

MM:ty

06/04/2007

- 1 **AN ACT** *to create* 16.75 (3m) (bg) and (bm) of the statutes; **relating to:** creating
2 minority business outreach requirements.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the joint legislative council's special committee on affirmative action.

Under current law, the department of administration (DOA) is directed to attempt to ensure that 5% of the total amount expended on supplies and services each year is paid to minority businesses certified by the department of commerce.

A minority business is a sole proprietorship, partnership, limited liability company, joint venture, or corporation that fulfills both of the following requirements:

1. It is at least 51% owned, controlled and actively managed by a minority group member or members who are U.S. citizens or persons lawfully admitted to the United States for permanent residence, as defined under 8 USC 1101 (a) (20).
2. It is currently performing a useful business function.

A minority group member means any of the following:

A Black.

A Hispanic.

An American Indian.

An Eskimo.

An Aleut.

A native Hawaiian.

An Asian-Indian.

A person of Asian-Pacific origin.

This draft requires DOA to promulgate rules to establish practices and procedures that the department must follow to facilitate the participation of minority businesses in all contracts with the department. The draft

specifies additional special procedures that must be followed for “major contracts” and directs DOA to define “major contract”. These procedures are modeled after practices followed by the department of transportation to increase minority business participation in the marquette interchange project.

The required procedures that apply to all DOA contracts are:

1. Providing minority businesses with advance notice of impending contract opportunities in the business areas that are relevant to the minority businesses.
2. Holding periodic community educational forums that provide information on upcoming department business and labor opportunities for minority businesses and provide training on the department’s bidding and quoting processes.
3. Issuing a sufficient number of small stand-alone contracts to allow minority businesses to participate in contracting with the department to the greatest extent feasible.
4. Requiring a prime contractor that utilizes subcontractors to include in its bid minority business subcontractor utilization goal commitments adequate to ensure representative participation by minority businesses, as specified by the department.

The required procedures that apply to “major contracts” let by DOA contracts are:

1. Conducting community workshops providing information on contract plans, schedules, and bidding procedures prior to soliciting bids.
2. Conducting training for minority businesses in the work areas where minority businesses have been under-utilized.
3. Providing individualized technical support to minority businesses throughout the pre-qualification process.
4. Implementing a loan mobilization program to enable minority businesses to participate in major contracts.
5. Issuing a sufficient number of small stand-alone contracts be issued to allow minority businesses to participate as prime contractors.
6. Requiring prime contractors to subcontract with minority businesses to ensure representative participation of minority businesses in major contracts. Minority business subcontractor utilization goal commitments must be submitted with each bid submitted by a prime contractor.

7. Exempting a prime contractor from meeting a goal for minority business subcontractor utilization if the prime contractor provides documentation of a good faith effort to find minority businesses to participate as subcontractors. "Good faith effort" must include, at a minimum, advertising in minority media outlets and direct solicitation of minority businesses throughout the region.

8. Requiring department monitoring to ensure minority business subcontractor participation throughout the project as specified in the department contract with the prime contractor.

9. Requiring the department to monitor payments to minority subcontractors to ensure that timely payments are made to minority business subcontractors by prime contractors.

10. Allowing minority business subcontractors to be covered under prime contractor's bonding, to the extent feasible.

1 **SECTION 1.** 16.75 (3m) (bg) and (bm) of the statutes are created to read:

2 16.75 (**3m**) (bg) The department shall promulgate rules to establish practices and
3 procedures that the department shall follow to facilitate the participation of minority
4 businesses in all contracts with the department. The rules shall do all of the following:

5 1. Require the department to provide minority businesses with advance notice of
6 impending contract opportunities in the business areas that are relevant to the
7 minority business.

8 2. Require the department to hold periodic community educational forums that provide
9 information on upcoming department business and labor opportunities for minority
10 businesses and provide training on the department's bidding and quoting processes.

11 3. Require the department to issue a sufficient number of small stand-alone contracts
12 to allow minority businesses to participate in contracting with the department to the greatest
13 extent feasible.

1 4. If a prime contractor utilizes subcontractors, require that the bid submitted by the
2 contractor include minority business subcontractor utilization goal commitments adequate to
3 ensure representative participation by minority businesses, as specified by the department.

4 (bm) The department shall promulgate rules to establish practices and procedures that
5 the department shall follow to facilitate the participation of minority businesses in contracts
6 with the department for major contracts. The rules shall:

7 1. Define “major contract”.

8 2. Prior to soliciting bids on major contracts, conduct community workshops providing
9 information on contract plans, schedules, and bidding procedures.

10 3. Prior to soliciting bids on major contracts, conduct training for minority businesses
11 in the work areas where minority businesses have been under-utilized.

12 4. Require the department to provide individualized technical support to minority
13 businesses throughout the pre-qualification process.

14 5. Require the department to implement a loan mobilization program to enable minority
15 businesses to participate in major contracts.

16 6. Require that in contracting for major contracts, a sufficient number of small
17 stand-alone contracts be issued to allow minority businesses to participate as prime
18 contractors.

19 7. Require prime contractors to subcontract with minority businesses to ensure
20 representative participation of minority businesses in major contracts. Require that minority
21 business subcontractor utilization goal commitments to be submitted with each bid submitted
22 by a prime contractor.

23 8. Allow a prime contractor to be exempted from meeting a goal for minority business
24 subcontractor utilization if the prime contractor provides documentation of a good faith effort

1 to find minority businesses to participate as subcontractors. "Good faith effort" shall include,
2 at a minimum, advertising in minority media outlets and direct solicitation of minority
3 businesses throughout the region.

4 9. Require department monitoring to ensure minority business subcontractor
5 participation throughout the project as specified in the department contract with the prime
6 contractor.

7 10. Require the department to monitor payments to minority subcontractors to ensure
8 that timely payments are made to minority business subcontractors by prime contractors.

9 11. Allow minority business subcontractors to be covered under prime contractor's
10 bonding, to the extent feasible.

11 (END)