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(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)



**WISCONSIN DEPARTMENT OF
ADMINISTRATION**

JIM DOYLE
GOVERNOR

MICHAEL L. MORGAN
SECRETARY

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May 21, 2010

Senator Fred Risser, President
Wisconsin State Senate
Room 220 South, State Capitol
Madison, WI 53702

Representative Michael Sheridan, Speaker
Wisconsin State Assembly
Room 211 West, State Capitol
Madison, WI 53702


RE: Clearinghouse Rule 08-025, Chapter Adm 21

Dear Senator Risser and Representative Sheridan:

Enclosed in final draft form, please find the Department of Administration's proposed order to amend Chapter Adm 21 relating to advertising, bidding and award of construction contracts. The Department's report to the Legislature is also enclosed.

We respectfully request submittal of the rule to the appropriate standing committees for review.

Sincerely,


Michael L. Morgan
Secretary

cc: Bruce Hoesly, LRB
Joint Committee for Review of Administrative Rules *Senator Jim Halperin*

**ADMINISTRATIVE RULES
REPORT TO LEGISLATURE
Clearinghouse Rule 08-025**

By the Department of Administration Relating to Chapter Adm 21

Basis and Purpose of Proposed Rule:

The proposed rule amendments will allow bidders and contractors to submit state construction project bids via electronic format. Currently, for state projects outside of the Dane County area, bidders are required to prepare bids in advance of the bid opening and travel to Madison or use a mail service to deliver the bids to the Department. The current process does not allow equal preparation time for contractors throughout the state. The proposed rule amendments will save contractors and bidders driving and delivery time and associated costs. In addition, business practices have radically changed since the rule was created in 1979, including electronic and web based advertisement, electronic document exchange and acceptance of electronic notifications. The proposed rule amendments will allow standardized, fair and equitable bidding statewide and expedite the processing of construction documents.

The proposed rule also includes amendments to provide consistent references to the Department and deletes the requirement to provide written word bid prices versus numerical values.

The proposed rule including the analysis is attached.

Changes to Fiscal Estimate:

When the fiscal estimate for this rule was created, the Department had not yet determined whether it would develop the electronic bid website internally or pursue a vendor-provided and hosted website. The Department has determined that it will pursue the vendor option to develop and host the website for the electronic bid submission process proposed in Chapter Adm 21. The Department revised the fiscal estimate to provide its estimated costs and potential fees for the vendor option. A Notice of the Department's revised fiscal estimate for Adm 21 was published in the Wisconsin Administrative Register on March 31, 2010, as required by section 227.14(4)(d), Stats. A copy of the complete fiscal estimate is contained in the proposed rule order.

Responses to Legislative Council Rules Clearinghouse Recommendations:

A copy of the Clearinghouse Report is attached. All recommendations have been incorporated into the rule. In response to the Council's inquiry regarding section Adm 21.05(5), this language has been in the rule since its creation in 1979 in order to allow the department to determine bid conformance in the best interests of the State. The department is unable to foresee all permutations of bid errors submitted by contractors and needs to protect the process as well as state agencies and the general public from errors not specifically covered in s. Adm 21.08, Rejection of Bids, which could cost the state additional money.

Public Hearing and Comment Summary:

Public hearings were held on the proposed rule in Madison on May 14, 2008 and in Eau Claire on May 15, 2008. Transcripts of the hearings are attached. Modifications were made to the proposed rule as a result of testimony provided at the hearings and the written comments received by the Department.

The following persons attended the public hearings:**Madison Public Hearing**

John Mielke, representing ABC
Chad Dorton, representing Miron Construction
Sue Schneider, representing Miron Construction
Pete Christianson, representing Madison Newspaper Association

Eau Claire Public Hearing

Todd Schieffer, representing Vonasek & Schieffer

Summary of Public Comment (testimony) and Agency Response:

1. Pete Christianson, Wisconsin Newspaper Association. Applauds underlying intent of proposed rule to allow bidders and contractors to submit state construction project bids via electronic format but does not believe proposed amendment to s. 21.03(2) allowing posting a bid notice on a website is an adequate or legal alternative to publishing a legal notice in the newspaper pursuant to Chapter 985.04. Respectfully requests that alternative be struck from the rule.

RESPONSE: The department will not amend s. Adm 21.03(2) as originally proposed. The proposed change was intended to provide consistency with s. 16.75(1)(b), Wis. Stats., and current business practices industry-wide.

2. Todd Schieffer, representing Vonasek & Schieffer. Generally in favor of proposed rule but concerned about how bonding or bid bonding will be handled.

RESPONSE: The department does not intend to change or modify any of the submittal or other contract requirements, only permit the department to accept bids electronically.

Summary of Written Comments and Agency Response:

Copies of written comments are attached.

1. Peter Fox, Executive Director, Wisconsin Newspaper Association. Applauds the underlying intent of proposed rule to allow bidders and contractors to submit state construction project bids via electronic format. Concerned about proposed amendment to s. 21.03(2) that reads: "The department shall advertise for proposals by publication in the official state newspaper, or by official department website." Recommends that sentence be revised to read: "The department shall advertise for proposals by publication of a class 1 notice under ch. 985, Stats., in the official state newspaper." While a governmental website can be regarded as a secondary information-

dissemination format that can in this particular instance be helpful for construction firms that regularly are involved in such bidding, designating the "or" option in the proposed rule would severely restrict information reaching the general public and substantially reduce public awareness of governmental projects announced for bid.

RESPONSE: The department will not amend s. Adm 21.03(2) as originally proposed.

2. Randy Decker, Decker Lumber & Supply, Inc. Highly in favor of proposed rule; believes the state will benefit greatly if these changes are made.

RESPONSE: None

3. Jim Boullion, Director of Government Affairs, Associated General Contractors of Wisconsin. Supports proposed rule changes; very interested in insuring that the implementation of the new bidding procedure runs smoothly and fairly and included following comments:

- In section 5, "Adm 21.05, Submittal and receipt of bids" AGC recommends adding a requirement that DSF, in addition to date stamping electronic bids, be required to send a time stamped electronic email confirmation back to the electronic bidders so they know their bids were received. This will add a layer of security for contractors who want to insure that their bids were received successfully.
- A video and audio broadcast of the bid openings should be available in real time over the internet.
- AGC of Wisconsin would strongly oppose using the electronic bidding system for any type of electronic reverse auction system for public construction bidding.
- Will a company be able to submit electronic bids that amend previous bids up until the deadline, or will only one electronic bid be allowed?

RESPONSE: There will be a requirement for electronic notification of the bid receipt and bid opening so as to provide the desired security. The department is also in the process of implementing video broadcasting of the bid openings for remote access.

There is no intent by the department to have any type of reverse auction system. Further, as with the current hard copy bid system, the bid may be withdrawn as provided in section Adm 21.06. The department has not proposed any procedural changes to the rule section regarding bid withdrawal and does not anticipate any changes regarding this process.

Reference to applicable forms:

No new or revised forms are required by these rules.

Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis is not required because the rule will not have a significant economic impact on a substantial number of small businesses, as defined in s. 227.114(1), Stats.

**PROPOSED ORDER OF THE
DEPARTMENT OF ADMINISTRATION**

The Wisconsin Department of Administration proposes an order to repeal Adm 21.07(1) (b) 2.; to renumber Adm 21.02 (7), (8), and (9); to amend Adm 21.01(1), 21.02(3), 21.03(2) and (3)(intro.), 21.04(1), 21.06(1)(b), 21.07(1)(intro.), (3)(c) and (d), 21.08 (1)(intro.) and (f), (2)(intro.), (3), (4) and (7), 21.09 (1), (2), (4), (5) and (6); to repeal and recreate Adm 21.05; and to create Adm 21.02 (7), relating to construction bidding and contracting.

Analysis prepared by the Department of Administration

Statutory authority: s. 16.004(1) and 16.855(15), Stats.

Statutes interpreted: s. 16.85 and 16.855, Stats.

Agency Authority to Promulgate Rule:

Pursuant to s. 16.85, Stats., the Wisconsin Department of Administration is responsible for the supervision of all engineering, architectural services or construction work performed by, or for, the state in the construction and acquisition of new buildings or improvements and additions to existing buildings.

Related Statute or Rule:

None

Summary of Proposed Rule:

The Department proposes amending Chapter Adm 21, regarding the Department's requirements for advertising, bidding and contracting construction projects.

The proposed rule amendments would permit bidders and contractors to submit state construction project bids via electronic format. This allows for standardized, fair and equitable bidding statewide while maintaining bid integrity. Projects outside of the Dane County area now require bidders to prepare bids in advance of bid opening and travel to Madison, or use a mail service to deliver the bid to the department. This practice is not considered equitable to contractors throughout the State because it does not allow equal preparation time for submitting bids for state construction projects.

Included in the proposed rule are amendments to provide consistency to Department of Administration references as well as language striking written word bids versus numerical values.

Comparison of Similar Rules in Adjacent States

The State of Wisconsin surveyed other states through the National Association of State Facility Administrators and received several responses. The States of Montana, Ohio, Kansas and Alaska do not currently utilize electronic bidding practices. The State of Vermont has instituted electronic bidding with success and little adverse affect. Several states responded that electronic bidding was being utilized in their Transportation departments for roadway projects.

The State of Wisconsin also used data from the Federal Highway Administration regarding other states and bidding practices. Twenty-seven states are using electronic bidding for state DOT projects according to a 2006 survey.

The Illinois Capital Development Board opens sealed bids at four locations, Springfield, Chicago, Carbondale and Peru for state building construction projects.

The State of Minnesota Materials Management Division requires on line registration of vendors, but still does sealed public bid opening in paper format. Minnesota does have an initiative to move to electronic plan distribution to vendors.

The departments in the State of Iowa handle construction independently. With the exception of the Iowa Transportation Department, the other departments do individual sealed bid delivery and public bid opening via paper bid submittals.

The State of Michigan does not do electronic bidding with the exception of their transportation department.

Comparison with Existing or Proposed Federal Regulations

The US Department of Transportation Federal Highway Administration utilizes electronic bidding for highway construction projects. A review of the federal websites appear to indicate that other federal agencies can centrally post requested construction/services to the Federal Business Opportunities website with instructions on bidding independent to each agency within the federal government. A review of most of these federal posted projects indicates bids are to be hardcopy, delivered by hand, overnight or other delivery service to a specified location. None appeared to have electronic bidding availability.

The US Army Corps of Engineers utilizes the US Central Contractor Registration site for Contractors interested in doing Business with the Federal Government. The solicitations appear to require submittal of sealed hard copy bids to be submitted at various locations throughout the country.

Data Used To Support Rule

The current rule has been in existence since 1979 with little or no updating. Some editorial and dollar threshold changes were made in a 2006 rule package.

The proposed rule permits bidders and contractors to submit state construction project bids via electronic format. This allows for standardized, fair and equitable bidding statewide while maintaining bid integrity. Projects outside of the Dane County area currently require bidders to prepare bids in advance of bid opening and drive to Madison or use a mail service to deliver the bid to the department. This practice is not considered equitable to contractors throughout the state. Business practices since 1979 have radically changed including current practices such as electronic and web based advertisement, electronic document exchange and acceptance and electronic notifications. The proposed rule amendments will expedite the processing of construction documents and enhance the construction of state projects.

Effect on Small Businesses:

The Department foresees a positive impact on small businesses. It is estimated the majority of bidders on state construction projects are small business contractors and vendors. This change will save contractors and bidders driving and delivery time and associated costs as well as allowing them additional time in the bidding process to prepare bids for submittal to the department.

Agency Contact Person:

Donna Sorenson
Department of Administration
101 E. Wilson Street
P.O. Box 7864
Madison, WI 53707-7864
(608) 266-2887
Donna.Sorenson@Wisconsin.gov

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the agency contact person that is listed above and via the Wisconsin Administrative Rules Website at:
<http://adminrules.wisconsin.gov> by the end of the business day on June 15, 2008.

Fiscal Estimate:

State Fiscal Effect

This rule will have no effect on the revenues received by the department.

A review and analysis by the Department has determined that allowable resources and funding has led the department to seek a vendor solution to

electronic bidding. This vendor solution will allow the Department to provide the security and reliability necessary to the Department and prospective bidders on state projects. The vendor solution anticipated initial costs are estimated at \$100,000 to \$250,000. The Department has budgeted for these costs and will absorb this cost through the 4% Division of State Facilities management fee. On-going annual maintenance costs for the vendor solution products will also be absorbed and funded through the 4% DSF management fee.

Costs for the internal training, implementation and necessary staffing or oversight of the vendor solution will be funded through operations of the Division of State Facilities.

Local Fiscal Effect

There is no fiscal effect on local units of government.

Private Entities Fiscal Effect

It is estimated the rule change will have both a reduced cost to contractors and bidders by allowing bidding to be done from their office as well as a possible increased cost to contractors and bidders by vendor subscription fees. Contractors and bidders will not have to overnight deliver or drive bids to the Madison bid opening location. Contractors and bidders doing business with state facilities may have a subscription service fee from a selected vendor that may be in the range of \$100 to \$500 annually plus a nominal monthly access fee in the range of \$10 to \$50 dollars. While the exact amount of the cost to bidders on state projects has not been fully determined, it is expected that some of this fee is offset with the convenience of submitting a bid via a secure electronic submission and not having to deliver paper copy bids and the associated travel and delivery expenses. The Department will attempt to seek out vendors with the lowest cost of operation to the Department and prospective bidders.

TEXT OF RULE:

SECTION 1. Adm 21.01(1) is amended to read:

Adm 21.01 Authority. (1) Section 16.855(15), Stats., empowers the department of ~~administration~~ to adopt rules to implement the advertising and award of contracts for construction projects.

SECTION 2. Adm 21.02(3) is amended to read:

Adm 21.02(3) "Bid guarantee" means a properly executed department of ~~administration~~ form of bid bond, a bank certified check, or a cashier's check, in an amount equal to 10% of the highest combination base bid(s) and alternate bids submitted. In the event the federal government participates in a state project, the bid guarantee shall be as specified by the federal government, but not less than 10%.

SECTION 3. Adm 21.02 (7), (8) and (9) are renumbered to Adm 21.02 (8), (9) and (10), and Adm 21.02(8)(c) 5, as renumbered, is amended to read:

Adm 21.02(8) (c) 5. Is not presently on an ineligible list maintained by the department of ~~administration~~ for noncompliance with equal employment opportunities and affirmative action requirements as provided for in s. 16.765(9), Stats., or on any other agency list for construction related violation of statutes or administrative rules.

SECTION 4. Adm 21.02(7) is created to read:

Adm 21.02 (7) "Department" means the Wisconsin department of administration.

SECTION 5. Adm 21.03(2) and (3)(intro.) are amended to read:

Adm 21.03 (2) The department of ~~administration~~ shall advertise for proposals by publication of a class 1 notice under ch. 985, Stats., in the official state newspaper. The notice shall be published a minimum of 30 days prior to bid opening, unless the department of ~~administration~~ indicates in writing that the bidding period will be for a lesser period of time.

Adm 21.03 (3) In addition to the class 1 notice required in sub. (2), the department of ~~administration~~ may solicit and advertise for proposals by either or both of the following methods:

SECTION 6. Adm 21.04 (1) is amended to read:

Adm 21.04 Issuance of addenda. (1) The department of ~~administration~~ may issue addenda during the bidding period to correct, alter, or to provide clarification of the drawings and specifications for the project being bid or to extend the bidding period. No oral correction, alteration or clarification of said documents shall be considered valid.

SECTION 7. Adm 21.05 is repealed and recreated to read:

Adm 21.05 Submittal and receipt of bids.

(1) All bids shall be submitted electronically or in sealed envelopes.

(a) Electronic bids received by the department shall be submitted via a secured, authorized electronic transfer that provides for time and date verification as well as proper security in the transfer of data and information. Bids shall conform to project specification bid forms and include all information required by the specification as well as this section. The bidder shall submit all supporting and original documentation requested by the department within 3 calendar days of the request.

(b) Sealed envelope bids shall be enclosed in distinctly marked special envelopes provided by the department. Should the bidder not possess the special envelope provided by the department, the bidder shall place all of the following information on the face of the outermost envelope containing the bidder's proposal:

1. This envelope contains a sealed bid.
2. Project name.
3. Project number.
4. Location of project.
5. Division(s) of work being bid.
6. Bid date.
7. Name and address of bidder.

(2) The bidder is responsible for the bid described in sub. (1) (a) or (b) being delivered to the place designated in the published advertisement for proposals, on or before the date and time specified.

(3) All bids received by the department shall be stamped electronically or upon the face of the envelope indicating the date and time the bid was received.

(4) Bids received by the department after the date and time designated in the advertisement for proposal shall be returned to the bidder unopened.

(5) The department shall determine bids that conform with this section in the best interests of the state.

SECTION 8. Adm 21.06 (1) (b) is amended to read:

Adm 21.06 (1) (b) Personal appearance of the bidder or the bidder's authorized representative, whereby the identity and authority of the person may be ascertained by the department of ~~administration~~. After authority and identity is established, the individual shall be required to sign a receipt for the withdrawn bid.

SECTION 9. Adm 21.07 (1)(intro.) is amended to read:

Adm 21.07 Bid opening. (1) A representative of the department of ~~administration~~ shall preside at the bid opening as the bidding officer. At the date and time for bid opening, the bidding officer shall announce the following to those in attendance:

SECTION 10. Adm 21.07(1) (b)2. is repealed.

SECTION 11. Adm 21.07(3) (c) and (d) are amended to read:

Adm 21.07 (3) (c) The ~~written word~~ price quotation for the base bid and alternate bid(s).

Adm 21.07 (3) (d) If offered, the ~~written word~~ price quotation of a combined bid and identification of the base bids which constitute the work proposed under the combined bid submitted.

SECTION 12. Adm 21.08 (1)(intro.) and (f) are amended to read:

Adm 21.08 Rejection of bids. (1) The department of ~~administration~~ shall reject any bid which evidences any of the following conditions:

Adm 21.08(1)(f) The bid is submitted by a bidder who, through investigation, is found not to be qualified or responsible within the definition of these rules, ~~s. Adm 21.02(7)(b) and (c)~~ s. Adm 21.02(8)(b) and (c).

SECTION 13. Adm 21.08 (2)(intro.) is amended to read:

Adm 21.08 (2) The department of ~~administration~~ may reject any bid if the included documents have any of the following informalities, unless such informalities are waived by the department of ~~administration~~ and corrected by the bidder within 3 working days from the date and time of bidder notification:

SECTION 14. Adm 21.08 (3), (4) and (7) are amended to read:

Adm 21.08 (3) The department of ~~administration~~ may reject all low bids constituting the total lowest construction cost when such amount exceeds the authorized funds available.

Adm 21.08 (4) The department of ~~administration~~ reserves the right to reject any or all bids, if in the opinion of the department of ~~administration~~ the best interest of the state will be served.

Adm 21.08 (7) The department of ~~administration~~, with the approval of the attorney general, may settle or dispose of cases or issues arising out of errors, omissions, or mistakes contained in a bid which result in the bidder giving written notice of the bidder's intent not to execute the contract. However, if no such settlement is obtained, the bidder is not entitled to recover the bid guarantee unless the bidder proves in circuit court for Dane county that in making the mistake, error or omission the bidder was free from negligence.

SECTION 15. Adm 21.09(1), (2), (4), (5) and (6) are amended to read:

Adm 21.09 Award of contracts. (1) The department of ~~administration~~ will award contracts to the lowest qualified responsible bidder or bidders that result in the lowest total construction cost for the project and such amount does not exceed the available funds authorized for the project. Final determination as to which bidders are the lowest qualified responsible bidders is vested with the department of ~~administration~~.

Adm 21.09 (2) In cases where the bidding documents provide a formula for evaluation analysis in conjunction with the base bid or alternate bid(s), the department of ~~administration~~ will award to the lowest qualified responsible bidder(s) whose bid(s) produce the lowest bid when combined with the dollar value derived from the formula for converting evaluation factors. (see ~~s. Adm 21.02(7)(a).~~ s. Adm 21.02(8)(a).)

Adm 21.09 (4) Should the total of the proposals submitted by the lowest qualified responsible bidder(s) exceed the limits imposed by authorized funds, the department of ~~administration~~ may negotiate deductive changes in the lowest qualified bid for each contract to bring the bids within funding limits.

Adm 21.09 (5) The department of ~~administration~~ may consider any unsolicited material accompanying the bid of the lowest qualified responsible bidder only after contracts have been awarded on the basis of the information contained in the bid form. Such consideration may be given to unsolicited material only if it is in the best interest of the state to do so, and does not warrant rejection due to any of the conditions stated in s. Adm 21.08 (1) (e).

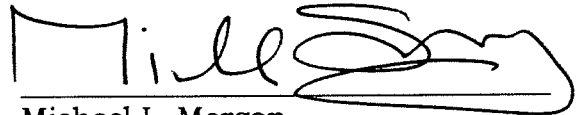
Adm 21.09 (6) Award of a contract will not be finalized until the required performance payment bond and certificate of insurance have been received and approved by the department of administration.

SECTION 16. Adm 21.09 (Note) is amended to read:

Note: See ~~Adm 21.02(7)(e) 5.~~ Adm 21.02(8)(c) 5. and 21.08(1)(f).

SECTION 17. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Dated: May 21, 2010



Michael L. Morgan
Secretary of Department of Administration



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 08-025

AN ORDER to repeal Adm 21.07 (1) (b) 2.; to renumber Adm 21.02 (7), (8), and (9); to amend Adm 21.03 (2), 21.04 (1), 21.06 (1) (b), 21.07 (1), (3) (c), and (d), 21.08 (1), (2), (3), (4), and (7), and 21.09 (1), (2), (4), (5), and (6); to repeal and recreate Adm 21.05; and to create Adm 21.02 (7), relating to construction bidding and contracting.

Submitted by **DEPARTMENT OF ADMINISTRATION**

04-01-2008 RECEIVED BY LEGISLATIVE COUNCIL.

04-22-2008 REPORT SENT TO AGENCY.

RS:SG

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 08-025

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

a. In the rule preface comparison of similar rules in adjacent states, a description of the process in the State of Michigan should be included.

b. Generally, the department strikes “of administration” from the phrase “department of administration” throughout ch. Adm 21. The department also should strike “of administration” from ss. Adm 21.01 (1), 21.02 (3) and (7) (c) 5., and 21.03 (3) (intro.).

c. Section Adm 21.03 (2) allows the department to advertise for bid proposals via notice distributed in electronic format. The rule summary should describe this change.

d. In s. Adm 21.05 (1) (b) (intro.), the phrase “all of” should precede the phrase “following information.”

e. SECTION 7 of the proposed rule should refer to s. Adm 21.07 (1) (intro.). [See also SECS. 10 and 11 and s. 1.03 (8) Note, Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. Should s. Adm 21.02 (1) be modified to account for the electronic notice proposed in s. Adm 21.03 (2)?

b. In s. Adm 21.05 (2), the correct cross-reference is “sub. (1) (a) or (b).”

- c. The cross-reference in s. Adm 21.08 (1) (f) should refer to s. Adm 21.02 (8) (b) and (c).
- d. In s. Adm 21.09 (2), the cross-reference should refer to s. Adm 21.02 (8) (a).
- e. In s. Adm 21.09 Note, the cross-reference should refer to s. Adm 21.02 (8) (c) 5.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the second paragraph of the rule preface summary, the word "requires" should be replaced by the word "require."

b. Section Adm 21.05 (5) is unclear. How will the department determine "bids that conform with this section in the best interests of the state"? What is the purpose of this provision?

PUBLIC HEARING FOR CHAPTER ADM 21, MADISON, WI - MAY 14, 2008

ZENTNER: Good afternoon. Welcome to the public hearing regarding Chapter Adm 21. We are here this afternoon for public hearing on Administrative rules Chapter 21 for the Department of Administration. The Department of Administration at this time, has set forth a public hearing pursuant to ss. 16.004(1), 16.855(15) and 227.11(2)(a), of the Wisconsin Statutes, to consider amending rules relating to architecture construction contracting for facilities owned by the State of Wisconsin. I am Robin Zentner. I am a Section Chief within the Bureau of Architecture and Engineering in the Department of Administration. With me is Adel Tabrizi, Bureau Director of the Bureau of Architecture and Engineering. In the April 15, 2008 issue of the Wisconsin Administrative Register, notice was given that a public hearing would be held on the rulemaking order proposed by the Department. Copies of the rules have been provided to interested parties. In addition, copies of the hearing notice were hand-delivered to the Press Boxes located in Room 235 Southwest of the State Capitol Building on April 28, 2008. The purpose of today's hearing is to give all interested persons or their representatives an opportunity to present facts, views or arguments regarding the proposed rules. In addition to today's testimony, the department will accept written comments or questions received by June 15, 2008. Please direct comments to Donna Sorenson, Department of Administration, 101 East Wilson Street, P.O. Box 7864, Madison, Wisconsin 53707. The statutes require that all persons appearing at this hearing have an opportunity to present their arguments and comments to the agency officer responsible for promulgating these rules. The Secretary of the Department of Administration has final responsibility for the promulgation of these rules. The Secretary has determined that the argument to him should be made in writing rather than oral argument. Consequently, a transcript of

this hearing will be prepared and provided to the Secretary, along with your written comments, prior to the promulgation as required by s. 227.18, of the Statutes. The Department proposes to amend the rules in order to permit bidders and contractors to submit state construction project bids via electronic format. The proposed rules were submitted to the Wisconsin Legislative Council Clearinghouse on April 1, 2008, for their review, analysis and recommendations. The Legislative Council issued its report on the proposed rules on April 22, 2008. The Department will amend these rules to address all of the comments suggested by Legislative Council. I'll now go through the appearance slips to see who wishes to give testimony on the rules. When I—for those who wish to testify, please come forward, state your name, who you are representing and if you are testifying in favor or in opposition to the proposed rules. This is Clearinghouse Rule No. 08-025. Any questions? Anybody wishing to testify?

?: I do have a question. Are you going to go over how you plan on doing this kind of? Or is that something that we can get information on somewhere else?

ZENTNER: Okay. Seeing that there's—

?: I don't mean to make it difficult for you but I guess we kind of thought we'd get a little bit more information on how you plan on doing—like going through WisBuild?

ZENTNER: Yes.

?: Is there any more documentation on how you plan to do it?

TABRIZI: Let's first see if anyone wants to testify?

ZENTNER: Do you want to testify?

(inaudible)

ZENTNER: Okay, none of the attendees wish to testify at the public hearing. We're now going to have a short question and answer period. (end of tape)

ZENTNER: This is a continuation of May 14, 2008 public hearing on Wisconsin Department of Administration Administrative Rule amending Chapter Adm 21. Testifying is Pete Christianson, Wisconsin Newspaper Association, 608-283-2492, testifying against but with suggestion.

CHRISTENSON: Thank you very much. I'll hand you a letter written by Peter Fox, the Executive Director of the Wisconsin Newspaper Association and submitted on behalf of its 241 members. I'm here to testify with a concern about the proposed Administrative Rule revision to Adm 21 regarding the Advertising, Bidding and Contracting of Construction Projects. We applaud the underlying intent to allow bidders and contractors to submit state construction project bids via electronic format but we don't believe that the use of, you know, of posting a bid notice on a website is an adequate or legal alternative to publishing a legal notice in the newspaper pursuant to Chapter 985.04. Under Chapter 985.04, the state has designated an official newspaper in which all legal notices required to be published may be published. One section of the proposed rule, specifically Adm 21.03(2), would recognize publishing notices in the

official state newspaper or on the official departmental website. In other words, you could either use the legal notice in the newspaper or post it on the departmental website. We don't believe that's an adequate notice under the statute and would respectfully request that that alternative be stricken from the rule. I would be happy to respond to any questions that you might have.

ZENTNER: No questions at this time.

CHRISTIANSON: Thank you very much.

ZENTNER: Thank you.

(end of public hearing on May 14, 2008)

PUBLIC HEARING FOR CHAPTER ADM 21, EAU CLAIRE, WI - MAY 15, 2008

ZENTNER: Public hearing on May 15, 2008, 10:00 a.m., Wisconsin Eau Claire State Office Building, 718 West Clairmont Avenue, Eau Claire County, Conference Room 105. Public hearing Chapter Adm 21. We are here for public hearing on Administrative rules Chapter 21 for the Department of Administration. The Department of Administration has set at this time and place a public hearing pursuant to ss. 16.004(1), 16.855(15) and 227.11(2)(a), of the Wisconsin Statutes, to consider amending rules relating to construction contracting for facilities owned by the State of Wisconsin. I am Robin Zentner. I am a Section Chief within the Bureau of Architecture and Engineering in the Department of Administration. In the April 15, 2008 issue of the Wisconsin Administrative Register, notice was given that a public hearing would be held on the rulemaking order proposed by the Department. Copies of the rules have

been provided to interested parties. In addition, copies of the hearing notice were hand-delivered to the Press Boxes located in Room 235 Southwest of the State Capitol Building on April 28, 2008. The purpose of today's hearing is to give all interested parties or their representatives an opportunity to present facts, views or arguments regarding the proposed rules. In addition to today's testimony, the department will accept written comments or questions received by June 15, 2008. Please direct comments to Donna Sorenson, Department of Administration, 101 East Wilson Street, P.O. Box 7864, Madison, Wisconsin 53707. The statutes require that all persons presenting at this hearing have an opportunity to present their arguments and comments to the agency officer responsible for promulgating the rules. The Secretary of the Department of Administration has final responsibility for promulgation of these rules. The Secretary has determined that argument to him should be made in writing rather than oral argument. Consequently, a transcript of this hearing will be prepared and provided to the Secretary, along with your written comments, prior to promulgation as required by s. 227.18, Stats. The Department proposes to amend the rules in order to permit bidders and contractors to submit state construction project bids via electronic format. The proposed rules were submitted to the Wisconsin Legislative Council Clearinghouse on April 1, 2008, for their review, analysis and recommendations. The Legislative Council issued its report on the proposed rules on April 22, 2008. The Department will amend the rules to address all of the comments suggested by Legislative Council. At this time, if there are any folks that are interested in testifying, please come forward, state your name, who you are representing,

whether you are testifying in favor or in opposition to the proposed rules. This is Clearinghouse Rule No. 08-025.

SCHIEFFER: Can I make comments as well?

ZENTNER: Yes, you may.

SCHIEFFER: I'm Todd Schieffer. I'm Vice President of Vonasek & Schieffer, Inc., in Rice Lake. We are a general contractor. I guess a couple of the things that came to mind for us, we were one of the contractors that requested that there be some type of location in the Northern part of the state in order to submit bids so that we did not have to run people down to Madison. We felt that it was costly to do such a thing. In generally, I'm in favor of this. I guess reading through the documents that I have right now, the only thing that I do is, I do have questions with regards to how it's going to be implemented and I understand that you haven't really addressed those yet. I do have concerns about how bonding or bid bonding is going to be handled. We in the past, I am familiar with the way DOT does their—we've done work through the DOT. And I guess that some of the things that I objected about the DOT was that they basically did a qualification of contractors and how much workload they can handle. And that concerns me if the DOA is thinking about the same kind of procedure because I really feel that it's really an issue between us and our bonding company as to whether or not we can submit a bond for a project. We're obviously not the largest contractor in the Northern or in the State. Nor are we the smallest but there are some projects that we realize that we're

capable of building but if the State's is going to qualify us and say that we can only bid projects up to a certain amount of dollars, we may have—I might have concerns about that. And I do have concerns about that. As far as the process itself, I'm familiar with it, like I said, through the DOT, so I don't have any objections on that end of it. I think it's a good way to go. So, I guess, given that, that's really about all I have at this point.

ZENTNER: Okay. I guess any other formalized comments that you'd like to make on the rule package at this time? If not, what I can do is I can shut it off and I can go through and discuss with you, your particular concerns and what the intent of the Department is.

SCHIEFFER: At this point, I guess I don't have any more formal comments to make.

ZENTNER: Okay, thank you.

(end of tape)

Sorenson, Donna - DOA

From: Randy [randyd@deckerlumber.com]
Sent: Tuesday, May 06, 2008 2:46 PM
To: Sorenson, Donna - DOA
Subject: Chapter Adm 21

In regards to the proposed amendment to Chapter Adm 21 – Advertising, Bidding and Award of Construction Contracts to permit the submission of electronic bids for state construction projects, I am HIGHLY IN FAVOR. I believe these changes should have been made years ago. I believe the State will benefit greatly if these changes are made.

Thank you for your time,

Randy Decker

Decker Lumber & Supply, Inc.
General Contractors
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Athens, WI 54411
Phone: 715-257-7531
Fax: 712-57-9392



PETER D. FOX
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PAT REILLY
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WNA Executive Director
PETER D. FOX

Donna Sorenson
Department of Administration
101 E. Wilson St.
P.O. Box 7864
Madison, WI 53707-7864

Dear Ms. Sorenson:

On behalf of the 241 members of the Wisconsin Newspaper Association (WNA), I write regarding the proposal by the Wisconsin Department of Administration to amend Chapter Adm 21 regarding the advertising, bidding and contracting construction projects. WNA appreciates the opportunity to comment and clarification from the department concerning the underlying intent of the rule changes. We have carefully studied the notice provided and applaud the underlying intent to allow bidders and contractors to submit state construction project bids via electronic format.

We do raise concern, however, over the portion that portion of the proposed rule in SECTION 3 (2) that reads: "The department shall advertise for proposals by public in the official state newspaper, or by official department website."

Chapter 985.04 of the State Statutes describes the official state newspaper: "The joint committee on legislative organization shall recommend to the legislature to designate some newspaper published in Wisconsin to be the official state newspaper, which shall publish all legal notices required to be published therein. Any such publication from any of the state agencies shall be deemed official. The joint committee may invite bids from all newspapers which meet the requirements of s. 985.03, but if it does so, it is not required to recommend the lowest bidder as the official state newspaper. The joint committee shall introduce its recommendation in the legislature in the form of a joint resolution. No designation takes effect until the joint resolution is adopted. A newspaper which is designated the official state newspaper shall continue as such until the legislature designates another newspaper to be the official state newspaper."

Donna Sorenson
Department of Administration
May 14, 2008
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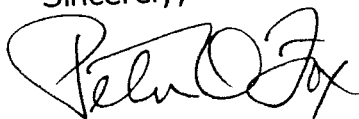
The purpose of this designation is to provide the citizens of Wisconsin with the most complete information about the course of their government in the most widely disseminated format of general readership as described in s. 985.03 (1) 2 (c). While a governmental Web site can be regarded as a secondary information-dissemination format that can, in this particular instance, be helpful for construction firms that regularly are involved in such bidding, designating the "or" option in the proposed rule would severely restrict information reaching the general public and substantially reduce public awareness of governmental projects announced for bids.

WNA urges that sentence be revised to read: "The department shall advertise for proposals by public of a class 1 notice under ch. 985, Stats., in the official state newspaper."

The department should have the option to publicize the proposal on the department Web site as such entities as the State Building Commission or the Administrator Division of State Facilities should deem appropriate. WNA appreciates the awareness of DOA in recognizing the important public-policy principal involved in complying with Chapter 985 provisions.

In closing, WNA commends the department for its steps to improve the construction contracting process for State of Wisconsin facilities.

Sincerely,



Peter D. Fox
Executive Director



The Associated General Contractors of Wisconsin

4814 East Broadway, Madison, WI 53716 • (608) 221-3821 • Fax: (608) 221-4446

June 13, 2008

Donna Sorenson
Department of Administration
101 E. Wilson St.
P.O. Box 7864
Madison, WI 53707-7864


Re: Various changes to Adm 21 to allow electronic bidding and solicitation of bids.

The Associated General Contractors of Wisconsin supports the proposed administrative rule change to allow the posting of requests for proposals on the official department website and the submittal of construction bids in an electronic format. We are very interested in insuring that the implementation of the new bidding procedure runs smoothly and fairly. To that end, we would like to make the following comments:

1. In section 5, "Adm 21.05 Submittal and receipt of bids" AGC recommends adding a requirement that the DSF, in addition to date stamping electronic bids, be required to send a time stamped electronic email confirmation back to the electronic bidders so they know that their bid were received. This will add a layer of security for contractors who want to insure that their bids were received successfully.
2. A video and audio broadcast of the bid openings should be available in real time over the internet.
3. AGC of Wisconsin would strongly oppose using this electronic bidding system for any type of electronic reverse auction system for public construction bidding.
4. Will a company be able to submit electronic bids that amend previous bids up until the deadline, or will only one electronic bid be allowed?

We would be glad to answer any questions or volunteer to meet with any members of the DSF staff to insure that this project is successfully implemented.

Thank you for your consideration.


Jim Boullion
Director of Government Affairs