

1999 DRAFTING REQUEST

Bill

Received: **07/28/98**

Received By: **kuesejt**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-2214**

By/Representing: **Geisler**

This file may be shown to any legislator: **NO**

Drafter: **kuesejt**

May Contact:

Alt. Drafters:

Subject: **State Government - miscellaneous**

Extra Copies: **DAK - 1**

Topic:

DOA:.....Geisler - Federally governed procurements exempted from state use requirements

Instructions:

See Attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kuesejt 11/15/98	chanaman 11/17/98		_____			State
/1			martykr 11/17/98	_____	lrb_docadmin 11/17/98		State
/2	kuesejt 01/14/99	chanaman 01/14/99	jfrantze 01/14/99	_____	lrb_docadmin 01/14/99		

FE Sent For:

<END>

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Received: **07/28/98**

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/?	kuesejt 11/15/98	chanaman 11/17/98		_____			State
/1		CMA 1/14 /2	martykr 11/17/98	_____	lrb_docadmin 11/17/98		
FE Sent For:	1/14/99 1/2-1-14 KMG		1/14	1/14			
				<END> 1/14			

(DNOTE)

LRB-0362

10/15/98 2:17:03 PM
Page 1

1999 DRAFTING REQUEST

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Received: 07/28/98

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Identical to LRB:

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Instructions:

See Attached

See S. 49.46(2)(b) S., stats.

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1?	kuesejt	1-11-16 kmj	km 11/17	Q7 km 11/17			

FE Sent For:

<END>

DHFS

Department of Health and Family Services
1999-01 Biennial Budget Statutory Language Request
June 24, 1998

Title: State Use Board

Current Language

The State Use Board oversees the program for state purchases from sheltered work centers. A sheltered work center is a charitable organization or nonprofit institution that is operated to provide rehabilitation for severely handicapped individuals and to provide remunerative employment or other occupational rehabilitative activity of an educational or therapeutic nature. To be a sheltered work center, not less than 75% of the total hours of direct labor can be performed by severely handicapped individuals. The State Use Board establishes eligibility of work centers for the program and identifies goods and services that state agencies must procure from the centers. The Board, which meets quarterly, has the authority to decide if a work center qualifies for the Use Program and if a work center is qualified to produce a certain commodity.

Under current statutes, major state information technology procurements are not subject to State Use Board policies.

Proposed Change

In addition to major IT procurements, exempt from State Use Board policies procurements governed by federal acquisition regulations or other federal law. Section 16.752 (12) (i)

Effect of the Change

The change would give DHFS discretion in purchasing goods or services governed by federal regulations, such as MA.

Rationale for the Change

Current State Use Board statutory provisions have been problematic for the administration of the Department's Medical Assistance (MA) program.

When the MA program's previous State Purchase Eyeglass Contract (SPEC) was coming to a close, a Sheltered Work Center (SWC) requested the contract. Current law virtually requires the Department to award the contract to the SWC even if, as in this case, the SWC has almost no experience in producing the needed product. The program is funded by federal and state Medicaid dollars and is subject to federal regulations, which must be followed closely.

It is important that the Department have the discretion to choose a vendor that has a reasonable chance for full contract compliance. In this case, the vendor had only been producing eyewear for a short period of time. The vendor had a small contract with the Department of Administration to produce prescription safety glasses for staff. In the early stages of the contract there were significant problems with compliance including meeting deadlines and meeting specifications. Although the vendor claims it is now meeting all deadlines and specs, any similar problems with the much larger MA contract could pose very serious problems. The MA contract involves about 237 orders for glasses each working day. With such a large figure, any setbacks, even minor, could pose serious problems for the entire contract.

Desired Effective Date: Upon passage
Agency: DHFS
Agency Contact: Chris Marschman
Phone: 266-3412

Section 16.752 (12) (i) of the Statutes is amended to read:

Section 16.752 (12) (i). Paragraph (a) does not apply to major procurements, as defined in s. 16.75 (6) (am), or to procurements governed by federal acquisition regulations or other federal law.

1999

Date (time) needed

(DO NOT) SOAN

LRB - 036211

JIK: cmf:kmj

DOA BUDGET DRAFT

Use the appropriate components and routines developed for bills.

>>FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION<<

AN ACT ... [DO NOT generate catalog]; relating to: ~~the budget.~~ application of state use requirements to certain procurements.

Analysis by the Legislative Reference Bureau

For the 3 titles used in an analysis, in the component bar:

For the main heading [old =M], execute: create → anal: → title: → head

For the subheading [old =S], execute: create → anal: → title: → sub

For the sub-subheading [old =P], execute: create → anal: → title: → sub-sub

head State government
sub Other state government
Ins. "KA"

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

SECTION #.

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0362/1
JTK.....

Ino. "KA"

Currently, a work center for the employment of severely handicapped individuals may qualify to receive preference in the award of a contract or order by a state agency for the purchase of materials, supplies, equipment or services if the state use board so requires with respect to particular materials, supplies, equipment or services and certain other conditions apply.

This bill provides that this preference does not apply to any state procurement that is governed by federal law or federal acquisition regulations.

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

Section #. 16.752 (12) (a) of the statutes is amended to read:

✓
16.752 (12) (a) Except as provided in pars. (c), (d), (h) and ~~(i)~~ ^{and (j)} and as authorized under sub. (13), agencies shall obtain materials, supplies, equipment and services on the list maintained by the board under sub. (2) (g).

~~History: 1989 a. 345; 1991 a. 32, 39; 1993 a. 16, 17; 1995 a. 27 ss. 383b, 384, 9116 (5).~~

SECTION . CUC; 16.752 (12) (j)

16.752 (12) (j) Paragraph (a) does not apply to purchases that are governed by federal law or federal acquisition regulations.

(End)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0362/1dn

JTK.....
cmj

1. As this draft does not contain any initial applicability provision, it applies to pending procurements that have not been reduced to binding contracts on the date of enactment. If you intend for the draft to apply only to bids or proposals solicited on or after that date, please let me know.

2. At my request, Tili de Boor forwarded to me a citation to a federal regulation, 43 ~~CFR~~ 74.43, which requires that federally aided health and human service procurements be made on a competitive basis. The language of this draft, however, extends beyond noncompetitive awards; it exempts all procurements for all federally aided programs that are governed by federal law or federal acquisition regulations from compliance with the state use law, regardless of whether the federal requirements relate to competition. Please let me know if this is not in accord with your intent.

3. You indicate that a state contractor, ~~which~~ ^{that} qualified as a work center for the employment of severely handicapped individuals has experienced quality control and delivery problems. That issue does not appear to be addressed in the federal regulation; however, the issue is addressed in current state law, which requires specifications of the state use board to be consistent with agency specifications, requires orders to be filled in accordance with the specifications, requires the board to investigate contractual violations, permits the board to grant exceptions to the requirement to purchase from a work center if a work center cannot meet delivery specifications, and directs the board to suspend eligibility of work centers for unsatisfactory performance. See s. 16.752 (2)(g), (11), (13) and (17)(a) and (c).

4. Because under this draft the application of state law is determined by future federal law and regulations, the draft may result in an invalid delegation of state lawmaking power to the federal government. See the discussion in 66 O.A.G. 331, 332-33 (1977). The delegation may be avoided either by 1) limiting the application of the draft to proposed procurements that are affected by existing federal procurement requirements; or 2) empowering a state officer or body other than the state use board to make exceptions to state use requirements based on a determination that adherence to those requirements would preclude federal participation in financing a procurement.

Jeffery T. Kuesel
Assistant Chief Counsel
266-6778

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0362/1dn
JTK:cmh&kmg:km

November 17, 1998

1. As this draft does not contain any initial applicability provision, it applies to pending procurements that have not been reduced to binding contracts on the date of enactment. If you intend for the draft to apply only to bids or proposals solicited on or after that date, please let me know.

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Jeffery T. Kuesel
Assistant Chief Counsel
266-6778



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0362/W 2

JTK:cmh&kmg:km

WANTED SOON

stays

DOA:.....de Boor - Federally governed procurements exempted from state use requirements

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

WPDS - please fix topic line on cover request sheet

don't Scot

1 AN ACT ...; relating to: application of state use requirements to certain
2 procurements.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

OTHER STATE GOVERNMENT

Currently, a work center for the employment of severely handicapped individuals may qualify to receive preference in the award of a contract or order by a state agency for the purchase of materials, supplies, equipment or services if the state use board so requires with respect to particular materials, supplies, equipment or services and certain other conditions apply.

TWS
A

~~This bill provides that this preference does not apply to any state procurement that is governed by federal law or federal acquisition regulations.~~

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:

3 SECTION 1. 16.752 (12) (a) of the statutes is amended to read:

1 16.752 (12) (a) Except as provided in pars. (c), (d), (h) and (i) and as
2 authorized under sub. (13), agencies shall obtain materials, supplies, equipment and
3 services on the list maintained by the board under sub. (2) (g).

4 **SECTION 2.** 16.752 (12) (j) of the statutes is created to read:

5 ~~16.752 (12) (j) Paragraph (a) does not apply to purchases that are governed by~~
6 ~~federal law or federal acquisition regulations.~~

(END)

JWS
2-5
7

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0362/2ins
JTK.....

FWS
A

91 This bill provides that the secretary of administration may, upon request of a state agency, waive compliance with this preference requirement with respect to any purchase to be made by or for that agency if the secretary determines that compliance with the requirement would contravene competitive requirements under federal law or regulations applicable to that purchase.

a

(END OF INSERT)

FWS
2-5

91 16. ⁷⁵² ~~16.072~~ (12)(j) ^{check space} The secretary may, upon request of an agency, waive compliance with par. (a) with respect to any purchase to be made by or for that agency if the secretary determines that compliance with par. (a) would contravene competitive requirements under federal law or regulations applicable to that purchase.

(END OF INSERT)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0362/2
JTK:cmh&kmg:jf

DOA:.....Geisler – Federally governed procurements exempted from state use requirements

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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This bill provides that the secretary of administration may, upon request of a state agency, waive compliance with this preference requirement with respect to any purchase to be made by or for that agency if the secretary determines that compliance with the requirement would contravene competitive requirements under federal law or regulations applicable to that purchase.

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