



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 05-069

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. Section 1.02 (2), Manual, lists headings for categories of information that should be included in the summary that precedes the rule in order to comply with relevant statutory requirements, including requirements imposed by 2003 Wisconsin Acts 118 and 145. To conform to this format, the title “Analysis prepared by the Department of Administration:” should be changed to “Rule Summary” and subsequent content should be moved to the appropriate item. For example, the information under “Proposed Amendments” in the current rule draft could be moved to item 5 (plain language analysis) of the 12 items that should be included in the rule summary. While several of the items may not be applicable, the items should still be listed and their nonapplicability should be indicated.

b. In s. Adm 20.02, the current language of the rule could be improved by replacing s. Adm 20.02 (intro.) with “In this chapter:” and by replacing “shall mean” in the following subsections with “means.” Correspondingly, in the rule draft, “shall mean” should be replaced with “means” in subs. (2), (5), and (7). Also, the current language of the rule could be improved by deleting “The term” from subs. (1) to (6) so that they began with the term being defined, as does sub. (7) in the rule draft. Likewise, in s. Adm 21.02, the current language of the rule could be improved by replacing s. Adm 21.02 (intro.) with “In this chapter:” and by deleting the subsection titles and beginning each subsection with the term being defined, followed by “means....” [See s. 1.01 (7), Manual.]

c. Section Adm 20.02 (4) (e) currently provides that for certain projects specified eligibility criteria may be waived. The rule draft repeals and recreates this provision to provide in part that when unique characteristics are evident, the selection committee may set appropriate standards of acceptability that are different from those set forth in the administrative code. The rule provision should include some general policy or goal by which these different standards may be measured. Without a statement of policy or goal, the setting of “appropriate standards” could become quite arbitrary.

d. Section Adm 20.05 makes frequent reference to the department’s official website. The website address should be included in a note to the rule. Also, will the “data record form” referred to in sub. (2) (a) and elsewhere be available at the website? Finally, in sub. (2) (intro.), the phrase “all of” should precede the phrase “the following.” [See also s. Adm 20.09 (2) (intro.).]

e. In s. Adm 20.09 (3) (b), the stricken phrase “or a designee thereof” should precede the underscored phrase “; or the secretary’s designee.”

f. The provision under s. Adm 20.10 (2) (f) does not follow from s. Adm 20.10 (2) (intro.), and should be moved to sub. (3) or (4) if the performance evaluation “scores” referred to in the provision relate to the “reports,” or sub. (4) or (5) if the “scores” relate to the “evaluation summary.” (The provision could be further clarified by adding “in the performance evaluation reports” or “in the evaluation summary” after “scores.”)

3. Conflict With or Duplication of Existing Rules

It appears that the sentence added to s. Adm 21.05 (5) conflicts with the current language in the first sentence of that subsection. If the department returns the bid unopened as required in the first sentence, it is unclear how it would “accept” the envelope “in the best interests of the state” as permitted in the second sentence.

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

a. In s. Adm 20.03 (4), “as defined in s. 16.855 (16) b. [sic] 2., Stats.” should be replaced with “approved by the governor under s. 16.855 (16) (b) 2., Stats.”

b. In ss. Adm 20.09 (2) (a) and (b) and (3) (b) and 21.01 (2), the notation “, Stats.,” should be inserted after the statutory reference, except that the notation in s. Adm 21.01 (2) should conclude with a period.

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

a. On page 1, under “Proposed Amendments,” in the second paragraph it appears that “the” should be added after “for” and “as well as allowing” should be replaced with “and allow.” In the third paragraph, the “s” in “allows” should be deleted. In the fourth paragraph, the “s” should be deleted in “regards.” In the sixth paragraph, “an unqualified bidder” should be

replaced with “that a bidder is unqualified.” On page 3, under “Data Used to Support Rule,” in the second sentence “that” should be replaced with “in which.”

b. Section Adm 20.05 (3), (6), (8), and (10) should use the active voice, if it is possible to identify the entity that would take the required action. As examples, for sub. (3): “The department shall make copies of the data record forms and the architect / engineer letters of interest available to the....” For sub. (6): “The selection committee shall keep the minutes of the selection committee meeting and shall record....” For sub. (8): The department [or selection committee] shall repeat the selection process, if....” For sub. (10): “The department shall post results of the selection on the....” Likewise, the first two sentences of s. Adm 20.08 (9) should be changed to the active voice. [See s. 1.01 (1), Manual.]

c. It is not clear whether s. Adm 20.03 (6) is intended to require only certain minutes to be kept (i.e., those that record the specified names), or whether it is requiring that all minutes record the specified names. The example in the previous comment relating to this provision is one way to clarify this provision, if the specified names are to be recorded on all minutes.

d. In s. Adm 20.05 (11), either the comma should be deleted after “process,” or there should also be a comma after “If.”

e. In s. Adm 21.09 (4), it appears that “of the lowest qualified responsible bidder” following the deleted material should be replaced by “in the lowest qualified bid” to correspond to s. 16.855 (6), Stats.