

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB133)

Received: 06/5/99

Received By: yacketa

Wanted: As time permits

Identical to LRB:

For: Legislative Fiscal Bureau

By/Representing: Simpson

This file may be shown to any legislator: NO

Drafter: yacketa

May Contact:

Alt. Drafters:

Subject: Public Assistance - Wis works

Extra Copies:

Pre Topic:

LFB:.....Simpson -

Topic:

Public input for contracts with W-2 agencies

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>
/1	yacketa 06/8/99	chanaman 06/8/99	martykr 06/9/99	_____	lrb_docadmin 06/9/99		

FE Sent For:

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and has been unable to find an unsubsidized job. Further, specify that a W-2 agency must place a person who is incapable of performing an up-front job search in a subsidized employment position immediately upon determining that the person meets the eligibility requirements.

allocation
10. LFB Paper #1084. Alternative A2. Modify the Governor's recommendation by providing \$3,519,000 in 1999-00 for start-up funding for new W-2 agencies. This option assumes that 17 new agencies would receive an average of \$207,000, based on the average start-up funding provided for the initial contracts for all of the agencies outside of Milwaukee County. Compared to the bill, this is a decrease of \$3,665,400 FED.

No draft
11. LFB Paper #1084. Alternative B1. Modify the Governor's recommendation by placing start-up funding in the Joint Committee on Finance's program supplements appropriation. The funding could be released under s. 13.10 upon approval by the Committee of a plan regarding the use of these funds submitted by the Department after more information is available regarding the number of new W-2 agencies for the next contract period.

b0539
TAY
12. LFB Paper #1085. Alternative 2. Modify the Governor's proposal by requiring DWD to contract with an existing W-2 agency to administer the W-2 program if that agency has met the performance standards established by the Department with input from a statewide advisory group. Require the Department to establish a process for public input into the W-2 program, including the contract process, similar to the process established by DHFS with respect to the managed care program, including forming a statewide advisory group, regional forums and special workgroups to address issues of concern to interested parties. Direct the Department to allow all members of the public to participate in the workgroups. Specify that these provisions would first apply to the performance standards included in the third round of W-2 agency contracts.

TAY
b0540
13. LFB Paper #1086. Alternative A1. Direct the Department to amend the request for proposals for administration of the W-2 program for the period January 1, 2000 through December 31, 2001 to define the term "entered employment transaction" under the job retention performance criterion.

TAY
14. LFB Paper #1086. Alternative A3. Direct the Department to modify the "full and appropriate engagement" criterion as follows: (a) define full and appropriate engagement for each individual who is required to participate in the food stamp employment and training (FSET) program as engagement in activities equal to the household's monthly food stamp benefit divided by the minimum wage; (b) eliminate the provision that would specify that full and appropriate engagement for W-2 subsidized employment participants is engagement in appropriate activities for at least 30 hours per week; and (c) clarify that for two-parent families, engagement in work activities is defined as 55 hours per week for both parents if the family is receiving federally funded child care assistance and the second parent in the family is not disabled or caring for a severely disabled child.

one Non-Stat

b0541
TAY
15. LFB Paper #1086. Alternative B1. Modify the bill by adopting statutory provisions to require DWD to base any profit calculation under the W-2 agency contracts on measures of agency performance including: (a) the placement of W-2 applicants and participants into



Legislative Fiscal Bureau

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June 1, 1999

Joint Committee on Finance

Paper #1085

TANF

W-2 Contracting Process (DWD -- Economic Support and Child Care)

[LFB 1999-01 Budget Summary: Page 701, #54]

CURRENT LAW

As a general provision, state law authorizes the Department of Workforce Development (DWD) to award a contract to any person to administer the W-2 program in a geographical area determined by DWD on the basis of a competitive process approved by the Department of Administration (DOA). The contract period must be for a term of at least two years.

The initial W-2 agency contracts covered the period from September 1, 1997, through December 31, 1999. The Department was required by state law to contract with a county or tribal governing body to administer W-2 if the county or tribal governing body met the aid to families with dependent children (AFDC) caseload performance standards established by the Department. Counties or tribal governing bodies that did not meet the performance standards were allowed to apply for a contract under a competitive process.

When the initial contract expires, a county or tribal governing body is allowed to apply for a new contract under the competitive process approved by DOA. A county or tribal governing body may elect not to enter into a contract if the county or tribal governing body informs DWD by the date established by the Department that the county or tribal governing body has made that election.

A county or tribal governing body that enters into a contract to administer W-2 but elects not to compete for a subsequent contract is required to provide notice to all employees and collective bargaining units of the employees who may be laid off as a result. This notice must be provided at least six months prior to the expiration of its contract, or by the date established by DWD, whichever is earlier. The notice must inform the employees and the representatives that: the agency will not to enter into or compete for a contract; the employees may be laid off as a

result; and the employes may consider forming a private agency to bid on the contract and may obtain information from DWD on the competitive process, the contract requirements, and information on steps that the employes might take to organize themselves. The Department is required to provide this information upon request.

If no acceptable provider in a geographical area is selected to administer the W-2 program, DWD is required to administer the program in that geographical area. A county that is awarded a contract to administer W-2 is required under current law to offer a subcontract to the agency that administered the job opportunities and basic skills (JOBS) program in that county.

The department is required to establish performance standards for the administration of W-2. If a W-2 agency does not meet these standards, the department may withhold any or all payment from the W-2 agency.

Current state law also exempts DWD from certain standard contracting provisions. In particular, if the Secretary of DOA determines that it is in the best interest of the state to do so, he may waive certain procurement requirements with respect to the W-2 agency contracts if DWD presents the Secretary with a procurement process and the Secretary approves the process.

GOVERNOR

Modify the W-2 agency contracting process to require that DWD contract with an existing W-2 agency to administer W-2 if that agency has met the performance standards established by the Department during the immediately preceding contract period, and allow a W-2 agency that has not met the performance standards established by the Department to apply for a contract under the competitive process.

As under current law, the Governor's recommendation would specify that an existing W-2 agency could elect not to enter into a new contract, but would have to inform the Department by the date established by the Department that the agency would not enter into the contract. Counties and tribal agencies that choose not to compete for a subsequent contract would continue to have to provide a notice to their employes at least six months prior to the expiration of the current contract. Further, the contract period would be for at least two years, as required under current law.

Finally, the bill would eliminate the requirement that the W-2 agency offer a subcontract to the agency that previously administered the job opportunities and basic skills program.

DISCUSSION POINTS

1. The current W-2 agency contracts began on September 1, 1997, and will end on December 31, 1999. The next W-2 agency contracts are expected to be implemented and issued for the period January 1, 2000, through December 31, 2001. A third contract period, then, is expected

for January 1, 2002, through December 31, 2003.

2. The Governor's proposal to require that DWD contract with an existing W-2 agency to administer W-2 if that agency has met the performance standards established by the Department during the immediately preceding contract period, and to allow a W-2 agency that has not met the performance standards established by the Department to apply for a contract under the competitive process would apply to the third W-2 contracts covering the period January 1, 2002, through December 31, 2003, and any subsequent contracts. However, the process proposed by the Governor is currently being used by DWD for the contracts that will begin on January 1, 2000. As required under state law, DWD's contracting process was approved by DOA.

3. Although DWD was required to contract with counties or tribes that met AFDC caseload performance standards for the initial W-2 agency contracts, current law does not require the Department to renew a contract with a W-2 agency that has met performance standards. However, in November, 1998, DWD issued performance criteria under a right of first selection (ROFS) process that was used to determine which W-2 agencies would be given the opportunity to submit a plan to administer the W-2 program for the next W-2 contract without further competition. The ROFS criteria contained certain programmatic and financial standards.

4. There are currently 75 W-2 agencies administering the W-2 program in 80 geographic areas. On March 9, 1999, the Department announced that 62 out of the 75 current W-2 agencies were determined to have met the ROFS criteria. All of the Milwaukee W-2 agencies met these standards. Each of the eight non-county W-2 agencies also met these criteria. The remaining 13 agencies, which represent 17 geographic regions, would have to enter a competitive process. If successful, those agencies could be awarded the next contract.

5. The Department has indicated that it intends to use the base contract benchmark level of the performance standards included in the request for proposals (RFP) to administer the W-2 program as the right of first selection criteria for the third W-2 contract (January 1, 2002 through December 31, 2003). The criteria established by the Department include measures for: (a) employment of participants lasting 30 days or more; (b) the wage rate at employment; (c) job retention; (d) full and appropriate engagement of participants in required activities; (e) assigning appropriate basic education activities to participants who do not have a high school diploma; and (f) available employer-provided health insurance benefits for participants. In addition, there are two optional criteria: contracting with a faith-based provider and completion by participants of basic skills and job skills training. These criteria are discussed in more detail in a separate paper.

6. Several concerns have been raised with respect to the contracting process used by the Department. First, some agencies have expressed that adequate time and was not available between the time the ROFS criteria were issued in November, 1998, and the time the agency had to comply with the criteria. Most standards were based on the agency's performance as of January, 1999, two months after the criteria were first issued. Some agencies have argued that performance standards should be provided earlier in the contract period so that the agencies can know what is expected. As indicated above, the Department intends to use the performance standards included in

the RFP as the right of first selection criteria for the third W-2 agency contract.

7. Second, it has been argued that appropriate review and input from the W-2 agencies and the public regarding the ROFS criteria for the next W-2 agency contracts did not occur. Several agencies expressed concern that certain criteria included in the ROFS did not accurately reflect previous guidance from DWD. The Department has coordinated a committee composed of representatives of W-2 agencies throughout the state to discuss issues and to allow for agency input. Although this group was consulted regarding the right of first selection criteria, some have expressed concern that the views of this group were not taken into account.

8. A final concern is that the ROFS criteria were applied inconsistently across agencies. The Legislature has provided the Department with a significant amount of flexibility in determining the most appropriate contracting process and in allowing the Department to obtain exemptions from many provisions that apply to other contracts. DWD was granted this flexibility because it was implementing a major new initiative, and having more control over the contracting process could enhance the ability of the Department to implement the program in a more efficient manner. It has been argued that this flexibility has resulted in inconsistent treatment of agencies under the contracting process.

9. It is difficult to determine the validity of concerns about fairness and whether criteria have been applied consistently across agencies. However, providing additional legislative oversight or public review of the contracting process may help alleviate such concerns. Therefore, one option the Committee may wish to consider is to require public input and review for the W-2 program that is modeled after the process that the Department of Health and Family Services (DHFS) uses for the medical assistance (MA) managed care program.

10. The process used by DHFS is not governed by statute or rule. DHFS has formed a statewide advisory group (SWAG) that usually meets twice per year. This group addresses all issues related to managed care, not just the contracting process. The purpose of this group is to provide information about programs and policies, and to provide a forum to raise issues of concern to the public. Other regional forums and workgroups have also been formed which focus on specific issues and act in an advisory capacity to the SWAG. Issues or concerns raised at the statewide meetings often are discussed in more detail at the regional level meetings.

11. Any person interested in participating in any of the workgroups may attend the meetings, which are chaired by a representative from DHFS. An agenda is provided by DHFS, but issues not on the agenda may be discussed. Attendance at the meetings has varied from around 40 people to over 200 at a recent meeting regarding the BadgerCare program. Recommendations discussed at the meetings are analyzed by DHFS and incorporated into negotiations for contracts, if applicable, or addressed separately. Usually, recommendations are not presented in a formal manner. Not all recommendations may be incorporated into DHFS policy or procedures; however, the advisory group model allows for clarification of policies and provides a means for issues to be raised.

12. The Committee could modify the Governor's proposal by requiring DWD to contract with an existing W-2 agency to administer the W-2 program if that agency has met the performance standards established by the Department with input from a statewide advisory group. Under this option, DWD could be required to establish a process for public input into the W-2 program similar to the process established by DHFS with respect to the managed care program. In particular, DWD could be required to form a statewide advisory group, regional forums and special workgroups to address all issues of concern to interested parties. Further it could be specified that all members of the public may participate in the workgroups.

13. This option would address the procedure for awarding the third round of contracts, but would not address the concerns raised about the current contracting process.

14. As an additional alternative, the Senate Committee on Aging and Human Services has recommended that the Department be required to offer a contract to each W-2 agency that has administered the program since September, 1997, to continue to administer the program for an additional year, from January 1, 2000, to December 31, 2000. Further, the Senate Committee recommends that the Department be directed to include in the contract for calendar year 2000, specific outcome-based performance criteria to be used as the basis for the right of first selection for the subsequent contract, which would begin January 1, 2001. These criteria would be the same as those included in the request for proposals for administration of the W-2 agency contracts that was released in draft form on April 12, 1999, by the Department, and would include any modifications approved by the Legislature under AB 133. Finally, the Senate Committee recommends that the right of first selection criteria for the contracts commencing on January 1, 2001, and any subsequent contracts be promulgated as a rule.

ALTERNATIVES

1. Approve the Governor's recommendation to require that DWD contract with an existing W-2 agency to administer W-2 if that agency has met the performance standards established by the Department during the immediately preceding contract period, and allow a W-2 agency that has not met the performance standards established by the Department to apply for a contract under the competitive process.

2. Modify the Governor's proposal by requiring DWD to contract with an existing W-2 agency to administer the W-2 program if that agency has met the performance standards established by the Department with input from a statewide advisory group. Require the Department to establish a process for public input into the W-2 program, including the contract process, similar to the process established by DHFS with respect to the managed care program, including forming a statewide advisory group, regional forums and special workgroups to address issues of concern to interested parties. Direct the Department to allow all members of the public to participate in the workgroups.

3. Modify the Governor's recommendation by requiring DWD to offer a contract to each W-2 agency that has administered the program since September 1997, to continue to administer the program for an additional year, from January 1, 2000, to December 31, 2000. Further, direct the Department to include in the contract for calendar year 2000, specific outcome-based performance criteria to be used as the basis for the right of first selection for the subsequent contract which would begin January 1, 2001. These criteria would be the same as those included in the request for proposals for administration of the W-2 agency contracts that was released in draft form on April 12, 1999, by the Department, and would include any modifications approved by the Legislature under AB 133. Finally, require DWD to promulgate rules regarding the right of first selection criteria for the contracts commencing on January 1, 2001, and any subsequent contracts.

Prepared by: Joanne T. Simpson



5001
State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0539/1

TAX.....

*Rmt
Rmt*

LFB:.....Simpson – Public input for contracts with W-2 agencies

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

2 1. Page 678, line 17: after “department” insert “in accordance with sub. (3),”.

3 2. Page 680, line 8: after that line insert:

4 “SECTION 1224m. 49.143 (3) of the statutes is amended to read:

5 49.143 (3) PERFORMANCE STANDARDS. The In consultation with the statewide

6 advisory group and special workgroups established under sub. (3m), the department

7 shall establish performance standards for the administration of Wisconsin works.

8 If a Wisconsin works agency does not meet the standards established under this

9 subsection, the department may withhold any or all payment from the Wisconsin

10 works agency.

History: 1995 a. 216, 289; 1997 a. 27, 36, 236, 318.

11 SECTION 1224p. 49.143 (3m) of the statutes is created to read:

1 49.143 (3m) STATEWIDE ADVISORY GROUP. The department shall establish a
 2 statewide advisory group to provide a forum for any person to raise concerns and to
 3 receive or provide information about programs and policies regarding Wisconsin
 4 works, including the Wisconsin works agency contract process. The department
 5 shall develop regional forums and special workgroups to address issues of concern
 6 raised at the meetings of the statewide advisory group and shall allow any person
 7 to participate in the workgroups.”.

8 **3.** Page 1466, line 3: after that line insert:

9 “(2) STATEWIDE ADVISORY GROUP. The treatment of section 49.143 (1) (am) 1. (with
 10 respect to consulting with a statewide advisory group) and (3) of the statutes first
 11 applies to performance standards established for Wisconsin works agency contracts
 12 having a term beginning on January 1, 2002.”.

(END)

Initial
App



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0539/1
TAY:cmh:km

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