

2011 DRAFTING REQUEST

Bill

Received: **06/29/2011**

Received By: **jkuesel**

Wanted: **As time permits**

Companion to LRB:

For: **Van Wanggaard (608) 266-1832**

By/Representing: **Scott Kelly**

May Contact:

Drafter: **jkuesel**

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

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Wanggaard@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

State construction contracting procedures

Instructions:

Per attached E mail, 6/29/11.

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 07/27/2011	kfollett 07/27/2011		_____			
/P1			rschluet 07/28/2011	_____	mbarman 07/28/2011		
/1	jkuesel 09/14/2011	kfollett 09/14/2011	jfrantze 09/14/2011	_____	lparisi 09/14/2011	lparisi 09/14/2011	
/2	jkuesel 12/13/2011	kfollett 12/14/2011	phenry 12/14/2011	_____	ggodwin 12/14/2011	ggodwin 12/14/2011	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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None

<END>

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/1	jkuesel 09/14/2011	kfollett 09/14/2011	jfrantze 09/14/2011	_____	lparisi 09/14/2011	lparisi 09/14/2011	

FE Sent For:

jkuesel
12/13/11
12kf
12/14

2011 DRAFTING REQUEST

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Companion to LRB:

For: Van Wanggaard (608) 266-1832

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Drafter: jkuesel

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No specific pre topic given

Topic:

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Instructions:

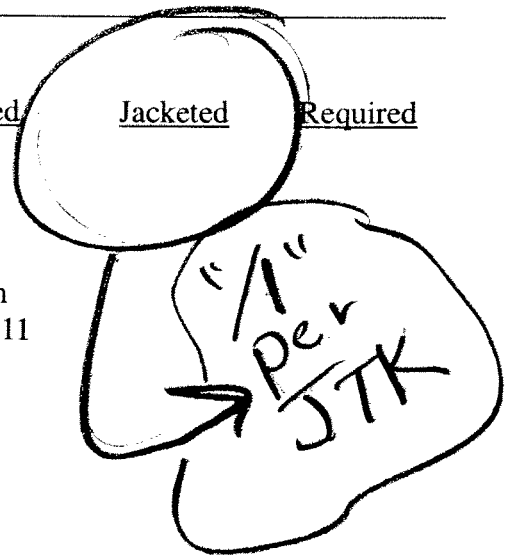
Per attached E mail, 6/29/11.

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/?	jkuesel 07/27/2011	kfollett 07/27/2011		==			
/P1	jkuesel 9/14/11	7/5f 9/14	rschluet 07/28/2011		mbarman 07/28/2011		

FE Sent For:

<END>



2011 DRAFTING REQUEST

Bill

Received: 06/29/2011

Received By: jkuesel

Wanted: As time permits

Companion to LRB:

For: Van Wanggaard (608) 266-1832

By/Representing: Scott Kelly

May Contact: Tim Howen, (414) 305-2011

Drafter: jkuesel

Subject: State Govt - state bldg proj

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Wanggaard@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given


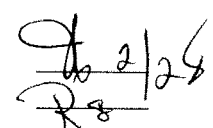
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12/PS	jkuesel 7/27/11	1/PI/GF 7/27					

FE Sent For:

<END>

Kuesel, Jeffery

To: Kelly, Scott
Subject: RE: LRBs0399/2

Scott,

I am entering your request. The instructions for the desired changes will probably need to be fleshed out a bit. As you suggest, some may be covered by the draft or by current law. I will review the situation to see what we now have that pertains to the concerns you describe. I will get back to you when I am able to reach the draft and investigate the situation further.

Jeffery T. Kuesel
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 266-6778
Jeffery.Kuesel@legis.wisconsin.gov

From: Kelly, Scott
Sent: Wednesday, June 29, 2011 11:05 AM
To: Kuesel, Jeffery
Subject: LRBs0399/2

Hi Jeff –

To reiterate, I would like LRBs0399/2 drafted as a 2011 piece of Legislation with the following changes:

- ✓ • Removing the "floor" of applicability from \$40,000,000 to zero. (this is described on Pg 2 Ln 6 of the LRB ANALYSIS.)
- ✓ • Open subcontractor bidding that provides transparency
- ✓ • Requirement that all subcontractors provide a performance and payment bond
- ✗ • Adhere to state prompt payment 4,20 FT
- ? • Add ability of state contractors to gain access to WIS Build. ?

If you have any questions, let me know, and I'll be sure to try to get more information.

Thanks

Scott

Scott Kelly
Senator Van Wanggaard
21st Senate District
(608)266-1832
scott.kelly@legis.wisconsin.gov



State of Wisconsin
2009 - 2010 LEGISLATURE

-2322/P1

LRBs0399/2

JTK:bjk&kjf.ph

kjf

DNUTE
Pa: 7/29

PWF
Done

SENATE SUBSTITUTE AMENDMENT 1,
TO 2009 SENATE BILL 298

April 9, 2010 - Offered by COMMITTEE ON ETHICS REFORM AND GOVERNMENT OPERATIONS.

Reger

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

bill **Analysis by the Legislative Reference Bureau**

This ~~substitute amendment~~ 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.

\$50,000

\$185,000

X

\$185,000

bill

2) DOA must require the prime contractor to solicit bids from subcontractors who will perform any division of the work on the project designated by DOA and to award each subcontract to the lowest qualified responsible bidder;

bill

The substitute amendment 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 work that DOA designates. The substitute amendment also permits DOA to utilize another contracting procedure to construct any project called "construction-manager-at-risk contracting" for any project having an estimated cost of \$40,000,000 or more. 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 solicit bids for all work on a project unless the manager submits a bid for a portion of the work. The substitute amendment also permits DOA to prescribe, by rule, additional contracting procedures not specified in current law or in the substitute amendment that DOA may utilize for any project.

each subcontract to the lowest qualified responsible bidder;

bill on a project

The substitute amendment provides the following when DOA uses a contracting procedure in which it solicits only single bids on all divisions of the work (single prime contracting): 1) the prime contractor must submit to DOA the names of the subcontractors that are proposed to be retained; 2) the prime contractor must provide proof to DOA of each proposed subcontractor's ability to obtain a bond that guarantees performance of its division of the work subject to criteria set by DOA; 3) the prime contractor must submit progress payment requests to DOA and must promptly pay the subcontractors for their proportionate share of the work when a payment is received from DOA; and 4) retainages from subcontractors must be limited to their proportionate share of the work. In addition, the substitute amendment provides that when DOA uses the single prime contracting procedure to construct a project, DOA must ensure that each subcontractor has access to the elements of the project information available to the prime contractor that are required for the subcontractor to effectively participate in the 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 substitute amendment 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:

SECTION 1. 16.855 (2) (intro.) of the statutes is amended to read:

as amended by 2011 Wisconsin Act 33

a bond issued by a surety company authorized to do business in this state guaranteeing

and payment for the

or (1)

1 16.855 (2) (intro.) Except as provided in subs. (10) and (14) (ae), (am), and (ao)
2 and except for projects authorized under s. 16.858, whenever the estimated
3 construction cost of a project exceeds ~~\$40,000~~ ^{\$50,000 ← plain} or if less and in the best interest of the
4 state, the department shall:

5 SECTION 2. 16.855 (13) (a) of the statutes is amended to read:

6 16.855 (13) (a) ~~A~~ The department may require each person who submits a bid
7 to provide a list of the major subcontractors shall not be required to be submitted,
8 as designated by the department in its solicitation documents, for work to be
9 performed with the person's bid. The Except as provided in sub. (14) (ae) 2., the
10 department may also require the each prime contractor to submit in writing the
11 names of prospective subcontractors for the department's approval before the award
12 of a contract to the prime contractor. *The department shall require each*

13 SECTION 3. 16.855 (14) (a) of the statutes is amended to read: *any division of*

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

21 If the department awards contracts by the division of work, the department shall *to*
22 award the contracts according to the division of work selected for bidding. Except *lowest*
23 as provided in pars. (am) and (ao) and sub. (10m) (a), the department shall award all *qualified*
24 contracts to the lowest qualified responsible bidder or bidders that result in the *responsible*
25 lowest total construction cost for the project. *bidder.*

1 SECTION 4. 16.855 (14) (ae) of the statutes is created to read:

2 16.855 (14) (ae) 1. In this paragraph:

3 a. "Base bid" means the bid of a prime contractor for all work to be performed
4 on a project submitted in accordance with the solicitation, excluding any alternatives
5 or options.

6 b. "Single prime contracting" means a contracting procedure in which the
7 department solicits only single bids on all divisions of the work on a project.

8 2. If the department elects to use single prime contracting for the construction
9 of a project, the department shall set forth the divisions of the work in the
10 solicitation. The department shall also enforce the following requirements:

11 a. Each bidder shall submit in writing the names of the subcontractors who are
12 proposed to be retained to perform services required under the base bid for each
13 division of the work specified by the department together with the amount to be paid
14 by the prime contractor to each subcontractor. No modification may be made in the
15 submission unless the department permits a modification. The department may
16 permit a modification after the opening of bids but prior to execution of the contract
17 with the prime contractor.

18 b. For each subcontractor that is enumerated by the prime contractor, the

19 prime contractor shall provide to the department proof of the subcontractor's ability
20 to obtain a bond that guarantees performance of ~~the~~ division of the work subject to

21 ~~criteria set by the department.~~

issued by a surety company authorized to do business in this state guaranteeing to be performed by the Subcontractor
and payment for the

22 c. The prime contractor shall submit progress payment requests to the
23 department for each period designated by the department and upon receiving each

24 progress payment shall pay each subcontractor for its division of the work promptly

in accordance with s. 16.528 (2m)

1 d. In making payments to each subcontractor, the prime contractor shall limit
2 the amount of any retainage to the proportionate share of the retainage under sub.
3 (19) that is attributable to the subcontractor's division of the work.

4 e. The prime contractor shall promptly pay each subcontractor for any
5 retainage when the work contracted to that subcontractor is completed to the
6 satisfaction of the department.

7 3. If the department elects to use single prime contracting for the construction
8 of a project, the department shall ensure that each subcontractor has access to the
9 elements of the project information available to the prime contractor that are
10 required for the subcontractor to effectively participate in execution of the project.

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

12 16.855 (14) (am) 1. In this paragraph, "construction-manager-at-risk
13 contracting" means a contracting procedure in which a person is selected by the
14 department to act as a construction manager for a project; to provide
15 pre-construction services during the design phase of the project; and to manage the
16 construction process, which includes, but is not limited to, supervision of public
17 notice and bidding for construction work on the project, contracting for construction
18 work required to be performed on the project, compliance with all terms and
19 conditions of applicable collective bargaining agreements, if any, and assumption of
20 responsibility for the project's cost, completion schedule, and workmanship of
21 construction.

22 2. As an alternative to the procedures under par. (a), the department may
23 utilize construction-manager-at-risk contracting to construct a project ~~having an~~
24 ~~estimated cost of \$40,000,000 or more.~~ The department shall prescribe, by rule, the
25 specific procedures to be used by the department for projects constructed using

1 construction-manager-at-risk contracting. A rule promulgated under this
2 subdivision[✓] may provide that any provision of this section[✓] does not apply to a project
3 constructed in accordance with the procedures prescribed in the rule.

4 3. When the department elects to utilize construction-manager-at-risk
5 contracting to construct a project, the construction manager shall solicit bids on all
6 work on the project in the manner prescribed under this subsection[✓] unless the
7 construction manager elects to submit a bid to perform a portion of the work. In that
8 case, the department shall solicit bids for that portion of the work in accordance with
9 procedures prescribed by rule.

10 (an) The department may prescribe, by rule, additional contracting procedures
11 not enumerated in this subsection[✓] that the department may utilize to construct any
12 project that requires approval of the building commission under s. 13.48 (10) (a).

13 (ao) On any project[✓] constructed under a procedure identified in or prescribed
14 under par. (ae), (am),[✓] or (an),[✓] the department shall comply with all provisions[✓] of this
15 section[✓] unless the building commission waives compliance under s. 13.48 (19), or a
16 rule promulgated under par. (am)[✓] provides for an alternative procedure.

17 (ap) The department[✓] shall define, by rule:

18 1. Any specific contracting procedures[✓] not specified in par. (ae) that prime
19 contractors must use when the department elects under par. (a) to solicit only single
20 bids on all divisions of the work on a project to provide protections to major
21 subcontractors.

22 2. The specific contracting[✓] procedures identified in or authorized to be
23 prescribed under pars. (am)[✓] and (an)[✓] and how they will be applied to construction
24 projects.

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

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

6 5. The procedures that the department will use to solicit bids for any portion
7 of the work on a project in which the construction manager at risk for the project
8 elects to submit a bid to perform the portion of the work.

9 (aq) The department may define, by rule, the criteria that will be applied to the
10 selection of a contracting procedure for a project when the building commission
11 waives any provision of this section to permit the use of innovative types of design
12 and construction processes under s. 13.48 (19).

13 **SECTION 6.** 16.855 (15) of the statutes is amended to read:

14 16.855 (15) The department shall promulgate rules to implement the
15 advertising and award of contracts under sub. (1).

16 **SECTION 7. Initial applicability.**

17 (1) The treatment of section 16.855 (2) (intro.), (13) (a), (14) (a), (ae), and (am)
18 to (aq), and (15) of the statutes first applies with respect to contracts for services or
19 construction work entered into on the effective date of this subsection.

20 (END)

D-Note

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

LRB-2322/P1dn

JTK...:kjf

Date

Senator Wanggaard:

I will be out of the office until August 3 and have been unable to reach Tim Hoven regarding the language to enhance access to WisBuild Initiative projects. I have therefore prepared this preliminary draft to allow you to review the other proposed changes. When I return, I will add the WisBuild language.

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

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

LRB-2322/P1dn
JTK:kjf:rs

July 28, 2011

Senator Wanggaard:

I will be out of the office until August 3 and have been unable to reach Tim Hoven regarding the language to enhance access to WisBuild Initiative projects. I have therefore prepared this preliminary draft to allow you to review the other proposed changes. When I return, I will add the WisBuild language.

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



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2322/P1
JTK:kjf:rs

Today

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Rosen

1 AN ACT *to amend* ~~16.855 (2)~~ (intro.), 16.855 (13) (a), 16.855 (14) (a) and 16.855
2 (15); and *to create* 16.855 (14) (ae) and 16.855 (14) (am) to (aq) of the statutes;
3 **relating to:** state building contracting and construction procedures and
4 granting 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 \$50,000 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 \$185,000, 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 \$185,000, 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

work that DOA designates. 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 preconstruction services and to manage the construction process. The construction manager must solicit bids for all work on a project unless the manager submits a bid for a portion of the work. 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.

The bill provides the following when DOA uses a contracting procedure in which it solicits only single bids on all divisions of the work on a project (single prime contracting): 1) the prime contractor must submit to DOA the names of the subcontractors that are proposed to be retained; 2) DOA must require the prime contractor to solicit bids from subcontractors who will perform any division of the work on the project designated by DOA and to award each subcontract to the lowest qualified responsible bidder; 3) the prime contractor must provide to DOA a bond issued by a surety company authorized to do business in this state guaranteeing performance of and payment for the division of the work; 4) the prime contractor must submit progress payment requests to DOA and must promptly pay the subcontractors for their proportionate share of the work when a payment is received from DOA; and 5) retainages from subcontractors must be limited to their proportionate share of the work. In addition, the bill provides that when DOA uses the single prime contracting procedure to construct a project, DOA must ensure that each subcontractor has access to the elements of the project information available to the prime contractor that are required for the subcontractor to effectively participate in the 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 (2) (intro.) of the statutes, as affected by 2011 Wisconsin Act
2 32, is amended to read:

3 16.855 (2) (intro.) Except as provided in subs. (10) and (14) (ae), (am), and (ao)
4 and except for projects authorized under s. 16.858, whenever the estimated
5 construction cost of a project exceeds \$50,000, or if less and in the best interest of the
6 state, the department shall:

7 **SECTION 2.** 16.855 (13) (a) of the statutes is amended to read:

8 16.855 (13) (a) ~~A~~ The department may require each person who submits a bid
9 to provide a list of the major subcontractors shall not be required to be submitted,
10 as designated by the department in its solicitation documents, for work to be
11 performed with the person's bid. The Except as provided in sub. (14) (ae) 2., the
12 department may also require ~~the~~ each prime contractor to submit in writing the
13 names of prospective subcontractors for the department's approval before the award
14 of a contract to the prime contractor. The department shall require each prime
15 contractor to solicit bids from subcontractors who will perform any division of the
16 work on a project designated by the department and to award each subcontract to the
17 lowest qualified responsible bidder.

18 **SECTION 3.** 16.855 (14) (a) of the statutes is amended to read:

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

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

6 **SECTION 4.** 16.855 (14) (ae) of the statutes is created to read:

7 16.855 (14) (ae) 1. In this paragraph:

8 a. "Base bid" means the bid of a prime contractor for all work to be performed
9 on a project submitted in accordance with the solicitation, excluding any alternatives
10 or options.

11 b. "Single prime contracting" means a contracting procedure in which the
12 department solicits only single bids on all divisions of the work on a project.

13 2. If the department elects to use single prime contracting for the construction
14 of a project, the department shall set forth the divisions of the work in the
15 solicitation. The department shall also enforce the following requirements:

16 a. Each bidder shall submit in writing the names of the subcontractors who are
17 proposed to be retained to perform services required under the base bid for each
18 division of the work specified by the department together with the amount to be paid
19 by the prime contractor to each subcontractor. No modification may be made in the
20 submission unless the department permits a modification. The department may
21 permit a modification after the opening of bids but prior to execution of the contract
22 with the prime contractor.

23 b. For each subcontractor that is enumerated by the prime contractor, the
24 prime contractor shall provide to the department a bond issued by a surety company

1 authorized to do business in this state guaranteeing performance of and payment for
2 the division of the work to be performed by the subcontractor.

3 c. The prime contractor shall submit progress payment requests to the
4 department for each period designated by the department and upon receiving each
5 progress payment shall pay each subcontractor for its division of the work in
6 accordance with s. 16.528 (2m).

7 d. In making payments to each subcontractor, the prime contractor shall limit
8 the amount of any retainage to the proportionate share of the retainage under sub.
9 (19) that is attributable to the subcontractor's division of the work.

10 e. The prime contractor shall promptly pay each subcontractor for any
11 retainage when the work contracted to that subcontractor is completed to the
12 satisfaction of the department.

13 3. If the department elects to use single prime contracting for the construction
14 of a project, the department shall ensure that each subcontractor has access to the
15 elements of the project information available to the prime contractor that are
16 required for the subcontractor to effectively participate in execution of the project.

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

18 16.855 (14) (am) 1. In this paragraph, "construction-manager-at-risk
19 contracting" means a contracting procedure in which a person is selected by the
20 department to act as a construction manager for a project; to provide preconstruction
21 services during the design phase of the project; and to manage the construction
22 process, which includes, but is not limited to, supervision of public notice and bidding
23 for construction work on the project, contracting for construction work required to
24 be performed on the project, compliance with all terms and conditions of applicable

1 collective bargaining agreements, if any, and assumption of responsibility for the
2 project's cost, completion schedule, and workmanship of construction.

3 2. As an alternative to the procedures under par. (a), the department may
4 utilize construction-manager-at-risk contracting to construct a project. The
5 department shall prescribe, by rule, the specific procedures to be used by the
6 department for projects constructed using construction-manager-at-risk
7 contracting. A rule promulgated under this subdivision may provide that any
8 provision of this section does not apply to a project constructed in accordance with
9 the procedures prescribed in the rule.

10 3. When the department elects to utilize construction-manager-at-risk
11 contracting to construct a project, the construction manager shall solicit bids on all
12 work on the project in the manner prescribed under this subsection unless the
13 construction manager elects to submit a bid to perform a portion of the work. In that
14 case, the department shall solicit bids for that portion of the work in accordance with
15 procedures prescribed by rule.

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

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

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

24 1. Any specific contracting procedures not specified in par. (ae) that prime
25 contractors must use when the department elects under par. (a) to solicit only single

1 bids on all divisions of the work on a project to provide protections to major
2 subcontractors.

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

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

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

11 5. The procedures that the department will use to solicit bids for any portion
12 of the work on a project in which the construction manager at risk for the project
13 elects to submit a bid to perform the portion of the work.

14 (aq) The department may define, by rule, the criteria that will be applied to the
15 selection of a contracting procedure for a project when the building commission
16 waives any provision of this section to permit the use of innovative types of design
17 and construction processes under s. 13.48 (19).

18 **SECTION 6.** 16.855 (15) of the statutes is amended to read:

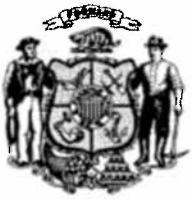
19 16.855 (15) The department shall promulgate rules to implement the
20 advertising and award of contracts under sub. (1).

21 **SECTION 7. Initial applicability.**

22 (1) The treatment of section 16.855 (2) (intro.), (13) (a), (14) (a), (ae), and (am)
23 to (aq), and (15) of the statutes first applies with respect to contracts for services or
24 construction work entered into on the effective date of this subsection.

25

(END)



State of Wisconsin

2011 - 2012 LEGISLATURE

2011 BILL

AN ACT to amend 16.855 (2) (intro.), 16.855 (13) (a), 16.855 (14) (a) and 16.855 (15); and to create 16.855 (14) (ae) and 16.855 (14) (am) to (aq) of the statutes; relating to: state building contracting and construction procedures and granting 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 \$50,000 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 \$185,000, 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 \$185,000, 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 work that DOA designates. 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 preconstruction services and to manage the construction process. The construction manager must solicit bids for all work on a project unless the manager submits a bid for a portion of the work. 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.

The bill provides the following when DOA uses a contracting procedure in which it solicits only single bids on all divisions of the work on a project (single prime contracting): 1) the prime contractor must submit to DOA the names of the subcontractors that are proposed to be retained; 2) DOA must require the prime contractor to solicit bids from subcontractors who will perform any division of the work on the project designated by DOA and to award each subcontract to the lowest qualified responsible bidder; 3) the prime contractor must provide to DOA a bond issued by a surety company authorized to do business in this state guaranteeing performance of and payment for the division of the work; 4) the prime contractor must submit progress payment requests to DOA and must promptly pay the subcontractors for their proportionate share of the work when a payment is received from DOA; and 5) retainages from subcontractors must be limited to their proportionate share of the work. In addition, the bill provides that when DOA uses the single prime contracting procedure to construct a project, DOA must ensure that each subcontractor has access to the elements of the project information available to the prime contractor that are required for the subcontractor to effectively participate in the 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:

BILL

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

16.855 (1) The department shall let by contract to the lowest qualified responsible bidder all construction work when the estimated construction cost of the project exceeds \$50,000, except for construction work authorized under s. 16.858 and except as provided in sub. (10m), (14 am) or s. 13.48 (19). If a bidder is not a Wisconsin firm and the department determines that the state, foreign nation or subdivision thereof in which the bidder is domiciled grants a preference to bidders domiciled in that state, nation or subdivision in making governmental purchases, the department shall give a preference over that bidder to Wisconsin firms, if any, when awarding the contract, in the absence of compelling reasons to the contrary. The department may enter into agreements with states, foreign nations and subdivisions thereof for the purpose of implementing this subsection.

SECTION 2. 16.855 (2) (intro.) of the statutes, as affected by 2011 Wisconsin Act 32, is amended to read:

16.855 (2) (intro.) Except as provided in subs. (10) and (14) (ae), (am), and (ao) and except for projects authorized under s. 16.858, whenever the estimated construction cost of a project exceeds \$50,000, or if less and in the best interest of the state, the department shall:

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

16.855 (13) (a) The department may require the bidder to submit a list of the major subcontractors, as designated by the department in its solicitation documents, for work to be performed with the bidder's bid. Except as provided in sub. (14) (ae) 2., the department may also require each prime contractor to submit in writing the names of prospective subcontractors for the

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department's approval before the award of a contract to the prime contractor. The department shall require the bidder to solicit bids from subcontractors who will perform any division of the work on a project designated by the department and to award each subcontract to the lowest qualified responsible bidder.

Deleted: each prime contractor

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

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

- 4 -

BILL

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

SECTION 5. 16.855 (14) (ae) of the statutes is created to read:

16.855 (14) (ae) 1. In this paragraph:

a. "Base bid" means the bid of a prime contractor for all work to be performed on a project submitted in accordance with the solicitation, excluding any alternatives or options.

b. "Single prime contracting" means a contracting procedure in which the department solicits only single bids on all divisions of the work on a project.

2. If the department elects to use single prime contracting for the construction of a project, the department shall set forth the divisions of the work in the solicitation. The department shall also enforce the following requirements:

a. Each bidder shall submit in writing the names of the subcontractors who are proposed to be retained to perform services required under the base bid for each division of the work specified by the department together with the amount to be paid by the prime contractor to each subcontractor. No modification may be made in the submission unless the department permits a modification. The department may permit a modification after the opening of bids but prior to execution of the contract with the prime contractor.

~~b. For each subcontractor that is enumerated by the prime contractor, the prime contractor shall provide to the department a bond issued by a surety company~~

- 5 -

BILL

~~authorized to do business in this state guaranteeing performance of and payment for the division of the work to be performed by the subcontractor.~~

c. The prime contractor shall submit progress payment requests to the department for each period designated by the department and upon receiving each progress payment shall pay each subcontractor for its division of the work in accordance with s. 16.528 (2m).

d. In making payments to each subcontractor, the prime contractor shall limit the amount of any retainage to the proportionate share of the retainage under sub. (19) that is attributable to the subcontractor's division of the work.

e. The prime contractor shall promptly pay each subcontractor no later than seven days after the prime contractors receipt of payment, the amount to which the subcontractor is entitled, including

Deleted: for

any

retainage when the work contracted to that subcontractor is completed to the satisfaction of the department.

3. If the department elects to use single prime contracting for the construction of a project, the department shall ensure that each subcontractor has access to the elements of the project information available to the prime contractor that are required for the subcontractor to effectively participate in execution of the project.

SECTION 6. 16.855 (14) (am) to (aq) of the statutes are created to read:

16.855 (14) (am) 1. In this paragraph, “construction–manager–at–risk contracting” means a contracting procedure in which a person is selected by the department to act as a construction manager for a project; to provide preconstruction services during the design phase of the project; and to manage the construction process, which includes, but is not limited to, supervision of public notice and bidding for construction work on the project, contracting for construction work required to be performed on the project, compliance with all terms and conditions of applicable

– 6 –

collective bargaining agreements, if any, and assumption of responsibility for the project’s cost, completion schedule, and workmanship of construction.

2. As an alternative to the procedures under par. (a), the department may utilize construction–manager–at–risk contracting to construct a project. The department shall prescribe, by rule, the specific procedures to be used by the department for projects constructed using construction–manager–at–risk contracting. A rule promulgated under this subdivision may provide

that any provision of this section does not apply to a project constructed in accordance with the procedures prescribed in the rule.

3. When the department elects to utilize construction-manager-at-risk contracting to construct a project, the construction manager shall solicit bids on all work on the project in the manner prescribed under this subsection unless the construction manager elects to submit a bid to perform a portion of the work. In that case, the department shall solicit bids for that portion of the work in accordance with procedures prescribed by rule. The department shall also enforce the following requirements:

a. Within a reasonable time after the construction-manager-at-risk's receipt of bids, tabulations of all bids received and subcontract award results shall be provided to the department, and the department shall make such tabulations available for public inspection.

b. The construction-manager-at-risk shall award all contracts to the lowest qualified responsive bidder, unless the construction-manager-at-risk recommends and the department concurs that it is in the state's best interest to contract with a subcontractor other than the lowest bidder.

c. The construction-manager-at-risk shall provide the subcontract forms of agreement within the bidding documents.

d. The construction-manager-at-risk shall submit progress payment requests to the department for each period designated by the department and upon receiving each progress payment shall pay each subcontractor for its division of the work in accordance with s. 16.528 (2m).

e. In making payments to each subcontractor, the construction-manager-at-risk shall limit the amount of any retainage to the proportionate share of the retainage under sub. (19) that is attributable to the subcontractor's division of the work.

f. The construction-manager-at-risk shall promptly pay each subcontractor no later than seven days after the prime contractors receipt of payment, the amount to which the subcontractor is

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entitled, including any retainage when the work contracted to that subcontractor is completed to the satisfaction of the department.

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

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

(ap) The department shall define, by rule:

1. Any specific contracting procedures not specified in par. (ae) that prime contractors must use when the department elects under par. (a) to solicit only single

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bids on all divisions of the work on a project to provide protections to major subcontractors.

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

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

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

5. The procedures that the department will use to solicit bids for any portion of the work on a project in which the construction manager at risk for the project elects to submit a bid to perform the portion of the work.

(aq) The department may define, by rule, the criteria that will be applied to the selection of a contracting procedure for a project when the building commission waives any provision of this section to permit the use of innovative types of design and construction processes under s. 13.48 (19).

SECTION 7. 16.855 (15) of the statutes is amended to read:

16.855 (15) The department shall promulgate rules to implement the advertising and award of contracts under sub. (1).

SECTION 8. Initial applicability.

(1) The treatment of section 16.855 (2) (intro.), (13) (a), (14) (a), (ae), and (am) to (aq), and (15) of the statutes first applies with respect to contracts for services or construction work entered into on the effective date of this subsection.

(END)

Kuesel, Jeffery

To: Kelly, Scott
Subject: RE: LRB-2322

Scott,
I will work directly with Tim Hoven on the redraft.

Jeff Kuesel

From: Kelly, Scott
Sent: Monday, November 28, 2011 11:23 AM
To: Kuesel, Jeffery
Cc: tim@hovenconsulting.com
Subject: FW:

Hi Jeff-

If I haven't already authorized - please work with Tim Hoven on LRB 2322/1

Thanks

Scott

From: Tim Hoven [mailto:tim@hovenconsulting.com]
Sent: Mon 11/28/2011 10:40 AM
To: Kelly, Scott
Subject:

Hi Scott,

I have additional drafting instructions for the alternative delivery method. I know that you are working from home today and out the rest of the week. If you have a moment, could you please call me and maybe if given permission, I would speak directly to the drafting attorney to get the modifications in the hopper.

Thanks,

Tim
HOVEN Consulting
44 East Mifflin Street , Suite 600
Madison, WI 53703
Telephone 414-305-2011

11/28/2011

Kuesel, Jeffery

From: Kuesel, Jeffery
Sent: Wednesday, November 30, 2011 2:18 PM
To: 'Tim Hoven'
Cc: Kelly, Scott
Subject: RE: LRB2322/1

Tim,

This will confirm that we have your changes and will deal with them as soon as possible. I will get back to you directly with any questions that come up.

Jeff

Jeffery T. Kuesel

**Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 266-6778
Jeffery.Kuesel@legis.wisconsin.gov**

From: Tim Hoven [mailto:tim@hovenconsulting.com]
Sent: Wednesday, November 30, 2011 11:26 AM
To: Kuesel, Jeffery
Cc: Kelly, Scott
Subject: LRB2322/1

Hi Jeff,

Please find attached modifications and edits that we would like to have included into LRB 2322/1 that relates to alternative delivery methods for state construction projects. For your convenience, I have highlighted the changes in blue.

Should you need further clarification, do not hesitate to contact me directly.

Thank you,

Tim

HOVEN Consulting
44 East Mifflin Street , Suite 600
Madison, WI 53703
Telephone 414-305-2011

From: Kelly, Scott [mailto:Scott.Kelly@legis.wisconsin.gov]
Sent: Monday, November 28, 2011 11:23 AM
To: Kuesel, Jeffery
Cc: tim@hovenconsulting.com
Subject: FW:

11/30/2011

Hi Jeff-

If I haven't already authorized - please work with Tim Hoven on LRB 2322/1

Thanks

Scott

11/30/2011



State of Wisconsin
2011 - 2012 LEGISLATURE

In 12/13



LRB-2322/1
JTK:kjf:jf

due
12/14

2011 BILL

1 AN ACT ^(regenerate) ~~to amend 16.855 (2) (intro.), 16.855 (13) (a), 16.855 (14) (a) and 16.855~~
2 ~~(15); and to create 16.855 (14) (ae) and 16.855 (14) (am) to (aq)~~ of the statutes;
3 **relating to:** state building contracting and construction procedures and
4 granting 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 \$50,000 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 \$185,000, 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 \$185,000, 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

X work that DOA designates. 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 preconstruction services and to manage the construction process. The construction manager must solicit bids for all work on a project unless the manager submits a bid for a portion of the work. 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.

FNS
2A

The bill provides the following when DOA uses a contracting procedure in which it solicits only single bids on all divisions of the work on a project (single prime contracting): 1) the prime contractor must submit to DOA the names of the subcontractors that are proposed to be retained; 2) DOA must require the prime contractor to solicit bids from subcontractors who will perform any division of the work on the project designated by DOA and to award each subcontract to the lowest qualified responsible bidder; 3) ~~the prime contractor must provide to DOA a bond issued by a surety company authorized to do business in this state guaranteeing performance of and payment for the division of the work;~~ 4) the prime contractor must submit progress payment requests to DOA and must promptly pay the subcontractors for their proportionate share of the work when a payment is received from DOA; and 5) retainages from subcontractors must be limited to their proportionate share of the work. In addition, the bill provides that when DOA uses the single prime contracting procedure to construct a project, DOA must ensure that each subcontractor has access to the elements of the project information available to the prime contractor that are required for the subcontractor to effectively participate in the project.

within
7 days
after
seven

4)

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 bill also directs DOA to require each bidder to solicit bids from subcontractors who will perform any division of the work on a project designated by DOA and to award each subcontract to the lowest qualified responsible bidder.

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

BILL

1 SECTION 1. 16.855 (2) (intro.) of the statutes, as affected by 2011 Wisconsin Act
2 32, is amended to read:

3 16.855 (2) (intro.) Except as provided in subs. (10) and (14) (ae), (am), and (ao)
4 and except for projects authorized under s. 16.858, whenever the estimated
5 construction cost of a project exceeds \$50,000, or if less and in the best interest of the
6 state, the department shall:

7 SECTION 2. 16.855 (13) (a) of the statutes is amended to read:

8 16.855 (13) (a) ~~A~~ The department may require each bidder
9 to submit a list of the major subcontractors shall not be required to be submitted,
10 as designated by the department in its solicitation documents, for work to be
11 performed with the bidder's bid. The Except as provided in sub. (14) (ae) 2., the
12 department may also require the each prime contractor to submit in writing the
13 names of prospective subcontractors for the department's approval before the award
14 of a contract to the prime contractor. The department shall require each prime
15 contractor to solicit bids from subcontractors who will perform any division of the
16 work on a project designated by the department and to award each subcontract to the
17 lowest qualified responsible bidder.

18 SECTION 3. 16.855 (14) (a) of the statutes is amended to read:

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

BILL**SECTION 3**

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

6 **SECTION 4.** 16.855 (14) (ae) of the statutes is created to read:

7 16.855 (14) (ae) 1. In this paragraph:

8 a. "Base bid" means the bid of a prime contractor for all work to be performed
9 on a project submitted in accordance with the solicitation, excluding any alternatives
10 or options.

11 b. "Single prime contracting" means a contracting procedure in which the
12 department solicits only single bids on all divisions of the work on a project.

13 2. If the department elects to use single prime contracting for the construction
14 of a project, the department shall set forth the divisions of the work in the
15 solicitation. The department shall also enforce the following requirements:

16 a. Each bidder shall submit in writing the names of the subcontractors who are
17 proposed to be retained to perform services required under the base bid for each
18 division of the work specified by the department together with the amount to be paid
19 by the prime contractor to each subcontractor. No modification may be made in the
20 submission unless the department permits a modification. The department may
21 permit a modification after the opening of bids but prior to execution of the contract
22 with the prime contractor.

23 ~~b. For each subcontractor that is enumerated by the prime contractor, the~~
24 ~~prime contractor shall provide to the department a bond issued by a surety company~~

BILL

1 authorized to do business in this state guaranteeing performance of and payment for
2 the division of the work to be performed by the subcontractor.

3 *b.c.* The prime contractor shall submit progress payment requests to the
4 department for each period designated by the department and upon receiving each
5 progress payment shall pay each subcontractor for its division of the work in
6 accordance with s. 16.528 (2m).

7 *c.d.* In making payments to each subcontractor, the prime contractor shall limit
8 the amount of any retainage to the proportionate share of the retainage under sub.
9 (19) that is attributable to the subcontractor's division of the work.

10 *d.e.* The prime contractor shall ~~promptly~~ ^{no later than 7 days after the prime contractor receives} pay each subcontractor ^{payment} for any
11 retainage when the work contracted to that subcontractor is completed to the ^{the}
12 satisfaction of the department. ^{amount}
^{to which the}
^{subcontractor}
^{is}
^{entitled}
^{including}

13 3. If the department elects to use single prime contracting for the construction
14 of a project, the department shall ensure that each subcontractor has access to the
15 elements of the project information available to the prime contractor that are
16 required for the subcontractor to effectively participate in execution of the project.

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

18 16.855 (14) (am) 1. In this paragraph, "construction-manager-at-risk
19 contracting" means a contracting procedure in which a person is selected by the
20 department to act as a construction manager for a project; to provide preconstruction
21 services during the design phase of the project; and to manage the construction
22 process, which includes, but is not limited to, supervision of public notice and bidding
23 for construction work on the project, contracting for construction work required to
24 be performed on the project, compliance with all terms and conditions of applicable

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SECTION 5

1 collective bargaining agreements, if any, and assumption of responsibility for the
2 project's cost, completion schedule, and workmanship of construction.

3 2. As an alternative to the procedures under par. (a), the department may
4 utilize construction-manager-at-risk contracting to construct a project. The
5 department shall prescribe, by rule, the specific procedures to be used by the
6 department for projects constructed using construction-manager-at-risk
7 contracting. A rule promulgated under this subdivision may provide that any
8 provision of this section does not apply to a project constructed in accordance with
9 the procedures prescribed in the rule.

10 3. When the department elects to utilize construction-manager-at-risk
11 contracting to construct a project, the construction manager shall solicit bids on all
12 work on the project in the manner prescribed under this subsection unless the
13 construction manager elects to submit a bid to perform a portion of the work. In that
14 case, the department shall solicit bids for that portion of the work in accordance with
15 procedures prescribed by rule.

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6-15
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16 (an) The department may prescribe, by rule, additional contracting procedures
17 not enumerated in this subsection that the department may utilize to construct any
18 project that requires approval of the building commission under s. 13.48 (10) (a).

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

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

24 1. Any specific contracting procedures not specified in par. (ae) that prime
25 contractors must use when the department elects under par. (a) to solicit only single

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1 bids on all divisions of the work on a project to provide protections to major
2 subcontractors.

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

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

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

11 5. The procedures that the department will use to solicit bids for any portion
12 of the work on a project in which the construction manager at risk for the project
13 elects to submit a bid to perform the portion of the work.

14 (aq) The department may define, by rule, the criteria that will be applied to the
15 selection of a contracting procedure for a project when the building commission
16 waives any provision of this section to permit the use of innovative types of design
17 and construction processes under s. 13.48 (19).

18 **SECTION 6.** 16.855 (15) of the statutes is amended to read:

19 16.855 (15) The department shall promulgate rules to implement the
20 advertising and award of contracts under sub. (1).

21 **SECTION 7. Initial applicability.**

22 (1) The treatment of section 16.855 (2) (intro.), (13) (a), (14) (a), (ae), and (am)
23 to (aq), and (15) of the statutes first applies with respect to contracts for services or
24 construction work entered into on the effective date of this subsection.

25

(END)

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The bill also requires the construction manager to award all contracts to the lowest qualified responsible bidder unless the construction manager and DOA agree that it is in the best interest of the state to contract with a subcontractor other than the lowest bidder. In addition, the bill requires the construction manager to submit progress payment requests to DOA, to pay each subcontractor the amount to which the subcontractor is entitled within seven days after the prime contractor receives payment for work performed, and to limit the amount of any retainage to the proportionate share of the retainage that is attributable to the subcontractor's division of the work.

INS 3-1:

SECTION 1. 16.855 (1) of the statutes, as affected by 2011 Wisconsin Act 32, is amended to read:

16.855 (1) The department shall let by contract to the lowest qualified responsible bidder all construction work when the estimated construction cost of the project exceeds \$50,000, except for construction work authorized under s. 16.858 and except as provided in sub. (10m) or (14) (am) or s. 13.48 (19). If a bidder is not a Wisconsin firm and the department determines that the state, foreign nation or subdivision thereof in which the bidder is domiciled grants a preference to bidders domiciled in that state, nation or subdivision in making governmental purchases, the department shall give a preference over that bidder to Wisconsin firms, if any, when awarding the contract, in the absence of compelling reasons to the contrary. The department may enter into agreements with states, foreign nations and subdivisions thereof for the purpose of implementing this subsection.

History: 1971 c. 125; 1973 c. 47; 1975 c. 39, 199, 390; 1977 c. 418; 1979 c. 34; 1981 c. 20; 1983 a. 27 ss. 104g to 105, 2202 (1); 1983 a. 390 s. 6; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27, 292; 1989 a. 31; 1991 a. 39, 316; 1995 a. 27 ss. 400p, 9126 (19); 1995 a. 227; 1997 a. 27, 306; 1999 a. 150 s. 672; 1999 a. 197; 2001 a. 103; 2003 a. 33, 157; 2005 a. 141, 391; 2007 a. 20 s. 9121 (6) (a); 2009 a. 299; 2011 a. 32.

INS 6-15:

~~NSP~~ The department shall also enforce the following requirements:

~~19~~ a. Within a reasonable time after the construction manager receives bids, the construction manager shall provide tabulations of all bids received and subcontract award results to the department and the department shall make the tabulations available for public inspection.

b. The construction manager shall award all contracts to the lowest qualified responsible bidder unless the construction manager recommends to the department and the department concurs that it is in the best interest of the state to contract with a subcontractor other than the lowest bidder.

c. The construction manager shall provide subcontract forms of agreement with the bidding documents.

d. The construction manager shall submit progress payment requests to the department for each period designated by the department and upon receiving each progress payment shall pay each subcontractor for its division of the work in accordance with s. 16.528 (2m).

e. In making payments to each subcontractor, the construction manager shall limit the amount of any retainage to the proportionate share of the retainage under sub. (19) that is attributable to the subcontractor's division of the work.

f. The construction manager shall pay each subcontractor no later than 7 days after the prime contractor receives payment the amount to which the subcontractor is entitled, including any retainage, when the work contracted is completed to the satisfaction of the department.