

2015 DRAFTING REQUEST

Bill

Received: **10/7/2014** Received By: **emueller**
Wanted: **As time permits** Same as LRB:
For: **Administration-Budget 266-1039** By/Representing: **Mette**
May Contact: Drafter: **zwyatt**
Subject: **Transportation - highways** Addl. Drafters:
Extra Copies: **ARG, EVM**

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to: **eric.mueller@legis.wisconsin.gov**
aaron.gary@legis.wisconsin.gov
zachary.wyatt@legis.wisconsin.gov
sbostatlanguage@webapps.wi.gov

Pre Topic:

DOA:.....Mette, BB0459 -

Topic:

CMGC bidding

Instructions:

See attached

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>
/?	zwyatt 11/19/2014			_____			
/P1		csicilia 1/14/2015	jfrantze 1/14/2015	_____	sbasford 11/25/2014		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P2				_____	mbarman 1/14/2015		
/P3		wjackson 1/20/2015	rschluet 1/20/2015	_____	sbasford 1/20/2015		

FE Sent For:

<END>

2015 DRAFTING REQUEST

Bill

Received: 10/7/2014 Received By: emueller
Wanted: As time permits Same as LRB:
For: Transportation By/Representing: Anna Richter
May Contact: Drafter: zwyatt
Subject: Transportation - highways Addl. Drafters:
Extra Copies: ARG, EVM

Submit via email: YES
Requester's email: Anna.Richter@dot.wi.gov
Carbon copy (CC) to: eric.mueller@legis.wisconsin.gov
aaron.gary@legis.wisconsin.gov
zachary.wyatt@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Construction manager-general contractor project delivery pilot program

Instructions:

See attached

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>
/?	zwyatt 11/19/2014			_____			
/P1		csicilia 1/14/2015	jfrantze 1/14/2015	_____	sbasford 11/25/2014		
/P2				_____	mbarman		

Vers. Drafted

Reviewed

Typed

Proofed

Submitted

Jacketed

Required

1/14/2015

FE Sent For:

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<END>

1/20/15

2015 DRAFTING REQUEST

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/?	zwyatt 11/19/2014			_____			
/P1		csicilia 11/25/2014	rschluet 11/25/2014	_____	sbasford 11/25/2014		

P2 js 11/14/15
Jd Rs
11/14

FE Sent For:

<END>

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Wanted: **As time permits** Same as LRB:
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May Contact: Drafter: **zwyatt**
Subject: **Transportation - highways** Addl. Drafters:
Extra Copies: **ARG, EVM**

Submit via email: **YES**
Requester's email: **Anna.Richter@dot.wi.gov**
Carbon copy (CC) to: **eric.mueller@legis.wisconsin.gov**
aaron.gary@legis.wisconsin.gov
zachary.wyatt@legis.wisconsin.gov

Pre Topic:

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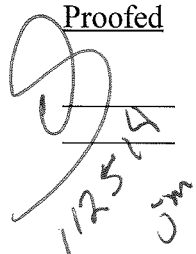
Topic:

Construction manager-general contractor project delivery pilot program

Instructions:

See attached

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	zwyatt	Pl gjs 11/25 14	Pl gjs 11/25 14				
FE Sent For:							

<END>

**Department of Transportation
2015-17 Biennial Budget Request
STATUTORY MODIFICATIONS**

DIN NUMBER: XXXXX

TOPIC: Best Value Construction – Piloting Construction Manager/General Contractor Methodology

DESCRIPTION OF CHANGE: The department requests authority during the 2015-17 and 2017-19 biennia to enter into up to three pilot projects that utilize the Construction Manager/General Contractor (CMGC) alternative project delivery and construction model. To engage in the CMGC model, the department requests a change to Wis. Stats., Chapter 84.06 (2) (a) and (b) which currently require a low bid process for selection of construction contractors, with limited, narrowly defined exceptions.

JUSTIFICATION:

Current state statutes require the department to engage in a low bid process for selection of highway improvement construction contractors. Wisconsin is considered a Design-Bid-Build (DBB) state and the Department typically contracts with separate entities for the design and construction aspects of a project (assuming in-house design is not used). Other state departments of transportation report that the CMGC model can result in significant time and cost savings when compared to the DBB contracting method.

To evaluate the use of the CMGC model for a variety of project types in Wisconsin's construction environment, the department is seeking statutory changes that will allow it to engage in multiple pilot projects. The pilot project process will be planned by a joint Department-industry team which will recommend the number and type of projects, as well as individual project size and cost. Level of project complexity and the ability to demonstrate benefits to innovation will be key factors in project selection since CMGC is particularly well suited to complex projects where innovation is important. It is anticipated the projects will be selected during the 2015-17 biennium, although the Department requests the authority to continue the pilot through the 2017-19 biennium to ensure that the best projects for this purpose can be identified. Following construction, an in-depth evaluation will assess project quality, cost savings, industry feedback, and process flow and timeline. No additional funds are being requested since the pilot projects will be selected from the pool of highway improvement projects already identified for advancement.

Background. CMGC is a delivery process in which the owner enters into two contracts, one with a designer and one with a contractor. The contractor acts as the owner's agent and works with the designer throughout the design process. At a certain point in design, the contractor provides the owner a "bid" on the project, often in the form of a guaranteed maximum price (GMP). If the owner is satisfied with the contractor's bid, a contract is executed for the construction work. If the bid is unacceptable, the owner may convert to a DBB process.

The CMGC process contrasts with DBB, where the contractor never acts as an agent of the owner. During a DBB design process, the designer is the only entity working under the direction, and in the interest, of the owner. For DBB, the department needs to design a project that is biddable by all contractors because, when the design process ends, project construction is always awarded through a bid letting process. With DBB, because of the differing contractual relationship between the owner and the contractor, the contractor is always working at his or her own risk and, therefore, can never be considered an agent of the owner.

While DBB is a good process for the majority of projects, CMGC allows the Department to take advantage of a contractor's insight and innovation – this serves the state's interests particularly on complex projects

or projects with difficult staging. CMGC allows the Department to work individually with a contractor who may have tools or techniques that are not available to other contractors.

Other advantages of the CMGC model include:

- The department is involved in decision-making throughout the design process;
- The process provides a fertile environment for innovation as the contractor is more involved in design and can freely suggest new methods, equipment or different construction staging;
- The contractor has more design satisfaction because of direct involvement in design, resulting in fewer change orders;
- The Department and the contractor can discuss and retire, minimize or mitigate risk, saving money.
- Could help the department better respond to unexpected influxes of federal or state funds when the duration of funding availability is short.

Preparatory Process: The Department's request for authority to select and initiate three CMGC pilot projects during the 2015-17 and 2017-19 biennia will provide the opportunity for industry and the Department to gain information and evaluate the potential for this delivery model. To have the greatest chance for success, in FY 15 the Department and industry are laying the groundwork so that if this request is approved, the execution of the pilots can be optimally planned and efficiently executed. The Department and industry representatives are meeting to explore the project selection process, and will hire an experienced consultant to ensure that the process and guidelines are well thought-out and doable. This collaborative Department-industry process will improve communication and enhance knowledge about best value contracting which also may be of use in future exploration of a variety of public private partnerships as well as CMGC.



DNOTE

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Agency Budget Draft

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

Analysis by the Legislative Reference Bureau

TRANSPORTATION

Sub
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 procurement process. "Construction manager-general contractor procurement process" is defined as a method for contracting for an improvement project in which 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 design contracts utilizing the construction manager-general contractor procurement process no later than July 1, 2019.

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

- 2 SECTION 1. 84.06 (2) (a) of the statutes is amended to read:
- 3 84.06 (2) (a) All such highway improvements shall be executed by contract
- 4 based on bids unless the department finds that another method as provided in sub.

1 (2m), (3), or (4) would be more feasible and advantageous. Bids shall be advertised
 2 for in the manner determined by the department. Except as provided in s. 84.075,
 3 the contract shall be awarded to the lowest competent and responsible bidder as
 4 determined by the department. If the bid of the lowest competent bidder is
 5 determined by the department to be in excess of the estimated reasonable value of
 6 the work or not in the public interest, all bids may be rejected. The department shall,
 7 so far as reasonable, follow uniform methods of advertising for bids and may
 8 prescribe and require uniform forms of bids and contracts. Except as provided in par.
 9 (b), the secretary shall enter into the contract on behalf of the state. Every such
 10 contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.82, 16.87 and 16.89, but
 11 ss. 16.528, 16.752, 16.753, and 16.754 apply to the contract. Any such contract
 12 involving an expenditure of \$1,000 or more shall not be valid until approved by the
 13 governor. The secretary may require the attorney general to examine any contract
 14 and any bond submitted in connection with the contract and report on its sufficiency
 15 of form and execution. The bond required by s. 779.14 (1m) is exempt from approval
 16 by the governor and shall be subject to approval by the secretary. This subsection
 17 also applies to contracts with private contractors based on bids for maintenance
 18 under s. 84.07.

History: 1971 c. 125; 1977 c. 29 ss. 932, 1654 (8) (a); 1977 c. 196 s. 131; 1977 c. 273; 1979 c. 32 s. 92 (9); 1979 c. 34, 314; 1983 a. 27; 1983 a. 524 ss. 31, 50; 1985 a. 225
 s. 100; 1985 a. 300, 332; 1987 a. 98, 399; 1989 a. 31, 345; 1993 a. 496; 1995 a. 27; 1997 a. 237; 2001 a. 16; 2005 a. 410; 2009 a. 28; 2013 a. 20.

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

20 **84.06 (2m) CONSTRUCTION MANAGER-GENERAL CONTRACTOR PROCUREMENT**
 21 **PROCESS.** (a) In this subsection:

22 1. "Construction manager" means a person in the business of providing
 23 construction services that is also qualified to supervise, manage, or otherwise
 24 participate in the engineering and design work for an improvement project.

1 2. "Construction manager-general contractor procurement process" means a
2 method of contracting for an improvement project to which all of the following apply:

3 a. The department contracts with a construction manager to supervise,
4 manage, or otherwise participate in the engineering and design work for the project.

5 b. After partial completion of the engineering and design work for the project,
6 and without further bidding of project construction, the department contracts with
7 the construction manager for construction of the project.

8 (b) The department may utilize a construction manager-general contractor
9 procurement process for no more than 3 highway improvement projects.

10 (c) If the department initiates a construction manager-general contractor
11 procurement process for a project, before the project design is 90 percent complete,
12 the construction manager shall provide to the department a proposal for the cost to
13 construct the project. If the department accepts the proposal, the department shall
14 enter into a contract with the construction manager to construct the project. If the
15 department rejects the bid, the department may continue with the project in the
16 manner described in sub. (2). *proposal*

17 (d) This subsection applies only with respect to engineering and design
18 contracts entered into prior to July 1, 2019.

19 History: 1987 a. 399; 1989 a. 31; 1991 a. 39; 1993 a. 112; 1995 a. 113; 1997 a. 27; 2001 a. 16; 2011 a. 32.

SECTION 3. 103.50 (2) of the statutes is amended to read:

20 103.50 (2) PREVAILING WAGE RATES AND HOURS OF LABOR. No person performing
21 the work described in sub. (2m) in the employ of a contractor, subcontractor, agent
22 or other person performing any work on a project under a contract based on bids as
23 provided in s. 84.06 (2), or under a contract utilizing ^a construction manager-general
24 contractor procurement process under s. 84.06 (2m), to which the state is a party for

1 the construction or improvement of any highway may be permitted to work a greater
2 number of hours per day or per week than the prevailing hours of labor; nor may he
3 or she be paid a lesser rate of wages than the prevailing wage rate in the area in which
4 the work is to be done determined under sub. (3); except that any such person may
5 be permitted or required to work more than such prevailing hours of labor per day
6 and per week if he or she is paid for all hours worked in excess of the prevailing hours
7 of labor at a rate of at least 1.5 times his or her hourly basic rate of pay.

History: 1977 c. 29 s. 1654 (8) (c); 1979 c. 269; 1985 b. 332 ss. 143, 144, 253; 1989 a. 228; 1993 a. 492; 1995 a. 215, 225; 1997 a. 3, 35; 1999 a. 70; 1999 a. 150 ss. 629, 672; 2001 a. 30; 2009 a. 28; 2011 a. 32; 2013 a. 166.

8 **SECTION 4.** 779.14 (1) (b) of the statutes is amended to read:

9 779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) or (2m)
10 for highway improvements, any person who has a direct contractual relationship,
11 expressed or implied, with the prime contractor to perform, furnish, or procure labor,
12 services, materials, plans, or specifications.

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167; 2005 a. 204; 2013 a. 173 s. 33.

13 **SECTION 5.** 779.14 (2) (a) 3. of the statutes is amended to read:

14 779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) or (2m)
15 for highway improvements, failure of the prime contractor to comply with a contract,
16 whether express or implied, with a subcontractor, supplier, or service provider of the
17 prime contractor for performing, furnishing, or procuring labor, services, materials,
18 plans, or specifications for the purpose of making the highway improvement that is
19 the subject of the contract with the governmental entity.

History: 1973 c. 90; 1975 c. 147 s. 54; 1975 c. 224; 1977 c. 418; 1979 c. 32 s. 57; 1979 c. 110 s. 60 (12); 1979 c. 176; Stats. 1979 s. 779.14; 1985 a. 225; 1987 a. 399; 1989 a. 31, 290; 1995 a. 395, 432; 1997 a. 27, 39, 237; 1999 a. 167; 2005 a. 204; 2013 a. 173 s. 33.

20 **SECTION 6.** 895.56 (2) (a) of the statutes is amended to read:

21 895.56 (2) (a) The acts or omissions by the person occurred while performing
22 a contract entered into under s. 84.06 (2) or (2m), including acts or omissions by any
23 person who has a direct contractual relationship with the prime contractor, as

1 defined in s. 779.01 (2) (d), under a contract entered into under s. 84.06 (2) or (2m)
2 to perform labor or furnish materials.

3 History: 1997 a. 237.

SECTION 7. 895.56 (2) (c) of the statutes is amended to read:

4 895.56 (2) (c) The acts or omissions involving petroleum-contaminated soil on
5 the property were required by reasonably precise specifications in the contract
6 entered into under s. 84.06 (2) or (2m), and the acts or omissions conformed to those
7 specifications, or were otherwise directed by the department of transportation or by
8 the department of natural resources.

(2)(a)

9 History: 1997 a. 237.

SECTION 9345. Initial applicability; Transportation.

10 (1) ~~CONSTRUCTION MANAGER-GENERAL CONTRACTOR PROCUREMENT PROCESS.~~ The
11 treatment of sections 84.06 (2a) and (2m), 103.50 (2), 779.14 (1) (b) and (2) (a) 3., and
12 895.56 (2) (a) and (c) of the statutes first applies to contracts entered into on the
13 effective date of this subsection.

14 (END)

d-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0389/P1dn

ZDW:/:.....

gs

— late —

ATTN: Anna Richter

Please review the attached draft to ensure that it is consistent with your intent. Please consider the following issues and advise if any revisions to the draft are necessary.

1. This draft assumes that the design process will follow the procedure under s. 84.01 (13). Is this consistent with your intent or should this contract be governed by s. 84.06 (2)?
2. Is it necessary to ^eto include a provision stating that DOT may delegate authority to the construction manager to be its agent for the design work? See s. 84.06 (2) (b) for an example of a similar provision that delegates authority to local units of government. *
3. Created s. 84.06 (2m) (d) limits the applicability of this procurement process to engineering and design contracts entered into prior to July 1, 2019. Is it your intent that the sunset provision be applied to a different stage of the process (e.g. when contracting for construction)? *
4. Is it necessary to treat s. 84.076 (3) so that it applies to created 84.06 (2m)? ✓

Zachary Wyatt
Legislative Attorney
(608) 267-3362
zachary.wyatt@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0389/P1dn
ZDW:cjs:rs

November 25, 2014

ATTN: Anna Richter

Please review the attached draft to ensure that it is consistent with your intent. Please consider the following issues and advise if any revisions to the draft are necessary.

1. This draft assumes that the design process will follow the procedure under s. 84.01 (13). Is this consistent with your intent or should this contract be governed by s. 84.06 (2)?
2. Is it necessary to include a provision stating that DOT may delegate authority to the construction manager to be its agent for the design work? See s. 84.06 (2) (b) for an example of a similar provision that delegates authority to local units of government.
3. Created s. 84.06 (2m) (d) limits the applicability of this procurement process to engineering and design contracts entered into prior to July 1, 2019. Is it your intent that the sunset provision be applied to a different stage of the process (e.g., when contracting for construction)?
4. Is it necessary to treat s. 84.076 (3) so that it applies to created 84.06 (2m)?

Zachary Wyatt
Legislative Attorney
(608) 267-3362
zachary.wyatt@legis.wisconsin.gov

Wyatt, Zachary

From: Mette, Bryan - DOA <Bryan.Mette@wisconsin.gov>
Sent: Monday, December 22, 2014 12:04 PM
To: Wyatt, Zachary
Subject: FW: LRB 0389-CMGC draft
Attachments: Clean_Chung redline suggestions.docx

Importance: High

Follow Up Flag: Follow up

Flag Status: Flagged

Updates for CMGC draft—LRB 0389

From: Richter, Anna - DOT
Sent: Friday, December 19, 2014 1:08 PM
To: Mette, Bryan - DOA
Cc: Merriman Hitchman, Linda H - DOT
Subject: LRB 0389-CMGC draft
Importance: High

Hi Bryan,

One last legislative draft suggestion to forward to you on CMGC.

Our proposed changes are highlighted in the attached document. To summarize:

1. We added the definitions of "construction manager" and "construction manager-general contractor contract" in 84.06(1), "Definitions"
2. We've tried to make this subsection (2m) more consistent with subsections (1), (3) and (4) in form. Since there are sub-subsections
3. We broke down the two phases of the CM-GC contracts and procurements more distinctly for two reasons:
 - a. Clarity of duties and requirements of CMGC and department, and
 - b. Prevailing wage should only apply to construction phase (second phase) of CMGC work – design and other preconstruction work should not be covered.
4. We added specific requirements to CM's proposal to construct project – GMP (guaranteed max. price), and 30% own forces to avoid CM just subletting the 2d phase (construction phase) entirely.

5. We made changes to prevailing wage statute (103.50) to clarify that PV only applies to construction phase.

We'd also suggested verifying with the LFB whether there is enough language in s.84.06(2m)(b) in terms of prequalifying a contractor to construct the project as defined in s.66.0901(2). The CMGC would need to be someone that is prequalified to work in Wisconsin and have the capacity or work rating to complete the work that the project would include.

Also, we'd want to verify with the LRB if there should be language discussing the hiring of an independent estimator at the same time the state hires the general contractor. The estimator would be contracted between scoping and 30% (there are typically 3 estimates completed during preconstruction as an approach to price, at 30%, 60% and 90% of design). The contractor's 90% would be compared to the independent estimate and state estimate to determine if we should sever the contract or build the project. We'd also want to make sure that just saying "approximately 90%" gives us enough flexibility for the comparison to happen a little before or after...

Can the reference to CMGC as a "Procurement Process" be changed to "Alternative Delivery Method?" CMGC is not really a procurement process.

Thanks!
Anna

Chung redline suggestions:

Add to 84.06(1) Definitions:

“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 and/or construction work for an improvement project.

“Construction manager-general contractor contract” means a contract for an improvement awarded pursuant to subsection (2m).

84.06(2m) CONSTRUCTION MANAGER-GENERAL CONTRACTOR PROCUREMENT PROCESS.

- (a) If the department finds that it would be more feasible or advantageous, the department may award a 2-phase construction manager-general contractor contract to construction manager for preconstruction and construction services for an improvement project, subject to the provisions of this subsection (2m).
- (b) The department may award a construction manager-general contractor contract to a construction manager to supervise, manage, or otherwise participate in the engineering and design work for the project based on qualifications, experience, best value, or other combination of factors considered appropriate by the department.
- (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:
 - i. includes a guaranteed maximum price, and
 - ii. certifies that at least 30% of the work for the construction phase shall be performed with its own organization.
- (d) The department shall obtain an independent cost estimate for the construction of the project.
- (e) For the construction phase, the department may:
 - i. enter into a construction contract with the construction manager pursuant to its proposal, or
 - ii. award the construction contract based on bids in the manner described in sub. (2).

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

(g) This subsection applies only with respect to engineering and design contracts entered into prior to July 1, 2019.

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 construction 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



INSERT

stays (R.M.R.)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Agency budget draft

GA

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1 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 procurement process.

“Construction manager-general contractor procurement process” is defined as a method for contracting for an improvement project in which 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 design contracts utilizing the construction manager-general contractor procurement process no later than July 1, 2019.

under this process

no more than 3

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

ns 1-2

2 SECTION 1. 84.06 (2) (a) of the statutes is amended to read:

3 84.06 (2) (a) All such highway improvements shall be executed by contract

4 based on bids unless the department finds that another method as provided in sub.

1 (2m), (3), or (4) would be more feasible and advantageous. Bids shall be advertised
2 for in the manner determined by the department. Except as provided in s. 84.075,
3 the contract shall be awarded to the lowest competent and responsible bidder as
4 determined by the department. If the bid of the lowest competent bidder is
5 determined by the department to be in excess of the estimated reasonable value of
6 the work or not in the public interest, all bids may be rejected. The department shall,
7 so far as reasonable, follow uniform methods of advertising for bids and may
8 prescribe and require uniform forms of bids and contracts. Except as provided in par.
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13 governor. The secretary may require the attorney general to examine any contract
14 and any bond submitted in connection with the contract and report on its sufficiency
15 of form and execution. The bond required by s. 779.14 (1m) is exempt from approval
16 by the governor and shall be subject to approval by the secretary. This subsection
17 also applies to contracts with private contractors based on bids for maintenance
18 under s. 84.07.

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

20 84.06 (2m) CONSTRUCTION MANAGER-GENERAL CONTRACTOR PROCUREMENT

21 PROCESS. (a) In this subsection:

22 1. "Construction manager" means a person in the business of providing
23 construction services that is also qualified to supervise, manage, or otherwise
24 participate in the engineering and design work for an improvement project.

1 2. "Construction manager-general contractor procurement process" means a
 2 method of contracting for an improvement project to which all of the following apply:
 3 a. The department contracts with a construction manager to supervise,
 4 manage, or otherwise participate in the engineering and design work for the project.
 5 b. After partial completion of the engineering and design work for the project,
 6 and without further bidding of project construction, the department contracts with
 the construction manager for construction of the project.

Do NOT DELETE THIS SECTION

Do NOT DELETE THIS SECTION

8 (f) (b) The department may utilize a construction manager-general contractor
 9 procurement process for no more than 3 highway improvement projects.

X

10 (c) If the department initiates a construction manager-general contractor
 11 procurement process for a project, before the project design is 90 percent complete,
 12 the construction manager shall provide to the department a proposal for the cost to
 13 construct the project. If the department accepts the proposal, the department shall
 14 enter into a contract with the construction manager to construct the project. If the
 15 department rejects the proposal, the department may continue with the project in
 16 the manner described in sub. (2).

X

17 (d) This subsection applies only with respect to engineering and design
 18 contracts entered into prior to July 1, 2019.

SECTION 3. 103.50 (2) of the statutes is amended to read:

20 103.50 (2) PREVAILING WAGE RATES AND HOURS OF LABOR. No person performing
 21 the work described in sub. (2m) in the employ of a contractor, subcontractor, agent
 22 or other person performing any work on a project under a contract based on bids as
 23 provided in s. 84.06 (2), or under a contract utilizing a construction manager-general
 24 contractor procurement process under s. 84.06 (2m), to which the state is a party for
 25 the construction or improvement of any highway may be permitted to work a greater

(e)

1 number of hours per day or per week than the prevailing hours of labor; nor may he
2 or she be paid a lesser rate of wages than the prevailing wage rate in the area in which
3 the work is to be done determined under sub. (3); except that any such person may
4 be permitted or required to work more than such prevailing hours of labor per day
5 and per week if he or she is paid for all hours worked in excess of the prevailing hours
6 of labor at a rate of at least 1.5 times his or her hourly basic rate of pay.

7 **SECTION 4.** 779.14 (1) (b) of the statutes is amended to read:

8 779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) or (2m)
9 for highway improvements, any person who has a direct contractual relationship,
10 expressed or implied, with the prime contractor to perform, furnish, or procure labor,
11 services, materials, plans, or specifications.

12 **SECTION 5.** 779.14 (2) (a) 3. of the statutes is amended to read:

13 779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) or (2m)
14 for highway improvements, failure of the prime contractor to comply with a contract,
15 whether express or implied, with a subcontractor, supplier, or service provider of the
16 prime contractor for performing, furnishing, or procuring labor, services, materials,
17 plans, or specifications for the purpose of making the highway improvement that is
18 the subject of the contract with the governmental entity.

19 **SECTION 6.** 895.56 (2) (a) of the statutes is amended to read:

20 895.56 (2) (a) The acts or omissions by the person occurred while performing
21 a contract entered into under s. 84.06 (2) or (2m), including acts or omissions by any
22 person who has a direct contractual relationship with the prime contractor, as
23 defined in s. 779.01 (2) (d), under a contract entered into under s. 84.06 (2) or (2m)
24 to perform labor or furnish materials.

25 **SECTION 7.** 895.56 (2) (c) of the statutes is amended to read:

1 895.56 (2) (c) The acts or omissions involving petroleum-contaminated soil on
2 the property were required by reasonably precise specifications in the contract
3 entered into under s. 84.06 (2) or (2m), and the acts or omissions conformed to those
4 specifications, or were otherwise directed by the department of transportation or by
5 the department of natural resources.

6 **SECTION 9345. Initial applicability; Transportation.**

7 (1) CONSTRUCTION MANAGER-GENERAL CONTRACTOR PROCUREMENT PROCESS. The
8 ^{84.06 (1)(c) to (1)(j)} treatment of sections 84.06 (2) (a) and (2m), 103.50 (2), 779.14 (1) (b) and (2) (a) 3.,
9 and 895.56 (2) (a) and (c) of the statutes first applies to contracts entered into on the
10 effective date of this subsection.

11 (END)

84.06 (1)(a), (ag),
and (aj)

2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0389/Plins
ZDW:cjs:rs

gn

1 **INS 1-2**

X 2 **SECTION 1.** 84.06 (1) (a) of the statutes is renumbered 84.06 (1) (am).

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

4 84.06 (1) (ag) "Construction manager" means a person in the business of
5 providing construction services that is also qualified to supervise, manage, or
6 otherwise participate in the engineering, design, or construction work for an
7 improvement project.

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

9 84.06 (1) (aj) "Construction manager-general contractor contract" means a
10 contract for an improvement project awarded under sub. (2m).

11 **INS 2-21**

Prior to July 1, 2019;

12 (1) *no 9* If the department finds that it would be more feasible and advantageous, the
13 department may award a 2-phase construction manager-general contractor
14 contract to a construction manager for preconstruction and construction services for
15 an improvement project.

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

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

22 1. Includes a guaranteed maximum price.

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

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

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

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

8 2. Award the construction contract in accordance with sub. (2).
9

2015 DRAFTING REQUEST

Bill

Received: **10/7/2014** Received By: **emueller**
Wanted: **As time permits** Same as LRB:
For: **Administration-Budget 266-1039** By/Representing: **Mette**
May Contact: Drafter: **zwyatt**
Subject: **Transportation - highways** Addl. Drafters:
Extra Copies: **ARG, EVM**

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to: **eric.mueller@legis.wisconsin.gov**
aaron.gary@legis.wisconsin.gov
zachary.wyatt@legis.wisconsin.gov
sbostatlanguage@webapps.wi.gov

Pre Topic:

DOA:.....Mette, BB0459 -

Topic:

CMGC bidding

Instructions:

See attached

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>
/?	zwyatt 11/19/2014			_____			
/P1		csicilia 1/14/2015	jfrantze 1/14/2015	_____	sbasford 11/25/2014		

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/P2

_____ mbarman
_____ 1/14/2015

FE Sent For:

<END>

Wyatt, Zachary

From: Hanaman, Cathlene
Sent: Thursday, January 15, 2015 5:13 PM
To: Wyatt, Zachary
Subject: FW: Statutory Language Drafting Request - BB0459

From: Bryan.Mette@Wisconsin.gov [mailto:Bryan.Mette@Wisconsin.gov]
Sent: Thursday, January 15, 2015 5:10 PM
To: Hanaman, Cathlene
Cc: Ziegler, Paul - DOA; Mette, Bryan - DOA; Connor, Christopher B - DOA
Subject: Statutory Language Drafting Request - BB0459

Biennial Budget: 2015-17

DOA Tracking Code: BB0459

Topic: CMGC Bidding

SBO Team: TLGED

SBO Analyst: Mette, Bryan - DOA
Phone: 608-266-1039
E-mail: Bryan.Mette@Wisconsin.gov

Agency Acronym: WisDOT

Agency Number: 395

Priority: High

Intent:

Creating a SharePoint record of an already completed draft

LRB-0389/P1 compiled by Zachary Wyatt

Attachments: False

Please send completed drafts to SBOStatlanguage@webapps.wi.gov



Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

No changes
Entered as DOT
budget.

Do Not Gen

1 **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:

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

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

4 84.06 (1) (ag) "Construction manager" means a person in the business of
5 providing construction services that is also qualified to supervise, manage, or

1 otherwise participate in the engineering, design, or construction work for an
2 improvement project.

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

4 84.06 (1) (aj) “Construction manager–general contractor contract” means a
5 contract for an improvement project awarded under sub. (2m).

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

7 84.06 (2) (a) All such highway improvements shall be executed by contract
8 based on bids unless the department finds that another method as provided in sub.
9 (2m), (3), or (4) would be more feasible and advantageous. Bids shall be advertised
10 for in the manner determined by the department. Except as provided in s. 84.075,
11 the contract shall be awarded to the lowest competent and responsible bidder as
12 determined by the department. If the bid of the lowest competent bidder is
13 determined by the department to be in excess of the estimated reasonable value of
14 the work or not in the public interest, all bids may be rejected. The department shall,
15 so far as reasonable, follow uniform methods of advertising for bids and may
16 prescribe and require uniform forms of bids and contracts. Except as provided in par.
17 (b), the secretary shall enter into the contract on behalf of the state. Every such
18 contract is exempted from ss. 16.70 to 16.75, 16.755 to 16.82, 16.87 and 16.89, but
19 ss. 16.528, 16.752, 16.753, and 16.754 apply to the contract. Any such contract
20 involving an expenditure of \$1,000 or more shall not be valid until approved by the
21 governor. The secretary may require the attorney general to examine any contract
22 and any bond submitted in connection with the contract and report on its sufficiency
23 of form and execution. The bond required by s. 779.14 (1m) is exempt from approval
24 by the governor and shall be subject to approval by the secretary. This subsection

1 also applies to contracts with private contractors based on bids for maintenance
2 under s. 84.07.

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

4 **84.06 (2m) CONSTRUCTION MANAGER–GENERAL CONTRACTOR PROCESS.** (a) Prior to
5 July 1, 2019, if the department finds that it would be more feasible and
6 advantageous, the department may award a 2–phase construction manager–general
7 contractor contract to a construction manager for preconstruction and construction
8 services for an improvement project.

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

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

15 1. Includes a guaranteed maximum price.

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

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

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

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

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

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

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

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

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

15 779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) or (2m)
16 for highway improvements, any person who has a direct contractual relationship,
17 expressed or implied, with the prime contractor to perform, furnish, or procure labor,
18 services, materials, plans, or specifications.

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

20 779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) or (2m)
21 for highway improvements, failure of the prime contractor to comply with a contract,
22 whether express or implied, with a subcontractor, supplier, or service provider of the
23 prime contractor for performing, furnishing, or procuring labor, services, materials,
24 plans, or specifications for the purpose of making the highway improvement that is
25 the subject of the contract with the governmental entity.



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

1 **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.

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3 otherwise participate in the engineering, design, or construction work for an
4 improvement project.

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6 84.06 (1) (aj) “Construction manager-general contractor contract” means a
7 contract for an improvement project awarded under sub. (2m).

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9 84.06 (2) (a) All such highway improvements shall be executed by contract
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18 prescribe and require uniform forms of bids and contracts. Except as provided in par.
19 (b), the secretary shall enter into the contract on behalf of the state. Every such
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23 governor. The secretary may require the attorney general to examine any contract
24 and any bond submitted in connection with the contract and report on its sufficiency
25 of form and execution. The bond required by s. 779.14 (1m) is exempt from approval

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

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5 84.06 (2m) CONSTRUCTION MANAGER–GENERAL CONTRACTOR PROCESS. (a) Prior to
6 July 1, 2019, if the department finds that it would be more feasible and
7 advantageous, the department may award a 2–phase construction manager–general
8 contractor contract to a construction manager for preconstruction and construction
9 services for an improvement project.

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

13 (c) Before the project design is 90 percent complete, the construction manager
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17 2. Certifies that at least 30 percent of the work for the construction phase shall
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19 (d) The department shall obtain an independent cost estimate for the
20 construction of the project.

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

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

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

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

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

4 103.50 (2) PREVAILING WAGE RATES AND HOURS OF LABOR. No person performing
5 the work described in sub. (2m) in the employ of a contractor, subcontractor, agent
6 or other person performing any work on a project under a contract based on bids as
7 provided in s. 84.06 (2), or under a contract under s. 84.06 (2m) (e), to which the state
8 is a party for the construction or improvement of any highway may be permitted to
9 work a greater number of hours per day or per week than the prevailing hours of
10 labor; nor may he or she be paid a lesser rate of wages than the prevailing wage rate
11 in the area in which the work is to be done determined under sub. (3); except that any
12 such person may be permitted or required to work more than such prevailing hours
13 of labor per day and per week if he or she is paid for all hours worked in excess of the
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15 pay.

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

17 779.14 (1) (b) With respect to contracts entered into under s. 84.06 (2) or (2m)
18 for highway improvements, any person who has a direct contractual relationship,
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20 services, materials, plans, or specifications.

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

22 779.14 (2) (a) 3. With respect to contracts entered into under s. 84.06 (2) or (2m)
23 for highway improvements, failure of the prime contractor to comply with a contract,
24 whether express or implied, with a subcontractor, supplier, or service provider of the
25 prime contractor for performing, furnishing, or procuring labor, services, materials,

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

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

4 895.56 (2) (a) The acts or omissions by the person occurred while performing
5 a contract entered into under s. 84.06 (2) or (2m), including acts or omissions by any
6 person who has a direct contractual relationship with the prime contractor, as
7 defined in s. 779.01 (2) (d), under a contract entered into under s. 84.06 (2) or (2m)
8 to perform labor or furnish materials.

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

10 895.56 (2) (c) The acts or omissions involving petroleum-contaminated soil on
11 the property were required by reasonably precise specifications in the contract
12 entered into under s. 84.06 (2) or (2m), and the acts or omissions conformed to those
13 specifications, or were otherwise directed by the department of transportation or by
14 the department of natural resources.

15 **SECTION 9345. Initial applicability; Transportation.**

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

20 (END)