



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-0389/P3
ZDW:cjs:rs

DOA:.....Mette, BB0459 - CMGC bidding

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TRANSPORTATION

HIGHWAYS

Under current law, highway improvement projects undertaken by DOT must be executed by contract based on bids, with limited exceptions. This bill authorizes DOT, for no more than three highway improvement projects, to enter into contracts using a construction manager-general contractor process. Under this process, the department contracts with a provider of construction services to supervise the design work for the project and, subject to an acceptable proposal, contracts with the provider of construction services for construction of the project. This bill authorizes DOT to enter into no more than 3 design contracts utilizing the construction manager-general contractor process no later than July 1, 2019.

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

SECTION 1. 84.06 (1) (a) of the statutes is renumbered 84.06 (1) (am).

SECTION 2. 84.06 (1) (ag) of the statutes is created to read:

84.06 (1) (ag) “Construction manager” means a person in the business of providing construction services that is also qualified to supervise, manage, or otherwise participate in the engineering, design, or construction work for an improvement project.

SECTION 3. 84.06 (1) (aj) of the statutes is created to read:

84.06 (1) (aj) “Construction manager-general contractor contract” means a contract for an improvement project awarded under sub. (2m).

SECTION 4. 84.06 (2) (a) of the statutes is amended to read:

84.06 (2) (a) All such highway improvements shall be executed by contract based on bids unless the department finds that another method as provided in sub. (2m), (3), or (4) would be more feasible and advantageous. Bids shall be advertised for in the manner determined by the department. Except as provided in s. 84.075, the contract shall be awarded to the lowest competent and responsible bidder as determined by the department. If the bid of the lowest competent bidder is determined by the department to be in excess of the estimated reasonable value of the work or not in the public interest, all bids may be rejected. The department shall, so far as reasonable, follow uniform methods of advertising for bids and may prescribe and require uniform forms of bids and contracts. Except as provided in par. (b), the secretary shall enter into the contract on behalf of the state. Every such contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.82, 16.87 and 16.89, but ss. 16.528, 16.752, 16.753, and 16.754 apply to the contract. Any such contract involving an expenditure of \$1,000 or more shall not be valid until approved by the governor. The secretary may require the attorney general to examine any contract and any bond submitted in connection with the contract and report on its sufficiency of form and execution. The bond required by s. 779.14 (1m) is exempt from approval

by the governor and shall be subject to approval by the secretary. This subsection also applies to contracts with private contractors based on bids for maintenance under s. 84.07.

SECTION 5. 84.06 (2m) of the statutes is created to read:

84.06 (2m) CONSTRUCTION MANAGER-GENERAL CONTRACTOR PROCESS. (a) Prior to July 1, 2019, if the department finds that it would be more feasible and advantageous, the department may award a 2-phase construction manager-general contractor contract to a construction manager for preconstruction and construction services for an improvement project.

(b) The department may award a construction manager-general contractor contract to a construction manager based on qualifications, experience, best value, or any other combination of factors the department considers appropriate.

(c) Before the project design is 90 percent complete, the construction manager shall provide to the department a proposal for the construction manager to construct the project which does all of the following:

1. Includes a guaranteed maximum price.

2. Certifies that at least 30 percent of the work for the construction phase shall be performed by the construction manager.

(d) The department shall obtain an independent cost estimate for the construction of the project.

(e) For the construction phase, the department may do any of the following:

1. Enter into a construction contract with the construction manager pursuant to a proposal under par. (c).

2. Award the construction contract in accordance with sub. (2).

(f) The department may utilize a construction manager-general contractor contract for no more than 3 highway improvement projects.

SECTION 6. 103.50 (2) of the statutes is amended to read:

103.50 (2) PREVAILING WAGE RATES AND HOURS OF LABOR. No person performing the work described in sub. (2m) in the employ of a contractor, subcontractor, agent or other person performing any work on a project under a contract based on bids as provided in s. 84.06 (2), or under a contract under s. 84.06 (2m) (e), to which the state is a party for the construction or improvement of any highway may be permitted to work a greater number of hours per day or per week than the prevailing hours of labor; nor may he or she be paid a lesser rate of wages than the prevailing wage rate in the area in which the work is to be done determined under sub. (3); except that any such person may be permitted or required to work more than such prevailing hours of labor per day and per week if he or she is paid for all hours worked in excess of the prevailing hours of labor at a rate of at least 1.5 times his or her hourly basic rate of pay.

SECTION 7. 779.14 (1) (b) of the statutes is amended to read:

779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) or (2m) for highway improvements, any person who has a direct contractual relationship, expressed or implied, with the prime contractor to perform, furnish, or procure labor, services, materials, plans, or specifications.

SECTION 8. 779.14 (2) (a) 3. of the statutes is amended to read:

779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) or (2m) for highway improvements, failure of the prime contractor to comply with a contract, whether express or implied, with a subcontractor, supplier, or service provider of the prime contractor for performing, furnishing, or procuring labor, services, materials,

plans, or specifications for the purpose of making the highway improvement that is the subject of the contract with the governmental entity.

SECTION 9. 895.56 (2) (a) of the statutes is amended to read:

895.56 (2) (a) The acts or omissions by the person occurred while performing a contract entered into under s. 84.06 (2) or (2m), including acts or omissions by any person who has a direct contractual relationship with the prime contractor, as defined in s. 779.01 (2) (d), under a contract entered into under s. 84.06 (2) or (2m) to perform labor or furnish materials.

SECTION 10. 895.56 (2) (c) of the statutes is amended to read:

895.56 (2) (c) The acts or omissions involving petroleum-contaminated soil on the property were required by reasonably precise specifications in the contract entered into under s. 84.06 (2) or (2m), and the acts or omissions conformed to those specifications, or were otherwise directed by the department of transportation or by the department of natural resources.

SECTION 9345. Initial applicability; Transportation.

(1) CONSTRUCTION MANAGER-GENERAL CONTRACTOR PROCESS. The treatment of sections 84.06 (1) (a), (ag), and (aj), (2) (a), and (2m), 103.50 (2), 779.14 (1) (b) and (2) (a) 3., and 895.56 (2) (a) and (c) of the statutes first applies to contracts entered into on the effective date of this subsection.

(END)