



September 1995 Special Session

**ASSEMBLY AMENDMENT 1,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 1**

September 27, 1995 - Offered by Representative WILLIAMS.

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 5, line 11: delete the material beginning with "Sections" and ending
3 with the period on line 12.

4 **2.** Page 5, line 12: after that line insert:

5 "SECTION 6g. 16.855 (1) and (10m) (a) and (c) of the statutes are amended to
6 read:

7 16.855 (1) The department shall let by contract to the lowest qualified
8 responsible bidder all construction work to be performed for the state or to be
9 performed for any local professional baseball park district under s. 16.854 when the
10 estimated construction cost of the project exceeds \$30,000, except as provided in sub.
11 (10m) or s. 13.48 (19). If a bidder is not a Wisconsin firm and the department
12 determines that the state, foreign nation or subdivision thereof in which the bidder
13 is domiciled grants a preference to bidders domiciled in that state, nation or
14 subdivision in making governmental purchases, the department shall give a
15 preference over that bidder to Wisconsin firms, if any, when awarding the contract,

1 in the absence of compelling reasons to the contrary. The department may enter into
2 agreements with states, foreign nations and subdivisions thereof for the purpose of
3 implementing this subsection.

4 **(10m)** (a) ~~In~~ Except as provided in s. 16.854, in awarding construction
5 contracts the department shall attempt to ensure that 5% of the total amount
6 expended in each fiscal year is awarded to contractors and subcontractors which are
7 minority businesses, as defined under s. 16.75 (3m) (a). The department may award
8 any contract to a minority business that submits a qualified responsible bid that is
9 no more than 5% higher than the apparent low bid.

10 (c) The department shall maintain and annually publish data on contracts
11 awarded to minority businesses under this subsection and ss. 16.854, 16.87 and
12 84.075.

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

14 16.87 **(2)** A contract for engineering services or architectural services or a
15 contract involving an expenditure of \$2,500 or more for construction work, or \$20,000
16 or more for limited trades work, to be done for or furnished to the state or a
17 department, board, commission or officer of the state or to any local professional
18 baseball park district under subch. III of ch. 229, if the department provides services
19 to the district under s. 16.854, is exempt from the requirements of ss. 16.705 and
20 16.75. ~~The~~ Except as provided in s. 16.854, the department shall attempt to ensure
21 that 5% of the total amount expended ~~under this section~~ for such contracts in each
22 fiscal year is paid to minority businesses, as defined under s. 16.75 (3m) (a).

23 **(3)** Except as provided in sub. (4), a contract entered into by the department
24 under sub. (2) is not valid or effectual for any purpose until it is endorsed in writing
25 and approved by the secretary or the secretary's designated assistant and, if the

1 contract involves an expenditure over \$30,000, approved by the governor. Except as
2 provided in sub. (4), no payment or compensation for work done under any such
3 contract involving \$2,500 or more, except a highway contract, may be made unless
4 the written claim is audited and approved by the secretary or the secretary's
5 designee. Any change order to a contract requiring approval under this subsection
6 requires the prior approval by the secretary or the secretary's designated assistant
7 and, if the change order involves an expenditure over \$30,000, the approval of the
8 governor.”.

9 **3.** Page 27, line 19: after “to” insert “s. 229.70 and”.

10 **4.** Page 27, line 20: delete the material beginning with “The” and ending with
11 the period on line 23.

12 **5.** Page 31, line 11: delete “**Minority contracting goals.**” and substitute
13 “**Contracting.**”.

14 **6.** Page 31, line 11: after that line insert:

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

16 **7.** Page 31, line 12: substitute “(am)” for “(a)”.

17 **8.** Page 31, line 16: after that line insert:

18 “**(1b)** The district shall let by contract to the lowest qualified responsible bidder
19 all construction work when the estimated construction cost of the project exceeds
20 \$30,000, except as provided in subs. (1g) and (7). If a bidder is not a Wisconsin firm
21 and the district determines that the state, foreign nation or subdivision thereof in
22 which the bidder is domiciled grants a preference to bidders domiciled in that state,
23 nation or subdivision in making governmental purchases, the district shall give a
24 preference over that bidder to Wisconsin firms, if any, when awarding the contract,

1 in the absence of compelling reasons to the contrary. The district may enter into
2 agreements with states, foreign nations and subdivisions thereof for the purpose of
3 implementing this subsection.

4 (1c) Whenever the estimated construction cost of a project exceeds \$30,000, or
5 if less and in the best interest of the district, the district shall:

6 (1d) Advertise for proposals by publication of a class 1 notice, under ch. 985,
7 in the official state newspaper. Similar notices may be placed in publications likely
8 to inform potential bidders of the project. The district may solicit bids from qualified
9 contractors to ensure adequate competition. All advertisements shall contain the
10 following information:

- 11 1. Location of work and the name of the owner.
- 12 2. Scope of the work.
- 13 3. Amount of bid guarantee required.
- 14 4. Date, time and place of bid opening.
- 15 5. Date when, and place where, plans will be available.

16 (b) Require that a guarantee of not less than 10% of the amount of the bid shall
17 be included with each bid submitted guaranteeing the execution of the contract
18 within 10 days after offering, if offered within 30 days after the date set for the
19 opening thereof. The parties may agree to extend the time for offering of the contract
20 beyond 30 days after the opening of bids.

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

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

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

3 **(1f)** The district may issue contract change orders, if they are considered to be
4 in the best interests of the district.

5 **(1g)** When the district believes that it is in the best interests of the district to
6 contract for certain articles or materials available from only one source, it may
7 contract for said articles or materials without the usual statutory procedure, after
8 a publication of a class 1 notice, under ch. 985, in the official state newspaper.”.

9 **9.** Page 33, line 10: after that line insert:

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

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

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

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

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

23 **(10)** (a) A list of subcontractors shall not be required to be submitted with the
24 bid. The district may require the successful bidder to submit in writing the names

1 of prospective subcontractors for the district’s approval before the award of a contract
2 to the prime contractor.

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

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

9 (11) (a) If the estimated construction cost of a project exceeds \$100,000, the
10 district shall take both single bids and separate bids on any division of the work that
11 it designates. If the estimated construction cost of a project does not exceed \$100,000
12 and bids are required to be solicited under sub. (2), the district may take single bids
13 or separate bids on any division of the work that it designates. If the district awards
14 contracts by the division of work, the district shall award the contracts according to
15 the division of work selected for bidding. Except as provided in subs. (1g) and (7), the
16 district shall award all contracts to the lowest qualified responsible bidder or bidders
17 that result in the lowest total construction cost for the project.

18 (b) The district is not liable to a prime contractor for damage from delay caused
19 by another prime contractor if the division takes reasonable action to require the
20 delaying prime contractor to comply with its contract. If the district is not liable
21 under this paragraph, the delayed prime contractor may bring an action for damages
22 against the delaying prime contractor.”

23 (END)