

2009 DRAFTING REQUEST

Bill

Received: **09/15/2009**

Received By: **jkuesel**

Wanted: **Soon**

Identical to LRB:

For: **Administration**

By/Representing: **Peter Maternowski**

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

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **State Govt - state bldg proj**

Extra Copies:

Submit via email: **YES**

Requester's email: **peter.maternowski@doa.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

State construction contracting procedures

Instructions:

Per LRB-3285/5.

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>
/?	jkuesel 09/15/2009	bkraft 09/15/2009		_____			
/1			mduchek 09/15/2009	_____	mbarman 09/15/2009	mbarman 09/15/2009	

FE Sent For:

<END>

↳ Not Needed

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/?	jkuesel 09/15/2009	bkraft 09/15/2009		_____			
/1			mduchek 09/15/2009	_____	mbarman 09/15/2009		

FE Sent For:

<END>

*for Assembly
Per Peter M.
(See attached)*

2009 DRAFTING REQUEST

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Received: 09/15/2009

Received By: **jkuesel**

Wanted: **Soon**

Identical to LRB:

For: **Administration 6-5565**

By/Representing: **Peter Maternowski**

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

Drafter: **jkuesel**

May Contact:

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17/1	jkuesel 9/15/09	11 bjk 9/15		_____	_____	_____	_____

FE Sent For:

<END>

Kuesel, Jeffery

To: Maternowski, Peter J - DOA
Subject: RE: Submitted: LRB 09-3285/5 Topic: State construction contracting procedures?body=

Peter,
I'll take care of it.
Jeff

From: Maternowski, Peter J - DOA [<mailto:peter.maternowski@wisconsin.gov>]
Sent: Monday, September 14, 2009 3:40 PM
To: Kuesel, Jeffery
Subject: Submitted: LRB 09-3285/5 Topic: State construction contracting procedures?body=

Jeff,

I have asked for LRB 3285/5 to be jacket for introduction as a Senate bill. Would it be possible to have a companion Assembly bill drafted?

Thanks

Peter Maternowski
Division of State Facilities
(608) 266-5565

2009 DRAFTING REQUEST

Bill

Received: **08/17/2009**

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **Administration**

By/Representing: **Peter Maternowski**

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

Drafter: **jkuesel**

May Contact:

Adl. Drafters:

Subject: **State Govt - state bldg proj**

Extra Copies:

Submit via email: **YES**

Requester's email: **peter.maternowski@wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

State construction contracting procedures

Instructions:

Per attached E mail, 8/14/09.

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>
/?	jkuesel 08/24/2009	bkraft 08/24/2009		_____			
/1			rschluet 08/24/2009	_____	sbasford 08/24/2009		
/2	jkuesel 08/26/2009	bkraft 08/26/2009	rschluet 08/27/2009	_____	mbarman 08/27/2009		
/3	jkuesel	bkraft	rschluet	_____	sbasford		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	08/28/2009	08/28/2009	08/28/2009	_____	08/28/2009		
/4	jkuesel 09/10/2009	bkraft 09/10/2009	phentry 09/10/2009	_____	lparisi 09/10/2009		
/5	jkuesel 09/11/2009	kfollett 09/11/2009	mduchek 09/11/2009	_____ _____ _____	sbasford 09/11/2009	mbarman 09/15/2009 mbarman 09/15/2009	

FE Sent For:

<END>

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

LRB-3285/1dn
JTK:bjk:rs

August 24, 2009

Peter Maternowski:

1. Per our telephone conversation on August 21, I asked you to reflect on the extent you wished to require public notice or bidding or competitive sealed proposals on any projects that may be contracted under the proposed alternative contracting procedures.
2. Under this draft, public notice and bidding are not required on projects constructed in accordance with alternative contracting procedures, if authorized by the Building Commission for projects requiring commission approval. However, the draft does not suspend any other provisions of s. 16.855, stats., for such projects. The Building Commission may waive compliance with those provisions under s. 13.48 (19), stats. If something more is needed, please let me know.

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

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

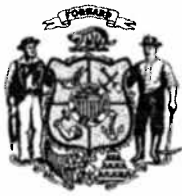
LRB-3285/4dn
JTK:bjk:ph

September 10, 2009

Peter Maternowski:

1. I have amended s. 16.855 (15), stats., to clarify that existing rules for the advertising and award of contracts apply only to contracts let by the department under s. 16.855 (1), stats. This is to distinguish these rules from the new rules to be promulgated under the draft.
2. I have inserted cross-references to the existing bidding exemption in s. 16.855 (10), stats., in s. 16.855 (1) and (2), stats., for improved clarity.

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



State of Wisconsin
2009 - 2010 LEGISLATURE

FROM
3285/5

-344011
LRB-3285/5 e

JTK:bjk&kjf:md

stays

Tue 9/15

2009 BILL

SA

regen.

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.

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

BILL

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.

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. (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

BILL

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

BILL**SECTION 4**

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

BILL

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).

Duerst, Christina

From: Maternowski, Peter J - DOA [peter.maternowski@wisconsin.gov]
Sent: Monday, September 14, 2009 5:23 PM
To: Duerst, Christina
Subject: RE: Draft Review: LRB 09-3285/5 Topic: State construction contracting procedures

Christina,

I have also asked Jeff for an Assembly jacket.

Would it be possible for me to pick up both of them? David Helbach the Building Commission Secretary will be speaking to the BC members about them.

Peter Maternowski
Division of State Facilities
(608) 266-5565

From: Duerst, Christina [mailto:Christina.Duerst@legis.wisconsin.gov]
Sent: Monday, September 14, 2009 3:57 PM
To: Maternowski, Peter J - DOA
Subject: RE: Draft Review: LRB 09-3285/5 Topic: State construction contracting procedures

Peter,
Would you like this jacket sent to a Senators office or will someone be picking it up here?
Thanks,

CHRISTINA DUERST
Program Assistant
State of WI - Legislative Reference Bureau
1 East Main, Suite 200
Madison, WI 53703
Phone: (608) 266-3561 Fax: (608) 264-6948

From: Maternowski, Peter J - DOA [mailto:peter.maternowski@wisconsin.gov]
Sent: Monday, September 14, 2009 3:37 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-3285/5 Topic: State construction contracting procedures

Please Jacket LRB 09-3285/5 for the SENATE.

9/15/2009