers by agencies and professional baseball park
13 districts.

14 (f) At least annually, conduct a review of the prices paid by agencies and
15 professional baseball park districts for the materials, supplies, equipment and

1 contractual services provided by work centers and make any adjustments necessary
2 to establish fair market price.

3 (g) Promulgate rules regarding specifications, time of delivery and designation
4 of materials, supplies, equipment and contractual services to be supplied by work
5 centers. The board shall maintain a list of each material, supply, piece of equipment
6 or contractual service to be supplied by work centers, and shall assign a number to
7 each item on the list. Specifications of the board shall be consistent with
8 specifications prescribed by agencies and professional baseball park districts for
9 which procurements are made.

10 (i) Prescribe a surcharge to be paid by each agency and professional baseball
11 park district, which shall be payable to the department within a time and in
12 accordance with a procedure specified by the board.

13 **SECTION 3d.** 16.752 (8) (a), (9), (12) (a), (c), (d) and (e) and (13) (a) (intro.), (b)
14 and (c) of the statutes are amended to read:

15 16.752 (8) (a) Furnish materials, supplies, equipment and services in strict
16 accordance with orders issued by agencies and professional baseball park districts.

17 (9) PURCHASE OF RAW MATERIALS. Work centers shall seek broad competition in
18 the purchase of raw materials and components used in the materials, supplies,
19 equipment or services provided under this section to agencies ~~under this section~~ and
20 professional baseball park districts. Work centers shall inform the board before
21 entering into multiyear contracts for such raw materials and components.

22 (12) (a) Except as provided in pars. (c), (d), (h) and (i) and as authorized under
23 sub. (13), agencies and professional baseball park districts shall obtain materials,
24 supplies, equipment and services on the list maintained by the board under sub. (2)
25 (g) from work centers qualified under sub. (7).

1 (c) Agencies and professional baseball park districts shall issue purchase
2 orders with sufficient time for the appropriate work center to produce the materials,
3 supplies or equipment or provide the services required.

4 (d) If any commodity on the list maintained under sub. (2) (g) is also produced
5 at an institution of the state and the commodity conforms to the specifications on the
6 list, ~~the~~ an ordering agency shall purchase the commodity from the institution.

7 (e) If a specific material, supply or piece of equipment on the list maintained
8 under sub. (2) (g) also appears on the list of materials, supplies and equipment
9 supplied by the prison industries under s. 16.75 (3t) (c), ~~the~~ an ordering agency shall
10 notify and provide prison industries with the opportunity to fill the order prior to
11 placing an order.

12 **(13)** (a) (intro.) Grant written authorization to an ordering agency or
13 professional baseball park district to procure materials, supplies, equipment or
14 services on the list maintained under sub. (2) (g) from commercial sources when all
15 of the following conditions are met:

16 (b) Issue an authorization to an ordering agency or professional baseball park
17 district to procure materials, supplies, equipment or services from commercial
18 sources when the quantity involved is not sufficient for the economical production
19 or provision by the work center to which the order is assigned.

20 (c) Issue authorizations under pars. (a) and (b) promptly upon request of an
21 ordering agency or professional baseball park district. The authorization shall be in
22 the form of a certificate which shall specify the quantities and delivery period covered
23 by the authorization. The organization shall transmit a copy of each certificate to
24 the board.

1 **SECTION 3e.** 16.752 (14) (d), (15), (17) and (18) (b) of the statutes are amended
2 to read:

3 16.752 **(14)** (d) Delivery of an order is accomplished when a shipment is
4 received and accepted by the purchasing agency or professional baseball park
5 district.

6 **(15)** ADJUSTMENT AND CANCELLATION OF ORDERS. If a work center fails to comply
7 with the terms of an order from an agency or professional baseball park district, the
8 ordering agency or district shall make every effort to negotiate adjustments before
9 canceling the order.

10 **(17)** QUALITY CONTROL. (a) Materials, supplies and equipment furnished by
11 work centers under specifications issued by an agency or professional baseball park
12 district shall be manufactured by work centers in strict accordance with the
13 specifications.

14 (b) Services provided by work centers under specifications issued by an agency
15 or professional baseball park district shall be performed by work centers in strict
16 accordance with the specifications. If no specifications exist, the services shall be
17 performed by work centers in accordance with good commercial practices.

18 (c) If the quality of a material, supply, piece of equipment or service received
19 from a work center is not satisfactory to the contracting agency or professional
20 baseball park district, the agency or district shall advise the board and, if the board
21 determines that the quality of the material, supply, equipment or service is
22 unsatisfactory, the board shall suspend the eligibility of the work center which
23 provided the material, supply or equipment or which performed the service to
24 participate in the program established under this section.

1 **(18)** (b) If an agency or professional baseball park district makes substantial
2 changes in a specification on the list maintained under sub. (2) (g) the board shall
3 assign a new item number. The agency or district shall notify the board of the
4 changes prior to their effective date.

5 **SECTION 3f.** 16.765 (1) of the statutes, as affected by 1995 Wisconsin Act 27, is
6 amended to read:

7 16.765 **(1)** Contracting agencies, the University of Wisconsin Hospitals and
8 Clinics Authority ~~and~~, the Bradley center sports and entertainment corporation and
9 any local professional baseball park district created under subch. III of ch. 229 shall
10 include in all contracts executed by them a provision obligating the contractor not
11 to discriminate against any employe or applicant for employment because of age,
12 race, religion, color, handicap, sex, physical condition, developmental disability as
13 defined in s. 51.01 (5), sexual orientation as defined in s. 111.32 (13m) or national
14 origin and, except with respect to sexual orientation, obligating the contractor to take
15 affirmative action to ensure equal employment opportunities.

16 **SECTION 3g.** 16.765 (2) of the statutes, as affected by 1995 Wisconsin Act 27,
17 is amended to read:

18 16.765 **(2)** Contracting agencies, the University of Wisconsin Hospitals and
19 Clinics Authority ~~and~~, the Bradley center sports and entertainment corporation and
20 any local professional baseball park district created under subch. III of ch. 229 shall
21 include the following provision in every contract executed by them: "In connection
22 with the performance of work under this contract, the contractor agrees not to
23 discriminate against any employe or applicant for employment because of age, race,
24 religion, color, handicap, sex, physical condition, developmental disability as defined
25 in s. 51.01 (5), sexual orientation or national origin. This provision shall include, but

1 not be limited to, the following: employment, upgrading, demotion or transfer;
2 recruitment or recruitment advertising; layoff or termination; rates of pay or other
3 forms of compensation; and selection for training, including apprenticeship. Except
4 with respect to sexual orientation, the contractor further agrees to take affirmative
5 action to ensure equal employment opportunities. The contractor agrees to post in
6 conspicuous places, available for employes and applicants for employment, notices
7 to be provided by the contracting officer setting forth the provisions of the
8 nondiscrimination clause.”

9 **SECTION 3h.** 16.765 (4) of the statutes, as affected by 1995 Wisconsin Act 27,
10 is amended to read:

11 16.765 (4) Contracting agencies, the University of Wisconsin Hospitals and
12 Clinics Authority ~~and~~, the Bradley center sports and entertainment corporation and
13 any local professional baseball park district created under subch. III of ch. 229 shall
14 take appropriate action to revise the standard government contract forms under this
15 section.

16 **SECTION 3j.** 16.765 (5) of the statutes, as affected by 1995 Wisconsin Act 27, is
17 amended to read:

18 16.765 (5) The head of each contracting agency ~~and~~, the boards of directors of
19 the University of Wisconsin Hospitals and Clinics Authority and the Bradley center
20 sports and entertainment corporation and the district board of each local
21 professional baseball park district created under subch. III of ch. 229 shall be
22 primarily responsible for obtaining compliance by any contractor with the
23 nondiscrimination and affirmative action provisions prescribed by this section,
24 according to procedures recommended by the department. The department shall
25 make recommendations to the contracting agencies ~~and~~, the boards of directors of the

1 University of Wisconsin Hospitals and Clinics Authority and the Bradley center
2 sports and entertainment corporation and the district board of each local
3 professional baseball park district created under subch. III of ch. 229 for improving
4 and making more effective the nondiscrimination and affirmative action provisions
5 of contracts. The department shall promulgate such rules as may be necessary for
6 the performance of its functions under this section.

7 **SECTION 3L.** 16.765 (6) of the statutes, as affected by 1995 Wisconsin Act 27,
8 is amended to read:

9 16.765 (6) The department may receive complaints of alleged violations of the
10 nondiscrimination provisions of such contracts. The department shall investigate
11 and determine whether a violation of this section has occurred. The department may
12 delegate this authority to the contracting agency, the University of Wisconsin
13 Hospitals and Clinics Authority ~~or~~, the Bradley center sports and entertainment
14 corporation or a local professional baseball park district created under subch. III of
15 ch. 229 for processing in accordance with the department's procedures.

16 **SECTION 3n.** 16.765 (7) (intro.) and (d) of the statutes, as affected by 1995
17 Wisconsin Act 27, are amended to read:

18 16.765 (7) (intro.) When a violation of this section has been determined by the
19 department, the contracting agency, the University of Wisconsin Hospitals and
20 Clinics Authority ~~or~~, the Bradley center sports and entertainment corporation or a
21 local professional baseball park district created under subch. III of ch. 229, the
22 contracting agency, the University of Wisconsin Hospitals and Clinics Authority ~~or~~,
23 the Bradley center sports and entertainment corporation or the district shall:

24 (d) Direct the violating party to take immediate steps to prevent further
25 violations of this section and to report its corrective action to the contracting agency,

1 the University of Wisconsin Hospitals and Clinics Authority ~~or~~, the Bradley center
2 sports and entertainment corporation or the district.

3 **SECTION 3p.** 16.765 (8) of the statutes is amended to read:

4 16.765 (8) If further violations of this section are committed during the term
5 of the contract, the contracting agency ~~or~~, the Bradley center sports and
6 entertainment corporation or the local professional baseball park district created
7 under subch. III of ch. 229 may permit the violating party to complete the contract,
8 after complying with this section, but thereafter the contracting agency ~~or~~, the
9 Bradley center sports and entertainment corporation or the district shall request the
10 department to place the name of the party on the ineligible list for state contracts,
11 or the contracting agency ~~or~~, the Bradley center sports and entertainment
12 corporation or the district may terminate the contract without liability for the
13 uncompleted portion or any materials or services purchased or paid for by the
14 contracting party for use in completing the contract.”.

15 **2.** Page 7, line 9: delete lines 9 and 10 and substitute: “to provide any such
16 services is subject to s. 16.705 or 16.75 (1) (a) 1. and 3., (b) and (c), (1m) to (5) and (8)
17 to (10).”.

18 **3.** Page 9, line 10: delete the material beginning with “Sections” and ending
19 with the period on line 11.

20 **4.** Page 9, line 11: after that line insert:

21 “**SECTION 6g.** 16.855 (1) and (10m) (a) and (c) of the statutes are amended to
22 read:

23 16.855 (1) The department shall let by contract to the lowest qualified
24 responsible bidder all construction work to be performed for the state or to be

1 performed for any local professional baseball park district under s. 16.854 when the
2 estimated construction cost of the project exceeds \$30,000, except as provided in sub.
3 (10m) or s. 13.48 (19). If a bidder is not a Wisconsin firm and the department
4 determines that the state, foreign nation or subdivision thereof in which the bidder
5 is domiciled grants a preference to bidders domiciled in that state, nation or
6 subdivision in making governmental purchases, the department shall give a
7 preference over that bidder to Wisconsin firms, if any, when awarding the contract,
8 in the absence of compelling reasons to the contrary. The department may enter into
9 agreements with states, foreign nations and subdivisions thereof for the purpose of
10 implementing this subsection.

11 **(10m)** (a) ~~In~~ Except as provided in s. 16.854, in awarding construction
12 contracts the department shall attempt to ensure that 5% of the total amount
13 expended in each fiscal year is awarded to contractors and subcontractors which are
14 minority businesses, as defined under s. 16.75 (3m) (a). The department may award
15 any contract to a minority business that submits a qualified responsible bid that is
16 no more than 5% higher than the apparent low bid.

17 (c) The department shall maintain and annually publish data on contracts
18 awarded to minority businesses under this subsection and ss. 16.854, 16.87 and
19 84.075.

20 **SECTION 6r.** 16.87 (2) and (3) of the statutes are amended to read:

21 16.87 **(2)** A contract for engineering services or architectural services or a
22 contract involving an expenditure of \$2,500 or more for construction work, or \$20,000
23 or more for limited trades work, to be done for or furnished to the state or a
24 department, board, commission or officer of the state or to any local professional
25 baseball park district under subch. III of ch. 229, if the department provides services

1 to the district under s. 16.854, is exempt from the requirements of ss. 16.705 and
2 16.75. The Except as provided in s. 16.854, the department shall attempt to ensure
3 that 5% of the total amount expended ~~under this section~~ for such contracts in each
4 fiscal year is paid to minority businesses, as defined under s. 16.75 (3m) (a).

5 (3) Except as provided in sub. (4), a contract entered into by the department
6 under sub. (2) is not valid or effectual for any purpose until it is endorsed in writing
7 and approved by the secretary or the secretary’s designated assistant and, if the
8 contract involves an expenditure over \$30,000, approved by the governor. Except as
9 provided in sub. (4), no payment or compensation for work done under any such
10 contract involving \$2,500 or more, except a highway contract, may be made unless
11 the written claim is audited and approved by the secretary or the secretary’s
12 designee. Any change order to a contract requiring approval under this subsection
13 requires the prior approval by the secretary or the secretary’s designated assistant
14 and, if the change order involves an expenditure over \$30,000, the approval of the
15 governor.”.

16 5. Page 31, line 15: after “to” insert “s. 229.70 and”.

17 6. Page 31, line 16: delete the material beginning with “The” and ending with
18 the period on line 19.

19 7. Page 35, line 25: delete “**Minority contracting goals.**” and substitute
20 “**Contracting.**”.

21 8. Page 36, line 1: before that line insert:

22 “(a) “Construction work” has the meaning given in s. 16.87 (1).”.

23 9. Page 36, line 1: substitute “(am)” for “(a)”.

24 10. Page 36, line 5: after that line insert:

1 “(1b) The district shall let by contract to the lowest qualified responsible bidder
2 all construction work when the estimated construction cost of the project exceeds
3 \$30,000, except as provided in subs. (1f) and (7). If a bidder is not a Wisconsin firm
4 and the district determines that the state, foreign nation or subdivision thereof in
5 which the bidder is domiciled grants a preference to bidders domiciled in that state,
6 nation or subdivision in making governmental purchases, the district shall give a
7 preference over that bidder to Wisconsin firms, if any, when awarding the contract,
8 in the absence of compelling reasons to the contrary. The district may enter into
9 agreements with states, foreign nations and subdivisions thereof for the purpose of
10 implementing this subsection.

11 “(1c) Whenever the estimated construction cost of a project exceeds \$30,000, or
12 if less and in the best interest of the district, the district shall:

13 (a) Advertise for proposals by publication of a class 1 notice, under ch. 985, in
14 the official state newspaper. Similar notices may be placed in publications likely to
15 inform potential bidders of the project. The district may solicit bids from qualified
16 contractors to ensure adequate competition. All advertisements shall contain the
17 following information:

- 18 1. Location of work and the name of the owner.
- 19 2. Scope of the work.
- 20 3. Amount of bid guarantee required.
- 21 4. Date, time and place of bid opening.
- 22 5. Date when, and place where, plans will be available.

23 (b) Require that a guarantee of not less than 10% of the amount of the bid shall
24 be included with each bid submitted guaranteeing the execution of the contract
25 within 10 days after offering, if offered within 30 days after the date set for the

1 opening thereof. The parties may agree to extend the time for offering of the contract
2 beyond 30 days after the opening of bids.

3 (c) Publicly open and read aloud, at the time and place specified in the notice,
4 all bids. Within a reasonable time after opening, tabulations of all bids received shall
5 be available for public inspection.

6 (d) Not allow or make any correction or alteration of a bid, except as provided
7 in s. 66.29 (5).

8 **(1d)** Nothing contained in this section shall prevent the district from
9 negotiating deductive changes in the lowest qualified bid.

10 **(1e)** The district may issue contract change orders, if they are considered to be
11 in the best interests of the district.

12 **(1f)** When the district believes that it is in the best interests of the district to
13 contract for certain articles or materials available from only one source, it may
14 contract for said articles or materials without the usual statutory procedure, after
15 a publication of a class 1 notice, under ch. 985, in the official state newspaper.”.

16 **11.** Page 37, line 25: after that line insert:

17 **“(7)** (a) The district may award any contract to a minority business that
18 submits a qualified responsible bid that is no more than 5% higher than the apparent
19 low bid.

20 (b) Upon completion of any contract, the contractor shall report to the district
21 any amount of the contract that was subcontracted to minority businesses.

22 (c) The district shall maintain and annually publish data on contracts awarded
23 to minority businesses under this section.

1 **(8)** For each proposed construction project, the district shall ensure that the
2 specifications require the use of recovered materials and recycled materials, as
3 defined in s. 16.70 (11) and (12), to the extent that such use is technically and
4 economically feasible.

5 **(9)** A contractor shall be liable for any damages to another contractor working
6 on the same project caused by reason of the former's default, act or nonperformance.

7 **(10)** (a) A list of subcontractors shall not be required to be submitted with the
8 bid. The district may require the successful bidder to submit in writing the names
9 of prospective subcontractors for the district's approval before the award of a contract
10 to the prime contractor.

11 (b) All subcontractors must be approved in writing by the district prior to their
12 employment. Requests for approval of prospective subcontractors shall be in
13 writing.

14 (c) Changes may be made in the list of subcontractors, with the agreement of
15 the district and the prime contractor, when in the opinion of the district it is in the
16 best interests of the district to require the change.

17 **(11)** (a) If the estimated construction cost of a project exceeds \$100,000, the
18 district shall take both single bids and separate bids on any division of the work that
19 it designates. If the estimated construction cost of a project does not exceed \$100,000
20 and bids are required to be solicited under sub. (1c), the district may take single bids
21 or separate bids on any division of the work that it designates. If the district awards
22 contracts by the division of work, the district shall award the contracts according to
23 the division of work selected for bidding. Except as provided in subs. (1f) and (7), the
24 district shall award all contracts to the lowest qualified responsible bidder or bidders
25 that result in the lowest total construction cost for the project.

1 (b) The district is not liable to a prime contractor for damage from delay caused
2 by another prime contractor if the division takes reasonable action to require the
3 delaying prime contractor to comply with its contract. If the district is not liable
4 under this paragraph, the delayed prime contractor may bring an action for damages
5 against the delaying prime contractor.

6 **(12)** If a vendor is not a Wisconsin producer, distributor, supplier or retailer and
7 the district determines that the state, foreign nation or subdivision thereof in which
8 the vendor is domiciled grants a preference to vendors domiciled in that state, nation
9 or subdivision in making governmental purchases, the district shall give a
10 preference over that vendor to Wisconsin producers, distributors, suppliers and
11 retailers, if any, when awarding an order or contract. The district may enter into
12 agreements with states, foreign nations and subdivisions thereof for the purpose of
13 implementing this subsection.

14 **(13)** (a) In this subsection:

15 1. “Manufactured” means mined, produced, manufactured, fabricated or
16 assembled.

17 2. “Manufactured in the United States” means that materials are
18 manufactured in whole or in substantial part within the United States or that the
19 majority of the component parts thereof were manufactured in whole or in
20 substantial part in the United States.

21 3. “Materials” means any goods, supplies, equipment or any other tangible
22 products or materials.

23 4. “Purchase” means acquire by purchase or lease.

24 (b) When all other factors are substantially equal, the district shall purchase
25 materials which are manufactured to the greatest extent in the United States.

1 (c) Paragraph (b) does not apply if the materials are purchased for the purpose
2 of commercial resale or for the purpose of use in the production of goods for
3 commercial sale. Paragraph (b) does not apply if the district determines that the
4 foreign nation or subdivision thereof in which the vendor is domiciled does not give
5 preference to vendors domiciled in that nation or subdivision in making
6 governmental purchases. Paragraph (b) does not apply if the district determines
7 that:

8 1. The materials are not manufactured in the United States in sufficient or
9 reasonably available quantities; or

10 2. The quality of the materials is substantially less than the quality of similar
11 available materials manufactured outside of the United States.”.

12

(END)