

MM:ty

06/04/2007

1 **AN ACT** *to repeal and recreate* 16.75 (3m) (b); and *to create* 16.75 (3m) (bf) and
2 (bm) of the statutes; **relating to:** creating minority business subcontracting
3 requirements applicable to the department of administration.

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.

The department may purchase materials, supplies, equipment, and contractual services from any minority business submitting a qualified responsible competitive bid that is no more than 5% higher than the apparent low bid or competitive proposal that is no more than 5% higher than the most advantageous offer. In administering the preference for minority businesses, the department and any agency making purchases must maximize the use of minority businesses which are incorporated in Wisconsin or which have their principal place of business in Wisconsin.

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 repeals the provision described above that allows for a 5% set-aside for minority businesses and replaces it with the requirement that all firms contracting with the department or any other agency as prime contractors utilize minority businesses as subcontractors to the extent specified by the department by rule.

The department must promulgate rules specifying the required rate of utilization of minority businesses as subcontractors through a process that provides for public participation and takes into consideration all of the following:

1. The number of minority businesses ready, willing, and able to perform needed services or provide needed supplies to prime contractors.
2. The availability of minority businesses to perform as subcontractors in different geographical areas of the state.
3. The level of minority business participation in department contracts that the department has determined it would expect absent the effects of discrimination.
4. Factors that affect the opportunities for minority business to form, grow and compete. These include, but are not limited to, disparities in the ability of minority businesses to get the financing, bonding, and insurance required to participate as a subcontractor.

The draft requires the department to maintain and make available to interested persons a directory identifying all firms eligible to participate as minority businesses in each region of the state. The listing for each firm must include its address, telephone number, and the types of work the firm has been certified to perform as a minority business. The directory must be revised at least annually and updated information must be made available to contractors and the public on request.

The draft requires each firm bidding for a contract to submit the following information to the department along with its bid:

1. The names and addresses of minority businesses that will participate in the contract.

2. A description of the work that each minority business will perform under the contract.

3. The dollar amount of the participation of each minority business firm participating in the contract.

4. Written documentation of the bidder's commitment to use a minority business subcontractor whose participation it submits to meet a contract goal.

5. Written confirmation from the minority business that it is participating in the contract as provided in the prime contractor's commitment.

1 **SECTION 1.** 16.75 (3m) (b) of the statutes is repealed and recreated to read:

2 16.75 (**3m**) (b) The department and any agency making purchases under s. 16.74 shall
3 require all prime contractors to utilize minority businesses as subcontractors to the extent
4 specified by the department by rule. The rules establishing the required utilization of minority
5 businesses as subcontractors shall be determined through a process that provides for public
6 participation and takes into consideration all of the following:

7 1. The number of minority businesses ready, willing, and able to perform the needed
8 services or provide the needed supplies to prime contractors.

9 2. The availability of minority businesses to perform as subcontractors in different
10 geographical areas of the state.

11 3. The level of minority business participation in department contracts that the
12 department has determined it would expect absent the effects of discrimination.

13 4. Factors that affect the opportunities for minority business to form, grow, and
14 compete. These include, but are not limited to, disparities in the ability of minority businesses
15 to get the financing, bonding, and insurance required to participate as a subcontractor.

16 **SECTION 2.** 16.75 (3m) (bf) and (bm) of the statutes are created to read:

