

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

CR 06-077

The Wisconsin Department of Transportation adopts an order to create ch. TRANS 515, relating to contractual service procurement.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 16.70(3g) and 84.01(13), Stats.

Statutory authority: ss. 16.70(3g) and 84.01(13), Stats.

Explanation of agency authority: The Department of Transportation is authorized to execute contracts for engineering and other services under s. 84.01(13), Stats. That statute also requires the Department to conduct a cost-benefit comparison of having that work performed by state employees or by contractual service providers, if the contract will cost \$25,000 or more. In addition to promulgating permanent rules, Act 89 requires the Department to promulgate emergency rules on this subject not later than July 1, 2006, and requires the Department to conduct this comparison for all contractual services solicited on or after July 1, 2006.

Related statute or rule: ss. 16.70(3g), 84.01(13) and 84.06(1m), Stats.

Plain language analysis: The rule requires a cost benefit analysis before procuring engineering or other specialized services under s. 84.01(13), Stats., in excess of \$25,000 when those services are normally performed by state employees. The required analysis includes a comparison between the costs of contracting out and performing the services with state employees. The analysis also considers other subjective factors such as timeliness, quality and technical expertise.

Summary of, and preliminary comparison with, existing or proposed federal regulation: N/A

Comparison with Rules in Adjacent States:

Michigan: Department legal counsel is unaware of and was unable to locate any rules in this state pertaining to this subject.

Minnesota: Department legal counsel is unaware of and was unable to locate any rules in this state pertaining to this subject.

Illinois: Department legal counsel is unaware of and was unable to locate any rules in this state pertaining to this subject.

Iowa: Iowa Code sec. 23A.2 (2205) prohibits the state from offering to the public any supply or service that is also offered by private enterprise. This prohibition does not apply to supplies or services to be used or consumed solely by the state. There appears to be no requirement that the state compare costs and benefits of obtaining services by state employees or private enterprise.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: 2005 Wisconsin Act 89 requires the Department to promulgate this rule.

Analysis and supporting documentation used to determine effect on small businesses: The rule does not affect the amount or quality of engineering or specialized services procured from private enterprise and therefore is expected to have no effect on small businesses.

Effect on small business: The requirements of the rule will be implemented by Department employees and will have no effect on external parties, including small business. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect and anticipated costs incurred by private sector: The Department estimates that compliance with 2005 Wisconsin Act 89 will cost it \$217,000 per year. No similar costs will be borne by the private sector.

Agency contact person and copies of rule: Copies of the rule can be obtained, without cost, by writing to Greg Jacobson, Department of Transportation, Contract Administration Unit, Room 951, P. O. Box 7913, Madison, WI 53707-7913. You may also contact Mr. Jacobson by phone at (608) 266-1824.

TEXT OF RULE

SECTION 1. Ch. Trans 515 is created to read:

CHAPTER TRANS 515 CONTRACTUAL SERVICE PROCUREMENT

Trans 515.01 Purpose and scope. 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, as required under s. 84.01(13), Stats.

Trans 515.02 Definitions. In this chapter, “department” means the department of transportation.

Trans 515.03 Cost-benefit analysis. (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 annually. Each cost-benefit analysis shall include the information set forth in subs. (2) to (6).

(2) SERVICE OVERVIEW. A cost-benefit analysis shall provide the following:

(a) A justification for the request written in clear, non-technical language that can be understood by persons who may not be directly involved in or familiar with the proposed service, with all acronyms fully defined.

(b) A list and description of any federal mandates, state statutes or administrative rules that dictate how the proposed service must be performed.

(3) TOTAL COST. 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 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 Development, Roadway Development Section, P.O. Box 7916, Madison, WI 53707-7916 or (608) 266-9349.

(4) **QUALITY.** A description of the proposed service to be performed, a list of items to be delivered, any specific conditions to be required of the contractor, and how the department will ensure that the contractor will provide services and quality as promised without financial losses to the State.

(5) **TECHNICAL EXPERTISE.** (a) *Capacity.* A description whether department employees have the capacity to perform the proposed service.

(b) *Expertise.* A description whether department employees have the expertise to perform the proposed service.

(6) **TIMELINESS.** (a) *Timeliness.* A complete schedule and timetable for the proposed service.

(b) *Project term.* A statement indicating whether the proposed service is a short-term project or is a long-term need for the department.

Trans 515.04 Continued appropriateness of contracting. 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.

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

(END OF RULE TEXT)

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.

Signed at Madison, Wisconsin, this ____ day of February, 2007.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation