



## 2009 ASSEMBLY BILL 427

September 22, 2009 – Introduced by Representatives BLACK, HINTZ and KAUFERT, cosponsored by Senators RISSER, PLALE and KANAVAS, by request of The Building Commission. Referred to Committee on Consumer Protection.

1     **AN ACT** *to amend* 16.855 (1), 16.855 (2) (intro.), 16.855 (13) (a), 16.855 (14) (a)  
2             and 16.855 (15); and *to create* 16.855 (14) (am) to (aq) of the statutes; **relating**  
3             **to:** state building contracting and construction procedures and granting  
4             rule-making authority.

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### ***Analysis by the Legislative Reference Bureau***

This bill makes changes in state building contracting and construction procedures.

Currently, with certain exceptions, contracts for construction work on state construction projects that cost more than \$40,000 must be let by contract to the lowest responsible bidder and must be preceded by public notice and a public bidding process. Wisconsin-based bidders are accorded a preference over bidders whose home governments grant them a preference in making governmental purchases. With certain exceptions, if bids are required to be solicited and the estimated cost of a project exceeds \$150,000, the Department of Administration (DOA) must solicit single and separate bids on each portion of the work that DOA designates. DOA must attempt to ensure that 5 percent of the total amount expended for construction work in each fiscal year is awarded to minority-owned businesses. Contractors must be granted certain progress payments while a project is underway. With certain exceptions, if the estimated cost of a project exceeds \$150,000, the project is subject to approval of the Building Commission.

The bill permits DOA either to: 1) solicit both single and separate bids on any division of the work it designates; or 2) solicit only single bids on all divisions of the

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work that DOA designates. The bill directs DOA to prescribe, by rule, certain procedures that prime contractors must use to protect subcontractors when DOA solicits only single bids on all divisions of the work on a project. The bill also permits DOA to utilize another contracting procedure to construct any project called “construction–manager–at–risk contracting.” Under the construction–manager–at–risk contracting procedure, DOA hires a construction manager to provide pre–construction services and to manage the construction process. The construction manager must publicly solicit bids for all work on a project unless the manager submits a bid for a portion of the work, in which case, DOA solicits bids on that portion of the work on the project. The bill also permits DOA to prescribe, by rule, additional contracting procedures not specified in current law or in the bill that DOA may utilize for any project. Under all of the proposed new contracting procedures, as well as any other procedures prescribed by DOA, DOA must advertise for and solicit bids on all or any portion of the work it designates and comply with all other laws governing construction procedures, except that DOA may provide, by rule, that any of these laws do not apply to a specific project that is constructed using the construction–manager–at–risk procedure, and except that, as currently provided, the Building Commission may waive compliance with any of these laws for construction of a specific project.

Currently, with certain exceptions, a bidder on a contract for a state project need not submit with its bid a list of the subcontractors to be used on the project, but DOA may require a list of the subcontractors to be submitted before the contract is awarded. This bill permits DOA to require each bidder on a state project to submit with its bid a list of its subcontractors to be used on the project.

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

1           **SECTION 1.** 16.855 (1) of the statutes is amended to read:

2           **16.855 (1)** The department shall let by contract to the lowest qualified  
3 responsible bidder all construction work when the estimated construction cost of the  
4 project exceeds \$40,000, except for construction work authorized under s. 16.858 and  
5 except as provided in ~~sub.~~ subs. (10), (10m) or, and (14) (am) and (ao) and s. 13.48 (19).  
6 If a bidder is not a Wisconsin firm and the department determines that the state,  
7 foreign nation or subdivision thereof in which the bidder is domiciled grants a  
8 preference to bidders domiciled in that state, nation or subdivision in making  
9 governmental purchases, the department shall give a preference over that bidder to

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1 Wisconsin firms, if any, when awarding the contract, in the absence of compelling  
2 reasons to the contrary. The department may enter into agreements with states,  
3 foreign nations and subdivisions thereof for the purpose of implementing this  
4 subsection.

5 **SECTION 2.** 16.855 (2) (intro.) of the statutes is amended to read:

6 16.855 (2) (intro.) Except as provided in subs. (10) and (14) (am) and (ao) and  
7 except for projects authorized under s. 16.858, whenever the estimated construction  
8 cost of a project exceeds \$40,000, or if less and in the best interest of the state, the  
9 department shall:

10 **SECTION 3.** 16.855 (13) (a) of the statutes is amended to read:

11 16.855 (13) (a) ~~A~~ The department may require each person who submits a bid  
12 to provide a list of the major subcontractors shall not be required to be submitted,  
13 as designated by the department in its solicitation documents, for work to be  
14 performed with the person's bid. The department may also require the each prime  
15 contractor to submit in writing the names of prospective subcontractors for the  
16 department's approval before the award of a contract to the prime contractor.

17 **SECTION 4.** 16.855 (14) (a) of the statutes is amended to read:

18 16.855 (14) (a) If a project requires prior approval of the building commission  
19 under s. 13.48 (10) (a) ~~and or~~ bids are required to be solicited under sub. (2), the  
20 department ~~shall take~~ may solicit both single bids and separate bids on any division  
21 of the work that it designates. ~~If a project does not require prior approval of the~~  
22 ~~building commission under s. 13.48 (10) (a) and bids are required to be solicited under~~  
23 ~~sub. (2), the department may take single bids or separate bids on any division of the~~  
24 ~~work that it designates or may solicit only single bids on all divisions of the work.~~  
25 If the department awards contracts by the division of work, the department shall

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1 award the contracts according to the division of work selected for bidding. Except  
2 as provided in pars. (am) and (ao) and sub. (10m) (a), the department shall award all  
3 contracts to the lowest qualified responsible bidder or bidders that result in the  
4 lowest total construction cost for the project.

5 **SECTION 5.** 16.855 (14) (am) to (aq) of the statutes are created to read:

6 16.855 **(14)** (am) 1. In this paragraph, “construction–manager–at–risk  
7 contracting” means a contracting procedure in which a person is selected by the  
8 department to act as a construction manager for a project; to provide  
9 pre–construction services during the design phase of the project; and to manage the  
10 construction process, which includes, but is not limited to, supervision of public  
11 notice and bidding for construction work on the project and assumption of  
12 responsibility for the project’s cost, completion schedule, and workmanship of  
13 construction.

14 2. As an alternative to the procedures under par. (a), the department may  
15 utilize construction–manager–at–risk contracting to construct a project. The  
16 department shall prescribe, by rule, the specific procedures to be used by the  
17 department for projects constructed using construction–manager–at–risk  
18 contracting. A rule promulgated under this subdivision may provide that any  
19 provision of this section does not apply to a project constructed in accordance with  
20 the procedures prescribed in the rule.

21 3. When the department elects to utilize construction–manager–at–risk  
22 contracting to construct a project, the construction manager shall solicit bids on all  
23 work on the project in the manner prescribed under this subsection unless the  
24 construction manager elects to submit a bid to perform a portion of the work. In that

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1 case, the department shall solicit bids for that portion of the work in accordance with  
2 procedures prescribed by rule.

3 (an) The department may prescribe, by rule, additional contracting procedures  
4 not enumerated in this subsection that the department may utilize to construct any  
5 project that requires approval of the commission under s. 13.48 (10) (a).

6 (ao) On any project constructed under a procedure identified in or prescribed  
7 under par. (am) or (an), the department shall comply with all provisions of this  
8 section unless the building commission waives compliance under s. 13.48 (19), or a  
9 rule promulgated under par. (am) provides for an alternative procedure.

10 (ap) The department shall define, by rule:

11 1. The specific contracting procedures that prime contractors must use when  
12 the department elects under par. (a) to solicit only single bids on all divisions of the  
13 work on a project to provide protections to major subcontractors, including but not  
14 limited to requirements for prime contractors to provide a list of major  
15 subcontractors to the department, as designated by the department in its solicitation  
16 documents; to provide major subcontractors with access to project documentation;  
17 and to promptly pay subcontractors for their work on the project.

18 2. The specific contracting procedures identified in or authorized to be  
19 prescribed under pars. (am) and (an) and how they will be applied to construction  
20 projects.

21 3. The criteria that will be applied to the selection of the contracting procedure  
22 that will be utilized by the department on a particular project.

23 4. The selection process that the department will use to select a contractor for  
24 any contracting procedure to be utilized on a project other than the procedures  
25 identified in par. (a).

