



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #747

Procurement Flexibilities (UW System and UW-Madison Authority)

[LFB 2011-13 Budget Summary: Page 491, #1]

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. These agents must adhere to all statutory requirements imposed on purchases by DOA.

GOVERNOR

Provide that, in general, UW-Madison would be subject to current law governing purchasing. Provide that DOA would delegate to the UW-Madison Board of Trustees the authority to enter into contracts for materials, supplies, equipment, or services that relate to higher education and agencies other than the UW System or UW-Madison do not commonly purchase. Authorize the UW-Madison Board of Trustees to enter into agreements with other higher education institutions under which any of the parties may agree to participate in, administer, sponsor, or conduct purchasing of materials, supplies, equipment, permanent personal property, miscellaneous capital, or contractual services. Provide that UW-Madison would be able to purchase from any vendor selected as a result of such purchasing agreements.

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. These agents have unlimited authority to purchase goods and contract through 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 sources. Contracts of more than \$5,000 but less than \$25,000 maybe awarded through a simplified bid process. Purchases of goods in excess of \$25,000 require a more formal competitive, sealed bid process. Contracts for services above \$25,000 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. Sole source purchases and purchases through consortia also require prior approval by DOA. UW purchasing agents must conform to statutory requirements and DOA rules when making purchases regardless of fund source. This means that state procurement procedures must be followed even when purchases are made with federal funds, other grants, or gift moneys.

2. According to DOA, total state purchase orders were approximately \$978 million in 2009. Purchase orders by UW-Madison totaled \$193 million and purchase orders by all other UW institutions and UW System Administration totaled \$190 million in 2009. Total UW System purchase orders, including UW-Madison, accounted for approximately 40% of all state purchases in that year. (These figures exclude purchases made using state purchasing cards. In general, state purchasing cards can be made to purchase items up to \$5,000 in cost.)

3. Under current law, most statutory requirements related to purchasing do not apply to authorities. Authorities are required to include non-discrimination language in their contracts, comply with state energy efficiency standards when purchasing energy consuming equipment, and are prohibited from purchasing from vendors who have and an outstanding tax liability. In addition, certain authorities must award contracts on the basis of life cycle costs when appropriate and must follow statutory requirements related to the purchase of recycled and recovered materials and purchasing goods to minimize solid waste.

4. As UW-Madison would be created as an authority under the bill, it could be exempted from most statutory requirements related to purchasing consistent with other authorities. However, unlike existing authorities, the proposed UW-Madison authority would be appropriated a significant amount of state general purpose revenue (GPR). Under the bill, GPR appropriations for UW-Madison would total \$377.7 million in 2011-12 and \$462.2 million in 2012-13. For this reason, the state may have an interest in ensuring that UW-Madison authority purchases conform to statutory requirements that it does not have in other authorities that do not receive state funds. (The Wisconsin Economic Development Corporation [WEDC], created by 2011 Act 7, is the only other authority for which GPR funds would be provided during the 2011-13 biennia. Under the bill, WEDC would be appropriated \$18.7 million GPR in 2011-12 and \$16.4 million GPR in 2012-13. Similar to other authorities, WEDC is exempted from most statutory requirements related to purchasing.)

5. One alternative could be to exempt UW-Madison authority purchases made with certain fund sources, for example federal research funds, from state statutory purchasing requirements and DOA oversight. Under current law, purchases made with federal grant funds must conform to both federal and state purchasing requirements. If these purchases were exempted from state requirements and DOA oversight, the UW-Madison authority would still be required to follow federal purchasing guidelines. Federal grants and contracts make up a significant portion of UW-Madison's budget. Based on UW System budget documents, it is estimated that UW-Madison will receive \$519.8 million in federal grants and contracts for research in 2010-11. Excluding these

purchases from state purchasing requirements and DOA oversight could reduce administrative burden and may make UW-Madison more competitive for federal research grants and contracts in the future. However, exempting some purchases and not others from state requirements and DOA oversight may complicate the purchasing process by creating two separate purchasing procedures.

6. Under current practice, DOA enters into contracts with vendors for a wide range of goods and services commonly used by state agencies. Examples of goods and services covered by DOA contracts include office supplies; furniture; maintenance, repair, and operating supplies; software; computer peripherals; consulting; and printing. When DOA has a contract covering a certain good or service, state agencies are required to purchase that good or service through that contract. These contracts are referred to as "mandatory contracts."

7. According to DOA staff, DOA did an informal survey of the vendors with which it has contracts in fall, 2010. These vendors were asked how contract prices would be affected if UW institutions were no longer required to purchase through DOA mandatory contracts. According to the vendors surveyed, volume is the primary determinant of contract prices. If UW institutions were to be exempted from purchasing through DOA mandatory contracts, the vendors estimated that prices charged to all other agencies would increase by 5% to 30%. As UW-Madison purchase orders are approximately one-half of total UW System purchases, it can be inferred that excluding the UW-Madison authority from mandatory contracts might similarly increase the prices charged to all other agencies.

8. Under the bill, DOA would be required to delegate to the UW-Madison Board of Trustees the authority to enter into contracts for materials, supplies, equipment, or services that relate to higher education and agencies other than the UW System or UW-Madison do not commonly purchase. According to the State Budget Office, the Governor did not intend to specify what purchasing authority DOA would delegate to UW-Madison. As it was not the Governor's intent that this language be included in the bill, the Committee may wish to delete it. As a matter of law, if UW-Madison is created as an authority and treated as a state agency for the purpose of purchasing, as would be the case under the bill, DOA could delegate purchasing authority to the UW-Madison authority. DOA staff have indicated that, as a matter of practice, the UW-Madison authority would be delegated purchasing authority whether or not this provision were to be included in the bill.

9. If the UW-Madison authority is deleted from the bill and UW-Madison remains a UW System institution, the Committee may want to require DOA to delegate purchasing authority directly to UW-Madison. Under current practice, DOA delegates purchasing authority to a UW System purchasing agent and this purchasing agent then delegates purchasing authority to an agent at each UW institution. If DOA were to delegate authority directly to UW-Madison, it could tailor this delegation to reflect the unique nature of many of UW-Madison's purchases, especially those related to research, and the expertise of UW-Madison's purchasing staff.

10. Under the bill, the UW-Madison authority Board of Trustees would be authorized to enter into agreements with other higher education institutions under which any of the parties may agree to participate in, administer, sponsor, or conduct purchasing of materials, supplies, equipment, permanent personal property, miscellaneous capital, or contractual services. The bill specifies that

the Board of Trustees would be able to purchase from any vendor selected as a result of such purchasing agreements. Under current law, purchases made through consortia require prior approval of DOA. This prevents the UW System or UW-Madison from committing to purchase a certain amount through the consortia contract prior to the contract being bid and might result in higher prices for all consortia members or specifically for UW System and UW-Madison. In some cases, UW-Madison researchers have been prevented from purchasing the same equipment as other researchers who may share a research grant because those purchases required DOA approval.

11. The State Budget Office has indicated that this provision was unintentionally included in the bill. For that reason, the Committee may wish to delete it. If the provision were to remain in the bill, it is understood that the UW-Madison authority would not be able to purchase items covered by DOA mandatory contracts through higher education consortia as UW-Madison would only be delegated purchasing authority for goods and services related to higher education that agencies other than UW System and the UW-Madison authority do not commonly purchase. However, it is unclear which, if any, of the other statutory purchasing requirements consortia contracts would have to conform to. Given that such consortia would likely competitively bid their contracts in order to get the best price for their members, requiring that these contracts conform to current law purchasing requirements may be unnecessary.

12. If the UW-Madison authority is deleted from the bill and UW-Madison remains a UW System institution, the Committee could authorize the UW System Board of Regents to enter into agreements with other higher education institutions under which any of the parties may agree to participate in, administer, sponsor, or conduct purchasing of materials, supplies, equipment, permanent personal property, miscellaneous capital, or contractual services. This change could benefit all UW institutions.

ALTERNATIVES

A. UW-Madison Authority -- Procurement Provisions

1. Approve the Governor's recommendations.
2. Exempt UW-Madison as an authority from current law governing purchasing.
3. Exempt UW-Madison purchases made with federal grants and contracts for research from state purchasing requirements and DOA oversight.
4. Provide that UW-Madison would be subject to current law governing purchasing. Delete other purchasing provisions.

B. UW System -- Procurement Provisions

1. Provide that DOA would delegate purchasing authority directly to UW-Madison. Under current practice, DOA delegates purchasing authority to UW System which in turn delegates purchasing authority to UW-Madison.

2. Authorize the Board of Regents to enter into agreements with other higher education institutions under which any of the parties may agree to participate in, administer, sponsor, or conduct purchasing of materials, supplies, equipment, permanent personal property, miscellaneous capital, or contractual services, excluding goods and services covered by DOA mandatory contracts. Provide that the Board of Regents would be able to purchase from any vendor selected as a result of such purchasing agreements.

3. Exempt UW System purchases made with federal grants and contracts for research from state purchasing requirements and DOA oversight.

4. Maintain current law.

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