



2011 ASSEMBLY BILL 570

February 16, 2012 - Introduced by Representative LEMAHIEU. Referred to
Committee on Homeland Security and State Affairs.

1 **AN ACT to amend** 16.75 (1) (a) 1. and 16.855 (1); and **to create** 16.7545 and
2 16.856 of the statutes; **relating to:** investment activities in Iran, state
3 procurement and construction contracts, and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Administration (DOA), other agencies to which DOA has delegated purchasing authority, the legislature, the judicial branch, and authorities (collectively, "purchasing agents") may purchase all necessary materials and contractual services. Current law also generally authorizes DOA to contract for construction work when the project cost is estimated to exceed \$50,000. With some exceptions, the purchases or contracts must be awarded to the lowest bidder.

This bill creates a new exception to the lowest-bidder award. Under the bill, a purchasing agent may not purchase from, or contract for materials or services with, an entity that, among other actions, provides goods or services to the energy, finance, or construction sectors in Iran; purchases oil or natural gas from Iran; provides goods or services to a person on the Specially Designated Nationals List for Iran or to a person placed on the Specially Designated Nationals List for a violation of Iran sanctions imposed by the U.S. Office of Foreign Assets Control; or transfers to Iran, or provides services to Iran regarding, certain items or technology such as firearms, ammunition, tear gas, surveillance technology, or items that could be used by the Iranian government to commit human rights abuses against Iranian citizens.

In addition, the bill requires an entity submitting a bid to a purchasing agent to certify that the entity is not engaging in any actions that would prohibit, under

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the bill, the purchasing agent from entering into a purchasing contract with the entity. Any entity that provides a false or misleading certification is subject to a forfeiture of the lesser of \$1,000,000 or twice the amount of the contract for which the certification was made.

Finally, the bill requires DOA to maintain a list of entities that DOA determines have engaged in an activity that would prohibit, under the bill, a purchasing agent from entering into a purchasing contract with the entity, including submitting a certification that is required under the bill that is false or misleading. DOA must use credible publicly available information when maintaining the list and must provide a 30-day notice to an entity before it will appear on the list so as to give the entity an opportunity to appeal the listing.

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.** 16.75 (1) (a) 1. of the statutes is amended to read:

2 16.75 (1) (a) 1. All orders awarded or contracts made by the department for all
3 materials, supplies, equipment, and contractual services to be provided to any
4 agency, except as otherwise provided in par. (c) and, subs. (2), (2g), (2m), (3m), (3t),
5 (6), (7), (8), (9), (10e), and (10m), and ss. 16.705 (1r), 16.73 (4) (a), 16.751, 16.754,
6 16.7545, 16.964 (8), 50.05 (7) (f), 153.05 (2m) (a), and 287.15 (7), shall be awarded to
7 the lowest responsible bidder, taking into consideration life cycle cost estimates
8 under sub. (1m), when appropriate, the location of the agency, the quantities of the
9 articles to be supplied, their conformity with the specifications, and the purposes for
10 which they are required and the date of delivery.

11 **SECTION 2.** 16.7545 of the statutes is created to read:

12 **16.7545 Investment activities in Iran. (1)** In this section:

13 (a) “Engaging in investment activities in Iran” means any of the following:

14 1. Providing goods or services to the energy, finance, or construction sectors of
15 Iran.

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1 2. Purchasing crude oil, refined petroleum products, or natural gas from Iran.

2 3. Providing goods or services, or providing payment for goods or services, to
3 a person on the Specially Designated Nationals List for Iran or to a person placed on
4 the Specially Designated Nationals List for a violation of Iran sanctions imposed by
5 the office of foreign assets control in the federal department of the treasury or a
6 successor office.

7 4. Transferring to Iran, facilitating the transfer to Iran of, or providing to Iran
8 services, including through joint ventures or licensing of intellectual property, with
9 respect to, any of the following goods or technologies:

10 a. Firearms, ammunition, accessories for firearms, rubber bullets, clubs,
11 batons, police sticks, mace, stun grenades, tasers, electroshock weapons, tear gas,
12 water cannons, motorcycles, motorized transport for security personnel, or
13 surveillance technology.

14 b. Sensitive technology, as defined in 22 USC 8515 (c).

15 c. Goods or technologies that the department determines have been or may be
16 used by the government of Iran to commit human rights abuses against the people
17 of Iran.

18 5. Extending credit to a person that is identified on a list created under sub.
19 (3).

20 (b) "Specially Designated Nationals List" means the list of persons maintained
21 by the office of foreign assets control in the federal department of the treasury or a
22 successor office.

23 **(2)** An authorized representative of any person submitting a bid under s. 16.75
24 must certify that the bidder is not engaging in investment activities in Iran and is
25 not on the Specially Designated Nationals List for a violation of Iran sanctions

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1 imposed by the office of foreign assets control in the federal department of the
2 treasury or a successor office.

3 (3) (a) The department shall develop, and shall update every 90 days, a list of
4 persons that the department determines have engaged in activities in Iran or that
5 have submitted within the previous 3 years a false certification under sub. (2). The
6 department shall use credible information that is available to the public in making
7 its determination.

8 (b) No later than 30 days before adding a person to the list under par. (a), the
9 department shall provide written notice to the person of its intent. The notice shall
10 include notice of the consequences under sub. (4) of inclusion on the list. The notice
11 shall include how the person may demonstrate to the department that it is not
12 engaging in activities in Iran or did not submit a false certification under sub. (2),
13 whichever is appropriate.

14 (4) (a) The department, a designated purchasing agent under s. 16.71, an
15 agency making purchases under s. 16.74, and any authority may not enter into a
16 contract or order for the purchase of materials, supplies, equipment, or contractual
17 services with any of the following:

- 18 1. A person that is on the list maintained by the department under sub. (3) (a).
- 19 2. A person that does not submit a certification as required under sub. (2).

20 (b) If the department, a designated purchasing agent under s. 16.71, an agency
21 making purchases under s. 16.74, or any authority discovers that it has entered into
22 a contract or order that violates par. (a), it shall terminate the contract or order
23 without liability for the uncompleted portion or any materials or services purchased
24 or paid for by the person for use in completing the contract or order, and, if the person

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1 would be subject to a forfeiture under sub. (5), it shall report the violation to the
2 attorney general.

3 (c) All contracts entered into under this subchapter must contain written
4 notification of the requirements in this section and the penalty under sub. (5).

5 (5) Any person that provides a false or misleading certification under sub. (2)
6 shall forfeit an amount that is the lesser of \$1,000,000 or twice the amount of the
7 contract for which the certification was made. Forfeitures under this subsection
8 shall be enforced by action on behalf of the state by the attorney general.

9 **SECTION 3.** 16.855 (1) of the statutes, as affected by 2011 Wisconsin Act 32, is
10 amended to read:

11 16.855 (1) The department shall let by contract to the lowest qualified
12 responsible bidder all construction work when the estimated construction cost of the
13 project exceeds \$50,000, except for construction work authorized under s. 16.858 and
14 except as provided in sub. (10m) or s. 13.48 (19) or 16.856. If a bidder is not a
15 Wisconsin firm and the department determines that the state, foreign nation or
16 subdivision thereof in which the bidder is domiciled grants a preference to bidders
17 domiciled in that state, nation or subdivision in making governmental purchases,
18 the department shall give a preference over that bidder to Wisconsin firms, if any,
19 when awarding the contract, in the absence of compelling reasons to the contrary.
20 The department may enter into agreements with states, foreign nations and
21 subdivisions thereof for the purpose of implementing this subsection.

22 **SECTION 4.** 16.856 of the statutes is created to read:

23 **16.856 Investment activities in Iran.** (1) In this section:

24 (a) "Engaging in investment activities in Iran" has the meaning given in s.
25 16.7545 (1) (a).

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1 (b) "Specially Designated Nationals List" has the meaning given in s. 16.7545

2 (1) (b).

3 (2) An authorized representative of any person submitting a bid under s.
4 16.855 must certify that the bidder is not engaging in investment activities in Iran
5 and is not on the Specially Designated Nationals List for a violation of Iran sanctions
6 imposed by the office of foreign assets control in the federal department of the
7 treasury or a successor office.

8 (4) (a) The department may not let any construction work by contract under
9 s. 16.855 (1) to any of the following persons:

10 1. A person that is on the list maintained by the department under s. 16.7545

11 (3) (a).

12 2. A person that does not submit a certification as required under sub. (2).

13 (b) If the department discovers that it has entered into a contract that violates
14 par. (a), it shall terminate the contract without liability for the uncompleted portion
15 or any materials or services purchased or paid for by the person for use in completing
16 the contract, and, if the person would be subject to a forfeiture under sub. (5), it shall
17 report the violation to the attorney general.

18 (c) All contracts entered into under s. 16.855 (1) must contain written
19 notification of the requirements in this section and the penalty under sub. (5).

20 (5) Any person that provides a false or misleading certification under sub. (2)
21 shall forfeit an amount that is the lesser of \$1,000,000 or twice the amount of the
22 contract for which the certification was made. Forfeitures under this subsection
23 shall be enforced by action on behalf of the state by the attorney general.

24 **SECTION 5. Initial applicability.**

