

CHAPTER 314, Laws of 1979

AN ACT to amend 16.75 (1) (a), 84.01 (13) and 84.06 (2) to (4); and to create 13.94 (1) (L), 16.75 (2) (c) and 16.754 of the statutes, relating to preference for American-made materials in state purchasing.

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

SECTION 1. 13.94 (1) (L) of the statutes is created to read:

13.94 (1) (L) Monitor and review purchases and purchasing procedures of state departments, boards, commissions and independent agencies, and report to the joint legislative audit committee no later than January 2 of each year concerning the extent to which state departments, boards, commissions and independent agencies are purchasing materials, supplies or equipment manufactured outside of the United States.

SECTION 2. 16.75 (1) (a) of the statutes, as affected by chapter 34, laws of 1979, is amended to read:

16.75 (1) (a) All orders awarded or contracts made by the department for all materials, supplies, equipment and contractual services, except as otherwise provided in s. 16.754, par. (c) and subs. (2), (6) and (7), shall be awarded to the lowest responsible bidder, taking into consideration life cycle cost estimates, the location of the institution or agency, the quantities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required and the date of delivery; but preference shall always be given to materials, supplies, equipment and contractual services of Wisconsin producers, distributors, suppliers and retailers. Bids may be received only in accordance with such specifications as are adopted by the department as provided in this subsection. Any or all bids may be rejected. Each bid, with the name of the bidder, shall be entered on a record, and each record with the successful bid indicated shall, after the award or letting of the contract, be opened to public inspection. Where a low bid is rejected, a complete written record shall be compiled and filed, giving the reason in full for such action. Any waiver of sealed, advertised bids as provided in sub. (6) shall be entered on a record kept by the department and open to public inspection.

SECTION 3. 16.75 (2) (c) of the statutes is created to read:

16.75 (2) (c) To the extent possible, the department shall write specifications so as to permit the purchase of materials manufactured in the United States, as defined in s. 16.754 (1).

SECTION 4. 16.754 of the statutes is created to read:

16.754 Preference for American-made materials. (1) DEFINITIONS. As used in this section:

(a) "Manufactured" means mined, produced, manufactured, fabricated or assembled.

(b) "Manufactured in the United States" means that materials are manufactured in whole or in substantial part within the United States or that the majority of the component parts thereof were manufactured in whole or in substantial part in the United States.

(c) "Materials" means any goods, supplies, equipment or any other tangible products or materials.

(d) "Purchase" means acquire by purchase or lease.

(e) "State" means the state of Wisconsin or any agency thereof, a contractor acting pursuant to a contract with the state, and any person acting on behalf of the state or any agent thereof.

(2) PURCHASE PREFERENCE. Notwithstanding s. 16.75 (1), (2) and (6), when all other factors are substantially equal the state shall purchase materials which are manufactured to the greatest extent in the United States.

(3) EXEMPTIONS. Subsection (2) does not apply if the materials are purchased for the purpose of commercial resale or for the purpose of use in the production of goods for commercial sale. Subsection (2) does not apply to the purchase of stationery and printing materials. Subsection (2) does not apply if the department or other person having contracting authority in respect to the purchase determines that:

(a) The materials are not manufactured in the United States in sufficient or reasonably available quantities; or

(b) The quality of the materials is substantially less than the quality of similar available materials manufactured outside of the United States.

SECTION 5. 84.01 (13) of the statutes is amended to read:

84.01 (13) ENGINEERING SERVICES. The department may engage such engineering, consulting, surveying or other specialized services as it ~~may deem~~ deems advisable, ~~which shall be.~~ Any engagement of services under this subsection is exempt from ss. 16.70 to 16.75, 16.755 to 16.82 and ss. 16.85 to 16.89, but ~~any such s. 16.754 applies to such engagement.~~ Any engagement involving an expenditure of \$3,000 or more shall be by formal contract approved by the governor.

SECTION 6. 84.06 (2) to (4) of the statutes, as affected by chapter 32, laws of 1979, are amended to read:

84.06 (2) BIDS, CONTRACTS. All such highway improvements shall be executed by contract based on bids unless the department finds that another method as provided in sub. (3), (4) or (5) would be more feasible and advantageous. Bids shall be advertised for in the manner determined by the department. 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. The secretary shall enter into the contract on behalf of the state. Every such contract is ~~excepted~~ exempted from ss. 16.70 to 16.75, 16.755 to 16.82, 16.87 and 16.89, but s. 16.754 applies to the contract. Any such contract involving an expenditure of \$1,000 or more shall not be valid until ~~approval of approved by the governor is indorsed.~~ approval by the governor and shall be subject to approval by the secretary. This subsection ~~shall also apply~~ also applies to contracts with private contractors based on bids for maintenance under s. 84.07.

(3) CONTRACTS WITH COUNTY OR MUNICIPALITY; DIRECT LABOR; MATERIALS. If the department finds that it would be more feasible and advantageous to have the improvement performed by the county in which the proposed improvement is located and without bids, the department may, by arrangement with the county highway committee of the county, enter into a contract satisfactory to the department to have the work done by the county forces and equipment ~~and in.~~ In such contract the department may authorize the county to purchase, deliver and store materials and may fix the rental rates of small tools and equipment. The contract shall be between the county and the state and shall not be based on bids, and may be entered into on behalf of the county by the county highway

committee and on behalf of the state by the secretary. Such contract is ~~excepted exempted~~ from s. 779.14 and from all provisions of chs. 16 and 230 ~~and s. 779.14, but if, except s. 16.754.~~ If the total estimated indebtedness to be incurred exceeds \$5,000 the contract shall not be valid until ~~the approval of~~ approved by the governor ~~is indorsed~~. The provisions of this subsection relating to agreements between a county and the state shall also authorize and apply to such arrangements between a city, town or a village and the state. In such cases, the governing body of the city, town or village shall enter into the agreement on behalf of the municipality.

(4) SPECIAL CONTRACTS WITH RAILROADS AND UTILITIES. If an improvement undertaken by the department will cross or affect the property or facilities of a railroad or public utility company, the department may, upon finding that it is feasible and advantageous to the state, arrange to perform portions of the improvement work affecting such facilities or property or perform work of altering, rearranging or relocating such facilities by contract with the railroad or public utility. Such contract shall be between the railroad company or public utility and the state and need not be based on bids; ~~and.~~ The contract may be entered into on behalf of the state by the secretary. Every such contract is ~~excepted exempted~~ from s. 779.14 and from all provisions of chs. 16 and 230 ~~and s. 779.14, except s. 16.754.~~ No such contract in which the total estimated debt to be incurred exceeds \$5,000 shall be valid until ~~the approval of~~ approved by the governor ~~is indorsed~~. As used in this subsection, "public utility" means the same as in s. 196.01 and "railroad" means the same as in s. 195.02. "Property" as used in this subsection includes but is not limited to tracks, trestles, signals, grade crossings, rights-of-way, stations, pole lines, plants, substations and other facilities. Nothing in this subsection shall be construed to relieve any railroad or public utility from any financial obligation, expense, duty or responsibility otherwise provided by law relative to such property.
