

1999 DRAFTING REQUEST

Bill

Received: **01/13/99**

Received By: **kuesejt**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget 6-8593**

By/Representing: **Holden**

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

Drafter: **kuesejt**

May Contact:

Alt. Drafters:

Subject: **State Government - miscellaneous**

Extra Copies:

Topic:

DOA:.....Holden - SWIB procurements

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 01/24/99	wjackson 01/26/99		_____			
/1			lpaasch 01/26/99	_____	lrb_docadmin 01/26/99		
/2	kuesejt 02/2/99	wjackson 02/2/99	lpaasch 02/2/99	_____	lrb_docadmin 02/2/99		

FE Sent For:

<END>

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/?	kuesejt 01/24/99	wjackson 01/26/99		_____			
/1		1/2 2/2 WLJ	lpaasch 01/26/99	_____	lrb_docadmin 01/26/99		
1/2	kuesejt 2/2	1/2 2/2 jlg	2-2LP.	2-2LP.			
FE Sent For:				JP <END>			

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1?	kuesejt	1 WLj 1/25 1 Jlg 1/25	1/26 LP	1/26 LP KM			

FE Sent For:

<END>



STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR
MARK D. BUGHER
SECRETARY

Mailing Address:
Post Office Box 7864
Madison, WI 53707-7864



Date: January 11, 1999

Priority: High

To: Steve Miller
Legislative Reference Bureau

From: Kerry Holden, SBO, 6-8593 *KH*

Subject: Draft for Governor's 1999-2001 Budget Bill - SWIB Procurement Authority

Please draft for inclusion in the Governor's 1999-2001 budget bill statutory language to exclude SWIB from the requirement to use the state procurement process. It appears this can be accomplished by amending s. 16.70 so that it does not apply to SWIB. Please call me with any questions. Thank you.

1999

Date (time) needed

DO NOT
SOON

LRB - 1733, 1

DOA BUDGET DRAFT

JRK : Wlj :
+ jlg

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. procurements
by the investment board.

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

(Next page)

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-1733/lins
JTK.....

Header → STATE GOVERNMENT ✓
Subheader → OFFICE STATE GOVERNMENT ✓

Under current law, the investment board must make all purchases of materials, supplies, equipment or services through the department of administration (DOA). DOA may delegate authority to the board and other state agencies to make purchases independently of DOA, but any agency to which DOA delegates purchasing authority must adhere to all statutory requirements that would apply if DOA made the purchases. In making purchases, DOA and the agencies to which DOA delegates purchasing authority are required, subject to numerous exceptions, to make purchases by solicitation of bids or competitive sealed proposals preceded by public notice. Agencies must provide written justification for contractual service procurements and must comply with rules of DOA regarding conflicts of interest between contractors and agency employees. Agencies must offer the department of corrections (DOC) the opportunity to supply those materials, supplies, equipment or services that DOC is able to supply. Agencies must purchase computer services that are provided by DOA from DOA, unless DOA permits otherwise.

This bill permits the investment board to make all purchases independently of DOA, with or without public notice or solicitation of bids or proposals, except that the board must procure all stationery and printing from the lowest responsible bidder. Under the bill, the board is not subject to requirements that DOA and other executive branch agencies must adhere to in making purchases, except that the board must continue to adhere to certain current requirements, including a requirement for agencies to attempt to ensure that at least 5% of the amount they spend on purchases each year is paid to minority-owned businesses, a requirement for agencies to procure certain materials, supplies, equipment or services from work centers that employ handicapped individuals, requirements that agencies require contractors not to practice discrimination in employment and to take affirmative action to ensure equal employment opportunities, requirements that agencies use specifications developed by DOA that are designed to ensure maximum use of recycled and recovered materials and products made from materials that are recyclable or recoverable and to ensure that the paper they purchase has at least 40% recycled or recovered content and requirements that, whenever all other factors are substantially equal, agencies make purchases from Wisconsin-based businesses and purchase products made from American-made materials. Under the bill, the investment board may continue to make any of its purchases through DOA, in which case all current requirements continue to apply.

Section #. 16.52 (6) (a) of the statutes is amended to read:

16.52 (6) (a) Except as authorized in ~~s. 16.74~~ ^{ss. 16.74 and 16.745} all purchase orders, contracts, or printing orders for any agency as defined in s. 16.70 (1) shall, before any liability is incurred thereon, be submitted to the secretary for his or her approval as to legality of purpose and sufficiency of appropriated and allotted funds therefor. In all cases the date of ~~the~~ ^{a purchasing} contract or order governs the fiscal year to which the contract or order is chargeable, unless the secretary determines that the purpose of the contract or order is to prevent lapsing of appropriations or to otherwise circumvent budgetary intent. ~~Upon~~ ^{Whenever} such approval ^{is required}, the secretary shall immediately encumber all contracts or orders, and indicate the fiscal year to which they are chargeable. ^(, upon granting approval)

History: 1971 c. 125, 261; 1973 c. 243; 1975 c. 41 s. 52; 1977 c. 29; 1977 c. 196 s. 130 (3), (4); 1977 c. 272, 273, 418; 1979 c. 34 ss. 65 to 67, 2102 (43) (a); 1981 c. 14; 1983 a. 27 ss. 73, 74, 2202 (42); 1983 a. 368; 1985 a. 29; 1987 a. 399; 1989 a. 31, 336, 359; 1991 a. 39, 316; 1995 a. 27 ss. 296, 297, 9145 (1); 1997 a. 27.

Section #. 16.71 (1) of the statutes is amended to read:

16.71 (1) Except as otherwise required under this section or as authorized in ~~s. 16.74~~ ^{s. 550} and ~~16.745~~ ^{16.745}, the department shall purchase and may delegate to special designated agents the authority to purchase all necessary materials, supplies, equipment, all other permanent personal property and miscellaneous capital, and contractual services and all other expense of a consumable nature for all agencies. In making any delegation, the department shall require the agent to adhere to all requirements imposed upon the department in making purchases under this subchapter. All materials, services and other things and expense furnished to any agency and interest paid under s. 16.528 shall be charged to the proper appropriation of the agency to which furnished.

~~History: 1977 c. 418; 1983 a. 333; 1985 a. 29, 300; 1987 a. 119; 1989 a. 31; 1991 a. 39, 269; 1995 a. 27; 1997 a. 27.~~

Section #. 16.72 (4) (a) of the statutes is amended to read:

16.72 (4) (a) Except as provided in ^{ss.} ~~s.~~ 16.74 and 16.745[✓] or as otherwise provided in this subchapter and the rules promulgated under s. 16.74 and this subchapter, all supplies, materials, equipment and contractual services shall be purchased for and furnished to any agency only upon requisition to the department. The department shall prescribe the form, contents, number and disposition of requisitions and shall promulgate rules as to time and manner of submitting such requisitions for processing. No agency or officer may engage any person to perform contractual services without the specific prior approval of the department for each such engagement. Purchases of supplies, materials, equipment or contractual services by the ^{investment board or by the} legislature, the courts or legislative service or judicial branch agencies do not require approval under this paragraph.

~~History: 1975 c. 41; 1977 c. 118; 1981 c. 20, 350; 1983 a. 92; 1983 a. 333 ss. 3c, 3g, 3n, 3w; 1985 a. 29 ss. 122g, 320 (1); 1985 a. 332; 1987 a. 119, 292; 1989 a. 31, 335; 1991 a. 39, 269; 1995 a. 27, 227; 1997 a. 27, 212; s. 13.93 (1) (b).~~

Section #. 16.72 (6) of the statutes is amended to read:

16.72 (6) ✓ The department shall maintain a clearinghouse of information regarding products made from recycled material and recovered material for purchase by governmental agencies and authorities. The clearinghouse shall include information concerning the availability, price and quality of products made from recycled materials and recovered materials. The clearinghouse shall also include information concerning vendors and other persons willing to purchase recyclable material from agencies, authorities and local governmental units. The department shall develop a mechanism to make this information available to all designated agents under s. 16.71 (1), agencies making purchases under ~~s. 16.74~~ ^{ss. and 16.745 ✓} and authorities to assist them in complying with s. 16.75 (8) and (9) and to all local governmental purchasing agents to assist them in complying with s. 66.299 (3) and (4).

~~History: 1975 c. 41; 1977 c. 418; 1981 c. 20, 350; 1983 a. 92; 1983 a. 333 ss. 3c, 3g, 3n, 3w; 1985 a. 29, ss. 122g, 3200 (1); 1985 a. 332; 1987 a. 119, 292; 1989 a. 31, 335; 1991 a. 39, 269; 1995 a. 27, 227; 1997 a. 27, 212; s. 13.93 (1) (b).~~

16.745

is created

Section #. 16.74 (3) to (6) of the statutes are amended to read:

ⓑ

16.745 Investment board purchasing. (1) The investment board may place requisitions and enter into contracts for the purchase of any materials, supplies, equipment or services required by the board.

16.74 (3) Each legislative and judicial officer who is authorized to make purchases or engage services under this section may prescribe the form of requisitions or contracts for the purchases and engagements. Requisitions and contracts shall be maintained by the officer and shall be subject to inspection and copying under subch. II of ch. 19. No such requisition or contract need be filed with the department.

The investment board shall maintain copies of all purchasing requisitions and contracts. Requisitions and contracts shall be maintained by the officer and shall be subject to inspection and copying under subch. II of ch. 19. No such requisition or contract need be filed with the department.

and contracts and shall permit

ⓑ

(2) The investment board shall file all bills and statements for purchases and engagements made by the officer under this section with the secretary, who shall audit and authorize payment of all lawful bills and statements. No bill or statement for any purchase or engagement for the legislature, the courts or any legislative service or judicial branch agency may be paid until the bill or statement is approved by the requisitioning or contracting officer under sub. (2).

ⓑ

(3) The department, upon request, shall make recommendations and furnish assistance to the courts, to either house of the legislature or to any legislative service or judicial branch agency regarding purchasing procedure. The department, upon request, shall process requisitions for purchases submitted by the courts, the legislature or any legislative service or judicial branch agency and shall procure materials, supplies, equipment, property and services for the courts, the legislature and legislative service and judicial branch agencies in accordance with the purchasing procedure prescribed for executive branch agencies under this subchapter.

ⓑ

(4) All stationery and printing purchased under this section shall be procured from the lowest responsible bidder.

History: 1985 a. 29.

Section #. 16.75 (1) (a) 2. of the statutes is amended to read:

16.75 (1) (a) 2. If a vendor is not a Wisconsin producer, distributor, supplier or retailer and the department determines that the state, foreign nation or subdivision thereof in which the vendor is domiciled grants a preference to vendors domiciled in that state, nation or subdivision in making governmental purchases, the department and any agency making purchases under s. 16.74^{or 16.745} shall give a preference over that vendor to Wisconsin producers, distributors, suppliers and retailers, if any, when awarding the order or contract. The department may enter into agreements with states, foreign nations and subdivisions thereof for the purpose of implementing this subdivision.

~~History: 1975 c. 224; 1977 c. 418, 419; 1979 c. 34, 221, 314, 340, 355; 1979 c. 361 s. 112; 1981 c. 121 s. 20; 1983 a. 27 ss. 91, 93 to 99; 1983 a. 333 ss. 3g, 3r to 4b, 6; 1983 a. 368, 390; 1985 a. 29 ss. 122m to 124, 3200 (1); 1985 a. 180; 1987 a. 27, 119, 142, 147, 186, 399, 403; 1989 a. 31, 335, 345, 359; 1991 a. 39, 170; 1993 a. 16, 414; 1995 a. 27 ss. 368 to 382, 9116 (5); 1995 a. 225, 227, 244, 289, 432; 1997 a. 3.~~

Section #. 16.75 (3m) (b) of the statutes is amended to read:

16.75 (3m) (b) The department and any agency making purchases under s. 16.74^{or 16.745} shall attempt to ensure that 5% of the total amount expended under this subchapter in each fiscal year is paid to minority businesses. Except as provided under sub. (7), the department may purchase materials, supplies, equipment and contractual services from any minority business submitting a qualified responsible competitive bid that is no more than 5% higher than the apparent low bid or competitive proposal that is no more than 5% higher than the most advantageous offer. In administering the preference for minority businesses established in this paragraph, the department and any agency making purchases under s. 16.74^{or 16.745} shall maximize the use of minority businesses which are incorporated under ch. 180 or which have their principal place of business in this state.

History: ~~1975 c. 224; 1977 c. 418, 419; 1979 c. 34, 221, 314, 340, 355; 1979 c. 361 s. 112; 1981 c. 121 s. 20; 1983 a. 27 ss. 91, 93 to 99; 1983 a. 333 ss. 3g, 3r to 4b, 6; 1983 a. 368, 390; 1985 a. 29 ss. 122m to 124, 3200 (1); 1985 a. 180; 1987 a. 27, 119, 142, 147, 186, 399, 403; 1989 a. 31, 335, 345, 359; 1991 a. 39, 170; 1993 a. 16, 414; 1995 a. 27 ss. 368 to 382, 9116 (5); 1995 a. 225, 227, 244, 289, 432; 1997 a. 3.~~

Section #. 16.75 (8) (a) 1. of the statutes is amended to read:

16.75 (8) (a) 1. The department, any other designated purchasing agent under s. 16.71 (1), any agency making purchases under s. 16.74^{or 16.745} and each authority other than the University of Wisconsin Hospitals and Clinics Authority shall, to the extent practicable, make purchasing selections using specifications developed under s. 16.72 (2) (e) to maximize the purchase of materials utilizing recycled materials and recovered materials.

History: 1975 c. 224; 1977 c. 418, 419; 1979 c. 34, 221, 314, 340, 355; 1979 c. 361 s. 112; 1981 c. 121 s. 20; 1983 a. 27 ss. 91, 93 to 99; 1983 a. 333 ss. 3g, 3r to 4b, 6; 1983 a. 368, 390; 1985 a. 29 ss. 122m to 124, 3200 (1); 1985 a. 180; 1987 a. 27, 119, 142, 147, 186, 399, 403; 1989 a. 31, 335, 345, 359; 1991 a. 39, 170; 1993 a. 16, 414; 1995 a. 27 ss. 368 to 382, 9116 (5); 1995 a. 225, 227, 244, 289, 432; 1997 a. 3.

Section #. 16.75 (9) of the statutes is amended to read:

16.75 (9) The department, any other designated purchasing agent under s. 16.71 (1), any agency making purchases under s. 16.74 ^{or 16.745} and any authority other than the University of Wisconsin Hospitals and Clinics Authority shall, to the extent practicable, make purchasing selections using specifications prepared under s. 16.72 (2) (f).

~~History: 1975 c. 224; 1977 c. 418, 419; 1979 c. 34, 221, 314, 340, 355; 1979 c. 361 s. 112; 1981 c. 121 s. 20; 1983 a. 27 ss. 91, 93 to 99; 1983 a. 333 ss. 3g, 3r to 4b, 6; 1983 a. 368, 390; 1985 a. 29 ss. 122m to 124, 3200 (1); 1985 a. 180; 1987 a. 27, 119, 142, 147, 186, 399, 403; 1989 a. 31, 335, 345, 359; 1991 a. 39, 170; 1993 a. 16, 414; 1995 a. 27 ss. 368 to 382, 9116 (5); 1995 a. 225, 227, 244, 289, 432; 1997 a. 3.~~

Section #. 16.76 (1) of the statutes is amended to read:

16.76 (1) All contracts for materials, supplies, equipment or contractual services to be provided to any agency shall run to the state of Wisconsin. Such contracts shall be signed by the secretary or an individual authorized by the secretary, except that contracts entered into directly by the legislature, the courts or a legislative service or judicial branch agency shall be signed by an individual authorized under s. 16.74 (2) (h).

~~History: 1973 c. 333; 1977 c. 196 s. 130 (3); 1979 c. 34; 1983 a. 27; 1985 a. 29; 1987 a. 119, 142; 1989 a. 31; 1991 a. 39; 1993 a. 496; 1995 a. 27.~~

by the investment board shall be signed by an individual authorized by the board and contracts entered into

Section #. 16.77 (1)[✓] of the statutes is amended to read:

16.77 (1) No bill or statement for work or labor performed under purchase orders or contracts issued by the secretary or the secretary's designated agents, and no bill or statement for supplies, materials, equipment or contractual services purchased for and delivered to any agency may be paid until the bill or statement is approved through a preaudit or postaudit process determined by the secretary. This subsection does not apply to purchases made directly by the courts, the legislature or a legislative service or judicial branch agency under s. 16.74.[✓]

~~History: 1979 c. 221; 1981 c. 20 s. 2202 (1) (c); 1985 a. 29; 1985 a. 332 s. 251 (5); 1987 a. 119; 1991 a. 39.~~

*by the investment board or
to purchases made*

Section #. 16.78 (1) of the statutes is amended to read:

16.78 (1) Every agency other than the board of regents of the university of Wisconsin system or an agency making purchases under s. 16.74^{or 16.745 ✓✓} shall purchase all computer services from the division of information technology services in the department of ~~administration~~, unless the division grants written authorization to the agency to procure the services under s. 16.75 (1), to purchase the services from another agency or to provide the services to itself. The board of regents of the university of Wisconsin system may purchase computer services from the division of information technology services.

~~History: 1991 a. 39.~~

(End) ✓

done →

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1733/1dn

JTK.../.....

WL
+
WJ

1. This draft exempts the investment board from compliance with all procurement laws that currently apply to executive branch agencies only. However, it does not exempt the board from compliance with procurement laws that currently apply to the legislative and judicial branches as well as the executive branch. Let me know if this is not in accord with your intent.

2. The requirement to procure stationery and printing from the lowest responsible bidder is contained in article IV, section 25 of the Wisconsin constitution.

Jeffery T. Kuesel
Managing Attorney
266-6778

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

LRB-1733/1dn
JTK:wj&jlg:lp

January 26, 1999

1. This draft exempts the investment board from compliance with all procurement laws that currently apply to executive branch agencies only. However, it does not exempt the board from compliance with procurement laws that currently apply to the legislative and judicial branches as well as the executive branch. Let me know if this is not in accord with your intent.

2. The requirement to procure stationery and printing from the lowest responsible bidder is contained in article IV, section 25, of the Wisconsin Constitution.

Jeffery T. Kuesel
Managing Attorney
266-6778



(D NOTE)
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1733/2
JTK:wj&jlg:lp

(Wanted Seen)

DOA:.....Holden - SWIB procurements

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

*Don't Gen
Cut*

1 AN ACT *f*; relating to: procurements by the investment board.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

OTHER STATE GOVERNMENT

Under current law, the investment board must make all purchases of materials, supplies, equipment or services through the department of administration (DOA). DOA may delegate authority to the board and other state agencies to make purchases independently of DOA, but any agency to which DOA delegates purchasing authority must adhere to all statutory requirements that would apply if DOA made the purchases. In making purchases, DOA and the agencies to which DOA delegates purchasing authority are required, subject to numerous exceptions, to make purchases by solicitation of bids or competitive sealed proposals preceded by public notice. Agencies must provide written justification for contractual service procurements and must comply with rules of DOA regarding conflicts of interest between contractors and agency employees. Agencies must offer the department of corrections (DOC) the opportunity to supply those materials, supplies, equipment or services that DOC is able to supply. Agencies must purchase computer services that are provided by DOA from DOA, unless DOA permits otherwise.

This bill permits the investment board to make all purchases independently of DOA, with or without public notice or solicitation of bids or proposals, except that the board must procure all stationery and printing from the lowest responsible bidder. Under the bill, the board is not subject to requirements that DOA and other executive

branch agencies must adhere to in making purchases, except that the board must continue to adhere to certain current requirements, including a requirement for agencies to attempt to ensure that at least 5% of the amount they spend on purchases each year is paid to minority-owned businesses, a requirement for agencies to procure certain materials, supplies, equipment or services from work centers that employ handicapped individuals, requirements that agencies require contractors not to practice discrimination in employment and to take affirmative action to ensure equal employment opportunities, requirements that agencies use specifications developed by DOA that are designed to ensure maximum use of recycled and recovered materials and products made from materials that are recyclable or recoverable and to ensure that the paper they purchase has at least 40% recycled or recovered content and requirements that, whenever all other factors are substantially equal, agencies make purchases from Wisconsin-based businesses and purchase products made from American-made materials. Under the bill, the investment board may continue to make any of its purchases through DOA, in which case all current requirements continue to apply.

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

- 1 **SECTION 1.** 16.52 (6) (a) of the statutes is amended to read:
- 2 16.52 (6) (a) Except as authorized in s. ss. 16.74 and 16.745, all purchase
- 3 orders, contracts, or printing orders for any agency as defined in s. 16.70 (1) shall,
- 4 before any liability is incurred thereon, be submitted to the secretary for his or her
- 5 approval as to legality of purpose and sufficiency of appropriated and allotted funds
- 6 therefor. In all cases the date of ~~the~~ a purchasing contract or order governs the fiscal
- 7 year to which the contract or order is chargeable, unless the secretary determines
- 8 that the purpose of the contract or order is to prevent lapsing of appropriations or to
- 9 otherwise circumvent budgetary intent. ~~Upon~~ Whenever such approval is required,
- 10 the secretary, upon granting approval, shall immediately encumber all contracts or
- 11 orders, and indicate the fiscal year to which they are chargeable.
- 12 **SECTION 2.** 16.71 (1) of the statutes is amended to read:

1 16.71 (1) Except as otherwise required under this section or as authorized in
2 s. ~~ss. 16.74 and 16.745~~, the department shall purchase and may delegate to special
3 designated agents the authority to purchase all necessary materials, supplies,
4 equipment, all other permanent personal property and miscellaneous capital, and
5 contractual services and all other expense of a consumable nature for all agencies.
6 In making any delegation, the department shall require the agent to adhere to all
7 requirements imposed upon the department in making purchases under this
8 subchapter. All materials, services and other things and expense furnished to any
9 agency and interest paid under s. 16.528 shall be charged to the proper appropriation
10 of the agency to which furnished.

11 **SECTION 3.** 16.72 (4) (a) of the statutes is amended to read:

12 16.72 (4) (a) Except as provided in ~~s. ss. 16.74 and 16.745~~ or as otherwise
13 provided in this subchapter and the rules promulgated under s. 16.74 and this
14 subchapter, all supplies, materials, equipment and contractual services shall be
15 purchased for and furnished to any agency only upon requisition to the department.
16 The department shall prescribe the form, contents, number and disposition of
17 requisitions and shall promulgate rules as to time and manner of submitting such
18 requisitions for processing. No agency or officer may engage any person to perform
19 contractual services without the specific prior approval of the department for each
20 such engagement. Purchases of supplies, materials, equipment or contractual
21 services by the investment board or by the legislature, the courts or legislative
22 service or judicial branch agencies do not require approval under this paragraph.

23 **SECTION 4.** 16.72 (6) of the statutes is amended to read:

24 16.72 (6) The department shall maintain a clearinghouse of information
25 regarding products made from recycled material and recovered material for

1 purchase by governmental agencies and authorities. The clearinghouse shall
 2 include information concerning the availability, price and quality of products made
 3 from recycled materials and recovered materials. The clearinghouse shall also
 4 include information concerning vendors and other persons willing to purchase
 5 recyclable material from agencies, authorities and local governmental units. The
 6 department shall develop a mechanism to make this information available to all
 7 designated agents under s. 16.71 (1), agencies making purchases under s. ss. 16.74
 8 and 16.745 and authorities to assist them in complying with s. 16.75 (8) and (9) and
 9 to all local governmental purchasing agents to assist them in complying with s.
 10 66.299 (3) and (4).

11 SECTION 5. 16.745 of the statutes is created to read:

12 **16.745 Investment board purchasing.** (1) The investment board may place
 13 requisitions and enter into contracts for the purchase of any materials, supplies,
 14 equipment or services required by the board. The investment board shall maintain
 15 copies of all purchasing requisitions and contracts, and shall permit inspection and
 16 copying of the requisitions and contracts under subch. II of ch. 19. No such
 17 requisition or contract need be filed with the department.

18 (2) The investment board shall file all bills and statements for purchases and
 19 engagements made by the board with the secretary, who shall audit and authorize
 20 payment of all lawful bills and statements. No bill or statement for any purchase or
 21 engagement for the investment board may be paid until the bill or statement is
 22 approved by the board.

23 (3) The department, upon request, shall make recommendations and furnish
 24 assistance to the investment board regarding purchasing procedure. The
 25 department, upon request, shall process requisitions for purchases submitted by the

1 investment board and shall procure materials, supplies, equipment, property and
2 services for the board in accordance with the purchasing procedure prescribed for
3 executive branch agencies under this subchapter.

4 (4) All stationery and printing purchased by the investment board shall be
5 procured from the lowest responsible bidder.

6 SECTION 6. 16.75 (1) (a) 2. of the statutes is amended to read:

7 16.75 (1) (a) 2. If a vendor is not a Wisconsin producer, distributor, supplier or
8 retailer and the department determines that the state, foreign nation or subdivision
9 thereof in which the vendor is domiciled grants a preference to vendors domiciled in
10 that state, nation or subdivision in making governmental purchases, the department
11 and any agency making purchases under s. 16.74 or 16.745 shall give a preference
12 over that vendor to Wisconsin producers, distributors, suppliers and retailers, if any,
13 when awarding the order or contract. The department may enter into agreements
14 with states, foreign nations and subdivisions thereof for the purpose of implementing
15 this subdivision.

16 SECTION 7. 16.75 (3m) (b) of the statutes is amended to read:

17 16.75 (3m) (b) The department and any agency making purchases under s.
18 16.74 or 16.745 shall attempt to ensure that 5% of the total amount expended under
19 this subchapter in each fiscal year is paid to minority businesses. Except as provided
20 under sub. (7), the department may purchase materials, supplies, equipment and
21 contractual services from any minority business submitting a qualified responsible
22 competitive bid that is no more than 5% higher than the apparent low bid or
23 competitive proposal that is no more than 5% higher than the most advantageous
24 offer. In administering the preference for minority businesses established in this
25 paragraph, the department and any agency making purchases under s. 16.74 or

1 16.745 shall maximize the use of minority businesses which are incorporated under
2 ch. 180 or which have their principal place of business in this state.

3 **SECTION 8.** 16.75 (8) (a) 1. of the statutes is amended to read:

4 16.75 (8) (a) 1. The department, any other designated purchasing agent under
5 s. 16.71 (1), any agency making purchases under s. 16.74 or 16.745 and each
6 authority other than the University of Wisconsin Hospitals and Clinics Authority
7 shall, to the extent practicable, make purchasing selections using specifications
8 developed under s. 16.72 (2) (e) to maximize the purchase of materials utilizing
9 recycled materials and recovered materials.

10 **SECTION 9.** 16.75 (9) of the statutes is amended to read:

11 16.75 (9) The department, any other designated purchasing agent under s.
12 16.71 (1), any agency making purchases under s. 16.74 or 16.745 and any authority
13 other than the University of Wisconsin Hospitals and Clinics Authority shall, to the
14 extent practicable, make purchasing selections using specifications prepared under
15 s. 16.72 (2) (f).

16 **SECTION 10.** 16.76 (1) of the statutes is amended to read:

17 16.76 (1) All contracts for materials, supplies, equipment or contractual
18 services to be provided to any agency shall run to the state of Wisconsin. Such
19 contracts shall be signed by the secretary or an individual authorized by the
20 secretary, except that contracts entered into by the investment board shall be signed
21 by an individual authorized by the board and contracts entered into directly by the
22 legislature, the courts or a legislative service or judicial branch agency shall be
23 signed by an individual authorized under s. 16.74 (2) (b).

24 **SECTION 11.** 16.77 (1) of the statutes is amended to read:

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1733/2dn

JTK...|:...

NLJ
+
JLg

Caucutt/Holden: This draft reconciles LRB-1733/1 and LRB-1618/2. LRB-1733 and LRB-1618 should continue to appear in the compiled bill.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

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

LRB-1733/2dn
JTK:wlj&jlg:lp

February 2, 1999

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This draft reconciles LRB-1733/1 and LRB-1618/2. LRB-1733 and LRB-1618 should continue to appear in the compiled bill.

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1733/2
JTK:wlj&jlg:lp

DOA:.....Holden - SWIB procurements

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: procurements by the investment board.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

OTHER STATE GOVERNMENT

Under current law, the investment board must make all purchases of materials, supplies, equipment or services through the department of administration (DOA). DOA may delegate authority to the board and other state agencies to make purchases independently of DOA, but any agency to which DOA delegates purchasing authority must adhere to all statutory requirements that would apply if DOA made the purchases. In making purchases, DOA and the agencies to which DOA delegates purchasing authority are required, subject to numerous exceptions, to make purchases by solicitation of bids or competitive sealed proposals preceded by public notice. Agencies must provide written justification for contractual service procurements and must comply with rules of DOA regarding conflicts of interest between contractors and agency employees. Agencies must offer the department of corrections (DOC) the opportunity to supply those materials, supplies, equipment or services that DOC is able to supply. Agencies must purchase computer services that are provided by DOA from DOA, unless DOA permits otherwise.

This bill permits the investment board to make all purchases independently of DOA, with or without public notice or solicitation of bids or proposals, except that the board must procure all stationery and printing from the lowest responsible bidder. Under the bill, the board is not subject to requirements that DOA and other executive

branch agencies must adhere to in making purchases, except that the board must continue to adhere to certain current requirements, including a requirement for agencies to attempt to ensure that at least 5% of the amount they spend on purchases each year is paid to minority-owned businesses, a requirement for agencies to procure certain materials, supplies, equipment or services from work centers that employ handicapped individuals, requirements that agencies require contractors not to practice discrimination in employment and to take affirmative action to ensure equal employment opportunities, requirements that agencies use specifications developed by DOA that are designed to ensure maximum use of recycled and recovered materials and products made from materials that are recyclable or recoverable and to ensure that the paper they purchase has at least 40% recycled or recovered content and requirements that, whenever all other factors are substantially equal, agencies make purchases from Wisconsin-based businesses and purchase products made from American-made materials. Under the bill, the investment board may continue to make any of its purchases through DOA, in which case all current requirements continue to apply.

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

1 **SECTION 1.** 16.52 (6) (a) of the statutes is amended to read:

2 16.52 (6) (a) Except as authorized in s. ss. 16.74 and 16.745, all purchase
3 orders, contracts, or printing orders for any agency as defined in s. 16.70 (1) shall,
4 before any liability is incurred thereon, be submitted to the secretary for his or her
5 approval as to legality of purpose and sufficiency of appropriated and allotted funds
6 therefor. In all cases the date of the a purchasing contract or order governs the fiscal
7 year to which the contract or order is chargeable, unless the secretary determines
8 that the purpose of the contract or order is to prevent lapsing of appropriations or to
9 otherwise circumvent budgetary intent. Upon Whenever such approval is required,
10 the secretary, upon granting approval, shall immediately encumber all contracts or
11 orders, and indicate the fiscal year to which they are chargeable.

12 **SECTION 2.** 16.71 (1) of the statutes is amended to read:

1 16.71 (1) Except as otherwise required under this section or as authorized in
2 ~~s. ss. 16.74 and 16.745~~, the department shall purchase and may delegate to special
3 designated agents the authority to purchase all necessary materials, supplies,
4 equipment, all other permanent personal property and miscellaneous capital, and
5 contractual services and all other expense of a consumable nature for all agencies.
6 In making any delegation, the department shall require the agent to adhere to all
7 requirements imposed upon the department in making purchases under this
8 subchapter. All materials, services and other things and expense furnished to any
9 agency and interest paid under s. 16.528 shall be charged to the proper appropriation
10 of the agency to which furnished.

11 **SECTION 3.** 16.72 (4) (a) of the statutes is amended to read:

12 16.72 (4) (a) Except as provided in ~~s. ss. 16.74 and 16.745~~ or as otherwise
13 provided in this subchapter and the rules promulgated under s. 16.74 and this
14 subchapter, all supplies, materials, equipment and contractual services shall be
15 purchased for and furnished to any agency only upon requisition to the department.
16 The department shall prescribe the form, contents, number and disposition of
17 requisitions and shall promulgate rules as to time and manner of submitting such
18 requisitions for processing. No agency or officer may engage any person to perform
19 contractual services without the specific prior approval of the department for each
20 such engagement. Purchases of supplies, materials, equipment or contractual
21 services by the investment board or by the legislature, the courts or legislative
22 service or judicial branch agencies do not require approval under this paragraph.

23 **SECTION 4.** 16.745 of the statutes is created to read:

24 **16.745 Investment board purchasing.** (1) The investment board may place
25 requisitions and enter into contracts for the purchase of any materials, supplies,

1 equipment or services required by the board. The investment board shall maintain
2 copies of all purchasing requisitions and contracts, and shall permit inspection and
3 copying of the requisitions and contracts under subch. II of ch. 19. No such
4 requisition or contract need be filed with the department.

5 (2) The investment board shall file all bills and statements for purchases and
6 engagements made by the board with the secretary, who shall audit and authorize
7 payment of all lawful bills and statements. No bill or statement for any purchase or
8 engagement for the investment board may be paid until the bill or statement is
9 approved by the board.

10 (3) The department, upon request, shall make recommendations and furnish
11 assistance to the investment board regarding purchasing procedure. The
12 department, upon request, shall process requisitions for purchases submitted by the
13 investment board and shall procure materials, supplies, equipment, property and
14 services for the board in accordance with the purchasing procedure prescribed for
15 executive branch agencies under this subchapter.

16 (4) All stationery and printing purchased by the investment board shall be
17 procured from the lowest responsible bidder.

18 **SECTION 5.** 16.75 (1) (a) 2. of the statutes is amended to read:

19 16.75 (1) (a) 2. If a vendor is not a Wisconsin producer, distributor, supplier or
20 retailer and the department determines that the state, foreign nation or subdivision
21 thereof in which the vendor is domiciled grants a preference to vendors domiciled in
22 that state, nation or subdivision in making governmental purchases, the department
23 and any agency making purchases under s. 16.74 or 16.745 shall give a preference
24 over that vendor to Wisconsin producers, distributors, suppliers and retailers, if any,
25 when awarding the order or contract. The department may enter into agreements

1 with states, foreign nations and subdivisions thereof for the purpose of implementing
2 this subdivision.

3 **SECTION 6.** 16.75 (3m) (b) of the statutes is amended to read:

4 16.75 (3m) (b) The department and any agency making purchases under s.
5 16.74 or 16.745 shall attempt to ensure that 5% of the total amount expended under
6 this subchapter in each fiscal year is paid to minority businesses. Except as provided
7 under sub. (7), the department may purchase materials, supplies, equipment and
8 contractual services from any minority business submitting a qualified responsible
9 competitive bid that is no more than 5% higher than the apparent low bid or
10 competitive proposal that is no more than 5% higher than the most advantageous
11 offer. In administering the preference for minority businesses established in this
12 paragraph, the department and any agency making purchases under s. 16.74 or
13 16.745 shall maximize the use of minority businesses which are incorporated under
14 ch. 180 or which have their principal place of business in this state.

15 **SECTION 7.** 16.75 (8) (a) 1. of the statutes is amended to read:

16 16.75 (8) (a) 1. The department, any other designated purchasing agent under
17 s. 16.71 (1), any agency making purchases under s. 16.74 or 16.745 and each
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6 contracts shall be signed by the secretary or an individual authorized by the
7 secretary, except that contracts entered into by the investment board shall be signed
8 by an individual authorized by the board and contracts entered into directly by the
9 legislature, the courts or a legislative service or judicial branch agency shall be
10 signed by an individual authorized under s. 16.74 (2) (b).

11 **SECTION 10.** 16.77 (1) of the statutes is amended to read:

12 16.77 (1) No bill or statement for work or labor performed under purchase
13 orders or contracts issued by the secretary or the secretary's designated agents, and
14 no bill or statement for supplies, materials, equipment or contractual services
15 purchased for and delivered to any agency may be paid until the bill or statement is
16 approved through a preaudit or postaudit process determined by the secretary. This
17 subsection does not apply to purchases made by the investment board or to purchases
18 made directly by the courts, the legislature or a legislative service or judicial branch
19 agency under s. 16.74.

20 **SECTION 11.** 16.78 (1) of the statutes is amended to read:

21 16.78 (1) Every agency other than the board of regents of the university of
22 Wisconsin system or an agency making purchases under s. 16.74 or 16.745 shall
23 purchase all computer services from the division of information technology services
24 in the department of ~~administration~~, unless the division grants written
25 authorization to the agency to procure the services under s. 16.75 (1), to purchase the

1 services from another agency or to provide the services to itself. The board of regents
2 of the university of Wisconsin system may purchase computer services from the
3 division of information technology services.

4 (END)