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Joint Committee on Finance

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Procurement Authority (UW System)

[LFB 2015-17 Budget Summary: Page 489, #44]

CURRENT LAW

The Department of Administration (DOA) is responsible for purchasing all necessary materials, supplies, equipment, all other permanent personal property, miscellaneous capital, contractual services, and all other expenses of a consumable nature for all agencies. DOA may delegate this authority to special designated agents and is required to delegate authority to enter into contracts for materials, supplies, equipment, or services that relate to higher education and that other agencies do not commonly purchase to the UW Board of Regents and to UW-Madison. Agents who have been delegated purchasing authority by DOA must adhere to the same statutory requirements and administrative rules as DOA purchasing agents.

GOVERNOR

Provide that, for the purpose of procurement, the UW System Authority would be treated as a municipality and would not be subject to state law regarding procurement by state agencies. Under the bill, DOA would be able to enter into cooperative purchasing agreements with the UW System Authority and the UW System Authority would be able to enter into purchasing agreements with other municipalities. DOA would also have the authority to assess the UW System Authority for any procurement services provided to the Authority.

DISCUSSION POINTS

1. Under current practice, DOA delegates purchasing authority to a UW System agent and that agent then delegates purchasing authority to agents at each UW System institution other than UW-Madison. DOA delegates purchasing authority directly to a purchasing agent at UW-

Madison. These purchasing agents have unlimited authority to purchase goods and contract for services through existing contracts including DOA mandatory contracts. These agents may also purchase up to \$5,000 of goods and services not covered by DOA mandatory contracts from any source. Contracts of more than \$5,000 but less than \$50,000 may be awarded through a simplified bid process. Purchases of goods in excess of \$50,000 require a more formal competitive, sealed bid process. Contracts for services above \$50,000 require prior approval by DOA. When factors other than price should be considered in awarding a contract, requests for proposals are solicited. All requests for proposals require approval by DOA.

2. The Governor's budget would have converted the UW System to a public authority. For the purpose of procurement, the UW System Authority would have been defined as a municipality and would not have been subject to state law regarding procurement by state agencies. Earlier this month, the Co-Chairs of the Joint Finance Committee (JFC) indicated that the Governor's proposal to convert the UW System to a public authority would not be approved. If the Committee wishes to provide procurement authority to the UW System as a state agency, the Committee could exempt the UW System from current procurement law and administrative rules and directly authorize the Board of Regents to purchase all necessary materials, supplies, equipment, all other permanent personal property and miscellaneous capital, and contractual services and all other expense of a consumable nature. Under this alternative, DOA would not be involved in UW System procurement.

3. UW System officials have argued that directly authorizing the Board of Regents to purchase goods and services would allow UW procurement staff to streamline the procurement process and to enter into contracts for goods and services that may better meet the needs of UW institutions. Information regarding UW purchases would continue to be publicly available as UW purchases would continue to be entered into the state's accounting system and be shown on the state's OpenBook website as required by 2011 Act 32. To ensure that the Board of Regents continues to competitively bid contracts, the Committee could specify that the Board would be subject to the same bidding requirements as DOA under current law with the Regents and the Chancellor of each institution having all of the responsibilities for UW System purchases that DOA and the DOA Secretary has for state purchases under s. 16.75 of the statutes.

4. DOA staff have argued that excluding the UW System from DOA mandatory contracts would reduce the total volume of purchases made through those contracts and could result in higher prices for other state agencies. Procurement assessments charged to other state agencies could also increase as the UW System would no longer be subject to these assessments. In addition, some state contracts include rebates. If the UW System were not required to purchase through these contracts, the rebates that the state receives would be reduced.

5. Under current practice, other state agencies are able to purchase through many of the contracts negotiated by UW System Administration, UW-Madison, and other UW institutions. If the Committee provides the Board of Regents with procurement authority, the Committee could also require the Board and DOA to enter into memorandum of understanding by October 1, 2015, that would allow state agencies to purchase through UW System contracts when possible. This memorandum of understanding could be subject to approval by the Joint Finance Committee

through a 14-day passive review process.

6. According to DOA, state purchases totaled \$1,394.2 million in 2013-14. UW System purchases totaled \$575.3 million, or 41.3% of all state purchases in that year. The UW System estimates that \$97 million of its purchases in 2013-14 were made through DOA's mandatory contracts. According to the UW System, the items covered by DOA's mandatory contracts do not always meet the UW System's needs. This is a particular concern in the area of information technology. DOA staff have argued that if the UW System were not required to make purchases through DOA's mandatory contracts, the total volume of the goods and services purchased through those contracts would decrease resulting in an increase in the prices paid by other state agencies.

7. Several of DOA's mandatory contracts are now multi-state contracts. For example, Wisconsin is one of 46 states that participate in the Western States Contracting Alliance's contract for personal computer hardware, storage, printers, and peripherals. Because multiple states purchase through that contract, exempting the UW System from purchasing through this contract may have little effect on the total volume purchased through the contract and would likely not impact the prices paid under the contract by other state agencies. One alternative could be to prohibit DOA from requiring the UW System to purchase goods and services through a contract if that contract is a multi-state contract. This would give the UW System the ability to purchase goods and services that better meet its needs in certain areas without impacting prices charged to other state agencies.

8. Current law requires that the Governor provide prior approval for certain purchases by the UW System and all other state agencies. These purchases include the purchase of aircraft, trucks, and automobiles for general use; the purchase of legal services on a contingent fee basis; and purchases for which the statutory bidding process is waived. Because these purchases can only be approved by the Governor, these purchases may be delayed if the Governor is unable to review them immediately. One alternative that could speed the approval of these purchases could be to permit the DOA Secretary instead of the Governor to approve them. Another alternative could be to permit the Chancellor of the institution that would be making the purchase, or the UW System President in the case that the UW System would be making the purchase, to approve the purchase. Under this alternative, DOA staff would not conduct a review of the purchase.

9. In an effort to control the total number of vehicles owned by state agencies, DOA and the Governor have denied requests from UW institutions to purchase additional automobiles and trucks. It could be argued that the personnel at each UW institution can assess the needs of that institution and determine the number of vehicles that are needed. For this reason, it may be reasonable to exclude the UW System from DOA oversight of fleet management and maintenance and provide the Chancellor of each UW institution, instead of the Governor or the DOA Secretary, with the authority to approve the purchase of vehicles for that institution.

10. UW-Madison, UW-Milwaukee, and UW System Administration all employ legal staff. In addition to the legal staff employed by it directly, the UW System as a state agency has access to the services of attorneys employed by the Department of Justice (DOJ). From time to time, UW institutions require additional legal services beyond those provided by their own legal staff or DOJ. This may occur in instances where expertise in a particular legal area is required or the issue

involves parties in another country. To speed the process of contracting for legal staff in these instances, current law could be modified to permit the DOA Secretary or the Chancellor of the UW institution that would be contracting for the services to approve such contracts.

11. Current law requires that the UW System award contracts through a competitive bidding process. In some cases, a particular good or service may only be available from one source. Examples would include certain research equipment or updates to software purchased by the UW System through a prior contract. Under current law, approval by the Governor is required to waive the bidding process in cases where a good or service is only available from one source and the value of those goods or services exceeds \$25,000. Again, requiring approval by the Governor may unnecessarily delay these purchases. Permitting the DOA Secretary or the Chancellor of the institution involved in the purchase would speed the purchasing process in these instances. Another alternative could be to raise the \$25,000 threshold for the Governor's approval. This threshold has not been increased since 1995 when it was increased from \$10,000 to \$25,000. If this limit had been linked to increases in the consumer price index (CPI) since 1995, it would be \$38,800 in the current year. Increasing this threshold could reduce the number of sole source purchases that would require the Governor's approval.

ALTERNATIVES

Procurement -- General

1. Approve the Governor's recommendation. Under this alternative, the UW System would be treated as a municipality and would not be subject to state law regarding procurement by state agencies.

2. Modify the Governor's recommendation to exempt the UW System from current procurement law and administrative rule and directly authorize the Board of Regents to purchase all necessary materials, supplies, equipment, all other permanent personal property and miscellaneous capital, and contractual services and all other expense of a consumable nature.

3. In addition to alternative 2, specify that the Board would be subject to the same bidding requirements as the DOA under current law with the Regents having all of the responsibilities for UW System purchases that DOA has for state purchases under s. 16.75.

4. In addition to alternative 3, require the Board and DOA to enter into memorandum of understanding by October 1, 2015, that would allow state agencies to purchase through UW System contracts when possible. Specify that this memorandum of understanding would be subject to approval by the Joint Finance Committee through a 14-day passive review process.

5. Delete provision.

Mandatory Contracts

1. Modify current law to specify that the Department of Administration may not require the UW System to purchase goods and services through a contract that the Department of

Administration has entered into if that contract is a multi-state contract.

2. Maintain current law.

Sole Source Waivers

1. Modify current law to increase the threshold for gubernatorial approval of sole source waivers from \$25,000 to:

- a. \$50,000
- b. \$100,000

2. Modify current law to permit the Secretary of the Department of Administration, instead of the Governor, to approve sole source waivers.

3. Modify current law to permit the Chancellor of a UW institution to approve sole source waivers for purchases made by that institution.

4. Maintain current law.

Vehicles

1. Modify current law to permit the UW System to purchase necessary trucks and automobiles with written approval of the Secretary of the Department of Administration instead of the Governor as under current law.

2. Modify current law to exclude the UW System from DOA oversight of fleet management and maintenance and permit each UW System institution to purchase necessary trucks and automobiles with written approval of Chancellor of that institution instead of the Governor as under current law.

3. Maintain current law.

Legal Services

1. Modify current law to permit the UW System to contract for legal services on a contingent fee basis with written approval of the Secretary of the Department of Administration instead of the Governor as under current law.

2. Modify current law to permit each UW System institution to contract for legal services on a contingent fee basis with written approval of Chancellor of that institution instead of the Governor as under current law.

3. Maintain current law.

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