

1969 Senate Bill 601

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CHAPTER 497, LAWS OF 1969

AN ACT to create 16.855 of the statutes, relating to the letting of state contracts for construction work.

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

16.855 of the statutes is created to read:

16.855 CONSTRUCTION PROJECT CONTRACTS. (1) The department shall let by contract to the lowest qualified responsible bidder all construction work when the estimated construction cost of the project exceeds \$15,000. In the absence of compelling reasons to the contrary, preference shall be given to Wisconsin-based firms.

(2) Whenever the estimated construction cost of a project exceeds \$15,000, the department shall:

(a) Advertise for proposals by publication of a class 1 notice, under ch. 985, in the official state newspaper. Similar notices may be placed in publications likely to inform potential bidders of the project. The department may solicit bids from qualified contractors to insure adequate competition. All advertisements shall contain the following information:

1. Location of work and the name of the owner.
2. Scope of the work.
3. Amount of bid guarantee required.
4. Date, time and place of bid opening.
5. Date, and place where plans will be available.

(b) 1. Require that a guarantee of not less than 10% of the amount of the bid shall be included with each bid submitted guaranteeing the execution of the contract within 10 days of offering, if offered within 30 days after the date set for the opening thereof. The parties may agree to extend the time for offering of the contract beyond 30 days after the opening of bids.

2. If the federal government participates in a state project, the bid guarantee required in this paragraph controls, unless the federal government makes a specific provision for a different bid guarantee.

(c) Publicly open and read aloud, at the time and place specified in the notice, all bids. Within a reasonable time after opening, tabulations of all bids received shall be available for public inspection.

(d) Not allow or make any correction or alteration of a bid, except as provided in sub. (6).

(3) At any time prior to the published time of opening, a bid may be withdrawn on written request submitted to the department by the bidder or his agent, without prejudice to the right of the bidder to file a new bid.

(4) If a bid contains an error, omission or mistake, the bidder may limit his liability to the amount of his bid guarantee by giving written notice of his intent not to execute the contract to the department within 72 hours of the bid opening. The bidder is not entitled to recover his bid guarantee unless he proves in the circuit court for Dane county that in making the mistake, error or omission he was free from negligence.

(5) Any or all bids may be rejected if, in the opinion of the department, it is in the best interest of the state. The reasons for rejection shall be given to the bidder or bidders in writing.

(6) Nothing contained in this section shall prevent the department from negotiating deductive changes in the lowest qualified bid not to exceed 5% of the total bid in order to bring the bid within the limits imposed by authorized funds.

(7) The department may issue contract change orders, if they are deemed to be in the best interests of the state.

(8) The department may waive the requirement that contractors furnish the bonds specified in s. 289.14 (1), when adequate guarantees or warranties are provided for by contract.

(9) The department may require bidders to submit sworn statements as to financial ability, equipment and experience in construction and re-

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quire such other information as may be necessary to determine their competency.

(10) When the department believes that it is in the best interests of the state to contract for certain articles or materials available from only one source, it may contract for said articles or materials without the usual statutory procedure, after a publication of a class 1 notice, under ch. 985, in the official state newspaper.

(11) A contractor shall be liable for any damages to another contractor working on the same project caused by reason of the former's default, act or nonperformance.

(12) Nothing contained in this section shall be construed so as to make contracts let under this section subject to s. 66.29.

(13) (a) A list of subcontractors shall not be required to be submitted with the bid. The department may require the successful bidder to submit in writing the names of prospective subcontractors for the department's approval before the award of a contract to the prime contractor.

(b) All subcontractors must be approved in writing by the department prior to their employment. Requests for approval of prospective subcontractors shall be in writing.

(c) Changes may be made in the list of subcontractors, with the agreement of the department and the prime contractor, when in the opinion of the department it is in the best interests of the state to require the change.

(14) On all construction projects requiring the taking of bids under sub. (2), separate bids shall be taken for a) general construction, b) plumbing, c) heating, ventilating and air conditioning and d) electrical. The department may take separate bids on any other division or further subdivision of the preceding divisions of the work it designates. Combination bids for such work may also be taken provided any bidder who submits a combined bid also submits separate bids for all of the divisions of work comprising the combined bid. Contracts shall be awarded to the lowest qualified responsible bidders that result in the lowest total construction cost for the project.

(15) The department shall adopt rules to implement the advertising and award of contracts.

(16) This section does not apply to contracts between the state and federal government or any agency thereof, or with any political subdivision of the state. Subject to the approval of the governor, the requirements of this section may be waived in emergency situations involving the public health, welfare or safety and with respect to contracting with public utilities and when any such waiver is deemed by the governor to be in the best interests of the state.

Approved March 10, 1970.
