

**Clearinghouse Rule 15-063**

**STATE OF WISCONSIN  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY**

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The State of Wisconsin Department of Transportation proposes the rule change will update existing Wisconsin Administrative Code Chapter Trans 515 to conform with amendments to state statute § 84.01 (13) made in 2013 Wisconsin Act 20, relating to Contractual Service Procurement.

The Statement of Scope for this rule SS 007-14, was approved by the Governor on January 9, 2014, and published in Wisconsin Administrative Register No.: 698, on February 14, 2014, under § 227.185, Stats.

***Analysis Prepared by the Department of Transportation***

***Statutes Interpreted***

Statutes Interpreted: Wis. Stat. § 84.01(13)

***Statutory Authority***

Statutory Authority: Wis. Stat. § 84.01(13)

***Explanation of Statutory Authority***

Wisconsin State Statute § 84.01 (13) requires the Department of Transportation (department) to conduct a uniform cost-benefit analysis (CBA) on all proposed contractual expenditures for engineering, consulting, surveying or other specialized services above a statutory threshold amount to show that the proposed service can be performed more economically or efficiently by contract rather than by current state employees or by hiring permanent, project or limited term employees. Each CBA includes the following information: 1) Service Overview, 2) Total Cost, 3) Quality, 4) Technical Expertise and 5) Timeliness. Wisconsin State Statute § 84.01 (13) services was created by 2005 Wisconsin Act 89, which required a CBA for each proposed contractual expenditure of \$25,000 or more. 2013 Wisconsin Act 20 increased the statutory threshold amount from \$25,000 to \$300,000. This rulemaking will conform to 2013 Wisconsin Act 20 by discontinuing the preparation of CBAs for proposed contractual expenditures between \$25,000 and \$300,000.

***Related Statutes and Rules***

Wis. Stat. § 84.01(13)

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### *Plain Language Analysis*

The department proposes to amend Trans 515 to conform with amendments to Wisconsin Statute § 84.01 (13). 2013 Wisconsin Act 20 (Section 1515m), published July 1, 2013, amended § 84.01 (13) by increasing the minimum value of proposed contractual expenditures for services that require a CBA from \$25,000 to \$300,000. This rulemaking will conform to 2013 Wisconsin Act 20 by discontinuing the preparation of CBAs for proposed contractual services expenditures between \$25,000 and \$300,000.

### *Summary of and Comparison with Existing and Proposed Federal Statutes and Regulations*

Federal law generally requires procurement of services by low bid, but prohibits the use of low-bid procurement for architect and engineering services. Instead, selection of firms is based upon qualifications, with services acquired by competitive negotiation (Brooks Act). This requirement applies to state agencies. 23 CFR 172.5. The federal acquisition regulations system (FARS) require federal agencies to prepare an independent government estimate of the cost of architect-engineer services and furnish the estimate to the contracting officer before commencing negotiations for each proposed contract or contract modification expected to exceed the simplified acquisition threshold (currently, \$150,000). The estimate must be prepared on the basis of a detailed analysis of the required work as though the government were submitting a proposal. 48 CFR 36.605. This estimate requirement does not apply to state agencies. State transportation agencies receiving federal highway funds must prepare written procedures for its procurement methods for approval by the federal highway administration. These procedures must include, in preparing a scope of work, evaluation factors and cost estimate for selecting a consultant. 23 CFR 172.9. The department is unaware of any federal requirement to compare the cost of those services with the cost of providing those services through public employees.

### *Comparison with Rules in Adjacent States*

**Michigan:** State Administrative Board Resolution 2011-12. All contracts or purchase orders of \$250,000 or more must be approved by the State of Administrative Board prior to execution.

**Minnesota:** Taxpayers' Transportation Accountability Act (enacted 2008). (Minnesota state statute § 161.3202). This act requires commissioner of transportation to prepare a comprehensive written estimate which compares the cost of having the same work provided by agency employees versus a privatized contract. This comparison needs to be prepared for any privatization contract estimated to be \$100,000 or more. Before entering privatization transportation contract of \$250,000 or more, the commissioner must determine that cost of services provided by the contract is lower than the cost of agency employees.

**Illinois:** No similar rule in place.

**Iowa:** No similar rule in place.

***Summary of Factual Data and Analytical Methodologies***

Amending Trans 515 will conform with July 2013 legislative amendments to Wis. Stat. § 84.01 (13). The department declines to prepare CBAs for contractual services procurements between \$25,000 and \$300,000 because of the cost and difficulty preparing CBAs that fall below the minimum cost threshold required by law.

***Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis***

No effect.

***Effect on Small Business***

No negative effect anticipated.

***Initial Regulatory Flexibility Analysis***

The department completes over 500 CBAs annually for services with estimated values between \$25,000 and \$300,000. Eliminating the need to complete and review CBAs for these services would save the department approximately \$71,000 per year in labor hours if the CBA threshold is increased to \$300,000.

***DOT Contact***

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***Where Comments May Be Submitted***

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**PERMANENT RULE**

**SECTION 1: Trans 515.01 is amended to read:**

Trans 515.01. The purpose of this chapter is to create standards and procedures for conducting a cost-benefit analysis before contracting out for any service involving an estimated expenditure of more than ~~\$25,000~~ \$300,000, as required under s. 84.01 (13), Stats.

**SECTION 2: Trans 515.03 (1) is amended to read:**

Trans 515.03 (1). Analysis Required. The department shall complete a uniform cost-benefit analysis of each proposed contractual service procurement under s. 84.01 (13), Stats., involving an estimated expenditure of more than ~~\$25,000~~ \$300,000, annually. Each cost-benefit analysis shall include the information set forth in subs. (2) to (6).

**SECTION 3: Trans 515.03 (3) is and (Note) are amended to read:**

Trans 515.03 (3). Each proposed contractual service procurement under s. 84.01 (13), Stats., shall include a total cost component. For each proposed contractual service procurement under s. 84.01 (13), Stats., involving an estimated expenditure of more than ~~\$25,000~~ \$300,000 annually, the department shall complete a detailed cost-benefit analysis showing that the proposed service can be performed more economically or efficiently by contract rather than by current state employees or by hiring permanent, project or limited term employees. The consideration of relevant costs shall include, but not be limited to, wage and salary costs, fringe benefits costs, administrative overhead costs, other operating costs, material costs, insurance costs, facility costs, contract price, contract monitoring, and one-time conversion costs. The department shall use the cost-benefit methodology set forth in chapter 8 of the department's Facilities Development Manual.

Note: To request the cost-benefit methodology set forth in the Facilities Development Manual, please contact the Department of Transportation, Bureau of ~~Highway~~ Project Development, ~~Roadway Development~~ Consultant Services Section, P.O. Box 7916, Madison, WI 53707-7916 or (608) 266-9349 2375.

**SECTION 4: Trans 515.04 is amended to read:**

Trans 515.04. The department shall review periodically, and before any renewal, the continued appropriateness of contracting under each contractual service agreement under s. 84.01 (13), Stats., involving an estimated annual expenditure of more than ~~\$25,000~~ \$300,000.

**SECTION 5: Trans 515.05 is amended to read:**

Trans 515.05. The requirements of this rule apply to all contracts for which solicitation of interest date is after June 30, ~~2006~~ 2013.

**SECTION 6: EFFECTIVE DATE:** This rule shall take effect on the first day of the month following publication in the Register, as provided in s. 227.22 (2) (intro.), Stats.

**(END)**

Dated this \_\_\_\_\_ day of August 2015.

WISCONSIN DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

Mark Gottlieb, P.E.

Secretary