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To: Elected Officials and Officers
From: MUNICIPAL LAW & LITIGATION GROUP, SC
Re: 2025 Wis. Act 188 – Competitive Bidding Thresholds
Dated: May 26, 2026

Dear Ladies and Gentlemen:

On April 3, 2026, The Wisconsin Legislature adopted 2025 Wisconsin Act 173 (Assembly Bill 217), making changes to the threshold dollar amounts at which competitive bidding and public notice requirements apply to contracts for public construction. These changes have a direct and significant impact in the operation of municipal government and should be carefully reviewed. The legislation and our firm's recommendations following the enactment of Act are addressed below.

I. 2025 Wis. Act 188

The Act generally increases the dollar threshold for the competitive bidding requirement for local public works and contracts from \$25,000 to \$50,000, and it increases the dollar threshold for providing public notice of contracts from \$5,000 to \$10,000. The Act did not change any of the procedural requirements governing how bids are conducted or evaluated, or how notice is provided.

Significantly, a new, specific provision and rule have been created that applies to “public highway contracts.” The term “highway” is now specifically defined by the Act and treated as a distinct type of public construction versus all others, as it applies to public construction and bidding. Under the Act, a public highway contract is now defined as: “a contract for the construction, execution, repair, remodeling, or improvement of a highway.”

Public highway contracts and their related public notice and competitive bidding threshold amounts were not increased by the Act. Instead, thresholds for public highway contracts remain at \$25,000 for competitive bidding and \$5,000 for notice. Municipalities should note this, as public construction contracts frequently deal with highway/road projects.

The Legislature appears to have made a policy decision that road and highway work warrant continued competitive scrutiny at lower dollar values. In the future, this distinction may

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give rise to questions of what specifically constitutes a public highway under the applicable statutes, and which threshold certain projects are subject to, such as parking lot repair. Also, by broadly defining public highway construction and addressing it separately from other public construction, bidding for road work may now be required in circumstances when previously it was not.

The Act also creates a new exception for Towns from the competitive bidding and notice requirements where an improvement is constructed by a private entity and donated to a town, similar to the existing exemption for improvements donated to a city or village. This exception now affirmatively applies to Towns. The law now excludes public highway construction from this exception, however.

It is important to note the Act became effective as of April 5, 2026 and is now in effect. The Act applies to bids that were solicited on or after April 5, 2026.

II. Public Emergency Exception to Competitive Bidding and Notice Requirements.

Given the significant rain, wind and other weather events over the last few years, increasing numbers of municipalities have relied upon the emergency situation exception from public construction bidding and notice requirements. That exception is not impacted or effected by the Act. However, this is a good opportunity to offer a reminder of the nature of the exception.

Competitive bidding is not mandatory for the repair or reconstruction of public facilities when damage or threatened damage creates an emergency, as determined by resolution of the governing body, in which the public health or welfare of the municipality is endangered. This applies to towns (Wis. Stat. § 60.47(5)), villages and cities (Wis. Stat. § 62.15(1b)).

The emergency powers may be exercised to provide for the health, safety, protection and welfare of persons and property. When applicable, this includes excepting public constructions from bidding and notice requirements.

If a chief executive officer wishes to proclaim an emergency prior to governing body action, they must do so according to the procedures of Wis. Stat. § 323.14(4)(b) and this may only be done where the governing body is not able to “meet promptly.” There are other procedural and substantive requirements that also apply under such a circumstance. Additionally, a declared emergency does not exist in perpetuity and is subject to temporal limits as noted in Wis. Stat. §§ 323.11 and 323.14(4). Municipalities must be careful not to use this exception beyond the scope and purposes authorized by the statutes.

Our office can provide additional details on the procedure, nature, limitations and recommendations on the public emergency exception to the public contract bidding and notice requirements upon request.

III. Recommendations.

In light of the Act, we recommend that municipalities evaluate any ordinances, policies or resolutions that they may have adopted related to public bidding, contracting or purchasing that was drafted/formulated based on the previous version of the public bidding statutes, as some of

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those provisions or dollar amounts may now be out of sync with the current statutes. This is especially true where there is now a specific distinction in the public contract arena for highways. Until your ordinances are updated, you should continue to comply with the public bidding requirements shown in your ordinances, even if the thresholds are lower than required by this new State law.

Our office is happy to review your municipality's applicable code provisions and ordinances in this regard, upon request. If you have any questions or concerns regarding these matters, please do not hesitate to contact me.

Yours very truly,

MUNICIPAL LAW & LITIGATION GROUP, S.C.

Enclosures