

### ADMINISTRATIVE RULE - FISCAL ESTIMATE

**1. Fiscal Estimate Version**

Original       Updated       Corrected

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**2. Administrative Rule Chapter Title and Number**

Chapter ADM 24 – Debarment, Suspension and Ineligibility of Department of Administration Contractors

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**3. Subject**

ADM-24 creates policies and procedures to govern the debarment or suspension of contractors constructing, altering, or remodeling buildings for the State of Wisconsin through the Department of Administration, Division of State Facilities.

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**4. State Fiscal Effect:**

No Fiscal Effect  
 Indeterminate

Increase Existing Revenues  
 Decrease Existing Revenues

Increase Costs  
 Yes  No  
May be possible to absorb  
within agency's budget.  
 Decrease Costs

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**5. Fund Sources Affected:**

GPR       FED       PRO       PRS       SEG       SEG-S

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**6. Affected Ch. 20, Stats. Appropriations:**

20.505 (1)(kr) – Legal Services  
20.505 (1)(kc) – Capital Planning and Building Construction Services

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**7. Local Government Fiscal Effect:**

No Fiscal Effect  
 Indeterminate

Increase Revenues  
 Decrease Revenues

Increase Costs  
 Decrease Costs

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**8. Local Government Units Affected:**

Towns  Villages  Cities  Counties  School Districts  WTCS Districts  Others:

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**9. Private Sector Fiscal Effect (small businesses only):**

No Fiscal Effect  
 Indeterminate

Increase Revenues  
 Decrease Revenues  
 Yes  No  
May have significant  
economic impact on a  
substantial number of  
small businesses

Increase Costs  
 Yes  No  
May have significant  
economic impact on a  
substantial number of  
small businesses  
 Decrease Costs

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## 10. Types of Small Businesses Affected:

This rule is intended to address potential issues encountered by the Department of Administration's Division of State Facilities as it manages building contracts for the State of Wisconsin. The small businesses involved would be expected to include building contractors and their subsidiaries and affiliates as well as developers and other firms involved in the design and construction of state facilities.

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## 11. Fiscal Analysis Summary

ADM 24 creates policies and procedures to address contract disputes that may arise between the DOA Division of State Facilities (DOA/DSF) and contractors when DSF is unsatisfied with the performance of a contractor related to the construction and maintenance of state buildings. It is intended to replace the existing *ad hoc* arguments and negotiations with a more consistent approach that will save time and money for both DSF and contractors. It establishes a procedure for suspension of the contractor from further bidding during a period of investigation and progresses to a period of time during which the contractor may be debarred from bidding on additional DSF contracts. DOA anticipates that the mere existence of this rule will remove incentives to engage in frivolous disputes or prolong disputes and encourage a more expeditious and equitable settlement of disputes.

ADM 24 establishes a process that will permit DOA to suspend a contractor from entering into new contracts or sub-contracts pending completion of legal proceedings or debarment under provisions of this rule. Under provisions of this rule the Department may also debar a contractor from any new or renewed contracts or sub-contracts for up to three years.

While the suspension and debarment procedures are intended to be as informal as is practical, each provides for a formal decision making process that may include a fact-finding hearing to be conducted by the DOA Division of Hearings and Appeals (DOA/DHA). DOA estimates that only about 4 suspension procedures may be commenced in any given year and an average of 1.5 debarment proceedings. Because there has been no established procedure upon which to base expectations these estimates are considered highly variable by DOA.

Compliance with the procedures in this rule will require time from DOA staff attorneys, paralegal staff and an architect/engineer manager from DSF. The salary and fringe benefit costs for a DOA staff attorney are \$66.00 per hour. A paralegal would be charged at \$36.00 hourly and the DSF staff at \$56.00 hourly.

DOA estimates that a suspension proceeding would typically require about 5 hours of time from a DOA legal staff attorney, supported by 1.5 hours of paralegal staff assistance. Additionally, DSF staff would dedicate about 5 hours of effort to a suspension procedure. DOA anticipates that the requirement to maintain and make publicly available a list of suspended contractors can be incorporated into existing DSF publications with no estimable cost. While the rule provides for a fact-finding hearing in both a suspension proceeding and a debarment proceeding, it is assumed that in practice such a hearing will only be necessary in the event of a debarment proceeding.

For a debarment proceeding, DOA estimates that a DOA legal staff attorney would be required for about 10 hours. Paralegal time is estimated at 3 hours and DSF time at 10 hours. Additionally, in each of the anticipated debarment cases, DOA assumes that a fact-finding hearing will be required. The DHA notes that the time commitment for a fact-finding hearing in cases of this type is highly case specific but that 16 hours of attorney time and 8 hours of paralegal time should be used for planning purposes. In addition, DOA anticipates that it will be advisable to prepare a written transcript of the fact-finding hearing at an estimated cost of \$1,000.

In summary, on an annual basis, DOA anticipates that expenses for debarment proceedings will be \$5,508 and suspension proceedings will require a further \$2,656. The total estimated fiscal impact is \$8,146. The following chart summarizes these estimates. These costs will be absorbed by the Department as a cost of operations.

DOA lacks salary and other necessary data to estimate the comparable costs incurred by private sector contractors in defending themselves during these proceedings. However, it estimates that the time involved

would be approximately the same as that required of DOA staff. Differences in cost would be a function of the billing rate of private sector legal counsel. In all cases, DOA will fund the cost of fact-finding hearings with no provision to recover those costs from the contractors involved.

<b>DEBARMENT</b>					
	Hourly Salary & Fringe Benefits	Hours per Debarment Proceeding	Other Debarment Costs	Annual Debarment Proceedings	Annual Debarment Cost
DOA Attorney	\$66	10		1.5	990
DOA paralegal	\$36	3		1.5	162
DSF staff input	\$56	10		1.5	840
DHA Adm Law Judge	\$66	16		1.5	1,584
DHA Paralegal	\$36	8		1.5	432
Transcript/recording costs			1000	1.5	1,500
					<u>5,508</u>

<b>SUSPENSION</b>					
	Hourly Salary & Fringe Benefits	Hours per Suspension Proceeding	Other Suspension Costs	Annual Suspension Proceedings	Annual Suspension Cost
DOA Attorney	\$66	5		4	1,320
DOA paralegal	\$36	1.5		4	216
DSF staff time	\$56	5		4	1,120
DHA Adm Law Judge	\$66				
DHA Paralegal	\$36				
Transcript/recording costs					
					<u>2,656</u>

**12. Long-Range Fiscal Implications**

DOA recognizes that debaring certain contractors from future contract bids may theoretically result in at least one less bidder on future contracts than otherwise. This may cause, what DOA considers, a minimal decrease in competitiveness of future bids. However, by making the consequences of failure to meet the terms of a contract clear and transparent, DOA anticipates that the number of disputes will decline and those that arise will be settled more expeditiously.

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