



**WISCONSIN DEPARTMENT OF  
ADMINISTRATION**

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GOVERNOR

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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

**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.