

## STATEMENT OF SCOPE

### DEPARTMENT OF WORKFORCE DEVELOPMENT

**Rule No.**

Chapter DWD 293

**Relating to**

Adjustment of thresholds for payment and performance bond requirements

**Rule Type**

Permanent.

**Detailed Description of the Objective of the Proposed Rule**

Section 779.14, Stats., sets the cost estimate thresholds for the payment and performance assurance bond requirements that apply to contracts for performing, furnishing or procuring labor, services, materials, plans or specifications, for a public improvement project or public work. The statute requires the Department of Workforce Development (DWD) to biennially adjust the thresholds requirements in proportion to any change in construction costs since the last adjustment if the adjustment to be made would exceed 5%. DWD is planning a rule to adjust the thresholds to reflect a 6.15% increase in construction costs from December 2009 to December 2011 and a 5.4% increase in construction costs from December 2011 to December 2013.

DWD is also planning a new rule provision to provide that, beginning in 2016, DWD shall adjust the threshold amounts in January of every even calendar year by calculating the percentage difference over the previous two years, raising the threshold amounts if there is an increase of more than 5%, and publishing an announcement in the Wisconsin Administrative Register and a note in the text of the rule.

**Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives**

The major policy embodied in the rule is the policy set by the statute: that the threshold amounts are adjusted in proportion to the change in construction costs every two years, when there is an increase of more than 5%.

The proposed new policy is the provision to make future rule adjustments by performing the calculation described in the statute and publishing the adjusted threshold amounts in the Administrative Register and in a note to the rule.

The principal policy alternative would be to not make the proposed change. This would cause the continuation of the present situation in which the full formal rulemaking procedure must be followed in order to make changes which are determined by the policy stated in the statute.

### **Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)**

Section 779.14 (1s), Stats., requires DWD to biennially adjust the thresholds requirements in proportion to any change in construction costs since the last adjustment, if the adjustment would not be less than 5%.

### **Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule**

The estimated time is 40 hours.

### **List with Description of All Entities that May Be Affected by the Proposed Rule**

State agencies, local governmental units, employers in the construction industry who contract for public improvement or public work projects, and employees of these employers.

### **Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule**

There are federal contractor payment and performance bond requirements which apply to projects that are supported by federal funds. Under the federal laws and regulations, the threshold amount is a project with a cost of more than \$100,000. This threshold is set by statute and is rarely adjusted.

### **Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)**

The proposed rule will have a positive impact on businesses, including small businesses. Because the rule will involve only an adjustment to negate the effects of increasing construction costs, which would otherwise cause the bond requirements to apply to increasingly smaller projects, businesses will experience a positive impact in avoiding the application of bond requirements to smaller projects due solely to the effect of increasing costs. The proposed rule will otherwise have no economic impact locally or statewide.

### **Contact Person**

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