

2001 DRAFTING REQUEST

Bill

Received: **09/27/2000**

Received By: **nilsepe**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Etzler**

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

Drafter: **nilsepe**

May Contact:

Alt. Drafters:

Subject: **Transportation - highways**

Extra Copies: **PJH, TNF**

Pre Topic:

DOA:.....Etzler - T048,

Topic:

Exempt DBE contractor information from open records law

Instructions:

See Attached

See Barbara Byrd, DOT OGC, for model language

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>
/?	nilsepe 09/28/2000	gilfokm 09/28/2000		_____			
/P1	nilsepe 10/04/2000	gilfokm 10/04/2000	rschluet 10/02/2000	_____	lrb_docadmin 10/02/2000		
/P2			pgreensl 10/05/2000	_____	lrb_docadmin 10/05/2000		
/1	fasttn 11/19/2000	gilfokm 11/20/2000	jfrantze 11/20/2000	_____	lrb_docadmin 11/20/2000		

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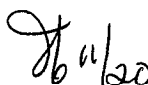
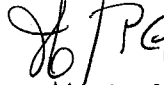
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/P2		1-11/20/00 mg	pgreensl 10/05/2000		lrb_docadmin 10/05/2000		

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/P1		102-10-4 Kmg	rschluet 10/02/2000		lrb_docadmin 10/02/2000		

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1/?	nilsepe	1/pt-9/28 Kmg	 9-27-00	 JS 10-2-00			

FE Sent For:

<END>

LEGISLATIVE BUDGET/NON-BUDGET PROPOSAL

Wisconsin Department of Transportation

2001-2003 BIENNIUM

DT1586 5/2000

DTID new -0579

Instructions: Complete this form for any budget/non-budget legislative initiative for which a Division requests the Secretary's Office (SO) approval. Check the budget box only if the proposal has a fiscal impact on department expenditures or revenue. This form must be signed by the Division Administrator(s). Include this form with your budget submittal materials or return two completed copies to the Office of Policy & Budget (OPB), Attention: Jim Hoelzel. One copy will be retained by OPB and the other copy provided to the Office of General Counsel. The form is available in the department forms catalog on dotnet.

Short Title of Topic Exempt from the Open Records law all information gathered by the Department for compliance with or administration of new federal DBE rules.			
Type of Proposal <input checked="" type="checkbox"/> Budget <input type="checkbox"/> Non-Budget	OGC OFFICE USE ONLY "T" Number Assigned <i>T048</i>		
	"B" Number Assigned <i>B032</i>	"NB" Number Assigned	
Date Submitted <i>8/9/00</i>	Division(s) DTID & OGC		
OPB Contact Person Catherine Lorence	Area Code - Telephone Number 264-9522		
Lead Division Contact Person Mark Woltmann	Area Code - Telephone Number 266-1744		
OGC Contact Person Jim Thiel	Area Code - Telephone Number 266-8928		
Define Problem Precisely TEA-21 requires the Department to gather information from contractors as part of: a)creating a bidders list as part of the new DBE Rule and b)creating a Civil Rights Data Base. Some information needed is sensitive and relates to economic conditions of the various business enterprises. There is resistance on the part of contractors to provide this information unless there is a certainty of confidentiality.			
Description of Proposed Change This request is for statutory language that would exempt from the Open Records law information gathered by the Department for compliance with or administration of the DBE rule.			
Justification for Change The TEA-21 regulations contain a provision requiring business concerns that receive prime contracts and subcontracts related to highway construction to provide the following information: the annual gross receipts of the business concern and the net worth of individuals that own and control the business concerns. Concerns and questions are being raised by both contractors and DOT personnel about the confidentiality of this information. There appears to be confusion about whether this kind of information will be protected or subject to open records requirements. Prior to requesting and collecting this kind of information, DOT must confirm whether this information is protected or not so that appropriate safeguards or procedures can be put in place to manage access to this information.			
Describe any legislative history and related statutory language This issue as been submitted to OGC as Request for Legal Services #2000-082			

_____ (Division Administrator Signature)	_____ (Date)
_____ (Division Administrator Signature)	_____ (Date)
_____ (Division Administrator Signature)	_____ (Date)

Current federal law requires ~~the department of transportation (DOT)~~ to pay specified percentages of expenditures for highway construction projects to disadvantaged business enterprises. A "disadvantaged business enterprise" is a business that is at least 51% owned, controlled and actively managed by minority group members, women, other individuals found to be socially and economically disadvantaged, or by a combination of such individuals. Current federal law also prohibits DOT from discriminating on the basis of race, color, national origin, or sex in the award of any construction contract that is paid for in part using federal funds.

To determine compliance with these requirements and prohibitions, federal law requires DOT to collect and submit to the federal department of transportation data concerning the ownership of businesses that bid for construction contracts let by DOT, and other financial information pertaining to such businesses and their owners. Federal law generally requires DOT to keep confidential such information submitted to it by minority businesses. Also under current Wisconsin law, any person generally has the right to receive any record kept or maintained by a government official, unless the law specifically prohibits disclosure of the information.

This bill requires DOT to keep confidential any information requested by DOT for purposes of determining or demonstrating compliance with the federal requirements and prohibitions described above. The information required to be kept confidential includes the business's name, address, age and annual gross receipts, information needed to determine the business's status as a disadvantaged business enterprise, and information relating to the personal net worth of the business's owners. The bill contains exceptions to allow DOT to disclose the information to the federal department of transportation, to the person to whom the information relates, and to persons having the written consent of that person.

(No fiscal note required)

SECTION 1. Section 84.01 ³² ~~(31)~~ of the statutes is created to read:

84.01 ³² ~~(31)~~ CONFIDENTIALITY OF BIDDER INFORMATION. (a) Notwithstanding s. 19.35 (1), the department may not disclose to any person any information requested by the department for the purpose of complying with 49 CFR 26, as that section existed on October 1, 1999.

(b) This subsection does not prohibit the department from disclosing information to any of the following persons:

1. The person to whom the information relates.

2. Any person who has the written consent of the person to whom the information relates to receive such information.
3. Any person to whom 49 CFR 26, as that section existed on October 1, 1999, requires or specifically authorizes the department to disclose such information.

(END)

ALTERNATIVE PROVISIONS:

(a) Notwithstanding s. 19.35 (1), the department may not disclose to any person any information specified under 49 CFR 26.11 (c), as that section existed on October 1, 1999, and any information relating to an individual's personal net worth, if the information was submitted to the department in response to the department's request for that information.

(a) Notwithstanding s. 19.35 (1), the department may not disclose to any person any information that is requested by the department for the purpose of complying with 49 CFR 26 and that 49 CFR 26 requires the department to collect.

(a) Notwithstanding s. 19.35 (1), the department may not disclose to any person any information submitted to the department in response to the department's request for such information, if the department requested the information for the purposes of complying with 49 CFR 26.

SOON

King PI

DOA:.....Etzler - T048, Exempt DBE contractor information from open records law

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

disadvantaged business enterprises and the open records law.

1 AN ACT ^{DONT GEN. CAT} relating to: ???

Analysis by the Legislative Reference Bureau

TRANSPORTATION

OTHER TRANSPORTATION

Current federal law requires DOT to pay specified percentages of expenditures for highway construction projects to disadvantaged business enterprises. A "disadvantaged business enterprise" is a business that is at least 51% owned, controlled, and actively managed by minority group members, women, or other individuals found to be socially and economically disadvantaged, or by a combination of such individuals. Current federal law also prohibits DOT from discriminating on the basis of race, color, national origin, or sex in the award of any construction contract that is paid for in part using federal funds.

To determine compliance with these requirements and prohibitions, federal law requires DOT to collect and submit to the federal department of transportation data concerning the ownership of businesses that bid for construction contracts let by DOT, and other financial information pertaining to such businesses and their owners. Federal law generally requires DOT to keep confidential such information submitted to it by a disadvantaged business enterprise. Also under current Wisconsin law, any person generally has the right to receive any record kept or maintained by a government official, unless the law specifically prohibits disclosure of the information.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0579/D1

PEN:kmg:rs

5001

[Handwritten signature]

DOA:.....Etzler - T048, Exempt DBE contractor information from open records law

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

DON'T GEN
GAT

1 AN ACT...; relating to: disadvantaged business enterprises and the open records
2 law.

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To determine compliance with these requirements and prohibitions, federal law requires DOT to collect and submit to the federal department of transportation data concerning the ownership of businesses that bid for construction contracts let by DOT, and other financial information pertaining to such businesses and their owners. Federal law generally requires DOT to keep confidential such information submitted to it by a disadvantaged business enterprise. Also under current Wisconsin law, any person generally has the right to receive any record kept or

*insert
2A*

maintained by a government official, unless the law specifically prohibits disclosure of the information.

This bill requires DOT to keep confidential any information requested by DOT for purposes of determining or demonstrating compliance with the federal requirements and prohibitions described above. The information required to be kept confidential includes the business’s name, address, age, and annual gross receipts, information needed to determine the business’s status as a disadvantaged business enterprise, and information relating to the personal net worth of the business’s owners. The bill contains exceptions to allow DOT to disclose the information to the federal department of transportation, to the person to whom the information relates, and to persons having the written consent of that person.

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

1 **SECTION 1.** 84.01 (32) of the statutes is created to read:

2 84.01 (32) CONFIDENTIALITY OF BIDDER INFORMATION. (a) ~~Notwithstanding s~~
3 ^{19.35}~~19.35~~ ^{WI}the department may not disclose to any person any information requested
4 by the department for the purpose of complying with 49 CFR 26, as that section
5 existed on October 1, 1999.

6 (b) This subsection does not prohibit the department from disclosing
7 information to any of the following persons:

8 1. The person to whom the information relates.

9 2. Any person who has the written consent of the person to whom the
10 information relates to receive such information.

11 3. Any person to whom 49 CFR 26, as that section existed on October 1, 1999,
12 requires or specifically authorizes the department to disclose such information.

13 (END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0579/P2ins
PEN.....

index
2-A

No 98
custodian demonstrates that the public interest in withholding the information contained in the record outweighs the strong public interest in providing access to the information, or unless the

(end insert)

Fast, Timothy

From: Nilsen, Paul
Sent: Tuesday, November 14, 2000 10:43 AM
To: Fast, Timothy
Cc: Etzler, John; Seaquist, Linda; Buckmaster, Carol
Subject: LRB-0579/P2; DBE bidder confidentiality

Dr. Fast,

Please redraft LRB-0579/P2 to narrow the exemption from public records disclosure. Instead of prohibiting disclosure of ALL info requested by DOT under 49 CFR 26, DOT wishes to keep confidential only information "relating to an individual's net worth statement, company financial statements, including bidder's gross receipts, and statement of bidder's experience".

Please amend page 2, line 3 or 4 to add something like: information "that relates to an individual's net worth statement, company financial statement, including a bidder's gross receipts, or statement of experience".

This is based loosely on the confidentiality afforded to bidder prequalification under s. 66.0901 (2), stats.

Paul E. Nilsen
Office of General Counsel, WisDOT
Paul.Nilsen@dot.state.wi.us
(608) 261-0126

2001 - 2002 LEGISLATURE

LRB-0579/~~12~~ (Podroff
maker has
~~been~~ kmg:pg been run)
TNF

WANTED SOON
turned in 11/19/00

DOA:.....Etzler - T048, Exempt DBE contractor information from open records law

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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To determine compliance with these requirements and prohibitions, federal law requires DOT to collect and submit to the federal department of transportation data concerning the ownership of businesses that bid for construction contracts let by DOT, and other financial information pertaining to such businesses and their owners. Federal law generally requires DOT to keep confidential such information submitted to it by a disadvantaged business enterprise. Also under current Wisconsin law, any person generally has the right to receive any record kept or

an individual's statement of net worth, a statement of experience, and a company's financial statement, including the gross receipts of a bidder.

maintained by a government official, unless the custodian demonstrates that the public interest in withholding the information contained in the record outweighs the strong public interest in providing access to the information, or unless the law specifically prohibits disclosure of the information. / certain

This bill requires DOT to keep confidential ~~any~~ information requested by DOT for purposes of determining or demonstrating compliance with the federal requirements and prohibitions described above. The information required to be kept confidential ~~includes the business's name, address, age, and annual gross receipts, information needed to determine the business's status as a disadvantaged business enterprise, and~~ information relating to ~~the personal net worth of the business owners.~~ The bill contains exceptions to allow DOT to disclose the information to the federal department of transportation, to the person to whom the information relates, and to persons having the written consent of that person.

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- 8 2. Any person who has the written consent of the person to whom the
- 9 information relates to receive such information.
- 10 3. Any person to whom 49 CFR 26, as that section existed on October 1, 1999,
- 11 requires or specifically authorizes the department to disclose such information.

(END)
D-NOTE

, that relates to an individual's statement of net worth, a statement of experience, or a company's financial statement, including the gross receipts of a bidder

LRB - 0579/1dn
TNF: KMG:

DRAFTER'S NOTE

This draft incorporates changes requested by
Mr. Paul Nilson of DOT on November 14, 2000.
The changes limit the information ^{that is} required to
be kept confidential.

TNF

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0579/1dn
TNF:kmg:jf

November 20, 2000

This draft incorporates changes requested by Mr. Paul Nilsen of DOT on November 14, 2000. The changes limit the information that is required to be kept confidential.

Timothy N. Fast
Senior Legislative Attorney
Phone: (608) 266-9739
E-mail: tim.fast@legis.state.wi.us



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0579/1
TNF:kmg:jf

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