

1999 SENATE BILL 431

March 1, 2000 - Introduced by Senators GEORGE and WELCH, cosponsored by Representatives BERCEAU, POCAN, GRONEMUS and KREUSER. Referred to Economic Development, Housing and Government Operations.

1 **AN ACT to amend** 16.75 (1) (a) 1., 16.82 (6), 23.41 (5), 84.01 (13) and 84.06 (2) (a),
2 (3) and (4); and **to create** 16.753 of the statutes; **relating to:** state procurement
3 from persons doing business in Burma or with the government of Burma.

Analysis by the Legislative Reference Bureau

This bill restricts the procurement of any materials, supplies, equipment or contractual services by this state from any person doing business in Burma or with the government of Burma. Under the bill, the secretary of administration is directed to maintain a restricted purchase list consisting of persons from whom state procurements are restricted. The list is compiled from statements that are required to be filed by proposed vendors and from other reliable sources. With limited exceptions, state procurements from persons whose names appear on the list are prohibited unless the secretary of administration determines that a particular procurement is essential and that elimination of a vendor whose name is on the list would eliminate the only source from which that procurement can be made or would result in competition that would be inadequate to protect the state's financial interests with respect to that procurement.

The bill does not apply to any person with operations in Burma for the sole purpose of reporting the news, or solely for the purpose of providing materials, supplies, equipment or contractual services for the purpose of telecommunications. Medical supplies are also exempted from the procurement restriction.

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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, as affected by 1999 Wisconsin Act 9,
2 is amended to read:

3 16.75 (1) (a) 1. All orders awarded or contracts made by the department for all
4 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), (3t),
6 (6), (7), (8) and (9) and ss. 16.73 (4) (a), 16.751, 16.753, 16.754, 50.05 (7) (f), 287.15
7 (7) and 301.265, shall be awarded to the lowest responsible bidder, taking into
8 consideration life cycle cost estimates under sub. (1m), when appropriate, the
9 location of the agency, the quantities of the articles to be supplied, their conformity
10 with the specifications, and the purposes for which they are required and the date
11 of delivery.

12 **SECTION 2.** 16.753 of the statutes is created to read:

13 **16.753 Procurement from persons doing business in or with Burma.**

14 **(1)** In this section:

15 (a) “Burma” means the nation of Myanmar.

16 (b) “Distribution agreement” means an agreement to guarantee an order or
17 contract for the provision of materials, supplies, equipment or contractual services.

18 (c) “Doing business in Burma” means any of the following:

19 1. Having a principal place of business, place of incorporation or corporate
20 headquarters in Burma, or having any operations, leases, franchises,

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1 majority-owned subsidiaries, distribution agreements or similar agreements in
2 Burma.

3 2. Being a majority-owned subsidiary, licensee or franchisee of a person that
4 has any of the interests described under subd. 1.

5 3. Promoting the importation or sale of any natural resource from Burma.

6 (d) “Government of Burma” means any public or quasi-public entity operating
7 within Burma, including any national, provincial, municipal, other governmental or
8 military body, public utility, public facility or national corporation in which the
9 government of Burma has a financial interest or operational responsibilities.

10 (e) “Majority-owned subsidiary” means an entity that is more than 50% owned
11 by another entity.

12 (f) “State” means the state of Wisconsin or any agency thereof, a contractor
13 acting pursuant to a contract with the state or any agent of the state.

14 **(2)** Notwithstanding s. 16.75 (1) (a) 2., (2), (2m) and (6), the state shall not
15 purchase materials, supplies, equipment or contractual services from any person
16 who is on the restricted purchase list maintained by the department under sub. (5)
17 unless the secretary determines that a particular procurement is essential and
18 elimination of a vendor who is on the restricted purchase list would eliminate the
19 only source from which that procurement can be made or would result in competition
20 that would be inadequate to protect the state’s financial interests with respect to that
21 procurement.

22 **(3)** Each agency that solicits bids or competitive sealed proposals for the
23 purchase of materials, supplies, equipment or contractual services shall provide
24 notice of this section in the solicitation. The secretary may prescribe the form of the
25 notice.

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1 **(4)** Before awarding any order or contract for materials, supplies, equipment
2 or contractual services to be supplied to this state, the agency placing the order or
3 entering into the contract shall require the proposed vendor to submit a sworn
4 statement, on a form prescribed by the secretary, providing information sufficient to
5 determine whether making the procurement from the proposed vendor would
6 contravene this section.

7 **(5)** The secretary shall maintain a restricted purchase list consisting of the
8 names of persons who, during the current or preceding calendar year, are or were
9 doing business in Burma or with the government of Burma. The secretary shall
10 include on the list the name of any person whose statement submitted under sub. (4)
11 indicates that the person meets the criteria for being included on the list. In creating
12 the list, the secretary shall consult United Nations reports, resources of The Investor
13 Responsibility Research Center, The Associates to Develop Democratic Burma and
14 other reliable sources. The secretary shall update the list maintained under this
15 subsection at least once every 3 months. The secretary shall provide the list
16 maintained under this subsection and each revision thereof to each agency making
17 direct procurements.

18 **(6)** This section does not apply to any of the following:

19 (a) A person with operations in Burma for the sole purpose of reporting the
20 news, or solely for the purpose of providing materials, supplies, equipment or
21 contractual services for the provision of international telecommunications.

22 (b) The purchase of medical supplies intended to preserve or prolong life or to
23 cure, prevent or ameliorate disease, including hospital, nutritional, diagnostic,
24 pharmaceutical and nonprescription products specifically manufactured to satisfy
25 identified health care needs, or for which there is no medical substitute.

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1 **(7)** The determination of whether a medical substitute exists under sub. (6) (b)
2 shall be made by the agency making a procurement pursuant to general standards
3 of good medical and professional practice. An agency making a determination under
4 this subsection shall record a statement of the reasons therefor in writing. If the
5 agency is not the department, the agency shall file a copy of the statement with the
6 department prior to making the procurement.

7 **SECTION 3.** 16.82 (6) of the statutes is amended to read:

8 **16.82 (6)** May provide any services to a local professional baseball park district
9 created under subch. III of ch. 229, for compensation to be agreed upon between the
10 department and the district, if the district has entered into a lease agreement with
11 the department under sub. (7), except that the department shall not act as a general
12 contractor for any construction work undertaken by the district. No order or contract
13 to provide any such services is subject to s. 16.705, 16.75 (1) to (5) and (8) to (10),
14 16.752, 16.753, 16.754 or 16.765.

15 **SECTION 4.** 23.41 (5) of the statutes is amended to read:

16 **23.41 (5)** Each contract for construction work entered into by the department
17 under this section shall be awarded on the basis of bids or competitive sealed
18 proposals in accordance with procedures established by the department. Each
19 contract for construction work shall be awarded to the lowest responsible bidder or
20 the person submitting the most advantageous competitive sealed proposal as
21 determined by the department. If the bid of the lowest responsible bidder or the
22 proposal of the person submitting the most advantageous competitive sealed
23 proposal is determined by the department to be in excess of the estimated reasonable
24 value of the work or not in the public interest, the department may reject all bids or
25 competitive sealed proposals. Every such contract is exempted from ss. 16.70 to

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1 16.75, 16.755, 16.76, 16.767 to 16.82, 16.855, 16.87 and 16.89, but ss. 16.528, 16.753,
2 16.754 and 16.765 apply to the contract. Every such contract involving an
3 expenditure of \$30,000 or more is not valid until the contract is approved by the
4 governor.

5 **SECTION 5.** 84.01 (13) of the statutes is amended to read:

6 **84.01 (13) ENGINEERING SERVICES.** The department may engage such
7 engineering, consulting, surveying or other specialized services as it deems
8 advisable. Any engagement of services under this subsection is exempt from ss.
9 16.70 to 16.75, 16.755 to 16.82 and 16.85 to 16.89, but ss. 16.528, 16.752, 16.753 and
10 16.754 apply to such engagement. Any engagement involving an expenditure of
11 \$3,000 or more shall be by formal contract approved by the governor.

12 **SECTION 6.** 84.06 (2) (a), (3) and (4) of the statutes are amended to read:

13 **84.06 (2) (a)** All such highway improvements shall be executed by contract
14 based on bids unless the department finds that another method as provided in sub.
15 (3) or (4) would be more feasible and advantageous. Bids shall be advertised for in
16 the manner determined by the department. Except as provided in s. 84.075, the
17 contract shall be awarded to the lowest competent and responsible bidder as
18 determined by the department. If the bid of the lowest competent bidder is
19 determined by the department to be in excess of the estimated reasonable value of
20 the work or not in the public interest, all bids may be rejected. The department shall,
21 so far as reasonable, follow uniform methods of advertising for bids and may
22 prescribe and require uniform forms of bids and contracts. Except as provided in par.
23 (b), the secretary shall enter into the contract on behalf of the state. Every such
24 contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.82, 16.87 and 16.89, but
25 ss. 16.528, 16.752, 16.753 and 16.754 apply to the contract. Any such contract

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1 involving an expenditure of \$1,000 or more shall not be valid until approved by the
2 governor. The secretary may require the attorney general to examine any contract
3 and any bond submitted in connection with the contract and report on its sufficiency
4 of form and execution. The bond required by s. 779.14 (1m) is exempt from approval
5 by the governor and shall be subject to approval by the secretary. This subsection
6 also applies to contracts with private contractors based on bids for maintenance
7 under s. 84.07.

8 **(3) CONTRACTS WITH COUNTY OR MUNICIPALITY; DIRECT LABOR; MATERIALS.** If the
9 department finds that it would be more feasible and advantageous to have the
10 improvement performed by the county in which the proposed improvement is located
11 and without bids, the department may, by arrangement with the county highway
12 committee of the county, enter into a contract satisfactory to the department to have
13 the work done by the county forces and equipment. In such contract the department
14 may authorize the county to purchase, deliver and store materials and may fix the
15 rental rates of small tools and equipment. The contract shall be between the county
16 and the state and shall not be based on bids, and may be entered into on behalf of the
17 county by the county highway committee and on behalf of the state by the secretary.
18 Such contract is exempted from s. 779.14 and from all provisions of chs. 16 and 230,
19 except s. ss. 16.753 and 16.754. If the total estimated indebtedness to be incurred
20 exceeds \$5,000 the contract shall not be valid until approved by the governor. The
21 provisions of this subsection relating to agreements between a county and the state
22 shall also authorize and apply to such arrangements between a city, town or a village
23 and the state. In such cases, the governing body of the city, town or village shall enter
24 into the agreement on behalf of the municipality.

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1 **(4) SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES.** If an improvement
2 undertaken by the department will cross or affect the property or facilities of a
3 railroad or public utility company, the department may, upon finding that it is
4 feasible and advantageous to the state, arrange to perform portions of the
5 improvement work affecting such facilities or property or perform work of altering,
6 rearranging or relocating such facilities by contract with the railroad or public
7 utility. Such contract shall be between the railroad company or public utility and the
8 state and need not be based on bids. The contract may be entered into on behalf of
9 the state by the secretary. Every such contract is exempted from s. 779.14 and from
10 all provisions of chs. 16 and 230, except ss. 16.528, 16.752, 16.753 and 16.754. No
11 such contract in which the total estimated debt to be incurred exceeds \$5,000 shall
12 be valid until approved by the governor. As used in this subsection, “public utility”
13 means the same as in s. 196.01 (5), and includes a telecommunications carrier as
14 defined in s. 196.01 (8m), and “railroad” means the same as in s. 195.02. “Property”
15 as used in this subsection includes but is not limited to tracks, trestles, signals, grade
16 crossings, rights-of-way, stations, pole lines, plants, substations and other facilities.
17 Nothing in this subsection shall be construed to relieve any railroad or public utility
18 from any financial obligation, expense, duty or responsibility otherwise provided by
19 law relative to such property.

SECTION 7. Initial applicability.

20 **(1)** This act first applies to orders or contracts for which bids or competitive
21 sealed proposals are solicited after the effective date of this subsection or, if a
22 procurement is to be made without solicitation of bids or competitive sealed
23

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1 proposals, to any order placed or contract awarded after the effective date of this
2 subsection.

3 (END)