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Effective Dates: January 1, 2010 through May 30, 2010

STATE OF WISCONSIN
Department of Workforce Development - Equal Rights Division

EMERGENCY RULE
DWD 293.02 - Adjustment of Thresholds for Payment and
Performance Assurance Requirements

The Wisconsin Department of Workforce Development amends s. DWD 293.02, relating to the adjustment of thresholds for payment and performance assurance bond requirements and affecting small businesses.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The adjustment of the thresholds for the application of the project payment and performance assurance bond requirements ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and the need for obtaining bonding is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the rule-making process.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 103.005(1), 779.14 (1s), and 227.11, Stats.

Statute interpreted: Section 779.14, Stats.

Explanation of agency authority. Section 779.14, Stats., sets the cost thresholds for the payment and performance assurance bond requirements that apply to contracts for the performance of labor or furnishing of materials for a public improvement project or public work. Section 779.14 (1s), Stats., requires the Department to biennially adjust the thresholds for various requirements in proportion to any change in construction costs since the last adjustment if the adjustment to be made would not be less than 5%.

Summary of the emergency rule. Chapter DWD 293 provides adjusted thresholds for various payment and performance assurance bond requirements that apply to contracts with state or local governments for the performance of labor or furnishing of materials for a public improvement or public work. This rule adjusts these thresholds to reflect a 6.82% increase in construction costs from December 2007 to December 2009.

Summary of analytical methodology. Section DWD 293.01 provides that the Department will adjust the thresholds on the basis of the change in the construction cost index as published in the *Engineering News-Record*, a national construction trade publication. Thresholds are rounded to the nearest thousand.

Comparison to federal law. The threshold for application of the federal contractor payment and performance bond requirements is \$100,000. This threshold is in the statute and is rarely adjusted.

Comparison of payment and performance bond thresholds in adjacent states. Minnesota has a public contractors' performance and payment bond requirement that applies to a contract that exceeds \$75,000. Illinois requires

a bond if a contract for a public work exceeds \$5,000. Neither state appears to have a mechanism for adjustment of the thresholds, other than statutory amendment. Michigan has a performance bond requirement without a clear statutory threshold. The Department is not aware of a performance bond requirement for public works contracts in Iowa.

Effect on small business. The rule affects small businesses as defined in s. 227.114 (1), Stats., but does not have a significant economic impact on a substantial number of small businesses.

Analysis used to determine effect on small business. Many construction companies are small businesses. The adjustment of the thresholds for application of the payment and performance bond requirements prevent these provisions from affecting more and more public works projects over time due solely to the effects of inflation.

SECTION 1. DWD 293.02 is amended to read:

DWD 293.02 (1) STATE CONTRACTS. (a) The payment and performance assurance requirements in s. 779.14 (1m) (c) 1., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$15,000~~ \$16,000 but not exceeding ~~\$139,000~~ \$148,000.

(b) The payment and performance assurance requirements in s. 779.14 (1m) (c) 2., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$139,000~~ \$148,000 but not exceeding ~~\$345,000~~ \$369,000.

(c) The payment and performance assurance requirements in s. 779.14 (1m) (c) 3., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$345,000~~ \$369,000.

(2) LOCAL GOVERNMENT CONTRACTS. (a) The payment and performance assurance requirements in s. 779.14 (1m) (d) 1., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$15,000~~ \$16,000 but not exceeding ~~\$69,000~~ \$74,000.

(b) The payment and performance assurance requirements in s. 779.14 (1m) (d) 2., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$69,000~~ \$74,000 but not exceeding ~~\$139,000~~ \$148,000.

(c) The payment and performance assurance requirements in s. 779.14 (1m) (d) 3., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$139,000~~ \$148,000.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on January 1, 2010, as provided in s. 227.24 (1) (d), Stats.

2009 Session

FISCAL ESTIMATE
DOA-2048 N(R03/97)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 293.02

Amendment No. if Applicable

Subject Adjustment of thresholds for payment and performance assurance bond requirements

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation

or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb
 Within Agency's Budget Yes
 No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG

SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The emergency rule does not have a fiscal effect because its impact is limited to adjusting the cost thresholds for bond requirements to account for increases due to inflation.

Long-Range Fiscal Implications

None

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Authorized Signature/Telephone No.

Date
12/22/09