

2011 DRAFTING REQUEST

Bill

Received: 02/13/2012

Received By: chanaman

Wanted: As time permits

Companion to LRB:

For: Julie Lassa (608) 266-3123

By/Representing: Danielle

May Contact:

Drafter: chanaman

Subject: State Govt - procurement

Addl. Drafters:

Extra Copies:

Submit via email: YES

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Contracting under state procurement laws

Instructions:

See attached-- 09s0345 sections 3, 4, 14, and 27 (and amendment)

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>
/?	chanaman 02/14/2012	mduchek 02/16/2012		_____			State
/1			jmurphy 02/16/2012	_____	ggodwin 02/16/2012	sbasford 03/12/2012	

FE Sent For:

<END>

↳ At Intro.

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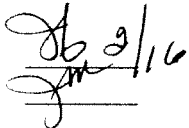
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1?	chanaman						
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FE Sent For:

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

PWF

*Fri.
(on request)*

ASU (W)

1 AN ACT...; relating to: contracting for services in state procurement.

Analysis by the Legislative Reference Bureau

Currently, the Department of Administration (DOA) or any state agency to which DOA delegates purchasing authority may contract for services if the services can be performed more efficiently or economically by contract than by state employees. This bill allows contracting for services if at least two of the following three conditions are met: 1) the services may be performed more economically by contract than by state employees; 2) when considering expertise, the services can be performed more efficiently by contract than by use of current full-time state positions; or 3) when considering timeliness, the services can be performed more efficiently by contract than by state employees.

Under current law, the requirement described ^{above} that allows an agency to contract for services only if the services can be performed more efficiently or economically by contract than by state employees does not apply to the Department of Transportation (DOT). Instead, DOT may engage engineering, consulting, surveying, or other specialized services as it deems advisable. Under this bill, before DOT enters into a contract for the engagement of services, DOT must determine at least that all of the following apply: 1) no current state employee is able and available to perform the services; 2) the work to be performed is necessary to DOT's achievement of its statutory responsibilities and there is statutory authority to enter into the contract; 3) the contract will not establish an employment relationship between the state or DOT and any person performing under the contract; 4) the contractor and its agents are not employees of the state; 5) DOT has specified a satisfactory method of evaluating and using the results of the work to be performed; and 6) the contract term

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 IF → generally does not exceed two years. In addition, before DOT enters into any contract for the engagement of services, DOT must implement a written plan providing for the assignment of specific personnel to manage the contract, including a monitoring and liaison function, the periodic review of interim reports or other indications of past performance, and the ultimate utilization of the final product of the services. In the event the results of the contract work will be continued by state employees upon completion of the contract, the contractor must include state employees in development and training, to the extent necessary to ensure that after completion of the contract, state employees can perform any ongoing work related to the same function. DOT may not contract out its previously eliminated jobs for four years without first considering the same former employees who are on the seniority unit layoff list who meet the minimum qualifications. The contract must provide that no more than 90 percent of the amount due under the contract may be paid until the secretary of administration has certified that the contractor has satisfactorily fulfilled the terms.

Finally, the bill provides that if in any fiscal year an executive branch agency is prohibited from hiring employees to fill vacant positions or its employees are required to serve an unpaid leave of absence, the agency may not enter into, renew, or extend any contractual services contracts with private contractors or consultants for the remainder of that fiscal year for the performance of services of agency employees who would have performed the services had they been hired or had they not have been required to take an unpaid leave of absence. This provision, however, does not apply to certain contracts of the Office of the State Public Defender, as well as certain contractual services contracts funded with federal economic stimulus funds. The bill further provides that an agency may submit a written request to the JCF to exempt an agency with respect to a specific contractual services contract. If the cochairpersons of JCF do not notify the agency within 14 working days after the date of the agency's submittal that JCF intends to schedule a meeting to review the request, approval of the request is granted. If, within 14 working days after the date of the agency's request submittal, the cochairpersons notify the agency that JCF intends to schedule a meeting to review the request, the request may be granted only as approved by JCF.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

(END)

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Joint Committee
 on Finance (JCF)

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1 **SECTION 3.** 16.705 (1) of the statutes is renumbered 16.705 (1) (a) (intro.) and
2 amended to read:

3 16.705 (1) (a) (intro.) The department or its agents may contract for services
4 which if at least 2 of the following conditions apply:

- 5 1. The services can be performed more economically ~~or~~ by contract.
- 6 2. When considering expertise of the current full-time positions, whether filled
7 or vacant, the services can be performed more efficiently by such contract than by use
8 of employees in those positions.

9 (d) The department shall, by rule, prescribe uniform procedures for
10 determining whether services are appropriate for contracting under this subsection.

11 **SECTION 4.** 16.705 (1) (a) 3., (b) and (c) of the statutes are created to read:

12 16.705 (1) (a) 3. When considering timeliness of delivery, the services can be
13 performed more efficiently by contract.

14 (b) Notwithstanding par. (a), the department or its agents may contract for any
15 services if the contract will be for a period that is not more than one year and if the
16 contract is not eligible for renewal.

17 (c) No contract under this section may be automatically renewed.

18 **SECTION 5.** 16.705 (2) of the statutes is renumbered 16.705 (2) (a) (intro.) and
19 amended to read:

20 16.705 (2) (a) (intro.) The department shall promulgate rules for the
21 procurement of contractual services by the department and its designated agents,
22 including but not limited to ~~rules~~ the following:

- 23 1. Rules prescribing approval and monitoring processes for contractual service
24 contracts.

1 16.705 (6) (a) An agency for which contractual services are performed under
 2 a contractual services agreement shall evaluate the contractual services using the
 3 standard performance measures and benchmark indicators created under sub. (5m)
 4 (b). No contract may be renewed until the agency completes the evaluation.

5 **SECTION 11.** 16.705 (7) of the statutes is amended to read:

6 16.705 (7) The department shall review evaluations submitted under sub. (6)
 7 (b) and promulgate rules prescribing procedures to assure that future contracts for
 8 contractual services are not awarded to contractors whose past performance is found
 9 to be unsatisfactory, to the extent feasible.

10 **SECTION 12.** 16.705 (8) (a) of the statutes is amended to read:

11 16.705 (8) (a) A summary of the cost-benefit analyses completed by agencies
 12 in compliance with rules promulgated by the department under sub. (2) (a).

13 **SECTION 13.** 16.705 (8) (am) of the statutes is created to read:

14 16.705 (8) (am) As provided under sub. (2) (b) 2., any services on which agencies
 15 would have had to perform a cost-benefit analysis or a continued appropriateness
 16 review but for the exemption under sub. (2) (b) 1. c.

17 **SECTION 14.** 16.705 (9) ^{e (10)} of the statutes is created to read:

18 16.705 (9) ^{e (10) b} (a) In this subsection, "federal economic stimulus funds" means
 19 federal moneys received by the state, pursuant to federal legislation enacted during
 20 the 111th Congress for the purpose of reviving the economy of the United States.

21 (b) Except as provided in pars. (c) ^{and (d)} and (d), if in any fiscal year an agency in the
 22 executive branch is prohibited from hiring employees to fill vacant positions or its
 23 employees are required to serve an unpaid leave of absence, the agency may not enter
 24 into, renew, or extend any contractual services contracts with private contractors or
 25 consultants for the remainder of that fiscal year for the performance of services of

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1 agency employees who would have performed the services had they been hired or had
2 they not have been required to take an unpaid leave of absence.

3 (c) Paragraph (b) ^{does} shall not apply to contractual services contracts that are
4 funded with federal economic stimulus funds ^{and if} and the secretary determines that any
5 deadlines imposed by the federal government on the expenditure of the federal
6 economic stimulus funds cannot be met without an agency's entering into, renewing,
7 or extending a contractual services contract or a cost-benefit analysis is conducted
8 that demonstrates that a contractual services contract would be more cost effective
9 and efficient than having state employees perform the services.

10 (cm) Paragraph (b) ^{does} shall not apply to contracts entered into, renewed, or
11 extended under s. 977.08.

12 (d) An agency in the executive branch may submit a written request to the joint
13 committee on finance to have par. (b) not apply to the agency with respect to a specific
14 contractual services contract. If the cochairpersons of the committee do not notify
15 the agency within 14 working days after the date of the agency's submittal that the
16 committee intends to schedule a meeting to review the request, approval of the
17 request is granted. If, within 14 working days after the date of the agency's request
18 submittal, the cochairpersons of the committee notify the agency that the committee
19 intends to schedule a meeting to review the request, the request may be granted only
20 as approved by the committee.

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21 **SECTION 15.** 16.75 (1) (a) 4. of the statutes is created to read:

22 16.75 (1) (a) 4. The contracting agency shall electronically send the successful
23 bidder a letter of intent to contract and shall send electronic copies of the letter to all
24 other bidders.

25 **SECTION 16.** 16.75 (1) (b) of the statutes is amended to read:

1 **3.** Page 2, line 20: after “positions” insert “, except that, for purposes of this
2 subsection, only the information specified in s. 16.42 (1) (i) is required for the
3 department of transportation and the University of Wisconsin System”.

4 **4.** Page 23, line 20: delete “The” and substitute “The Subject to sub. (13g), the”.

5 **5.** Page 23, line 23: delete “~~16.75~~ 16.7015, 16.705 (4), 16.71 to 16.751” and
6 substitute “16.75”.

7 **6.** Page 23, line 24: delete “16.705 except s. 16.705 (4),”.

8 **7.** Page 24, line 9: delete the material beginning with “. Notwithstanding” and
9 ending with “administration” on line 20.

10 **8.** Page 24, line 21: before that line insert:

11 “~~SECTION 27m.~~ [✓]84.01 (13g) of the statutes is created to read:

12 **84.01 (13g) PROCEDURES AND REQUIREMENTS FOR CONTRACTUAL ENGAGEMENTS OF**
13 **SERVICES.** (a) In this subsection:

14 1. “Available,” with respect to an employee, means that the employee is
15 qualified and any of the following applies:

16 a. The employee is already doing the work in question.

17 b. The employee is on layoff status in classes that can do the work in question.

18 c. There are authorized positions that are currently vacant with respect to the
19 work in question.

20 2. “Available,” with respect to an employee, does not include an employee who
21 is doing other work, is retired, or has decided not to do the work in question.

22 (b) Before entering into any contract for the engagement of services under sub.
23 (13), the department shall determine, at least, that all of the following apply:

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1 1. No current state employee is able and available to perform the services called
2 for by the contract.

3 2. The work to be performed under the contract is necessary to the department's
4 achievement of its statutory responsibilities and there is statutory authority to enter
5 into the contract.


6 3. The contract will not establish an employment relationship between the
7 state or the department and any person performing under the contract.

8 4. The contractor and its agents are not employees of the state.

9 5. The department has specified a satisfactory method of evaluating and using
10 the results of the work to be performed.

11 6. The contract term does not exceed 2 years, unless the secretary has
12 determined that a longer duration is in the best interest of the state, and the
13 combined contract and amendments will not exceed 5 years without specific, written
14 approval by the secretary according to established policy, procedures, and standards,
15 or unless otherwise provided for by law.

16 (c) Before entering into any contract for the engagement of services under sub.
17 (13), the department shall develop and implement a written plan providing for the
18 assignment of specific department personnel to manage the contract, including a
19 monitoring and liaison function, the periodic review of interim reports or other
20 indications of past performance, and the ultimate utilization of the final product of
21 the services. In the event the results of the contract work will be carried out or
22 continued by state employees upon completion of the contract, the contractor shall
23 include state employees in development and training, to the extent necessary to
24 ensure that after completion of the contract, state employees can perform any
25 ongoing work related to the same function. The department may not contract out its



1 previously eliminated jobs for 4 years without first considering the same former
2 employees who are on the seniority unit layoff list who meet the minimum
3 qualifications determined by the department. The terms of a contract shall provide
4 that no more than 90 percent of the amount due under the contract may be paid until
5 the final product has been reviewed by the secretary and the secretary has certified
6 that the contractor has satisfactorily fulfilled the terms of the contract." end
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7 **9.** Page 24, line 22: before "On" insert "(a)".

8 **10.** Page 25, line 3: delete the material beginning with "To" and ending with
9 "(8)." on line 4.

10 **11.** Page 25, line 7: delete "(a)" and substitute "1".

11 **12.** Page 25, line 9: delete "(b)" and substitute "2".

12 **13.** Page 25, line 11: after that line insert:

13 "3. Identification of all contractors engaged, contract amount, duration, and
14 services to be provided, as well as aggregated value of contracts for each contractor.
15 The report shall distinguish between initial contracts and extended or renewed
16 contracts and shall specify the termination date of each contract.

17 4. A summary of the department's contract review activities.

18 5. Identification of contract services by code according to the type of services.

19 6. Identification of any contracts awarded by other than usual and customary
20 contracting procedures, including any single source contracts.

21 (b) Within 30 days of final completion of a contract for engagements of services
22 authorized under sub. (13) that involves an expenditure of more than \$50,000, the
23 secretary shall submit to the governor, the joint committee on finance, the joint
24 legislative audit committee, and the chief clerk of each house of the legislature for

1 responsibility and that the department of transportation has, during the previous
2 three fiscal years, outsourced to persons not employed by the department of
3 transportation. The report shall include any outsourced projects for which the
4 department of transportation has encumbered, expended, or otherwise committed
5 any funding. In this report, the department of transportation shall also denote work
6 that was committed from funding provided under the American Recovery and
7 Reinvestment Act of 2009.

8 (3) RULEMAKING ON WORKLOAD OUTSOURCING. The department of transportation
9 shall begin promulgating the rules required under section 85.65 of the statutes, as
10 created by this act, no later than February 1, 2011, and shall submit in proposed form
11 the rules required under section 85.65 of the statutes, as created by this act, to the
12 legislative council staff under section 227.15 (1) of the statutes no later than
13 February 1, 2012.

14 **SECTION 46. Initial applicability.**

15 (1) The treatment of sections 16.705 (5g), (5m), and (5r) and 16.75 (1) (b), (2m)

16 (b), and (6) (c) of the statutes, the renumbering and amendment of section 16.705 (1)

17 (2), and (6) of the statutes, and the creation of section 16.705 (1) (a) 3. and (b), (2) (a)

18 3., (b), and (c), and (6) (a) of the statutes first apply to solicitations for contractual

19 services issued on the effective date of this subsection.

20 (2) The creation of section 16.705 (1) (c) of the statutes first applies to contracts
21 entered into, renewed, modified, or extended, whichever occurs first, on the effective
22 date of this subsection.

23 (3) The treatment of section 16.705 (4) of the statutes first applies to a
24 solicitation or a letter of intent to contract issued on the effective date of this
25 subsection.

Basford, Sarah

From: Wilson, Danielle

Sent: Monday, March 12, 2012 2:52 PM

To: LRB.Legal

Subject: Draft Review: LRB 11-4100/1 Topic: Contracting under state procurement laws

Please Jacket LRB 11-4100/1 for the SENATE.