

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: **agary**

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:

Exemptions from certain procurement requirements for building program and for Department of Transportation

Instructions:

See attached-- 09s0345 sections 20, 28, 34, and 45 (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 02/13/2012	mduchek 02/15/2012		_____			S&L
/1			rschluet 02/16/2012	_____	sbasford 02/16/2012	sbasford 03/12/2012	

FE Sent For:

<END>

↪ **AT Intro.**

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/?	chanaman 02/13/2012	lrb editor	MD	2/15			S&L
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FE Sent For:

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2/15/12
2/15
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WSB
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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(per requester)

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Done

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1 AN ACT ..., relating to: state contractual services and requiring the exercise of
2 rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, if a state agency enters into or renews a contract for services that involves an estimated expenditure of more than \$25,000, the agency must, in accordance with standards prescribed by the Department of Administration (DOA), conduct either a uniform cost-benefit analysis, for a new contract, or a continued appropriateness review, for a contract renewal. In addition, if the estimated cost exceeds \$50,000, DOA must generally invite bids or proposals to be submitted and award the contract to the entity that submits the lowest bid or most advantageous competitive proposal.

Current law exempts from the requirements certain contracts for engineering services or architectural services done for the state if DOA approves the contract. Under this bill, these service remain exempt from these requirements, but an engineer or an architect at DOA must determine if the project could be completed more effectively and efficiently with state employees before DOA may approve the contract.

Current law also exempts from the requirements contracts with the Department of Transportation (DOT). Instead, under current law, DOT must, in accordance with standards prescribed by DOT, conduct a uniform cost-benefit analysis, or continued appropriateness review, of each proposed engagement that involves an estimated expenditure of more than \$25,000. Under this bill, DOT must submit a report, with respect to the previous fiscal year, to the governor and the legislature on the following:

1. The number, value, and nature of contractual engagements of services authorized by DOT. ✓

2. A summary of the cost-benefit analyses completed. ✓

3. Recommendations for elimination of unneeded contractual engagements of services and for consolidation or resolicitation of existing contractual engagements of services. ✓

4. An identification of all contractors engaged, contract amount, duration, and services to be provided, as well as aggregated value of contracts for each contractor, distinguishing between initial contracts and extended or renewed contracts and specifying the termination date of each contract. ✓

5. A summary of DOT's contract review activities. ✓

6. An identification of contract services by code according to the type of services. ✓

7. An identification of any contracts awarded by other than usual and customary contracting procedures, including any single-source contracts. ✓

9 Then, under this bill, within 30 days of (final) completion of a contract for engagements of services that involves an expenditure of more than \$50,000, DOT must submit to the governor and the legislature a summary of the purpose of the contract, including why it was necessary to enter into the contract; the amount spent on the contract; if the contract was awarded by other than usual and customary contracting procedures and, if it was a single-source contract, an explanation of why there was only a single source for the services; and a performance evaluation of the work done under the contract. ✓

This bill also requires DOT to establish a methodology to determine the percentage of work for which DOT has responsibility that DOT may outsource to persons not employed by DOT and to set forth a process by which DOT could attain staffing levels sufficiently proficient to ensure that not more than 50 percent of work for which DOT has responsibility is outsourced to persons not employed by DOT. ✓

10 Finally, under this bill, within seven months of the enactment of this bill, DOT must submit a report to the joint committee on finance that contains recommendations on actions that DOT and local governments can take to improve the efficiency, cost-effectiveness, and timeliness of local road construction projects and proposed legislative changes to help to implement those recommendations. ✓ In addition, this bill requires DOT to submit to the legislature by February 1, 2013, a report on the work for which DOT has responsibility and that DOT has, during the previous three fiscal years, outsourced to persons not employed by DOT, including any outsourced projects for which DOT has encumbered, expended, or otherwise committed any funding. In this report, DOT must denote work that was committed from funding provided under the American Recovery and Reinvestment Act of 2009. ✓

For further information see the **state and local** 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:

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INS 1-3A

(END)

INS 1-3B

INS 1-3C

INS 1-3D

1 provided to an agency shall forfeit not less than \$5,000 nor more than \$10,000, plus
2 3 times the amount of the damages that were sustained by the state or would have
3 been sustained by the state, whichever is greater, as a result of the false claim. The
4 attorney general may bring an action on behalf of the state to recover any forfeiture
5 incurred under this section.

6 SECTION 20. 16.87 (2) of the statutes is renumbered 16.87 (2) (a) and amended

7 to read:

8 16.87 (2) (a) A contract for engineering services or architectural services or a
9 to be done for or furnished to the state or a department, board, commission, or officer
10 of the state is exempt from the requirements of ss. 16.75 and 16.705, but an engineer
11 or an architect employed at the department shall determine if the project could be
12 completed more effectively and efficiently with state employees before a contract
13 may be approved under sub. (3). (a) no A

14 (b) A contract involving an expenditure of \$10,000 or more for construction
15 work, or \$30,000 or more for limited trades work, to be done for or furnished to the
16 state or a department, board, commission, or officer of the state is exempt from the
17 requirements of ss. 16.705 and 16.75. plain

18 (c) The department shall attempt to ensure that 5% of the total amount
19 expended under this section in each fiscal year is paid to minority businesses, as
20 defined under s. 16.75 (3m) (a).

21 SECTION 21. 16.871 of the statutes is created to read:

22 16.871 False claims. (1) In this section:

23 (a) "Agency" has the meaning given in s. 16.70 (1e).

24 (b) "Construction work" has the meaning given in s. 16.87 (1) (a).

25 (bm) "Contract" has the meaning given in s. 16.771 (1).

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1 of services under this subsection. Any engagement involving an expenditure of
 2 \$3,000 or more shall be by formal contract approved by the governor. The
 3 department shall conduct a uniform cost-benefit analysis, as defined in s. 16.70 (3g),
 4 of each proposed engagement under this subsection that involves an estimated
 5 expenditure of more than ~~\$25,000~~ \$50,000 in accordance with standards prescribed
 6 by rule of the department. The department shall review periodically, and before any
 7 renewal, the continued appropriateness of contracting pursuant to each engagement
 8 under this subsection that involves an estimated expenditure of more than ~~\$25,000~~
 9 \$50,000. Notwithstanding any provision of s. 16.705 or rule promulgated under s.
 10 16.705, the department of transportation is not required to submit any proposed
 11 contractual engagement of services to, or obtain approval of any such engagement
 12 of services from, the department of administration before engaging any services
 13 under this subsection and the department of administration has no oversight
 14 authority over any such engagement of services under this subsection.
 15 Notwithstanding s. 16.705 (2), the department of transportation, rather than the
 16 department of administration, shall, before engaging any services under this
 17 subsection, satisfy itself that the justification for engaging such services conforms to
 18 the requirements of ss. 16.705, 16.752, 16.753, and 16.754, and the written
 19 justification required under s. 16.705 (2) shall be submitted to the department of
 20 transportation rather than the department of administration.

21 **SECTION 28.** 84.01 (13m) of the statutes is created to read:

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22 **84.01 (13m) CONTRACTUAL ENGAGEMENTS OF SERVICES REPORTING.** (a) On or before
 23 October 15 of each year, the department shall submit to the governor, the joint
 24 committee on finance, the joint legislative audit committee, and the chief clerk of
 25 each house of the legislature for distribution to the appropriate standing committees

✓

1 under s. 13.172 (3) a report concerning the number, value, and nature of contractual
2 engagements of services authorized under sub. (13) during the preceding fiscal year.

3 To the extent possible, the report required under this subsection may be combined
4 with the report required under s. 16.705 (8). The report shall also include, with

5 respect to contractual engagements of services for the preceding fiscal year, all of the
6 following:

7 (a) ^{1.} A summary of the cost-benefit analyses completed in compliance with rules
8 promulgated by the department.

9 ^{2.} Recommendations for elimination of unneeded contractual engagements of
10 services and for consolidation or resolicitation of existing contractual engagements
11 of services.

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12 **SECTION 29.** 84.01 (31) of the statutes is amended to read:

13 **84.01 (31) ACCOMMODATION OF UTILITY FACILITIES WITHIN HIGHWAY RIGHTS-OF-WAY.**

14 Notwithstanding ss. 84.06 (4), 84.063, 84.065, and 84.093, the department may, upon
15 finding that it is feasible and advantageous to the state, negotiate and enter into an
16 agreement to accept any plant or equipment used for the conveyance, by wire, optics,
17 radio signal, or other means, of voice, data, or other information at any frequency
18 over any part of the electromagnetic spectrum, or to accept any services associated
19 with the collection, storage, forwarding, switching, and delivery incidental to such
20 communication, as payment for the accommodation of a utility facility, as defined in
21 s. 84.063 (1) (b), within a highway right-of-way. Any agreement under this
22 subsection is exempt from ss. 16.70 to 16.75, 16.755 to 16.82, and 16.85 to 16.89, but
23 ss. 16.528, 16.752, and 16.754 apply to such agreement. Section 20.932 does not
24 apply to any agreement under this subsection.

25 **SECTION 30.** 84.06 (2) (a) of the statutes is amended to read:

1 ss. 16.528, 16.752, 16.753, and 16.754. No such contract in which the total estimated
 2 debt to be incurred exceeds \$5,000 shall be valid until approved by the governor. As
 3 used in this subsection, "public utility" means the same as in s. 196.01 (5), and
 4 includes a telecommunications carrier as defined in s. 196.01 (8m), and "railroad"
 5 means the same as in s. 195.02. "Property" as used in this subsection includes but
 6 is not limited to tracks, trestles, signals, grade crossings, rights-of-way, stations,
 7 pole lines, plants, substations, and other facilities. Nothing in this subsection shall
 8 be construed to relieve any railroad or public utility from any financial obligation,
 9 expense, duty, or responsibility otherwise provided by law relative to such property.

10 **SECTION 33.** 85.015 of the statutes is amended to read:

11 **85.015 Transportation assistance contracts.** All contracts entered into
 12 under this chapter to provide financial assistance in the areas of railroads, urban
 13 mass transit, specialized transportation, and harbors are subject to ss. 16.528,
 14 16.752, and 16.753 but are exempt from ss. 16.70 to 16.75, 16.755 to 16.82, 16.85 to
 15 16.87, and 16.875 to 16.89. Section 20.932 does not apply to contracts specified in
 16 this section.

17 **SECTION 34.** 85.65 of the statutes is created to read:

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18 **85.65 Workload outsourcing rules.** The department shall promulgate rules
 19 establishing a methodology to determine the percentage of work for which the
 20 department has responsibility that the department may outsource to persons not
 21 employed by the department. The rules shall set forth a process by which the
 22 department could attain staffing levels sufficiently proficient to ensure that not more
 23 than 50 percent of work for which the department has responsibility is outsourced
 24 to persons not employed by the department.

25 **SECTION 35.** 102.81 (2) of the statutes is amended to read:

1 804.01 (2) SCOPE OF DISCOVERY. (intro.) Except as provided in s. ss. 20.931 (9)
2 and 20.932 (9), and unless otherwise limited by order of the court in accordance with
3 the provisions of this chapter, the scope of discovery is as follows:

4 **SECTION 43.** 805.04 (2m) of the statutes is amended to read:

5 805.04 (2m) FALSE CLAIMS. An action filed under s. 20.931 or 20.932 may be
6 dismissed only by order of the court. ~~In determining whether to dismiss the action~~
7 ~~filed under s. 20.931 or 20.932, the court shall take into account the best interests~~
8 ~~of the parties and the purposes of s. 20.931 or 20.932, whichever is appropriate.~~

9 **SECTION 44.** 893.981 of the statutes is amended to read:

10 **893.981 False claims.** An action or claim under s. 20.931 or 20.932 shall be
11 commenced within 10 years after the cause of the action or claim accrues or be
12 barred.

13 **SECTION 45. Nonstatutory provisions.**

14 (1) REPORT ON LOCAL ROAD PROJECTS. No later than the first day of the 7th month
15 beginning after the effective date of this subsection, the department of
16 transportation shall submit a report to the joint committee on finance that contains
17 all of the following:

18 (a) Recommendations on actions that the department and local governments
19 can take to improve the efficiency, cost-effectiveness, and timeliness of local road
20 construction projects.

21 (b) Any proposed legislative changes that the legislature can consider that may
22 help to implement the recommendations under paragraph (a). *← check auto ref*

23 (2) REPORT ON WORKLOAD OUTSOURCING. No later than February 1, 201~~1~~³, the
24 department of transportation shall submit to the legislature under section 13.172 (2)
25 of the statutes a report on the work for which the department of transportation has

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1 responsibility and that the department of transportation has, during the previous
2 ~~two~~³ 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, 20~~11~~¹³, 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, 20~~12~~¹⁴.

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.

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.”.

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
 services to be provided, as well as aggregated value of contracts for each contractor.
 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

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1 distribution to the appropriate standing committees under s. 13.172 (3) a one-page
2 report that includes all of the following information:

3 1. A summary of the purpose of the contract, including why it was necessary
4 to enter into the contract.

5 2. The amount spent on the contract.

6 3. If the contract was awarded by other than usual and customary contracting
7 procedures, including if it was a single-source contract, an explanation of why the
8 department determined that there was only a single source for the services.

9 4. A written performance evaluation of the work done under the contract,
10 including an appraisal of the contractor's timeliness, quality, cost, and overall
11 performance in meeting the terms and objectives of the contract. Contractors may
12 request copies of evaluations prepared under this subdivision and may respond in
13 writing. ~~Contractor responses must be maintained by the department with the~~
14 ~~contract file."~~

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15 **14.** Page 34, line 1: delete "25.18 (1) (a), (f), and (m).".

16 **15.** Page 34, line 2: delete "84.01 (13), 84.06 (2) (a), (3), and (4), 85.015,".

17 (END)

shall maintain

Basford, Sarah

From: Wilson, Danielle

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

To: LRB.Legal

Subject: Draft Review: LRB 11-4095/1 Topic: Exemptions from certain procurement requirements for building program and for Department of Transportation

Please Jacket LRB 11-4095/1 for the SENATE.