



2011 ASSEMBLY BILL 22

February 8, 2011 - Introduced by Representatives CLARK, MOLEPSKE JR, SPANBAUER, MASON, BERCEAU, HEBL, FIELDS, ROYS, POPE-ROBERTS and BARCA, cosponsored by Senators SCHULTZ, MILLER, TAYLOR, ERPENBACH and WIRCH. Referred to Committee on Colleges and Universities.

1 **AN ACT to renumber and amend** 16.75 (1) (a) 1., 16.75 (1) (b) and 16.75 (2m)
2 (b); **to amend** 16.75 (2m) (a); and **to create** 16.75 (1) (a) 1. c., 16.75 (1) (b) 2.,
3 16.75 (2m) (b) 2. and 16.75 (3n) of the statutes; **relating to:** the purchase of food
4 by the Board of Regents of the University of Wisconsin-System.

Analysis by the Legislative Reference Bureau

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 \$25,000 require bids to be invited or proposals to be solicited and the order must be awarded to the lowest responsible bidder or most competitive sealed proposal. In determining the lowest responsible bidder the agency must consider the location of the agency, the quantities of the articles to be supplied, the conformity of the bids with the specifications in the invitation to bid, and the purpose for which the materials, supplies, or equipment are required and the delivery date. In determining the most competitive sealed proposal, the agency must consider factors outlined in the solicitation for competitive sealed proposals.

This bill creates several exceptions to these provisions if the Board of Regents of the University of Wisconsin System (board) is purchasing food. First, when the board is considering bids or proposals for the purchase of food, factors other than price may not comprise more than 25 percent of the total factors used to determine the lowest bid or most competitive proposal. In addition, under this bill, if the food is produced within a 100-mile radius of the site to which the food will be delivered,

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the board may purchase that food without inviting bids or soliciting proposals if the estimated cost does not exceed \$50,000. Finally, this bill creates an exception to the requirement to award to the lowest responsible bidder or most competitive sealed proposal by allowing the board to give the award to a person who submits a bid or proposal that is no more than 20 percent higher than the apparent low bid or than the most competitive proposal if the food was produced within a 100-mile radius of the site to which the food will be delivered.

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.** 16.75 (1) (a) 1. of the statutes is renumbered 16.75 (1) (a) 1. a. and
2 amended to read:

3 16.75 (1) (a) 1. a. All orders awarded or contracts made by the department for
4 all materials, supplies, equipment, and contractual services to be provided to any
5 agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3n),
6 (3t), (6), (7), (8), (9), (10e), and (10m) and ss. 16.705 (1r), 16.73 (4) (a), 16.751, 16.754,
7 16.964 (8), 50.05 (7) (f), 153.05 (2m) (a), and 287.15 (7), shall be awarded to the lowest
8 responsible bidder, ~~taking into consideration~~ to be determined as provided in subd.
9 1. b. and c.

10 b. Except as provided in subd. 1. c., the person who determines the lowest
11 responsible bidder shall consider life cycle cost estimates under sub. (1m), when
12 appropriate, the location of the agency, the quantities of the articles to be supplied,
13 their conformity with the specifications, and the purposes for which they are
14 required and the date of delivery.

15 **SECTION 2.** 16.75 (1) (a) 1. c. of the statutes is created to read:

16 16.75 (1) (a) 1. c. If the Board of Regents of the University of Wisconsin-System
17 is purchasing food and the purchase is subject to par. (b), factors other than price may

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1 not comprise more than 25 percent of the total factors used to determine the lowest
2 responsible bidder.

3 **SECTION 3.** 16.75 (1) (b) of the statutes is renumbered 16.75 (1) (b) 1. and
4 amended to read:

5 16.75 (1) (b) 1. ~~When~~ Except as provided in subd. 2., when the estimated cost
6 exceeds \$25,000, the department shall invite bids to be submitted. ~~The~~

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

19 **SECTION 4.** 16.75 (1) (b) 2. of the statutes is created to read:

20 16.75 (1) (b) 2. If the Board of Regents of the University of Wisconsin-System
21 is purchasing food and the food is produced within a 100-mile radius of the site to
22 which the food will be delivered, the person who produced the food or who distributes
23 the food may receive the award without submitting a bid if the estimated cost does
24 not exceed \$50,000.

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

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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 may solicit competitive sealed
4 proposals. Each request for competitive sealed proposals shall state the relative
5 importance of price and other evaluation factors. If the Board of Regents of the
6 University of Wisconsin-System is purchasing food, factors other than price may not
7 comprise more than 25 percent of the total factors used to determine the most
8 competitive sealed proposal.

9 **SECTION 6.** 16.75 (2m) (b) of the statutes is renumbered 16.75 (2m) (b) 1. and
10 amended to read:

11 16.75 (2m) (b) 1. ~~When~~ Except as provided in subd. 2., when the estimated cost
12 exceeds \$25,000, the department may invite competitive sealed proposals by
13 ~~publishing.~~

14 3. If competitive sealed proposals are invited, the department shall publish a
15 class 2 notice under ch. 985 or by posting post notice on the Internet at a site
16 determined or approved by the department. The notice shall describe the materials,
17 supplies, equipment, or contractual services to be purchased, the intent to make the
18 procurement by solicitation of proposals rather than by solicitation of bids, any
19 requirement for surety and the date the proposals will be opened, which shall be at
20 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.

22 **SECTION 7.** 16.75 (2m) (b) 2. of the statutes is created to read:

23 16.75 (2m) (b) 2. If the Board of Regents of the University of Wisconsin-System
24 is purchasing food and the food is produced within a 100-mile radius of the site to
25 which the food will be delivered, the person who produced that food or who

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1 distributes that food may receive the award without submitting a competitive sealed
2 proposal if the estimated cost does not exceed \$50,000.

3 **SECTION 8.** 16.75 (3n) of the statutes is created to read:

4 16.75 (3n) If the Board of Regents of the University of Wisconsin-System is
5 purchasing food and the award would otherwise be required to go to the low bid or
6 most advantageous proposal, the board may purchase the food from a person who
7 submits a qualified responsible competitive bid that is no more than 20 percent
8 higher than the apparent low bid or submits a competitive proposal that is no more
9 than 20 percent higher than the most advantageous proposal if the food was
10 produced within a 100-mile radius of the site to which the food will be delivered.

11 **SECTION 9. Initial applicability.**

12 (1) This act first applies with respect to bids or proposals solicited on the
13 effective date of this subsection.

14 (END)