

**2015 DRAFTING REQUEST**

**Bill**

Received: **6/1/2015** Received By: **chanaman**  
For: **Legislative Council Staff** Same as LRB:  
May Contact: By/Representing: **Zach Ramirez**  
Subject: **State Govt - procurement** Drafter: **chanaman**  
Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **Zach.Ramirez@legis.wisconsin.gov**  
Carbon copy (CC) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Make consistent the lowest requirement and the preference

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 6/1/2015	jdye 6/2/2015	_____			
/P1	chanaman 6/2/2015	jdye 6/2/2015	_____	mbarman 6/2/2015		
/1			_____	mbarman 6/2/2015	mbarman 6/2/2015	

FE Sent For:

*None  
Needed*

<END>

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/?	chanaman 6/1/2015	jdyer 6/2/2015	_____			
/P1			_____	mbarman 6/2/2015		

FE Sent For:

<END>

JACKET FOR SEN.  
PLEASE SEND JACKET TO ERLENBACH OFFICE

## Hanaman, Cathlene

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**From:** Ramirez, Zach  
**Sent:** Monday, June 01, 2015 2:19 PM  
**To:** Hanaman, Cathlene  
**Subject:** Letter Regarding s.16.855 (10m)  
**Attachments:** 201505281242.pdf

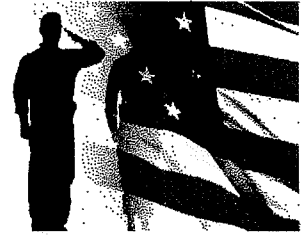
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Zach Ramirez  
Staff Attorney  
Wisconsin Legislative Council  
(608) 267-9485  
[zach.ramirez@legis.wi.gov](mailto:zach.ramirez@legis.wi.gov)



## VETERANS ELECTRIC, LLC

385 KENNEDY COURT EAST  
COLGATE, WI 53017  
PHONE: 414.333.8119  
FAX: 414.921.4154



March 27, 2015

Senator Jon Erpenbach  
Room 104 South  
State Capitol  
Madison, WI 53707-7882

I write to call your attention to, and request your assistance to correct an injustice by the current administration against Minority, Women Owned and Service Disabled Veteran Owned contractors like myself. The Wisconsin Department of Administration has circumvented the will and intent of the legislators by eliminating the WI contract bidders' preference program through administrative action.

In 2009 WI Assembly Bill 228 granted Service Disabled Veteran Business Owners the same 5% bidders' preference opportunity minority, women, and other disadvantaged business received on state sponsored construction projects. AB 228 further set "goals" for the state to increase the percentage of participation by Disabled Veteran Owned business in state projects. In the 2014 WI budget, the Department of Administration quietly included administrative language that, in DOAs' interpretation, eliminated the bidders' preference program for sub-contractors. Now it is impossible to achieve these participation goals.

As a Gulf War 100% rated, Service Disabled Veteran, I was thankful for this opportunity as I had formed my new company in January of 2010. As a new startup company I knew I faced significant challenges trying to compete in this current economy. I utilized my veteran benefits and the services offered to transition from a soldier to a Wisconsin certified Master Electrician. All my life I worked hard to earn what I have, to be self-sufficient. But now as a disabled vet I knew I was going to need help. I knew starting my own business would be a challenge. My professional trade is dominated by well-established contractors with deep pockets who can afford to dominate the market at any cost during this recession. I believed, with the help of the legislators by establishing the bidders' preference with AB 228, I could get my foot in the door. I wouldn't have to starve my business by under bidding everyone else; I just had to get close. If I could bring my bid within 5% of the mega contractors bid I could get the job. I wanted to grow my Disabled Veteran-owned business and maybe someday I could compete at the same level as the mega contractors. Now, that dream is in jeopardy.

On September 10, 2014 Veterans Electric bid a project for the WI Department of Military Affairs, project #13D3H. I was not the low bidder. Another mega electrical contractor was 3% lower than Veterans Electric but I was certain I would get the job with bidders' preference. Shortly after the bid opening the project was awarded to the mega contractor. I emailed and called DOA to inquire why. No one at DOA would respond.

Eventually my project manager and I made an unannounced visit at the DOA. During this visit, the DOA explained their interpretation of the new "Single Prime Contractor" program, established in the 2014 budget. Under this interpretation, the bidder's preference program was eliminated for minority, women and disabled veteran-owned Mechanical, Electrical and Plumbing (MEP) sub-contractors.

Under this new Single Prime Contractor program all MEP sub-contractors continue to submit their bids directly



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to DOA-DFD. The DOA, at its' sole discretion and without any consideration what so ever to the disadvantaged status of the business, selects the MEP sub-contractor it considers to be the "qualified" low bidder and directs the general prime contractor to utilize this successful low bidder(sub-contractor). Under the DOA's interpretation of the statutes, DOA is only signing a "contract" with the successful general prime contractor and therefor only the general prime contractor is entitled to bidders' preference. Frequently this is a contractor with no disadvantage status at all.

I believe this interpretation by DOA is incorrect and undermines the will and intent of AB 228 to aid disabled veteran-owned business. Under the Single Prime Contractor program, DOA, by establishing itself as the sole determining authority is "awarding" a contract. Although not directing entering into a contract with the successful MEP sub-contractor, by mandating all bidding general prime contractors to utilize only the successful MEP sub-contractors, DOA has, by definition and action "awarded a contract" to the sub-contractors . Accordingly DOA is in violation of Wis. Stat. s. 16.855(10) which states;

1. In awarding construction contracts the department shall attempt to **ensure that 5 percent** of the total amount expended in each fiscal year is **awarded** to contractors and **subcontractors** which are minority businesses, as defined under s. 16.75 (3m) (a) 4.
2. In awarding construction contracts, the department shall attempt to ensure that at least 1 percent of the total amount expended in each fiscal year is **awarded** to contractors and **subcontractors** that are disabled veteran-owned businesses.
3. The department may **award** any contract to a minority business or disabled veteran-owned business, or a business that is both a minority business and a **disabled veteran-owned business, if the business is a qualified responsible bidder and the business submits a bid that is no more than 5 percent higher than the apparent low bid.**

To date I have made considerable efforts to encourage both the Department of Administration and Governor Walker's office to change their position and restore the bidders preference benefit to all disadvantaged contractors including disabled veterans. Unfortunately it seems they have dug in their heels and no longer respond to any inquiry. Your help is desperately needed to intervene and either force the Department of Administration to obey the law as I have indicated above or to introduce new legislation that prevents the DOA from further discrimination.

If you truly wish to build Wisconsin businesses and give disabled veteran business owners like myself a helping hand you must act to restore the bidders' preference program. The playing field must be leveled and all socially, economically and physically disadvantaged business, like me, MUST be given a fair opportunity to compete and be included in state construction projects.

Respectfully,

Scott Flaughner

U.S. Air Force Retired

Owner, Veterans Electric, LLC



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-2545/P1  
CMH:eev&jld

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

No  
CHANGES

Regen

- 1 AN ACT *to amend* 16.855 (13) (a) and 16.855 (13) (b); and *to create* 16.855 (13)  
2 (b) 2. b. of the statutes; **relating to:** awards of construction contracts to  
3 minority businesses and disabled veteran-owned businesses by the  
4 Department of Administration.

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***Analysis by the Legislative Reference Bureau***

One provision in current law permits the Department of Administration (DOA) to award construction contracts to a minority business or a disabled veteran-owned business that submits a bid that is no more than 5 percent higher than the apparent low bid. Another provision requires DOA to identify for a contractor or general prime contractor the mechanical, electrical, or plumbing subcontractors that have submitted the lowest bid and does not take into account the preference DOA may give to a minority business or a disabled veteran-owned business. This bill allows DOA to identify for a contractor or general prime contractor either the lowest bidder or a bidder that is a minority business or a disabled veteran-owned business that is eligible for the preference.

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

- 5 SECTION 1. 16.855 (13) (a) of the statutes is amended to read:

1           16.855 (13) (a) 1. In any project under this section let under single prime  
2     contracting, ~~the department shall identify, as provided under par. (b), the~~  
3     ~~mechanical, electrical, or plumbing subcontractors who have submitted the lowest~~  
4     ~~bids and who are qualified responsible bidders. A~~ a general prime contractor who  
5     is submitting a bid under sub. (14) shall include the subcontractors so identified  
6     under par. (b) 2.

7           2. In any project under this section that is let under s. 13.48 (19), the  
8     ~~department shall identify, as provided under par. (b), the mechanical, electrical, or~~  
9     ~~plumbing subcontractors who have submitted the lowest bids and who are qualified~~  
10    ~~responsible bidders. The contractor awarded a contract under s. 13.48 (19) shall~~  
11    contract with the mechanical, electrical, or plumbing subcontractors so identified  
12    under par. (b) 2.

13           **SECTION 2.** 16.855 (13) (b) of the statutes is amended to read:

14           16.855 (13) (b) 1. For purposes of identifying subcontractors under par. (a), the  
15     department shall develop and administer an open and public bidding process and  
16     follow the requirements and procedures under sub. (2). Within 48 hours of the  
17     deadline for a mechanical, electrical, or plumbing contractor to submit a bid, the  
18     department shall post on the department Internet site the names of the bidders and  
19     the amount of each bid.

20           2. No more than 5 days after the deadline for the submittal of a bid, the  
21     department shall identify, post on its Internet site, and provide public notice of one  
22     of the following:

23           a. The lowest bidders who are qualified responsible bidders.

24           3. The department shall post on its Internet site the bids, including the bid  
25     documents, identified under ~~this paragraph as the lowest bids~~ subd. 2. and they shall

1 be open to public inspection under s. 19.35 (1). No other bids under this paragraph  
2 may be on the Internet site or open to public inspection.

3 **SECTION 3.** 16.855 (13) (b) 2. b. of the statutes is created to read:

4 16.855 (13) (b) 2. b. Any bidders who are eligible to be awarded a contract under  
5 sub. (10m) (am) 3.

6 **SECTION 4. Initial applicability.**

7 (1) This act first applies to bidders who are identified on the effective date of  
8 this subsection.

9 (END)



**Barman, Mike**

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**From:** LRB.Legal  
**To:** Ramirez, Zach  
**Subject:** Draft review: LRB -2545/1 Topic: Make consistent the lowest requirement and the preference  
**Attachments:** 15-2545/1

**State of Wisconsin - Legislative Reference Bureau**  
**One East Main Street - Suite 200 - Madison**

**The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent.** If you have any questions concerning the draft or would like to have it redrafted, please contact Cathlene M. Hanaman, Deputy Chief and Chief Operating Officer, at (608) 267-9810, at [cathlene.hanaman@legis.wisconsin.gov](mailto:cathlene.hanaman@legis.wisconsin.gov), or at One East Main Street, Suite 200.

**Per drafting attorney instructions ... this draft will be “jacketed” for the Senate and sent to Senator Erpenbach’s office.**

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at [LRB.Legal@legis.wisconsin.gov](mailto:LRB.Legal@legis.wisconsin.gov) or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

**Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.**