



2013 ASSEMBLY BILL 432

October 17, 2013 – Introduced by Representatives SMITH, CLARK, BARNES, BERCEAU, DANOU, DOYLE, GOYKE, HEBL, HULSEY, OHNSTAD, POPE, RICHARDS, C. TAYLOR, ZEPNICK and BARCA. Referred to Committee on Colleges and Universities.

1 **AN ACT to repeal** 16.75 (1) (b) 2. and 16.75 (2m) (b) 2.; **to renumber and amend**
2 16.75 (1) (a) 1.; **to amend** 16.75 (1) (b) 1., 16.75 (1) (b) 3., 16.75 (2m) (a) and 16.75
3 (2m) (b) 1.; and **to create** 16.75 (1) (a) 1. c., 16.75 (1) (b) 2m., 16.75 (2m) (b) 2m.
4 and 16.75 (3n) of the statutes; **relating to:** the purchase of food by the Board
5 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 \$50,000 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

ASSEMBLY BILL 432

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 \$100,000. 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:

1 **SECTION 1.** 16.75 (1) (a) 1. of the statutes, as affected by 2013 Wisconsin Act 20,
2 is renumbered 16.75 (1) (a) 1. a. and amended to read:

3 16.75 (1) (a) 1. a. All orders awarded or contracts made by the department for
4 all materials, supplies, equipment, and contractual services to be provided to any
5 agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3n),
6 (3t), (6), (7), (8), (9), (10e), and (10m) and ss. 16.705 (1r), 16.73 (4) (a), 16.751, 16.754,
7 50.05 (7) (f), 153.05 (2m) (a), 165.987, and 287.15 (7), shall be awarded to the lowest
8 responsible bidder, taking into consideration to be determined as provided in subd.
9 1. b. and c.

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

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

ASSEMBLY BILL 432

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

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

6 16.75 (1) (b) 1. Except as provided in subd. ~~2.~~ 2m., when the estimated cost
7 exceeds ~~\$25,000~~ \$50,000, the department shall invite bids to be submitted.

8 **SECTION 4.** 16.75 (1) (b) 2. of the statutes is repealed.

9 **SECTION 5.** 16.75 (1) (b) 2m. of the statutes is created to read:

10 16.75 (1) (b) 2m. If the Board of Regents of the University of Wisconsin-System
11 is purchasing food and the food is produced within a 100-mile radius of the site to
12 which the food will be delivered, the person who produced the food or who distributes
13 the food may receive the award without submitting a bid if the estimated cost does
14 not exceed \$100,000.

15 **SECTION 6.** 16.75 (1) (b) 3. of the statutes is amended to read:

16 16.75 (1) (b) 3. If subd. 1. ~~or 2.~~ requires bids to be solicited, the department
17 either shall solicit sealed bids to be opened publicly at a specified date and time, or
18 shall solicit bidding by auction to be conducted electronically at a specified date and
19 time. Whenever bids are invited, due notice inviting bids shall be published as a class
20 2 notice, under ch. 985 or posted on the Internet at a site determined or approved by
21 the department. The bid opening or auction shall occur at least 7 days after the date
22 of the last insertion of the notice or at least 7 days after the date of posting on the
23 Internet. The notice shall specify whether sealed bids are invited or bids will be
24 accepted by auction, and shall give a clear description of the materials, supplies,
25 equipment, or contractual services to be purchased, the amount of any bond, share

ASSEMBLY BILL 432

1 draft, check, or other draft to be submitted as surety with the bid or prior to the
2 auction, and the date and time that the public opening or the auction will be held.

3 **SECTION 7.** 16.75 (2m) (a) of the statutes is amended to read:

4 16.75 **(2m)** (a) Except as otherwise required by law, if the secretary or his or
5 her designee determines that the use of competitive sealed bidding is not practicable
6 or not advantageous to this state, the department may solicit competitive sealed
7 proposals. Each request for competitive sealed proposals shall state the relative
8 importance of price and other evaluation factors. If the Board of Regents of the
9 University of Wisconsin-System is purchasing food, factors other than price may not
10 comprise more than 25 percent of the total factors used to determine the most
11 competitive sealed proposal.

12 **SECTION 8.** 16.75 (2m) (b) 1. of the statutes is amended to read:

13 16.75 **(2m)** (b) 1. Except as provided in subd. 2. 2m., when the estimated cost
14 exceeds \$25,000 \$50,000, the department may invite competitive sealed proposals.

15 **SECTION 9.** 16.75 (2m) (b) 2. of the statutes is repealed.

16 **SECTION 10.** 16.75 (2m) (b) 2m. of the statutes is created to read:

17 16.75 **(2m)** (b) 2m. If the Board of Regents of the University of
18 Wisconsin-System is purchasing food and the food is produced within a 100-mile
19 radius of the site to which the food will be delivered, the person who produced the food
20 or who distributes the food may receive the award without submitting a competitive
21 sealed proposal if the estimated cost does not exceed \$100,000.

22 **SECTION 11.** 16.75 (3n) of the statutes is created to read:

23 16.75 **(3n)** If the Board of Regents of the University of Wisconsin-System is
24 purchasing food and the award would otherwise be required to go to the low bid or
25 most advantageous proposal, the board may purchase the food from a person who

ASSEMBLY BILL 432

1 submits a qualified responsible competitive bid that is no more than 20 percent
2 higher than the apparent low bid or submits a competitive proposal that is no more
3 than 20 percent higher than the most advantageous proposal if the food was
4 produced within a 100-mile radius of the site to which the food will be delivered.

5 **SECTION 12. Initial applicability.**

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

8 (END)