

CUMBERLAND SCHOOL DISTRICT  
CUMBERLAND, WI 54829

FUEL BID SHEET

Name of Supplier \_\_\_\_\_

Official Address \_\_\_\_\_

Phone Number \_\_\_\_\_ Contact Person \_\_\_\_\_

Bid Submitted By (signature and title) \_\_\_\_\_

This quotation dated the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

This quotation is good for \_\_\_\_\_ days from the above date.

*Special Notice: Enclosed is a copy of the state law which exempts schools from the fair market price requirement. Discounts can exceed normal retail gasoline discounts.*

**Fuel pumps must be accessible for large school buses and fire trucks and have safe entrances and exits.**

OPTION 1

1. Furnish unleaded gasoline at the pump for an all-inclusive laid in cost plus \_\_\_\_\_ cents per gallon.
2. Furnish #1 diesel fuel at the pump for an all-inclusive laid in cost plus \_\_\_\_\_ cents per gallon.
3. Furnish #2 diesel fuel at the pump for an all-inclusive laid in cost plus \_\_\_\_\_ cents per gallon.
4. Furnish 60/40 diesel fuel at the pump for an all-inclusive laid in cost plus \_\_\_\_\_ cents per gallon.

OPTION 2

We propose to offer the following at a discount rate by cents per gallon from the posted price on day of fill up.

1. Furnish unleaded gasoline at \_\_\_\_\_ less per gallon than the posted price on day of fill up.
2. Furnish diesel fuel at \_\_\_\_\_ less per gallon than the posted price on day of fill up.

In submitting this quotation, it is understood that the right is reserved by the Cumberland School District to reject any or all quotations and to waive any informality or irregularity in the quotations. The district also reserves the right to change fueling location if gelling or moisture becomes a problem.

DESCRIBE your recordkeeping assistance which will allow the Cumberland School District to file and reclaim federal gasoline taxes. \_\_\_\_\_

Special Consideration

Discount for prompt payment: [ ] none or \_\_\_\_\_ % or cents per gallon for \_\_\_\_\_ days.

Directions

Keep one copy for your records and return the other copy by 10:00 a.m., Friday, August 10, 2018 to: District Office, Cumberland School District, 1010 8th Avenue, Cumberland, WI 54829. **Please indicate "Fuel Bid" on your envelope.**

Bid Opening

10:00 a.m., Friday, August 10, 2018, at the District Office. Bids will be awarded at the regular August board meeting.

06/26/2018

greater, multiplied by each day of continued violation, together with costs, including accounting fees and reasonable attorney fees, notwithstanding s. 814.04 (1).

**(6) EXCEPTIONS.** (a) The provisions of this section shall not apply to sales at retail or sales at wholesale where:

1. Merchandise is sold in bona fide clearance sales.
2. Perishable merchandise must be sold promptly in order to forestall loss.
3. Merchandise is imperfect or damaged or is being discontinued.
4. Merchandise is sold upon the final liquidation of any business.
5. Merchandise is sold for charitable purposes or to relief agencies.

★ 6. Merchandise is sold on contract to departments of the government or governmental institutions.

7. The price of merchandise is made in good faith to meet an existing price of a competitor and is based on evidence in the possession of the retailer, wholesaler, wholesaler of motor vehicle fuel or refiner in the form of an advertisement, proof of sale or receipted purchase, price survey or other business record maintained by the retailer, wholesaler, wholesaler of motor vehicle fuel or refiner in the ordinary course of trade or the usual conduct of business.

8. Merchandise is sold by any officer acting under the order or direction of any court.

9. Motor vehicle fuel is sold by a person to a wholesaler of motor vehicle fuel, who may sell the motor vehicle fuel at either retail or wholesale.

(b) No retailer or wholesaler may claim the exemptions under par. (a) 1. to 4. if he or she limits or otherwise restricts the quantity of such merchandise which can be purchased by any buyer or if he or she fails to conspicuously disclose the reason for such sale in all advertisements relating thereto and on a label or tag on such merchandise or on a placard where the merchandise is displayed for sale.

(c) No person may claim the exemption under par. (a) 7. if that person holds a permit under subch. II of ch. 139.

(d) No retailer or wholesaler may claim the exemption under par. (a) 7. if that wholesaler or retailer holds a permit under subch. II of ch. 139.

**(7) NOTIFICATION REQUIREMENTS.** (a) If a retailer, wholesaler, wholesaler of motor vehicle fuel or refiner lowers in good faith the price of motor vehicle fuel below the applicable price specified under sub. (2) (am) 1m. to meet an existing price of a competitor, the person shall submit to the department notification of the lower price before the close of business on the day on which the price was lowered in the form and the manner required by the department.

(b) Failure to comply with par. (a) creates a rebuttable presumption that the retailer, wholesaler, wholesaler of motor vehicle fuel or refiner did not lower the price to meet the existing price of a competitor.

(c) If a retailer, wholesaler, wholesaler of motor vehicle fuel or refiner complies with par. (a), all of the following apply:

1. The department may not proceed under sub. (5) against the retailer, wholesaler, wholesaler of motor vehicle fuel or refiner.
2. The retailer, wholesaler, wholesaler of motor vehicle fuel or refiner is immune from liability under sub. (5m).

**History:** 1973 c. 310; 1979 c. 34 ss. 950 to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (20); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175; 1993 a. 16; 1997 a. 55; 2001 a. 16.

**Cross-reference:** See also s. ATCP 105.01, Wis. adm. code.

The state constitution protects the right to a trial by jury for a civil suit brought under this section. Village Food & Liquor Mart v. H & S Petroleum, Inc. 2002 WI 92, 254 Wis. 2d 478, 647 N.W.2d 100, 00-2493.

The only reasonable construction of "terminal closest to the retailer" under sub. (2) (am) 1m. c. is the terminal closest to the location where the retail sale occurs, not the corporate headquarters of the seller. Gross v. Woodman's Food Market, Inc. 2002 WI App 295, 259 Wis. 2d 181, 655 N.W.2d 718, 01-1746.

Sub. (3) prohibits a sale at less than statutory cost if the seller had either an intent proscribed by the statute or the sale had an effect proscribed by the statute. Gross v. Woodman's Food Market, Inc. 2002 WI App 295, 259 Wis. 2d 181, 655 N.W.2d 718, 01-1746.

This section is not so vague that it constitutes a denial of due process. That a seller may be penalized even if the seller lacks the intent to violate the section does not violate due process. Gross v. Woodman's Food Market, Inc. 2002 WI App 295, 259 Wis. 2d 181, 655 N.W.2d 718, 01-1746.

There is no requirement in sub. (7) that a retailer must conduct a price survey within any particular time period. DATCP by rule recommends that sellers maintain daily price surveys, but the department does not require or even recommend a survey every 24 hours. 22 Shawano, LLC v. R. C. Samanta Roy Institute of Science and Technology, Inc. 2006 WI App 14, 289 Wis. 2d 196, 709 N.W.2d 98, 05-0427.

"Competitor" in the phrase "existing price of a competitor" in sub. (2) (c) is not limited to competitors located in Wisconsin. Go America L.L.C. v. Kwik Trip, Inc. 2006 WI App 94, 292 Wis. 2d 795, 715 N.W.2d 746, 05-1512.

Sub. (2) (Lm) [now (2) (k)] qualifies the term "trade discount" in determining "cost to retailer" under sub. (2) (a) for sales of fermented malt beverages and intoxicating liquors. Sub. (2) (Lm) [now (2) (k)] is not a catchall prohibition against all trade discounts and does not apply to bona fide quantity discounts. 63 Atty. Gen. 516.

This section does not violate federal antitrust laws or constitutional due process. 77 Atty. Gen. 163.

*Flying J, Inc. v. Van Hollen*, 597 F. Supp. 2d 848, is reversed. The minimum markup provisions are not preempted by the Sherman Antitrust Act and are enforceable. *Flying J, Inc. v. Van Hollen*, 621 F.3d 658 (2010).

Wisconsin's unfair sales act — Unfair to whom? Waxman, 66 MLR 293 (1983).

**100.305 Prohibited selling practices during periods of abnormal economic disruption. (1) DEFINITIONS.** In this section:

(a) "Consumer goods or services" means goods or services that are used primarily for personal, family, or household purposes.

(b) "Emergency" includes any of the following:

1. A tornado, flood, fire, storm, or other destructive act of nature.

2. A disruption of energy supplies to the degree that a serious risk is posed to the economic well-being, health, or welfare of the public.

3. Hostile action.

4. A strike or civil disorder.

(c) "Hostile action" means an act of violence against a person or property in the United States by a foreign power or by a foreign or domestic terrorist.

(d) "Period of abnormal economic disruption" means a period of time during which normal business transactions in the state or a part of the state are disrupted, or are threatened to be disrupted, due to an emergency.

(e) "Seller" means a manufacturer, producer, supplier, wholesaler, distributor, or retailer.

**(2) PROHIBITION.** No seller may sell, or offer to sell, in this state at wholesale or at retail, consumer goods or services at unreasonably excessive prices if the governor, by executive order, has certified that the state or a part of the state is in a period of abnormal economic disruption.

**(3) RULES.** The department shall promulgate rules to establish formulas or other standards to be used in determining whether a wholesale or retail price is unreasonably excessive.

**(4m) ENFORCEMENT; PENALTY.** If a seller violates sub. (2), the department or, after consulting with the department, the department of justice, may do any of the following:

(a) Issue to the seller a warning notice specifying the action that the seller is required to take in order not to be in violation of sub. (2).

(b) Commence an action against the seller in the name of the state to recover a civil forfeiture of not more than \$10,000 or to temporarily or permanently restrain or enjoin the seller from violating sub. (2), or both.

**History:** 2005 a. 450.

**Cross-reference:** See also ch. ATCP 106, Wis. adm. code.

**100.31 Unfair discrimination in drug pricing. (1) DEFINITIONS.** In this section:

(a) "Drug" means any substance subject to 21 USC 353 (b).

(b) "Purchaser" means any person who engages primarily in selling drugs directly to consumers.