



## 2005 ASSEMBLY BILL 161

March 3, 2005 - Introduced by Representatives ALBERS, DAVIS, GIELOW, HAHN, HINES, MUSSER, PETTIS, TOWNSEND, PETROWSKI and VOS, cosponsored by Senators KAPANKE and ERPENBACH. Referred to Committee on Budget Review.

1     **AN ACT to amend** 59.52 (29) (a), 60.47 (2) (a), 60.47 (2) (b), 61.55, 62.15 (1) and  
2           62.15 (3); and **to create** 16.73 (7) and 16.75 (10r) of the statutes; **relating to:**  
3           solicitation of bids for public procurements by means of an electronic auction  
4           and granting rule-making.

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### *Analysis by the Legislative Reference Bureau*

Currently, subject to numerous exceptions, the Department of Administration (DOA) and those state agencies to which DOA delegates purchasing authority must solicit bids for state procurements by publishing two legal notices requiring sealed bids to be received by a specified time or by soliciting bids in an electronic auction that is conducted at a specified time, notice of which is given on the Internet.

This bill directs DOA to maintain a system for solicitation of bids for state procurements through use of an electronic auction and to prescribe, by rule, procedures whereby counties, municipalities, school districts, and other local governments are permitted to use the system for making their procurements upon payment of a reasonable fee prescribed by DOA. The bill also requires DOA to provide to the Department of Workforce Development (DWD) any information obtained through the use of that electronic auction concerning the hourly pay, plus the hourly contribution for benefits, paid for any trade or occupation that is commonly employed on projects of public works that are subject to the prevailing wage law, which requires laborers, workers, mechanics, and truck drivers employed on state or local public works projects to be paid at the rate paid for a majority of the hours worked in the person's trade or occupation in the county in which the project

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is located, in order for DWD to determine the prevailing wage rates for those trades or occupations.

Generally under current law, if a city, village, town, or county (political subdivision) wishes to let a public contract involving the construction or repair of any public work or building, or the furnishing of supplies or materials, there are a number of bidding requirements that apply to such contracts. If the value of the contract is above a certain amount, or between certain amounts, a political subdivision must publish a notice in the newspaper before it contracts for the work, or, in the case of counties, the county board may instead contract with a qualified bidder as specified by statute. Generally, these current law provisions that apply to cities also apply to federated public library systems and technical college districts.

Under this bill, a political subdivision, federated library system, and technical college district may solicit bids for certain public contracts by utilizing DOA's electronic procurement system. This option applies to situations under which a political subdivision is currently required or authorized to publish a notice in a newspaper before the contract is executed although, under the bill, the use of DOA's system counts as one of the required publications of such a notice.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 16.73 (7) of the statutes is created to read:

2           16.73 **(7)** The department shall, by rule, prescribe procedures whereby  
3 municipalities may utilize the electronic procurement system maintained by the  
4 department under s. 16.75 (10r). The department may assess reasonable fees to  
5 municipalities that utilize the system for their procurements for the purpose of  
6 supporting the department's costs of maintaining the system.

7           **SECTION 2.** 16.75 (10r) of the statutes is created to read:

8           16.75 **(10r)** The department of administration shall maintain a system  
9 whereby bids for materials, supplies, equipment or contractual services may be  
10 solicited through the use of an electronic auction whenever that department or its  
11 designated agent under s. 16.71 (1) determines that it is in the best interests of the  
12 state to solicit bids by this means. The department of administration shall provide

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1 to the department of workforce development any information obtained through the  
2 use of that electronic auction concerning the hourly basic rate of pay, as defined in  
3 s. 103.49 (1) (b), plus the hourly contributions for health insurance benefits, vacation  
4 benefits, pension benefits, and any other bona fide economic benefit, paid directly or  
5 indirectly for any trade or occupation that is commonly employed on projects of public  
6 works that are subject to s. 66.0903, 103.49, or 103.50 in order for the department  
7 of workforce development to determine the prevailing wage rates for those trades or  
8 occupations under s. 66.0903 (3) (am) or (ar), 103.49 (3) (a) or (am), or 103.50 (3) or  
9 (4).

10 **SECTION 3.** 59.52 (29) (a) of the statutes is amended to read:

11 59.52 (29) (a) All public work, including any contract for the construction,  
12 repair, remodeling, or improvement of any public work, building, or furnishing of  
13 supplies or material of any kind where the estimated cost of such work will exceed  
14 \$25,000 shall be let by contract to the lowest responsible bidder. Any public work,  
15 the estimated cost of which does not exceed \$25,000, shall be let as the board may  
16 direct. If the estimated cost of any public work is between \$5,000 and \$25,000, the  
17 board shall give a class 1 notice under ch. 985 before it contracts for the work or shall  
18 contract with a person qualified as a bidder under s. 66.0901 (2). All contracts to  
19 which this paragraph applies may be solicited by use of the department of  
20 administration's electronic procurement system under s. 16.75 (10r) and, if that  
21 system is used, the class one notice requirement under this paragraph does not apply.  
22 A contract, the estimated cost of which exceeds \$25,000, shall be let and entered into  
23 under s. 66.0901, except that the board may by a three-fourths vote of all the  
24 members entitled to a seat provide that any class of public work or any part thereof  
25 may be done directly by the county without submitting the same for bids. This

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1 subsection does not apply to public construction if the materials for such a project are  
2 donated or if the labor for such a project is provided by volunteers. This subsection  
3 does not apply to highway contracts which the county highway committee or the  
4 county highway commissioner is authorized by law to let or make.

5 **SECTION 4.** 60.47 (2) (a) of the statutes is amended to read:

6 60.47 (2) (a) No town may enter into a public contract with an estimated cost  
7 of more than \$5,000 but not more than \$15,000 unless the town board, or a town  
8 official or employee designated by the town board, gives a class 1 notice under ch. 985  
9 before execution of that public contract. The town may solicit bids for the public  
10 contract by use of the department of administration's electronic procurement system  
11 under s. 16.75 (10r) and, if the town does so, the notice requirement under this  
12 paragraph does not apply.

13 **SECTION 5.** 60.47 (2) (b) of the statutes is amended to read:

14 60.47 (2) (b) No town may enter into a public contract with a value of more than  
15 \$15,000 unless the town board, or a town official or employee designated by the town  
16 board, advertises for proposals to perform the terms of the public contract by  
17 publishing a class 2 notice under ch. 985. The town may solicit bids for the public  
18 contract by use of the department of administration's electronic procurement system  
19 under s. 16.75 (10r) and, if the town does so, the class 2 notice that is otherwise  
20 required under this paragraph shall be a class one notice requirement under ch. 985.  
21 The town board may provide for additional means of advertising for bids.

22 **SECTION 6.** 61.55 of the statutes is amended to read:

23 **61.55 Contracts involving over \$15,000; how let; exception.** All contracts  
24 for public construction, in any such village, exceeding \$15,000, shall be let by the  
25 village board to the lowest responsible bidder in accordance with s. 66.0901 insofar

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1 as said ~~that~~ section ~~may be~~ is applicable. If the estimated cost of any public  
2 construction exceeds \$5,000, but is not greater than \$15,000, the village board shall  
3 give a class 1 notice, under ch. 985, of the proposed construction before the contract  
4 for the construction is executed. This provision does not apply to public construction  
5 if the materials for such a project are donated or if the labor for such a project is  
6 provided by volunteers, and this provision and s. 281.41 are not mandatory for the  
7 repair and reconstruction of public facilities when damage or threatened damage  
8 thereto creates an emergency, as determined by resolution of the village board, in  
9 which the public health or welfare of the village is endangered. Whenever the village  
10 board by majority vote at a regular or special meeting declares that an emergency  
11 no longer exists, this exemption no longer applies. All contracts to which this section  
12 applies may be solicited by use of the department of administration's electronic  
13 procurement system under s. 16.75 (10r) and, if that system is used, the class 1 notice  
14 requirement under this section does not apply.

15 **SECTION 7.** 62.15 (1) of the statutes is amended to read:

16 62.15 (1) CONTRACTS; HOW LET; EXCEPTION FOR DONATED MATERIALS AND LABOR. All  
17 public construction, the estimated cost of which exceeds \$15,000, shall be let by  
18 contract to the lowest responsible bidder; all other public construction shall be let as  
19 the council may direct. If the estimated cost of any public construction exceeds  
20 \$5,000 but is not greater than \$15,000, the board of public works shall give a class  
21 1 notice, under ch. 985, of the proposed construction before the contract for the  
22 construction is executed. This provision does not apply to public construction if the  
23 materials for such a project are donated or if the labor for such a project is provided  
24 by volunteers. The council may also by a vote of three-fourths of all the  
25 members-elect provide by ordinance that any class of public construction or any part

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1       thereof may be done directly by the city without submitting the same for bids. All  
2       contracts to which this subsection applies may be solicited by use of the department  
3       of administration's electronic procurement system under s. 16.75 (10r) and, if that  
4       system is used, the class 1 notice requirement under this section does not apply.

5               **SECTION 8.** 62.15 (3) of the statutes is amended to read:

6               62.15 (3) ADVERTISEMENT FOR BIDS. After the plans, specifications, and form of  
7       contract have been prepared, the board of public works shall advertise for proposals  
8       for doing such work by publishing a class 2 notice, under ch. 985. The bids may be  
9       solicited by use of the department of administration's electronic procurement system  
10       under s. 16.75 (10r) and, if the board of public works does so, the class 2 notice that  
11       is otherwise required under this subsection shall be a class 1 notice requirement  
12       under ch. 985. No bid shall be received unless accompanied by a certified check or  
13       a bid bond equal to at least 5% but not more than 10% of the bid payable to the city  
14       as a guaranty that if the bid is accepted the bidder will execute and file the proper  
15       contract and bond within the time limited by the city. If the successful bidder so files  
16       the contract and bond, upon the execution of the contract by the city the check shall  
17       be returned. In case the successful bidder fails to file such contract and bond the  
18       amount of the check or bid bond shall be forfeited to the city as liquidated damages.  
19       The notice published shall inform bidders of this requirement.

20               **SECTION 9. Nonstatutory provisions.**

21               (1) The department of administration shall submit in proposed form the rules  
22       required under section 16.73 (7) of the statutes, as created by this act, to the  
23       legislative council staff under section 227.15 (1) of the statutes no later than the first  
24       day of the 7th month beginning after the effective date of this subsection.

25               **SECTION 10. Initial applicability.**

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1           (1) This act first applies to contracts entered into by a city, village, town, or  
2     county on the first day of the 7th month beginning after the effective date of this  
3     subsection.

4   **(END)**