

**ORDER OF THE  
DEPARTMENT OF ADMINISTRATION**

The Wisconsin Department of Administration proposes an order to amend Adm 20.03(1), 20.04 (1) and (2), 20.06(1), 20.07(4), 20.08(1), (5), (6), (8) and (9), 20.09 (2), (3) (b) and (c), 20.10(4) and (5), 21.01(2), 21.05(2) and (5), 21.09(4); to repeal and recreate Adm 20.02, 20.05, 20.06(1) (c), (e) and 21.02; and to create Adm 20.03(2) (e) and (4), 20.06(1) (g) and (h) and 20.07(3) (f), relating to architecture, engineering and construction solicitation, bidding and contracting.

**Rule Summary:**

- 1. Statutes interpreted:** s. 16.85, 16.855 and 16.87, Stats.
- 2. Statutory authority:** s. 16.004(1) and 16.855(15), Stats.
- 3. Explanation of agency authority:**

Pursuant to s. 16.85, Stats., the Wisconsin Department of Administration is responsible for the supervision of all engineering, architectural services or construction work performed by, or for, the state in the construction and acquisition of new buildings or improvements and additions to existing buildings.

**4. Related statute or rule:**

None applicable

**5. Plain language analysis:**

The department proposes amending Chapters Adm 20 and 21, regarding the department's requirements for architect/engineer services solicitation and construction contracting.

Proposed revisions to Adm 20 raise dollar threshold minimums for the architect/engineer selection committee for large projects and allow an additional owner agency voting member on the committee.

Section Adm 20.02 and 21.02, definitions are rewritten and reordered for clarification and consistency with administrative rule writing procedures.

Proposed revisions to Adm 20.03, 20.08 and 20.09 allow new or additional delegation and signature authority as a process improvement.

Sections Adm 20.05, 20.06 and 20.08 are revised to recognize current business practices with regard to department project advertising and solicitation via the department's official website, again as a method of process improvement as well as industry standard.

Proposed Adm 20.04 has raised a threshold dollar level for selection committee interviews to \$5,000,000 reflecting the increases in construction costs over the last two decades and to more accurately reflect the typical size and complexity of projects requiring architect/engineer interviewing. Raising the threshold also provides more opportunity for Wisconsin architects/engineers to increase their experience portfolio of larger projects.

The proposed rule in Adm 21.02 further allows for the department to determine that a bidder is unqualified based on noncompliance with other agency requirements and also requires responsible bidders to have an established safety program.

The proposed rule amends Adm 21.09 to permit greater department latitude in negotiating deductive changes with the lowest construction bidder(s) for better project budget management.

Other sections provide for non-substantive changes reflecting architect, engineer or project information submittal requirements necessary for department processing of projects.

Several other sections reflect administrative rule revisions required for consistency with statutes and recent statutory changes regarding dollar thresholds for project approvals and required signatures in project approvals.

## **6. Summary of, and comparison with existing or proposed federal regulation:**

The State of Wisconsin utilizes Qualifications-Based Selection for architectural and engineering services for State projects. The federal government in 1972 passed The Brooks Act requiring federal government agencies to utilize Qualifications-Based Selection (QBS) for federal projects. This act requires the following for federal projects: 1) Statements of qualifications from architect/engineer firms; 2) Evaluation of statements by evaluation boards; 3) Interviews with firms after short-listing top firms; and 4) Ranking and subsequent negotiation with the top ranked firm.

Since the passage of the Brooks Act, 45 other states have passed similar Qualifications-Based Selection criteria for architectural and engineering services and have applied these types of requirements for public works and in some cases private commercial projects.

The State of Wisconsin administrative code chapter Adm 20, Selecting and Contracting Architect/Engineer Services is consistent with The Brooks Act and has been in place since last revision in 1979. This administrative rule change seeks to update rules for current business practices as well as more consistent dollar threshold values.

## **7. Comparison with rules in adjacent states:**

A review of neighboring states indicates Minnesota and Michigan utilize website project solicitation with differing thresholds. Minnesota threshold for selection is \$2,000,000, Michigan threshold is \$1,000,000, Illinois threshold is \$250,000 also with

a qualifications-based architect/engineer selection process. Minor differences in the rules from state to state exist in committee makeup and other threshold values. All utilize and recognize website project posting.

**8. Summary of factual data and analytical methodologies:**

The current rule has been in existence since 1979 with little or no updating. The inflation index and increasing costs of services has created a condition in which the 1979 threshold level is approximately 50% of where it should be. This has created a condition requiring excessive oversight of smaller dollar value projects.

Business practices since 1979 have also radically changed. This proposed rule change reflects current practices such as electronic and web based advertisement, electronic document exchange and acceptance and electronic notifications. This will enhance the construction of state projects and speed up the processing of construction documents. Most other states as well as the Federal government utilize electronic advertising of projects as well as electronic document exchange.

**9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:**

None submitted, information provided under item number 10 and 11.

**10. Anticipated costs incurred by the private sector:**

Estimated fiscal effect on private entities: \$408,000 est. annual savings.

Waiving 3 of the 4 requirements of 20.02(4) will provide more flexibility and opportunities for small, Wisconsin-based architect/engineering firms to submit their qualifications and provide services and establish a performance evaluation for smaller projects. Waiver is permissive in that making a selection of those projects with greater risk can still be evaluated using all of the requirements.

Approximately \$17,000 per interview per firm multiplied by approximately 6 interviews per year is the estimated savings by increasing the threshold to \$5 million in the interview process. Typically, four firms are invited to interview. Likewise, Wisconsin architects/engineers can more easily qualify for \$5 million projects by making it easier to be selected for projects of 50% of the size (\$5 million). Currently, if a firm cannot meet the experience requirement of 50% of the size, the firms will partner with an out-of-state firm to meet the qualification.

Moving toward more electronic notifications requires firms to have computers with internet access or access those locations which provide public internet service for free or a nominal charge. Costs incurred for this are offset by eliminating manual paper processing of documents and creating more efficiency and timeliness for consultants to learn about projects and show interest in those projects they are most qualified for. Also, web advertising is visible to a greater number of potentially qualified design candidates and allows for confidential letters of interest to be read only by those staff most involved with the project allowing opportunity for dialogue.

**11. Effect on small business:**

The department does not foresee any negative impact on small businesses. As indicated in item number 10, given the less restrictive requirements, added access to the department via other media and changes in dollar thresholds, the department foresees a positive impact.

**12. CONTACT PERSON:**

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**TEXT OF RULE:**

**SECTION 1.** Adm 20.02 (2) is repealed and recreated to read:

**Adm 20.02 Definitions.** In this chapter:

**(1)** “Approval” means the written or electronic procedure for evaluation and acceptance.

**(2)** “Architect/engineer” means a member of the design profession, registered under <http://folio.legis.state.wi.us/cgi->

[bin/om\\_isapi.dll?clientID=145798&hitsperheading=on&infobase=stats.nfo&jump=ch.%20443&softpage=Document - JUMPDEST\\_ch.443](http://om_isapi.dll?clientID=145798&hitsperheading=on&infobase=stats.nfo&jump=ch.%20443&softpage=Document - JUMPDEST_ch.443) ch. 443, Stats. and is meant to refer to either an architect or an engineer, whichever is appropriate. The term shall apply to an individual or firm which provides architectural or engineering services, or both, and is not intended to impose the requirement of both registrations on an individual or individuals within a design firm.

**(3)** "Architect/engineer data record form" means a form upon which architects/engineers shall provide specific data requested by the department which will facilitate evaluation of architect/engineer eligibility, performance capabilities, experience, personnel and staff and statistics on past and present projects.

**(4)** "Architect/engineer proposal" means those documents submitted by an architect/engineer, indicating interest in providing professional services to the state for a specific project. The documents may include a fully executed architect/engineer data record form, a tentative schedule to include the method and staff that would be employed to meet the requirements of the proposed projects and such other materials as requested by the selection committee in the advertisement for architect/engineer proposals.

**(5)** "Department" means the department of administration. This also includes any organizational entity of the department of administration, which is assigned the responsibility for providing and supervising the architectural and engineering services performed by, or for, the state, as provided for in s. [http://folio.legis.state.wi.us/cgi-bin/om\\_isapi.dll?clientID=145798&hitsperheading=on&infobase=stats.nfo&jump=16.85&softpage=Document - JUMPDEST\\_16.85](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=145798&hitsperheading=on&infobase=stats.nfo&jump=16.85&softpage=Document - JUMPDEST_16.85) 16.85, Stats.

**(6)** "Eligible architect/engineer" means an architect/engineer who meets or exceeds the following criteria in order to be considered by the selection committee for a project:

- (a) Has more than one architect/engineer as a responsible member of the firm.
- (b) Has been in business for a period of not less than 3 years.
- (c) Has a permanent office within Wisconsin, where responsible direction of all services will be based. Out-of-state firms will be considered when the selection committee determines there are no Wisconsin firms qualified or available to provide the services required.
- (d) Has been responsible for the design and substantial completion of a similar project with a total construction cost or size of at least 50% as large as the construction cost or size of the project under consideration.
- (e) For construction projects less than \$1,000,000 or when it becomes apparent to the selection committee that a project is of such a size or has such unique characteristics that special architect/engineer project responsibility is warranted, the selection committee, by vote, may set appropriate standards of acceptability different from pars. (a), (b) and (d).

Note: The department will post additional information regarding selection committee requirements for projects at the time of project advertising. Additional information regarding selection committee policy and procedures maybe be obtained at the department website, [www.doa.state.wi.us/dsf](http://www.doa.state.wi.us/dsf).

**(7)** “Selection committee” means a standing group composed of 5 state employees appointed by the secretary of the department of administration including one who shall also be designated as chairperson, and a minimum of 3 who shall be registered architects/engineers. The agency for which the project is to be constructed will be requested to appoint 2 representatives to serve as additional members on the committee for the selection of an architect/engineer for that project. If after appropriate notice, the agency fails to have any representative at the selection committee meeting, such absence shall be considered a waiver of their vote on the architect/engineer selection for that project. Each committee member shall have one vote.

**SECTION 2.** Adm 20.03 (1) is amended to read:

**Adm 20.03 Convening of selection committee. (1)** At the call of the chairperson, or the chairperson’s designee, the selection committee shall convene for the purpose of initiating and carrying out the process of selecting architects/engineers for projects approved by the state building commission.

**SECTION 3.** Adm 20.03 (2) (e) is created to read:

**Adm 20.03 (2) (e)** Other pertinent project information.

**SECTION 4.** Adm 20.03 (4) is created to read:

**Adm 20.03 (4)** The chairperson of the selection committee, or the chairperson’s designee, may nominate an architect/engineer for emergency projects approved by the governor under s. 16.855 (16)(b)2., Stats., without solicitation or selection committee action. The chairperson, or chairperson’s designee, shall notify the selection committee of any emergency nomination action at the next scheduled selection committee meeting.

**SECTION 5.** Adm 20.04 (1) and (2) are amended to read:

**Adm 20.04 Selection procedures. (1)** When selecting an architect/engineer for a project when the estimated project cost is less than ~~\$2,500,000~~ \$5,000,000, the selection committee may utilize the simplified selection by nomination procedure specified in s. Adm 20.05.

**(2)** When selecting an architect/engineer for a project that has an estimated project cost of ~~\$2,500,000~~ \$5,000,000 or more, the selection committee shall require the more

detailed procedure for selection by advertisement, review and interview as specified in ss. Adm 20.06, 20.07 and 20.08.

**SECTION 6.** Adm 20.05 is repealed and recreated to read:

**Adm 20.05 Selection by nomination. (1)** The department shall solicit for architects/engineers by posting an advertisement for the project on the department's official website. The advertisement shall include a project description, proposed budget, schedule and a contact name for questions during the solicitation period. Architects/engineers who are interested in a project may submit a letter of interest through the website for review by the selection committee.

**(2)** An architect/engineer responding to the project solicitation shall provide all of the following information in the letter of interest:

- (a) Completed and updated architect/engineer data record form, if one has not previously been provided.
- (b) List of similar projects the architect/engineer has, at minimum, substantially completed, including approximate project square footage or cost of project.
- (c) Architect's/engineer's proposed staff and subconsultants for the project.
- (d) Schedule indicating when the architect/engineer can begin project work.
- (e) Any other pertinent information indicating the architect's/engineer's qualifications and experience.

**(3)** The department shall make copies of the data record forms and the submitted architect/engineer letters of interest available to the selection committee for consideration for each project.

**(4)** The selection committee's evaluation of all interested architects/engineers shall also give consideration to the qualification criteria stated in Adm 20.07 (3).

**(5)** The selection committee shall submit its first and second recommendations for selection of an architect/engineer to the secretary of the department, or the secretary's designee, accompanied with justification supporting their recommendations.

**(6)** The selection committee shall keep the minutes of the selection committee meeting and shall record the name of the architects/engineers considered for each project and the action taken by the selection committee and justification supporting the selection committee recommendations.

**(7)** The secretary of the department, or the secretary's designee, shall consider the selection committee's recommendations, and inform the selection committee of the approval or disapproval of the recommended architect/engineer.

**(8)** The department shall repeat the selection process if the secretary of the department, or the secretary's designee, does not accept the selection committee's recommendations.

**(9)** When the selection of an architect/engineer has been finalized, the department shall establish a time and date for the architect/engineer to meet with the department's designated representative to negotiate a contract. If negotiations with the selected architect/engineer firm do not reach consensus, negotiations may be initiated with the second qualified architect/engineer firm as determined by the selection committee.

**(10)** The department shall post the results of the selection on the department's official website.

**(11)** If at any time during the selection process the department determines submitted materials misrepresent qualifications, the department may reject the letter of interest of a recommended architect/engineer.

Note: The Wisconsin Department of Administration Division of State Facilities official website is [www.doa.state.wi.us/dsf](http://www.doa.state.wi.us/dsf). Forms, publications and information regarding architect/engineer selection and proposed projects may be obtained from this website.

**SECTION 7.** Adm 20.06 (1) is amended to read:

**Adm 20.06 Selection by advertisement. (1)** For all projects having an estimated project cost ~~which would exceed \$2,500,000~~ of \$5,000,000 or more, an invitation for architects/engineers to submit proposals for consideration by the selection committee, shall be published in a class 2 notice under ch. 985 Stats. in the official state paper. The notice shall include the following information:

**SECTION 8.** Adm 20.06 (1) (c) is repealed and recreated to read:

**Adm 20.06 (1) (c)** Architect/engineer qualification requirements.

**SECTION 9.** Adm 20.06 (1) (e) is repealed and recreated to read:

**Adm 20.06 (1) (e)** Project description, estimated project budget and schedule.

**SECTION 10.** Adm 20.06 (1) (g) and (h) are created to read:

**Adm 20.06 (1) (g)** Criteria used in ranking architects/engineers to qualify for the interview process.

**Adm 20.06 (1) (h)** Other information pertinent to the solicitation regarding the qualifications of the architect/engineer firm.

**SECTION 11.** Adm 20.07 (3) (f) is created to read:

**Adm 20.07 (3) (f)** Other information pertinent to the review of architect/engineer qualifications.

**SECTION 12.** Adm 20.07 (4) is amended to read:

**Adm 20.07 (4)** Consideration may be given to ~~joint ventures~~ associations consisting of 2 or more architect/engineer firms organized for the purposes of furnishing professional services as a single entity, providing the assignment of and provisions for continuity of the various responsibilities within the ~~joint venture~~ association are approved by the selection committee and further providing that the combination of the qualifications of the individual firms constituting the ~~joint venture~~ association makes the team eligible for selection as defined in s. Adm 20.02 (4) and the qualification requirements indicated in sub. (3). Those firms that are party to an association that are invited to interview in accordance with s. Adm 20.08 (1) shall submit at the interview an executed draft association agreement in principal between the parties. Firms that are party to an association, selected in accordance with s. Adm 20.08 (6), shall submit a final executed association agreement between the parties prior to execution of a contract in accordance with s. Adm 20.09. The association agreement shall indicate how responsibilities will be shared, how tasks will be divided and the firms or individuals that will be assigned the responsibilities and tasks.

**SECTION 13.** Adm 20.08 (1) is amended to read:

**Adm 20.08 Interview. (1)** Those architects/engineers deemed to be the best qualified, shall be notified and date and time shall be arranged for them to appear before the selection committee for the purpose of presenting their understanding of the scope of services required and their proposed method of meeting the program- including appropriateness and adherence to project budget and schedule. A copy of the evaluation form and interview questionnaire used by the selection committee will be furnished to the architect/engineer at least 10 days prior to their scheduled appearance.

**SECTION 14.** Adm 20.08(5) and (6) are amended to read:

**Adm 20.08 (5)** The selection committee will submit their first and second recommendation for selection of an architect/engineer to the secretary of the department or the secretary's designee.

**Adm 20.08 (6)** The secretary of the department, or the secretary's designee, will consider the selection committee's recommendations, and inform the selection committee of the results of that consideration.

**SECTION 15.** Adm 20.08 (8) and (9) are amended to read:

**Adm 20.08 (8)** Negotiations for contract shall be conducted in the same manner as that specified in s. Adm 20.05 ~~(11)~~ (9).

**Adm 20.08 (9)** ~~As soon after the selection of an architect/engineer has been confirmed, an announcement shall be sent to all architects/engineers who were interviewed, informing them of the selection committee action. After confirmation of the selection, the department shall notify all interviewed architects/engineers informing them of the selection committee action and post results of selection on the department's official website.~~ Any architect/engineer who was interviewed may upon request, inspect the selection committee interview evaluation of their firm.

Note: The Wisconsin Department of Administration Division of State Facilities official website is [www.doa.state.wi.us/dsf](http://www.doa.state.wi.us/dsf). Forms, publications and information regarding architect/engineer selection and proposed projects may be obtained from this website.

**SECTION 16.** Adm 20.09 (2), (a) and (b) are amended to read:

**Adm 20.09 (2)** ~~Upon return of contracts from the architect/engineer, the department shall be guided by the following procedure regarding final approval: Final approval authority for contracts shall be guided by all of the following:~~

- (a) The approving authority for contracts less than ~~\$15,000~~ the threshold prescribed in s. 16.87(3), Stats., is vested in the department secretary ~~or a designee thereof, or the secretary's designee.~~
- (b) Contracts of ~~\$15,000~~ the threshold prescribed in s. 16.87(3), Stats., or more must be signed by the department secretary ~~or a designee thereof, or the secretary's designee,~~ and forwarded to the governor for approval.

**SECTION 17.** Adm 20.09 (3) (b) and (c) are amended to read:

Adm 20.09 (3) (b) Change order requests shall be reviewed by the appropriate department representative coordinating the project implementation and by that employee's supervisor. If the request is approved by the department representative's supervisor, the recommendation shall be processed in the form of a change order and submitted to the department secretary ~~or a designee thereof, or the secretary's designee, in accordance with s. 16.87(3), Stats.,~~ for approval. ~~When the change order amounts to \$15,000 or more it shall also be submitted to the governor for approval.~~

**Adm 20.09 (3) (c)** A change order to the architect/engineer contract shall contain: specific information which will document the reason for the contract change, a description of the work involved, any change to the schedule, and the maximum cost limit.

**SECTION 18.** Adm 20.10 (4) and (5) are amended to read:

**Adm 20.10 (4)** The evaluation summary ~~of the performance evaluation reports~~ shall contain the significant evaluations of strengths and weaknesses and shall be utilized as a report to the selection committee and a basis for review with the architect/engineer. The summary shall be placed in the evaluation file.

**Adm 20.10 (5)** The ~~professional service~~ evaluation summary will be reviewed with the architect/engineer upon request. An entry ~~shall~~ may be made in the evaluation file to acknowledge the review with the architect/engineer, rating information, summary, or corrective measures to be taken as pertinent to providing good performance services, and any comments the architect/engineer desires to include as part of the record. The architect/engineer may appeal to the department any portion of the evaluation summary within a period of 30 calendar days after the architect/engineer has been notified of the evaluation.

**SECTION 19.** Adm 21.01 (2) is amended to read:

**Adm 21.01 (2)** These rules shall apply to all state construction projects when the estimated construction cost exceeds ~~\$30,000~~ the threshold prescribed in s. 16.855(1), Stats.

**SECTION 20.** Adm 21.02 is repealed and recreated to read:

**Adm 21.02 Definitions.** In this chapter:

**(1)** “Advertise for proposals” means a written notice announcing that sealed bids will be received for a specific construction project, inviting prospective bidders to obtain or review drawings and specifications for the purpose of submitting a bid to do work. The advertisement for proposals shall contain as a minimum, the following information:

- (a) Location of the work.
- (b) Identification of owner.
- (c) Scope of the work, which describes such items as square footage, number of floors and primary function(s) of the project.
- (d) A 10% bid guarantee is required.
- (e) Date and time receipt of bids will close and public opening will occur.
- (f) Location where bids will be received.
- (g) Date and place where drawings and specifications will be available.

**(2)** “Bid” means the completed standard bid form on which the bidder has set forth the price or prices for which the bidder is willing to enter into a contract to perform and complete the work bid, in full compliance with the contract documents.

**(3)** “Bid guarantee” means a properly executed department of administration form of bid bond, a bank certified check, or a cashier's check, in an amount equal to 10% of the highest combination base bid(s) and alternate bids submitted. In the event the federal government participates in a state project, the bid guarantee shall be as specified by the federal government, but not less than 10%.

**(4)** “Bidder” means an individual, partnership, or corporation that submits a bid.

**(5)** “Bidders authorized representative” means an individual who has been provided in writing, the authority to act in the bidder's behalf.

**(6)** “Bidding period” means that time span from the date of first publication of the advertisement for proposals to the date of bid opening.

**(7)** “Lowest qualified responsible bidder” shall be defined to include all of the following which must be met to be considered for award of contract:

(a) *Lowest bidder.* The lowest bidder is one whose bid contains the lowest total dollar amount when compared with other bids submitted for the same work. Should the specifications require evaluation of other factors in conjunction with lowest dollar amount to determine the lowest bidder, a formula shall be specified which will permit the conversion of evaluation factors to a dollar value.

(b) *Qualified bidder.* A qualified bidder is one who meets the following conditions:

1. Has completed one or more projects of at least 50% of the size or value of the division of work being bid and the type of work completed is similar to that being bid. If a greater magnitude of experience is deemed necessary, other than size or value of the work, such requirements will be described in the specifications.

2. Has access to all necessary equipment and has organizational capacity and technical competence necessary to enable performance of the work properly and expeditiously.

3. Consideration will be given to associations consisting of 2 or more contracting firms organized for the purpose of entering into a construction contract as a single entity, providing the assignment of and provisions for continuity of the various responsibilities within the association are agreed upon prior to award of contract and further providing that either of the individual firms constituting the association is qualified as defined herein.

4. In the event that the project is of such magnitude as to limit competition as a result of the conditions established for qualification, the department may waive the condition for bidder qualification.

5. The department may require bidders to submit sworn statements as to financial ability, equipment and experience in construction and require other such information as may be necessary to determine their competency. Bidders failing to submit required sworn statements shall be deemed not qualified.

(c) *Responsible bidder*. A responsible bidder is one who meets the following conditions:

1. Maintains a permanent place of business.
2. Provides a sworn statement upon request, which evidences the bidder has adequate financial resources to complete the work being bid, as well as all other work the bidder is presently under contract to complete.
3. Is bondable for the terms of the proposed contract.
4. Has a record of satisfactorily completing past projects. Criteria which will be considered in determining satisfactory completion of projects by contractors and subcontractors will include:
  - a. Completed contracts in accordance with drawings and specifications.
  - b. Diligently pursued execution of the work and completed contracts according to the established time schedule unless extensions are granted by the owner.
  - c. Fulfilled guarantee requirements of the contract documents.
  - d. Established and diligently maintained a satisfactory affirmative action program in accordance with the contract provisions.
  - e. Established and diligently maintained a satisfactory safety program in accordance with the contract provisions.
5. Is not presently on an ineligible list maintained by the department of administration for noncompliance with equal employment opportunities and affirmative action requirements as provided for in s. [\*\*\(8\)\*\* "Omission, error or mistake" are terms used interchangeably and synonymously, constituting a neglect to provide something that is required or a departure from accuracy.](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=26066511&hitsperheading=on&infobase=stats.nfo&jump=16.765%289%29&softpage=Document-JUMPDEST_16.765(9)16.765(9), Stats., or on any other agency list for construction related violation of statutes or administrative rules.</a></li></ol></div><div data-bbox=)

**(9)** "Supporting documents" means those documents packaged with a bid including, but not limited to, bid guarantee, power of attorney if bid bond is submitted as bid guarantee, affidavit form and other information specifically requested. Materials submitted with the bid form that are unsolicited are deemed to be fugitive materials and shall not be considered in determining the lowest bidder or award of contract.

**SECTION 21.** Adm 21.05 (2) is amended to read:

**Adm 21.05 (2)** Should the bidder not possess the special envelope described in sub. (1), the bidder ~~should~~ shall place the following information on the face of the outermost envelope containing the bidder's proposal:

**SECTION 22.** Adm 21.05 (5) is amended to read:

**Adm 21.05 (5)** Sealed bids received by the department of administration, after the date and time designated in the advertisement for proposal, shall have the date and time of receipt stamped upon the face of the envelope and returned to the bidder unopened. The department shall determine envelopes that conform with this section in the best interests of the state.

**SECTION 23.** Adm 21.09 (4) is amended to read:

**Adm 21.09 (4)** Should the total of the proposals submitted by the lowest qualified responsible bidder(s) exceed the limits imposed by authorized funds, the department of administration may negotiate deductive changes, ~~not to exceed 5% of the total bid by any of the lowest qualified responsible bidders~~ in the lowest qualified bid for each contract to bring the bids within funding limits.

**SECTION 24.** EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Dated: March 20, 2006

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Stephen E. Bablitch, Secretary  
Department of Administration