

State of Wisconsin



2025 Senate Bill 461

Date of enactment:
Date of publication*:

2025 WISCONSIN ACT

AN ACT *to repeal* 84.01 (33) (bm), 84.062 (1) (b), 84.062 (1) (c), 84.062 (1) (d), 84.062 (1) (dm), 84.062 (1) (h), (i), (j) and (k), 84.062 (1) (n), (o) and (q), 84.062 (2) (b), 84.062 (2) (d) and (e), 84.062 (3) (d), 84.062 (5) to (9) and 84.062 (13) and (14); *to renumber and amend* 84.062 (1) (a); *to amend* 84.013 (2m), 84.0145 (4), 84.062 (1) (e), 84.062 (1) (L), 84.062 (1) (m), 84.062 (2) (a), 84.062 (3) (a) (intro.), 84.062 (3) (a) 2., 84.062 (3) (a) 3., 84.062 (3) (a) 4., 84.062 (3) (b), 84.062 (10) (a), 84.062 (10) (b), 84.062 (11) (a) (intro.), 84.062 (11) (a) 1., 84.062 (11) (a) 2., 84.062 (11) (a) 3., 84.062 (11) (b) and 84.062 (11) (c); *to repeal and recreate* 84.062 (2) (title) and 84.062 (4); *to create* 84.062 (1) (ae), 84.062 (1) (bm), 84.062 (1) (er), 84.062 (1) (Lm), 84.062 (1) (mn), 84.062 (2) (c), 84.062 (3) (cm), 84.062 (3) (e), 84.062 (11) (d), 84.062 (11) (e), 84.062 (11) (f) and 84.062 (15) of the statutes; **relating to:** alternative delivery of projects contracted by the Department of Transportation.

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

SECTION 1. 84.01 (33) (bm) of the statutes is repealed.

SECTION 2. 84.013 (2m) of the statutes is amended to read:

84.013 (2m) The department shall annually adjust the amounts specified in sub. (1) (a) 1m. and 2m. to reflect the annual change in the Wisconsin Department of Transportation ~~Price~~ Construction Cost Index, Yearly Moving Average, as maintained by the department or, if at any time the department no longer maintains this index, another suitable index as determined by the department. Beginning in 2012, prior to October 1 of each year, the department shall compute the annual adjustment required under this subsection and shall publish the new adjusted amount applicable under sub. (1) (a) 1m. and 2m., which amount shall become effective on October 1 of that year. The department may not adjust the amounts specified in sub. (1) (a) 1m. and 2m. to an

amount less than that specified in sub. (1) (a) 1m. and 2m.

SECTION 3. 84.0145 (4) of the statutes is amended to read:

84.0145 (4) The department shall annually adjust the amount specified in sub. (1) (c) to reflect the annual change in the Wisconsin Department of Transportation ~~Price~~ Construction Cost Index, Yearly Moving Average, as maintained by the department or, if at any time the department no longer maintains this index, another suitable index as determined by the department. Beginning in 2012, prior to October 1 of each year, the department shall compute the annual adjustment required under this subsection and shall publish the new adjusted amount applicable under sub. (1) (c), which amount shall become effective on October 1 of that year. The department may not adjust the amount specified in sub. (1) (c) to an amount less than that specified in sub. (1) (c).

SECTION 4. 84.062 (1) (a) of the statutes is renumbered 84.062 (1) (am) and amended to read:

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

84.062 (1) (am) “Alternative technical ~~concepts~~” ~~concept~~ means ~~a proposed alternative to the technical requirements provided by the office~~ a suggested change to the project requirements submitted by a qualified responsible bidder or proposer that modifies the department's supplied basic configurations or design or construction criteria in the request for proposals for a project.

SECTION 5. 84.062 (1) (ae) of the statutes is created to read:

84.062 (1) (ae) “Alternative project delivery” means any construction project delivery method, other than under s. 84.06 (2), that is eligible for federal funding under title 23 of the code of federal regulations.

SECTION 6. 84.062 (1) (b) of the statutes is repealed.

SECTION 7. 84.062 (1) (bm) of the statutes is created to read:

84.062 (1) (bm) “Construction manager-general contractor delivery” is the delivery of a project through a 2-phase contract under which a contractor provides services during the preconstruction phase and, if there is an agreed upon price and scope, the construction phase of a project.

SECTION 8. 84.062 (1) (c) of the statutes is repealed.

SECTION 9. 84.062 (1) (d) of the statutes is repealed.

SECTION 10. 84.062 (1) (dm) of the statutes is repealed.

SECTION 10m. 84.062 (1) (e) of the statutes is amended to read:

84.062 (1) (e) “Design-build project” means a project for which design, engineering, construction, and related services are procured through a single contract with ~~a single private legal~~ an entity, consortium, or joint venture capable of providing the necessary design, engineering, construction, and related services.

SECTION 11. 84.062 (1) (er) of the statutes is created to read:

84.062 (1) (er) “Progressive design-build method” means a 2-phase contract, including a qualification-based selection process after which the department and a contractor work together to develop the final scope, schedule, and budget for a project.

SECTION 12. 84.062 (1) (h), (i), (j) and (k) of the statutes are repealed.

SECTION 13. 84.062 (1) (L) of the statutes is amended to read:

84.062 (1) (L) “Project” means a ~~project involving a highway improvement, as defined in s. 84.063 (1) (d)~~ state trunk highway improvement project.

SECTION 14. 84.062 (1) (Lm) of the statutes is created to read:

84.062 (1) (Lm) “Proposer” means an entity, joint venture, or consortium that submits a proposal in a single-phase selection process under sub. (4) (c).

SECTION 15. 84.062 (1) (m) of the statutes is amended to read:

84.062 (1) (m) “Qualified responsible bidder” means a ~~design builder that is responding to a request for qualifications and that is certified~~ respondent determined by the technical review committee to be a qualified responsible bidder under sub. (3) (cm) 1.

SECTION 16. 84.062 (1) (mn) of the statutes is created to read:

84.062 (1) (mn) “Respondent” means an entity, joint venture, or consortium that submits a response to a request for qualifications.

SECTION 17. 84.062 (1) (n), (o) and (q) of the statutes are repealed.

SECTION 18. 84.062 (2) (title) of the statutes is repealed and recreated to read:

84.062 (2) (title) PROJECTS.

SECTION 19. 84.062 (2) (a) of the statutes is amended to read:

84.062 (2) (a) ~~The Notwithstanding s. 84.06 (2), the department shall administer a pilot program under which not more than 6 contracts are awarded~~ may award contracts under this section for design-build projects that will use alternative project delivery. The department may not award contracts under this section for projects using construction manager-general contractor delivery or progressive design-build methods.

SECTION 20. 84.062 (2) (b) of the statutes is repealed.

SECTION 21. 84.062 (2) (c) of the statutes is created to read:

84.062 (2) (c) 1. Subject to subs. 2. to 4., the department may encumber in each fiscal biennium an amount not to exceed \$300,000,000 for projects using alternative project delivery.

2. In a joint project between states, the amounts that the department pays or commits to the other state, and the amounts paid or committed to this state by the other state, may not be counted under subd. 1.

3. The amount that is encumbered in a fiscal biennium under subd. 1. does not limit the amount that may be encumbered under subd. 1. in subsequent fiscal biennia. The amount that is not encumbered in a fiscal biennium under subd. 1. may not be carried forward to increase the total amount that may be encumbered under subd. 1. in subsequent fiscal biennia.

4. The department shall annually adjust the amount specified in subd. 1. to reflect the annual change in the

Wisconsin Department of Transportation Construction Cost Index, Yearly Moving Average, as maintained by the department or, if at any time the department no longer maintains this index, another suitable index as determined by the department. Beginning in 2026, prior to October 1 of each year, the department shall compute the annual adjustment required under this subdivision and shall publish the new adjusted amount applicable under subd. 1., which amount shall become effective on October 1 of that year. The department may not adjust the amount specified in subd. 1. to a lower amount.

SECTION 22. 84.062 (2) (d) and (e) of the statutes are repealed.

SECTION 23. 84.062 (3) (a) (intro.) of the statutes is amended to read:

84.062 (3) (a) (intro.) The secretary shall appoint 5 individuals, each of whom shall have directly participated in the design or construction of highway projects in this state, to a technical review committee to evaluate proposals submitted under this section. The committee shall consist of the following:

SECTION 24. 84.062 (3) (a) 2. of the statutes is amended to read:

84.062 (3) (a) 2. Two employees of the department representing the division of the department responsible for ~~transportation~~ project development.

SECTION 25. 84.062 (3) (a) 3. of the statutes is amended to read:

84.062 (3) (a) 3. One person representing individual who is recommended by a state association of architectural, engineering, or design companies or, if no association recommends an individual, is an employee of the department.

SECTION 26. 84.062 (3) (a) 4. of the statutes is amended to read:

84.062 (3) (a) 4. One person representing individual who is recommended by a state association of transportation construction companies or, if no association recommends an individual, is an employee of the department.

SECTION 27. 84.062 (3) (b) of the statutes is amended to read:

84.062 (3) (b) The secretary ~~cannot~~ may not appoint to the technical review committee any person associated, as defined in s. 19.42 (2), with a ~~design-builder respondent or proposer and shall replace on the technical review committee any person associated, as defined in s. 19.42 (2), with a respondent or proposer.~~ No person appointed to the technical review committee may review proposals under this section when the proposed project could benefit the appointee or the appointee's immediate family, as defined in s. 19.42 (7).

SECTION 28. 84.062 (3) (cm) of the statutes is created to read:

84.062 (3) (cm) 1. The technical review committee shall review all responses to a request for qualifications and determine which respondents are qualified responsible bidders.

2. The technical review committee shall review and evaluate, in accordance with the request for proposals, each proposal from a qualified responsible bidder or proposer provided to the department in response to a request for proposals issued under this section. The committee's evaluation may include a confidential interview.

3. Based on its review and evaluation of proposals under subd. 2., the technical review committee shall make a recommendation for awarding a contract, but only if the department receives 2 or more proposals.

4. The technical review committee shall reject as nonresponsive any proposal that contains an alternative technical concept unless, prior to the submission of a proposal that includes an alternative technical concept, the department determines that the alternative technical concept provides a solution that is equal to or better than the solution provided by the requirements in the request for proposals and approves the use of the alternative technical concept in writing.

SECTION 29. 84.062 (3) (d) of the statutes is repealed.

SECTION 30. 84.062 (3) (e) of the statutes is created to read:

84.062 (3) (e) Notwithstanding ss. 19.83 (1) and 19.85 (1), any meeting of the technical review committee shall be conducted in closed session and, subject to sub. (15), records of the meeting, including records developed in reviewing statements of qualifications and in the review of proposals, shall remain confidential until the date of notification of selection of the successful qualified responsible bidder or proposer. This paragraph does not limit the ability of the department to share information with a respondent, proposer, or qualified responsible bidder about their own statement of qualifications or proposal.

SECTION 31. 84.062 (4) of the statutes is repealed and recreated to read:

84.062 (4) **PROCUREMENT.** (a) In this subsection, "single-phase selection process" means a procurement process where price or technical proposals, or both, and qualifications are submitted in response to a request for proposals without first narrowing the field of prospective qualified responsible bidders with a request for qualifications.

(b) Except as provided in par. (c), for all projects procured under this section, the department shall use 2-

phase selection procedures that conform to the requirements in 23 CFR part 636, subparts B, C, D, and E.

(c) If the department determines the process under par. (b) is not appropriate for procuring a project under this section, the department may use a single-phase selection process that conforms to the requirements in 23 CFR part 636, subparts B, C, D, and E.

SECTION 32. 84.062 (5) to (9) of the statutes are repealed.

SECTION 33. 84.062 (10) (a) of the statutes is amended to read:

84.062 (10) (a) Nothing in this section shall be construed as relieving a ~~design-builder contractor~~ of 3rd-party liability or liability for loss or damage to property of the state or a county or municipality.

SECTION 34. 84.062 (10) (b) of the statutes is amended to read:

84.062 (10) (b) All design services, including architectural and engineering services, provided under ~~a design-build contract~~ this section are services and not products.

SECTION 35. 84.062 (11) (a) (intro.) of the statutes is amended to read:

84.062 (11) (a) (intro.) ~~The~~ For design-build projects, the department shall award a stipulated fee, as published in the request for proposals, of not less than three-tenths of 1 percent of the department's estimated cost of design and construction. For other alternative project delivery methods, if included in the notice of solicitation, the department may award a stipulated fee of not less than three-tenths of 1 percent of the department's estimated cost of design and construction. The department shall award fees under this subsection as follows:

SECTION 36. 84.062 (11) (a) 1. of the statutes is amended to read:

84.062 (11) (a) 1. To each qualified responsible bidder ~~that provides a responsive but unsuccessful proposal when the office issues a notice of intent to award a contract. If the request for proposals specifies a maximum fixed price, the office cannot award a fee to a proposal that exceeds the maximum fixed price whose proposal is determined by the technical review committee to be responsive but who is not awarded the contract.~~

SECTION 37. 84.062 (11) (a) 2. of the statutes is amended to read:

84.062 (11) (a) 2. To ~~all each~~ qualified responsible bidders ~~that provide a responsive proposal if the office does not issue a notice of intent to award a contract~~ bidder whose proposal is determined by the technical review committee to be responsive, if the department cancels or otherwise fails to award the contract.

SECTION 38. 84.062 (11) (a) 3. of the statutes is amended to read:

84.062 (11) (a) 3. To ~~all each~~ qualified responsible bidders bidder if the ~~office~~ department cancels the solicitation before the ~~technical review committee reviews~~ technical ~~of~~ proposals.

SECTION 39. 84.062 (11) (b) of the statutes is amended to read:

84.062 (11) (b) The department shall pay the fee to each qualified responsible bidder under par. (a) no later than 90 days after the department ~~issues a notice of intent to award a contract, determines that it will not issue a notice of intent to award a~~ executes the contract, cancels or otherwise fails to award the contract after the review of proposals, or cancels the solicitation before the review of proposals.

SECTION 40. 84.062 (11) (c) of the statutes is amended to read:

84.062 (11) (c) In consideration for paying the fee, the department may use work product contained in an unsuccessful proposal in connection with any ~~proposed or awarded design-build~~ project without making any additional compensation to ~~the design-builder~~ that qualified responsible bidder. If an unsuccessful ~~design-builder~~ qualified responsible bidder waives the fee, the department ~~cannot~~ may not use work product in ~~the design-builder's~~ that qualified responsible bidder's unsuccessful proposal.

SECTION 41. 84.062 (11) (d) of the statutes is created to read:

84.062 (11) (d) Fees required under this section shall be considered a cost of the project for which the department solicited technical proposals and shall be payable from the appropriation account from which the department pays construction costs for the project.

SECTION 42. 84.062 (11) (e) of the statutes is created to read:

84.062 (11) (e) For purposes of this subsection, a single-phase proposer under sub. (4) (c) shall be considered a qualified responsible bidder.

SECTION 43. 84.062 (11) (f) of the statutes is created to read:

84.062 (11) (f) Notwithstanding par. (a), the department may restrict the number of qualified responsible bidders eligible for payment under this subsection in the notice of solicitation for a single-phase selection process under sub. (4) (c).

SECTION 44. 84.062 (13) and (14) of the statutes are repealed.

SECTION 45. 84.062 (15) of the statutes is created to read:

84.062 (15) RECORDS. (a) A project using alternative project delivery is considered an active procurement

from the date of release of the request for qualifications, or publication of solicitation using a single-phase process under sub. (4) (c), to the date of notification of selection of the successful qualified responsible bidder or proposer. While the project is an active procurement, the department or the technical review committee may not make the documents submitted by respondents, proposers, or qualified responsible bidders available for public inspection or copying.

(b) Notwithstanding s. 19.35, if a qualified responsible bidder or proposer waives a fee to which they are entitled under sub. (11) (a), all documents submitted by the qualified responsible bidder or proposer remain the property of the qualified responsible bidder or proposer and shall remain confidential and may not be disclosed as a public record.
