

2001 DRAFTING REQUEST

Bill

Received: **12/14/2001**

Received By: **kuesejt**

Wanted: **As time permits**

Identical to LRB:

For: **Jon Richards (608) 266-0650**

By/Representing: **Dan Lorentz**

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

Drafter: **kuesejt**

May Contact: **Anne Sappenfield, LCS**

Addl. Drafters:

Subject: **State Government - miscellaneous**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Waiver of state purchasing 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 02/02/2002	gilfokm 02/04/2002		_____			
/1			pgreensl 02/05/2002	_____	lrb_docadmin 02/05/2002	lrb_docadmin 02/26/2002	

FE Sent For: *not needed*

<END>

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17 / 1	kuesejt	2/21-2/4 kmg	2/5 pg	2/5 HJ/JF			

FE Sent For:

<END>

1 **AN ACT** to amend 16.75 (6) (c), (d) and (e) of the statutes; relating to: joint finance
2 approval of waivers to purchasing requirements.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft requires the secretary of administration or the governor, whichever is applicable, to notify the joint committee on finance of certain proposed waivers to the general requirement that all orders awarded or contracts made by the department of administration for all materials, supplies, equipment and contractual services to be provided to any state agency must be awarded to the lowest responsible bidder. In addition, the bill draft requires such notification if the governor proposes to waive any purchasing requirements in cases in which there is a finding of emergency.

The bill draft does not require the secretary of administration to notify the joint committee on finance of waivers for purchases from another state, from any county, city, village, town or other governmental body in this state or from a regional or national consortium composed of nonprofit institutions that support governmental or educational services, or through a contract established by one of those entities with one or more third parties. In addition, it does not apply to waivers granted by the secretary of administration with respect to any Wisconsin-works contract entered into by the department of workforce development (DWD) if the DWD presents the secretary with a process for procurement of such contracts and the secretary approves the process.

3 **SECTION 1.** 16.75 (6) (c), (d) and (e) of the statutes are amended to read:

4 16.75 (6) (c) If the secretary determines that it is in the best interest of this state to do
5 so, he or she may, with the approval of the governor, waive the requirements of subs. (1) to
6 (5) and may purchase supplies, material, equipment, or contractual services, other than
7 printing and stationery, from a private source other than a source specified in par. (b). If the
8 secretary proposes to waive the requirements of subs. (1) to (5) under this paragraph, the
9 secretary shall notify the joint committee on finance of the proposed waiver. The secretary

1 may proceed with the proposed waiver if within 14 working days of the notification, the
2 committee does not schedule a meeting for the purpose of reviewing the secretary's proposed
3 waiver. If the committee schedules a meeting for the purpose of reviewing the proposed
4 waiver, the waiver may not take effect unless the committee approves the waiver. Except as
5 provided in sub. (2g) (c), if the cost of the purchase is expected to exceed \$25,000, the
6 department shall first publish a class 2 notice under ch. 985 or post a notice on the Internet at
7 the site determined or approved by the department under sub. (1) (b) describing the materials,
8 supplies, equipment, or contractual services to be purchased, stating the intent to make the
9 purchase from a private source without soliciting bids or competitive sealed proposals and
10 stating the date on which the contract or purchase order will be awarded. The date of the award
11 shall be at least 7 days after the date of the last insertion or the date of posting on the Internet.

12 (d) If the governor determines that it is in the best interest of this state to do so, he or
13 she may issue a general waiver of the requirements of subs. (1) to (5) permitting the purchase
14 of specified materials, supplies, equipment or contractual services, except printing and
15 stationery, from a private source. If the governor proposes to waive the requirements of subs.
16 (1) to (5) under this paragraph, the governor shall notify the joint committee on finance of the
17 proposed waiver. The governor may proceed with the waiver if within 14 working days of the
18 notification, the committee does not schedule a meeting for the purpose of reviewing the
19 governor's proposed waiver. If the committee schedules a meeting for the purpose of
20 reviewing the proposed waiver, the waiver may not take effect unless the committee approves
21 the waiver. A general waiver may be issued for any period up to one year. The governor may
22 impose any necessary or appropriate condition or restriction on the waiver.

23 (e) The governor or his or her designee may waive any requirement of this subchapter
24 if the governor or his or her designee finds that there exists an emergency which threatens the

1 public health, safety or welfare and the waiver is necessary to meet the emergency. The
2 governor or his or her designee shall require the award of each contract under this paragraph
3 to be made with such competition as is practicable under the circumstances. The governor or
4 his or her designee shall file with the department a statement of facts constituting the
5 emergency for each waiver issued under this paragraph, and a statement of the basis for
6 selection of each contractor under the emergency procedure. If the governor or his or her
7 designee proposes to waive the requirements of this subchapter under this paragraph, he or she
8 shall notify the joint committee on finance of the proposed waiver. The governor or his or her
9 designee may proceed with the proposed waiver if within 14 working days of the notification,
10 the committee does not schedule a meeting for the purpose of reviewing the proposed waiver.
11 If the committee schedules a meeting for the purpose of reviewing the proposed waiver, the
12 waiver may not take effect unless the committee approves the waiver. [A waiver under this
13 paragraph may be issued for any period up to one year.] This paragraph does not apply to the
14 requirement specified in sub. (7).

NOTE: The bill draft requires notification of the joint committee on finance under three provisions that permit the secretary of administration or the governor to waive requirements relating to state purchases.

Section 16.75 (6) (c) permits the secretary of administration, with the approval of the governor, to waive the requirements for awarding a bid to the lowest responsible bidder and to purchase supplies, material, equipment or contractual services from a private source if the secretary determines it is in the best interest of the state.

Section 16.75 (6) (d) permits the governor to issue a general waiver to the requirements for awarding a bid to the lowest responsible bidder and permit the purchase of specified materials, supplies, equipment or contractual services from a private source if the governor determines that it is in the best interest of the state. Such a waiver may be issued for any period up to one year.

Section 16.75 (6) (e) permits the governor or his or her designee to waive any requirements relating to purchasing under subch. IV, ch. 16, if

the governor or his or her designee finds that there exists an emergency which threatens the public health, safety or welfare and the waiver is necessary to meet the emergency. This is a broader exemption than the exemptions under pars. (c) and (d) as the governor may exempt the purchase from a wider array of purchasing requirements.

Under the bill draft, before granting any of the above-described waivers, the secretary of administration or the governor must notify the joint committee on finance. The waiver may be granted if within 14 days of the notification, the committee does not schedule a meeting for the purpose of reviewing the proposed waiver. If the committee does schedule such a meeting, the waiver may not take effect unless the committee approves it.

COMMENT: Section 16.75 (6) (d) limits the period of time for which a waiver under that paragraph may remain in effect to one year. The bracketed language for s. 16.75 (6) (e) would create the same duration requirement for waivers premised on a finding of emergency.

2001

Date (time) needed

TUE 2/5

LRB - 4425, 1

BILL

JRK King:

D-NOTE

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to: *waiver of certain state purchasing requirements*

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: create → anal: → title: → head

For the subheading, execute: create → anal: → title: → sub

For the sub-subheading, execute: create → anal: → title: → sub-sub

For the analysis text, in the component bar:

For the text paragraph, execute: create → anal: → text

attached

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

SECTION #.

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4425/lins
JTK.....

SECTION 1. 16.75 (6) (c) of the statutes, as affected by 2001 Wisconsin Act 16,
is amended to read:

16.75 (6) (c) If Except as provided in this paragraph, if the secretary determines that it is in the best interest of this state to do so, he or she may, with the approval of the governor, waive the requirements of subs. (1) to (5) and may purchase supplies, material, equipment, or contractual services, other than printing and stationery, from a private source other than a source specified in par. (b). If the secretary proposes to waive the requirements of sub^S(1) to (5) under this paragraph, the secretary shall provide written notice to the cochairpersons of the joint committee on finance of the proposed waiver. If, within 14 working days after the date of the secretary's notification, the cochairpersons of the committee do not notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the proposed waiver, the secretary may implement the proposed waiver. If, within 14 working days after the date of the secretary's notification, the cochairpersons notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the proposed waiver, the waiver does not take effect unless the committee approves the waiver. Except as provided in sub. (2g) (c), if the cost of the purchase made under a waiver is expected to exceed \$25,000, the department shall first publish a class 2 notice under ch. 985 or post a notice on the Internet at the site determined or approved by the department under sub. (1) (b) describing the materials, supplies, equipment, or contractual services to be purchased, stating the intent to make the purchase from a private source without soliciting bids or competitive sealed proposals and stating the date on which the contract or purchase

order will be awarded. The date of the award shall be at least 7 days after the date of the last insertion or the date of posting on the Internet.

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; 1999 a. 9, 44, 197; 2001 a. 16, 38.

SECTION 2. 16.75 (6) (d) and (e) of the statutes are amended to read:

16.76 (6) (d) If Except as provided in this paragraph, if the governor determines that it is in the best interest of this state to do so, he or she may issue a general waiver of the requirements of subs. (1) to (5) permitting the purchase of specified materials, supplies, equipment, or contractual services, except printing and stationery, from a private source. If the governor proposes to waive the requirements of subs. (1) to (5) under this paragraph, the governor shall provide written notice to the cochairpersons of the joint committee on finance of the proposed waiver. If, within 14 working days after the date of the governor's notification, the cochairpersons of the committee do not notify the governor that the committee has scheduled a meeting for the purpose of reviewing the proposed waiver, the governor may implement the proposed waiver. If, within 14 working days after the date of the governor's notification, the cochairpersons of the committee notify the governor that the committee has scheduled a meeting for the purpose of reviewing the proposed waiver, the waiver does not take effect unless the committee approves the waiver. A general waiver may be issued for any period up to one year. The governor may impose any necessary or appropriate condition or restriction on the waiver.

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; 1999 a. 9, 44, 197; 2001 a. 16, 38.

(e) The Except as provided in this paragraph, the governor or his or her designee may waive any requirement of this subchapter if the governor or his or her designee finds that there exists an emergency which threatens the public health, safety, or welfare and the waiver is necessary to meet the emergency. If the governor

or his or her designee proposes to waive any requirement of this subchapter under this paragraph, the governor or his or her designee shall provide written notice to the cochairpersons of the joint committee on finance of the proposed waiver. If, within 14 working days after notification by the governor or his or her designee, the cochairpersons of the committee do not notify the governor or his or her designee that the committee has scheduled a meeting for the purpose of reviewing the proposed waiver, the governor or his or her designee may implement the proposed waiver. If, within 14 working days after notification by the governor or his or her designee, the cochairpersons of the joint committee on finance notify the governor or his or her designee that the committee has scheduled a meeting for the purpose of reviewing the proposed waiver, the waiver does not take effect unless the committee approves the waiver. The governor or his or her designee shall require the award of each contract under this paragraph to be made with such competition as is practicable under the circumstances. The governor or his or her designee shall file with the department a statement of facts constituting the emergency for each waiver issued under this paragraph, and a statement of the basis for selection of each contractor under the emergency procedure. This paragraph does not apply to the requirement specified in sub. (7).

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. 2g, 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; 1999 a. 9, 44, 197; 2001 a. 16, 38.

(END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4425/1ins2
JTK.....

Currently, subject to numerous exceptions, state procurement laws impose various restrictions and procedural requirements for making state purchases. The requirements include a mandate to make purchases from the lowest responsible bidder or the person submitting the most advantageous competitive sealed proposal. The department of administration (DOA) and other state agencies making purchases must attempt to ensure that at least 5% of the total amount expended in each fiscal year is paid to minority-owned businesses. The department of corrections has a right of first refusal to provide certain materials, supplies, equipment, or services. DOA and the agencies must maximize the purchase of materials utilizing recycled or recovered materials. Contractual services may only be obtained in compliance with certain requirements designed to utilize these services only in appropriate situations, to avoid conflicts of interest, and to ensure that contractor performance is reviewed. Currently, the secretary of administration, with the approval of the governor, may waive requirements for competitive and minority purchasing for any specific purchase if the secretary determines that it is in the best interest of the state to do so. The governor may similarly waive these requirements generally for a period of up to one year if the governor determines that it is in the best interest of the state to do so. In addition, the governor or his or her designee may waive any requirement in the state procurement law if the governor or designee determines that there exists an emergency which threatens the public health, safety, or welfare and the waiver is necessary to meet the emergency.

This bill provides that if the secretary or the governor or his or her designee proposes to issue a waiver under any of these provisions, the secretary, governor, or designee must first provide written notification of the proposed waiver to the cochairpersons of the joint committee on finance. If, within 14 working days after the notification, the cochairpersons do not schedule a meeting of the committee for the purpose of reviewing the proposed waiver, the secretary, governor, or designee may implement the proposed waiver. If, within 14 working days after the notification, the cochairpersons schedule a meeting for the purpose of reviewing the proposed waiver, the proposed waiver does not take effect unless the committee approves the waiver.

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

LRB-4425/1dn

JTK.....

King

Representative Richards:

This draft does not include the one-year limitation on waivers that are issued to meet emergencies under s. 16.75 (6) (e), stats. that would parallel the existing limitation on general waivers of purchasing procedures under s. 16.75 (6) (d), stats. Please let me know if you would like to see this limitation included.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4425/1dn
JTK:kmg:pg

February 5, 2002

Representative Richards:

This draft does not include the one-year limitation on waivers that are issued to meet emergencies under s. 16.75 (6) (e), stats., that would parallel the existing limitation on general waivers of purchasing procedures under s. 16.75 (6) (d), stats. Please let me know if you would like to see this limitation included.

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

Emery, Lynn

From: Emery, Lynn
Sent: Tuesday, February 05, 2002 3:23
To: Rep.Richards
Subject: LRB-4425/1 (attached as requested)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)
(E-Mail: lynn.emery@legis.state.wi.us) (FAX: 608-264-6948)

Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

Barman, Mike

From: Kuesel, Jeffery
Sent: Tuesday, February 26, 2002 12:52 PM
To: Barman, Mike
Cc: Vasby, Tara
Subject: FW: LRB 4425

Assm

-----Original Message-----

From: Vasby, Tara
Sent: Tuesday, February 26, 2002 12:07 PM
To: Kuesel, Jeffery
Subject: LRB 4425

Jeff,

My apologies if this reaches you in error. Dan Lorentz thought you were the drafter for LRB 4425. Could you send the jacket for that over? It's ready to go to the Chief Clerk. Thanks!

Tara J. Vasby
Leg. Assistant
Rep. Jon Richards

02/26/2002