



2011 SENATE BILL 574

March 15, 2012 – Introduced by Senators LASSA and VINEHOUT, cosponsored by Representatives JORGENSEN, ROYS, TURNER and RINGHAND. Referred to Committee on Senate Organization.

1 **AN ACT** *to renumber and amend* 16.705 (1); and *to create* 16.705 (1) (a) 3., (b)
2 and (c), 16.705 (10) and 84.01 (13g) of the statutes; **relating to:** contracting for
3 services in state procurement.

Analysis by the Legislative Reference Bureau

Currently, the Department of Administration (DOA) or any state agency to which DOA delegates purchasing authority may contract for services if the services can be performed more efficiently or economically by contract than by state employees. This bill allows contracting for services if at least two of the following three conditions are met: 1) the services may be performed more economically by contract than by state employees; 2) when considering expertise, the services can be performed more efficiently by contract than by use of current full-time state positions; or 3) when considering timeliness, the services can be performed more efficiently by contract than by state employees.

Under current law, the requirement described above that allows an agency to contract for services only if the services can be performed more efficiently or economically by contract than by state employees does not apply to the Department of Transportation (DOT). Instead, DOT may engage engineering, consulting, surveying, or other specialized services as it deems advisable. Under this bill, before DOT enters into a contract for the engagement of services, DOT must determine that all of the following apply: 1) no current state employee is able and available to perform the services; 2) the work to be performed is necessary to DOT's achievement of its statutory responsibilities and there is statutory authority to enter into the

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contract; 3) the contract will not establish an employment relationship between the state or DOT and any person performing under the contract; 4) the contractor and its agents are not employees of the state; 5) DOT has specified a satisfactory method of evaluating and using the results of the work to be performed; and 6) the contract term does not exceed two years. In addition, before DOT enters into any contract for the engagement of services, DOT must implement a written plan providing for the assignment of specific personnel to manage the contract, including a monitoring and liaison function, the periodic review of interim reports or other indications of past performance, and the ultimate utilization of the final product of the services. If the results of the contract work will be continued by state employees upon completion of the contract, the contractor must include state employees in development and training, to the extent necessary to ensure that after completion of the contract, state employees can perform any ongoing work related to the same function. DOT may not contract out its previously eliminated jobs for four years without first considering the same former employees who are on the seniority unit layoff list who meet the minimum qualifications. The contract must provide that no more than 90 percent of the amount due under the contract may be paid until the secretary of administration has certified that the contractor has satisfactorily fulfilled the terms.

Finally, the bill provides that if in any fiscal year an executive branch agency is prohibited from hiring employees to fill vacant positions or its employees are required to serve an unpaid leave of absence, the agency may not enter into, renew, or extend any contractual services contracts with private contractors or consultants for the remainder of that fiscal year for the performance of services of agency employees who would have performed the services had they been hired or had they not been required to take an unpaid leave of absence. This provision, however, does not apply to certain contracts of the Office of the State Public Defender, as well as certain contractual services contracts funded with federal economic stimulus funds. The bill further provides that an agency may submit a written request to the Joint Committee on Finance (JCF) to exempt an agency with respect to a specific contractual services contract. If the cochairpersons of JCF do not notify the agency within 14 working days after the date of the agency's submittal that JCF intends to schedule a meeting to review the request, approval of the request is granted. If, within 14 working days after the date of the agency's request submittal, the cochairpersons notify the agency that JCF intends to schedule a meeting to review the request, the request may be granted only as approved by JCF.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 16.705 (1) of the statutes is renumbered 16.705 (1) (a) (intro.) and
2 amended to read:

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1 16.705 (1) (a) (intro.) The department or its agents may contract for services
2 which if at least 2 of the following conditions apply:

3 1. The services can be performed more economically or by contract.

4 2. When considering expertise of the current full-time positions, whether filled
5 or vacant, the services can be performed more efficiently by such contract than by use
6 of employees in those positions.

7 (d) The department shall, by rule, prescribe uniform procedures for
8 determining whether services are appropriate for contracting under this subsection.

9 **SECTION 2.** 16.705 (1) (a) 3., (b) and (c) of the statutes are created to read:

10 16.705 (1) (a) 3. When considering timeliness of delivery, the services can be
11 performed more efficiently by contract.

12 (b) Notwithstanding par. (a), the department or its agents may contract for any
13 services if the contract will be for a period that is not more than one year and if the
14 contract is not eligible for renewal.

15 (c) No contract under this section may be automatically renewed.

16 **SECTION 3.** 16.705 (10) of the statutes is created to read:

17 16.705 (10) (a) In this subsection, “federal economic stimulus funds” means
18 federal moneys received by the state, pursuant to federal legislation enacted during
19 the 111th Congress for the purpose of reviving the economy of the United States.

20 (b) Except as provided in pars. (c), (cm), and (d), if in any fiscal year an agency
21 in the executive branch is prohibited from hiring employees to fill vacant positions
22 or its employees are required to serve an unpaid leave of absence, the agency may
23 not enter into, renew, or extend any contractual services contracts with private
24 contractors or consultants for the remainder of that fiscal year for the performance

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1 of services of agency employees who would have performed the services had they
2 been hired or had they not have been required to take an unpaid leave of absence.

3 (c) Paragraph (b) does not apply to contractual services contracts that are
4 funded with federal economic stimulus funds if the secretary determines that any
5 deadlines imposed by the federal government on the expenditure of the federal
6 economic stimulus funds cannot be met without an agency's entering into, renewing,
7 or extending a contractual services contract or a cost-benefit analysis is conducted
8 that demonstrates that a contractual services contract would be more cost effective
9 and efficient than having state employees perform the services.

10 (cm) Paragraph (b) does not apply to contracts entered into, renewed, or
11 extended under s. 977.08.

12 (d) An agency in the executive branch may submit a written request to the joint
13 committee on finance to have par. (b) not apply to the agency with respect to a specific
14 contractual services contract. If the cochairpersons of the committee do not notify
15 the agency within 14 working days after the date of the agency's submittal that the
16 committee intends to schedule a meeting to review the request, approval of the
17 request is granted. If, within 14 working days after the date of the agency's request
18 submittal, the cochairpersons of the committee notify the agency that the committee
19 intends to schedule a meeting to review the request, the request may be granted only
20 as approved by the committee.

21 **SECTION 4.** 84.01 (13g) of the statutes is created to read:

22 **84.01 (13g) PROCEDURES AND REQUIREMENTS FOR CONTRACTUAL ENGAGEMENTS OF**
23 **SERVICES.** (a) In this subsection:

24 1. "Available," with respect to an employee, means that the employee is
25 qualified and any of the following applies:

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- 1 a. The employee is already doing the work in question.
- 2 b. The employee is on layoff status in classes that can do the work in question.
- 3 c. There are authorized positions that are currently vacant with respect to the
- 4 work in question.
- 5 2. "Available," with respect to an employee, does not include an employee who
- 6 is doing other work, is retired, or has decided not to do the work in question.
- 7 (b) Before entering into any contract for the engagement of services under sub.
- 8 (13), the department shall determine, at least, that all of the following apply:
- 9 1. No current state employee is able and available to perform the services called
- 10 for by the contract.
- 11 2. The work to be performed under the contract is necessary to the department's
- 12 achievement of its statutory responsibilities and there is statutory authority to enter
- 13 into the contract.
- 14 3. The contract will not establish an employment relationship between the
- 15 state or the department and any person performing under the contract.
- 16 4. The contractor and its agents are not employees of the state.
- 17 5. The department has specified a satisfactory method of evaluating and using
- 18 the results of the work to be performed.
- 19 6. The contract term does not exceed 2 years, unless the secretary has
- 20 determined that a longer duration is in the best interest of the state, and the
- 21 combined contract and amendments will not exceed 5 years without specific, written
- 22 approval by the secretary according to established policy, procedures, and standards,
- 23 or unless otherwise provided for by law.
- 24 (c) Before entering into any contract for the engagement of services under sub.
- 25 (13), the department shall develop and implement a written plan providing for the

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1 assignment of specific department personnel to manage the contract, including a
2 monitoring and liaison function, the periodic review of interim reports or other
3 indications of past performance, and the ultimate utilization of the final product of
4 the services. In the event the results of the contract work will be carried out or
5 continued by state employees upon completion of the contract, the contractor shall
6 include state employees in development and training, to the extent necessary to
7 ensure that after completion of the contract, state employees can perform any
8 ongoing work related to the same function. The department may not contract out its
9 previously eliminated jobs for 4 years without first considering the same former
10 employees who are on the seniority unit layoff list who meet the minimum
11 qualifications determined by the department. The terms of a contract shall provide
12 that no more than 90 percent of the amount due under the contract may be paid until
13 the final product has been reviewed by the secretary and the secretary has certified
14 that the contractor has satisfactorily fulfilled the terms of the contract.

SECTION 5. Initial applicability.

15
16 (1) The renumbering and amendment of section 16.705 (1) of the statutes and
17 the creation of section 16.705 (1) (a) 3. and (b) of the statutes first apply to
18 solicitations for contractual services issued on the effective date of this subsection.

19 (2) The creation of section 16.705 (1) (c) of the statutes first applies to contracts
20 entered into, renewed, modified, or extended, whichever occurs first, on the effective
21 date of this subsection.

22 (END)