February 8, 2011 – Introduced by Representatives Clark, Molepske Jr, Spanbauer, Mason, Berceau, Hebl, Fields, Roys, Pope-Roberts and Barca, cosponsored by Senators Schultz, Miller, Taylor, Erpenbach and Wirch. Referred to Committee on Colleges and Universities.

AN ACT to renumber and amend 16.75 (1) (a) 1., 16.75 (1) (b) and 16.75 (2m) (b); to amend 16.75 (2m) (a); and to create 16.75 (1) (a) 1. c., 16.75 (1) (b) 2., 16.75 (2m) (b) 2. and 16.75 (3n) of the statutes; relating to: the purchase of food by the Board of Regents of the University of Wisconsin–System.

Analysis by the Legislative Reference Bureau

Current law generally authorizes state agencies to purchase materials, supplies, or equipment under certain circumstances. With some exceptions, purchases for which the estimated cost exceeds $25,000 require bids to be invited or proposals to be solicited and the order must be awarded to the lowest responsible bidder or most competitive sealed proposal. In determining the lowest responsible bidder the agency must consider the location of the agency, the quantities of the articles to be supplied, the conformity of the bids with the specifications in the invitation to bid, and the purpose for which the materials, supplies, or equipment are required and the delivery date. In determining the most competitive sealed proposal, the agency must consider factors outlined in the solicitation for competitive sealed proposals.

This bill creates several exceptions to these provisions if the Board of Regents of the University of Wisconsin System (board) is purchasing food. First, when the board is considering bids or proposals for the purchase of food, factors other than price may not comprise more than 25 percent of the total factors used to determine the lowest bid or most competitive proposal. In addition, under this bill, if the food is produced within a 100-mile radius of the site to which the food will be delivered,
the board may purchase that food without inviting bids or soliciting proposals if the estimated cost does not exceed $50,000. Finally, this bill creates an exception to the requirement to award to the lowest responsible bidder or most competitive sealed proposal by allowing the board to give the award to a person who submits a bid or proposal that is no more than 20 percent higher than the apparent low bid or than the most competitive proposal if the food was produced within a 100-mile radius of the site to which the food will be delivered.

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:

SECTION 1. 16.75 (1) (a) 1. of the statutes is renumbered 16.75 (1) (a) 1. a. and amended to read:

16.75 (1) (a) 1. a. All orders awarded or contracts made by the department for all materials, supplies, equipment, and contractual services to be provided to any agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3n), (3t), (6), (7), (8), (9), (10e), and (10m) and ss. 16.705 (1r), 16.73 (4) (a), 16.751, 16.754, 16.964 (8), 50.05 (7) (f), 153.05 (2m) (a), and 287.15 (7), shall be awarded to the lowest responsible bidder, taking into consideration to be determined as provided in subd. 1. b. and c.

b. Except as provided in subd. 1. c., the person who determines the lowest responsible bidder shall consider life cycle cost estimates under sub. (1m), when appropriate, the location of the agency, the quantities of the articles to be supplied, their conformity with the specifications, and the purposes for which they are required and the date of delivery.

SECTION 2. 16.75 (1) (a) 1. c. of the statutes is created to read:

16.75 (1) (a) 1. c. If the Board of Regents of the University of Wisconsin–System is purchasing food and the purchase is subject to par. (b), factors other than price may
not comprise more than 25 percent of the total factors used to determine the lowest responsible bidder.

**SECTION 3.** 16.75 (1) (b) of the statutes is renumbered 16.75 (1) (b) 1. and amended to read:

16.75 (1) (b) 1. When except as provided in subd. 2., when the estimated cost exceeds $25,000, the department shall invite bids to be submitted. The

3. If subd. 1. or 2. requires bids to be solicited, the department shall either shall solicit sealed bids to be opened publicly at a specified date and time, or shall solicit bidding by auction to be conducted electronically at a specified date and time. Whenever bids are invited, due notice inviting bids shall be published as a class 2 notice, under ch. 985 or posted on the Internet at a site determined or approved by the department. The bid opening or auction shall occur at least 7 days after the date of the last insertion of the notice or at least 7 days after the date of posting on the Internet. The notice shall specify whether sealed bids are invited or bids will be accepted by auction, and shall give a clear description of the materials, supplies, equipment, or contractual services to be purchased, the amount of any bond, share draft, check, or other draft to be submitted as surety with the bid or prior to the auction, and the date and time that the public opening or the auction will be held.

**SECTION 4.** 16.75 (1) (b) 2. of the statutes is created to read:

16.75 (1) (b) 2. If the Board of Regents of the University of Wisconsin–System is purchasing food and the food is produced within a 100–mile radius of the site to which the food will be delivered, the person who produced the food or who distributes the food may receive the award without submitting a bid if the estimated cost does not exceed $50,000.

**SECTION 5.** 16.75 (2m) (a) of the statutes is amended to read:
16.75 (2m) (a) Except as otherwise required by law, if the secretary or his or her designee determines that the use of competitive sealed bidding is not practicable or not advantageous to this state, the department may solicit competitive sealed proposals. Each request for competitive sealed proposals shall state the relative importance of price and other evaluation factors. If the Board of Regents of the University of Wisconsin–System is purchasing food, factors other than price may not comprise more than 25 percent of the total factors used to determine the most competitive sealed proposal.

SECTION 6. 16.75 (2m) (b) of the statutes is renumbered 16.75 (2m) (b) 1. and amended to read:

16.75 (2m) (b) 1. When except as provided in subd. 2., when the estimated cost exceeds $25,000, the department may invite competitive sealed proposals by publishing.

3. If competitive sealed proposals are invited, the department shall publish a class 2 notice under ch. 985 or by posting notice on the Internet at a site determined or approved by the department. The notice shall describe the materials, supplies, equipment, or contractual services to be purchased, the intent to make the procurement by solicitation of proposals rather than by solicitation of bids, any requirement for surety and the date the proposals will be opened, which shall be at least 7 days after the date of the last insertion of the notice or at least 7 days after the date of posting on the Internet.

SECTION 7. 16.75 (2m) (b) 2. of the statutes is created to read:

16.75 (2m) (b) 2. If the Board of Regents of the University of Wisconsin–System is purchasing food and the food is produced within a 100–mile radius of the site to which the food will be delivered, the person who produced that food or who
distributes that food may receive the award without submitting a competitive sealed proposal if the estimated cost does not exceed $50,000.

SECTION 8. 16.75 (3n) of the statutes is created to read:

16.75 (3n) If the Board of Regents of the University of Wisconsin–System is purchasing food and the award would otherwise be required to go to the low bid or most advantageous proposal, the board may purchase the food from a person who submits a qualified responsible competitive bid that is no more than 20 percent higher than the apparent low bid or submits a competitive proposal that is no more than 20 percent higher than the most advantageous proposal if the food was produced within a 100–mile radius of the site to which the food will be delivered.

SECTION 9. Initial applicability.

(1) This act first applies with respect to bids or proposals solicited on the effective date of this subsection.

(END)