

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

*Joint Committee for
Review of
Administrative Rules
(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
-
- Clearinghouse Rules ... CRule
- 97hr_JCR-AR_CRule_98-104
-
- Committee Hearings ... CH
-
-
- Committee Reports ... CR
-
-
- Executive Sessions ... ES
-
-
- Hearing Records ... HR
-
-
- Miscellaneous ... Misc
-
-
- Record of Comm. Proceedings ... RCP
-

IES 6. (98-104) TECH. COLL. SYSTEM
PRINCIPLES / PROCEDURES

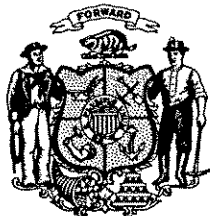
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-104

AN ORDER to amend TCS 6.05 (2) (c), (d), (f), (g), (j) (intro.) and (m), 7.03 (1), 8.06 (1) and (2), ch. TCS 9 (title), 9.01 (1), 9.02 (7) and 9.03 (1) (intro.), (a), (b) and (c) 1. and 2.; to repeal and recreate TCS 6.05 (2) (intro.), (h) and (L) and 9.03 (3); and to create TCS 6.05 (2) (a) (title), (b) (title), (c) (title), (d) (title), (e) (title), (f) (title), (g) (title), (i) (title), (j) (title), (k) (title) and (m) (title), relating to procurement policies and procedures; district budget, audit and finance; and district reporting of student participation in compulsory school attendance, post-secondary options and technical preparation programs.

Submitted by **WISCONSIN TECHNICAL COLLEGE SYSTEM BOARD**

07-24-98 RECEIVED BY LEGISLATIVE COUNCIL.
08-19-98 REPORT SENT TO AGENCY.

RNS:RW:kjf:jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

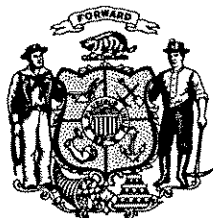
Comment Attached YES NO

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CLEARINGHOUSE RULE 98-104

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

- a. In SECTIONS where a title is being created, only the title should be shown, not the text of the rule. For example, see SECTIONS 1 and 2.
- b. In several provisions, "of this subsection" should be deleted. See SECTIONS 4, 7 and 9.
- c. Several SECTIONS in which a title is created and the text is amended should be divided into two SECTIONS--one for the creation of the title and one for amendment of the text. See SECTIONS 4, 5, 7, 8, 11 and 14.
- d. In SECTIONS 4 and 13, reference is made to par. "(1)"; the proper reference is to par. "(L)" to avoid confusion with the numeral one.
- e. The material contained in s. TCS 7.03 (4) could be shown in a note rather than a rule section.

4. Adequacy of References to Related Statutes, Rules and Forms

In the listing of statutes that authorize promulgation of the rule, the reference to s. 38.04 (11), Stats., should be deleted since a more specific reference to s. 38.04 (11) (a) 2., Stats., is included.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. TCS 6.05 (2) (intro.), the first comma should be deleted. Also, “, do all of the following” should be inserted before the colon.

b. In s. TCS 6.05 (2) (i), should the state board be notified of emergency procurements under this provision?

c. It is not clear what is intended by the requirement in s. TCS 6.05 (2) (h) that the report be “reflected” in the district board’s proceedings.

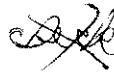
d. Section TCS 9.03 (3) could be revised for clarity to read: “Personally identifiable information collected under sub. (2) shall be used”

e. The agency may wish to include an initial applicability date to specify which transactions will be subject to the new rules.

**PROPOSED ORDER OF THE
WISCONSIN TECHNICAL COLLEGE SYSTEM BOARD
ADOPTING RULES RELATING TO GENERAL DISTRICT POLICIES;
DISTRICT BUDGET, AUDIT AND FINANCE;
CONTRACT FOR SERVICES; and
HIGH SCHOOL STUDENT REPORTING REQUIREMENTS**

The Wisconsin Technical College System Board proposes an order to amend 6.05(2)(c), (2)(d), (2)(f), (2)(g), (2)(j)(intro.), (2)(m); to repeal and recreate TCS 6.05(2)(intro.), (2)(h), and (2)(l); to create 6.05(2)(a) (title), (2)(b) (title), (2)(c) (title), (2)(d) (title), (2)(e) (title), (2)(f) (title), (2)(g) (title), (2)(i) (title), (2)(j) (title), (2)(k) (title), and (2)(m) (title), relating to procurement policies and procedures; to amend TCS 7.03(1), relating to district budget, audit and finance; to amend TCS 8.06(1) and (2), relating to contracts for services; to amend Ch. TCS 9 (title), 9.01(1), 9.02(7), 9.03(1) (intro.), (1)(a), (1)(b), (1)(c)1. and (1)(c)2.; and repeal and recreate 9.03(3), relating to district reporting of student participation in compulsory school attendance, postsecondary options and technical preparation programs.

ANALYSIS PREPARED BY THE TECHNICAL COLLEGE SYSTEM BOARD

Statutory authority: ss. 38.04(11), 38.04(11)(a)2., 38.04(14)(a), and 227.11(2), Wis. Stats. 

Statutes interpreted: ss. 38.04(11), 38.12(5), 38.12(5m), 38.12(7), 38.14(3), 38.28, Wis. Stats.

General district policies—Procurement (TCS 6.05). The current rule regarding technical college (WTCS) district procurement policies was originally promulgated in 1984 based on federal procurement guidelines and regulations to provide consistency for all purchases regardless of funding source. In recent years, changes at both the federal and state levels have led to higher threshold amounts for competitive procurement requirements. The proposed rule amendment would not only reflect these changes, but also make several improvements to the procurement process.

TCS 6.05 requires that each WTCS district board adopt, at a minimum, certain policies and procedures on procurement. In general, such policies and procedures must require: (1) competitive bid or selection procedures if the total cost of the procurement exceeds \$10,000; (2) the solicitation of written quotes from at least 2 prospective vendors if the total cost is between \$3,000 and \$10,000; and (3) a procedure established by the district board if the total cost is below \$3,000 (small procurements). In addition, all district contracts for public construction must be accomplished through the use of competitive bids if the estimated cost exceeds \$10,000 (as required under §38.18, Wis. Stats.).

The proposed rule amendment would: (1) increase the level for competitive bid or selection procedures to procurements in excess of \$25,000; (2) increase the solicitation of written quotes levels to procurements between \$10,000 and \$25,000 and require quotes from at least 3 vendors; and (3) increase the small procurement level to \$10,000. The \$10,000 competitive bid level for public construction contracts would remain unchanged.

This proposal would bring the WTCS district procurement thresholds more in-line with current federal and state regulations. The federal standard for competitive procurement is now \$100,000. The current purchasing law applicable to state agencies requires competitive procurement when the estimated cost of the transaction exceeds \$25,000 and a simplified procedure established by the state Department of Administration is used for transactions of \$25,000 or less (essentially quotes from at least 3 vendors without any formal bid procedures).

TCS 6.05 also requires that all procurements within a 30-day period from a single contractor or from multiple contractors (involving similar procurements) be considered in the aggregate in determining the method of procurement used by the district. The proposed amendment would replace this 30-day aggregation rule with a requirement that a district board's procurement policies include an annual review to determine if a more competitive procurement process should be used in succeeding years. This review would be conducted based on a report that aggregates multiple purchases of similar goods, supplies and services procured without competitive bids or selection procedures. The district board would be required to take formal action on this report and such action would have to be reflected in the board's minutes.

TCS 6.05 allows sole source procurement in certain circumstances including where cooperative purchasing under §16.73, Wis. Stats., is utilized. Such cooperatives involve joint purchasing agreements among a group of municipalities or between the state Department of Administration and a group of municipalities. The proposed rule amendment would modify the list of sole source procurements to include cooperative purchasing associations recognized by the State Director as having procurement policies that are substantially equivalent to those of the WTCS.

Finally, the proposed amendment would require that each district board disclose the evaluation criteria related to competitive selection procedures in the specifications provided to prospective vendors. This change will ensure that vendors are fully aware of the criteria and relative weight each criterion will receive in the selection process.

District budget, audit and finance—Accounting standards (TCS 7.03). The current rule requires WTCS districts to comply with accounting standards established by the National Council on Governmental Accounting (NCGA) and incorporates these standards into the rule by reference to the source document. At the time this rule was promulgated (September 1983), the NCGA was the authoritative source of generally accepted accounting principles for state and local governments. However, shortly

thereafter, the authority to establish governmental accounting standards was transferred to the Governmental Accounting Standards Board (GASB). The proposed rule amendment would recognize this change in authority by adopting and incorporating by reference the GASB accounting standards.

Contract for services—Reporting standards (TCS 8.06). The current rule interprets § 38.14(3)(e), Wis. Stats., which requires each WTCS district board to submit to the WTCS Board a report identifying all contracts under which the district board provided services. However, the rule reflects the statutory language prior to 1989 which required each district board to submit its contract report monthly and on forms provided by the WTCS Board. 1989 Wisconsin Act 31 changed the requirement to an annual report due by December 1st and specified that the report be submitted in a form determined by the WTCS Board. The proposed rule amendment would eliminate the monthly reporting requirement; establish the December 1st annual reporting date; specify that the report would be submitted electronically, in the format specified by the Board; and clarify the contents of the report.

High school student reporting requirements (TCS 9). The current rule interprets section 38.04 (11)(a)2., Wis. Stats., by requiring WTCS districts to annually, by June 15, submit a report to the WTCS Board on the number of high school students participating in the compulsory school attendance, postsecondary options and technical preparation programs. However, the budget for WTCS districts operates on a fiscal year basis ending June 30 of each year of the biennium. Furthermore, §38.04(11)(a), Stats., directs the WTCS Board to establish common use of the fiscal year for both operations and data reporting. Therefore, the June 15th reporting date is not compatible with the closing dates established for WTCS data reporting purposes. The proposed rule amendment would change the annual reporting date to August 15th.

TCS 9 also requires each WTCS district to report the number of high school students enrolled in a secondary course for which advanced standing or transcribed credit may be granted by the college under the technical preparation program. However, advanced standing is not automatic for high schools students and may not be granted unless the student applies for admission to a technical college and specifically requests advance standing based on the course being taken by that student. Similarly, transcribed credit is granted at the time of completion of the course. The proposed rule amendment would clarify that WTCS districts would report high school student participation in advanced standing and transcribed credit courses once these forms of credit have been granted to the student by the technical college.

Finally, the proposed amendment would provide the appropriate cross-references to the new youth options program under §118.55, Wis. Stats., which replaces the postsecondary enrollments option program under §118.37, Wis. Stats., as a result of 1997 Wisconsin Act 27.

TEXT OF RULE

SECTION 1. TCS 6.05(2) (intro.) is repealed and recreated to read:

TCS 6.05(2) **POLICIES AND PROCEDURES.** Each district board shall adopt procurement policies and procedures, that, at a minimum: *do all of ---*

SECTION 2. TCS 6.05(2)(a) (title) is created to read:

TCS 6.05(2)(a) Delegation. Identify those employees, by functional title, who are responsible for administering the district's procurement policy.

SECTION 3. TCS 6.05(2)(b) (title) is created to read:

TCS 6.05(2)(b) Code of conduct. Establish a procurement code of conduct that shall, except as provided under s. 946.13, Stats., prohibit any employee involved in procurement from having a financial interest in any procurement, and prohibit any employee involved in procurement from receiving any gratuity or other financial gain from any contractor.

SECTION 4. TCS 6.05(2)(c) (title) is created and (2)(c) is amended to read:

TCS 6.05(2)(c) Competitive bids. Require that all procurements where the total cost exceeds \$40,000 ~~\$25,000~~ and public construction under par. (L) ss. 38.18 and 62.15(1), (11) and (14), Stats., where the total cost exceeds \$10,000 be accomplished through the use of competitive bids except as provided by policies and procedures adopted under pars. (d) and (e) and (i) of this subsection.

(L) no
x(1)

SECTION 5. TCS 6.05(2)(d) (title) is created and (2)(d) is amended to read:

TCS 6.05(2)(d) Sole source procurement. Provide for sole source procurement where the district board determines that there is only one source for the required supply, service, equipment or construction item; where the required supply, service, equipment or construction item is to be purchased from another governmental body; or where cooperative purchasing under s. 16.73, Stats., is utilized or a cooperative purchasing association is recognized by the state director that has a competitive purchasing process that is substantially equivalent to the minimum requirements set forth in this section. The district board may delegate the power for authorizing sole source procurement to the district director who may with the approval of the district board redelegate this responsibility to other employees of the district.

SECTION 6. TCS 6.05(2)(e) (title) is created to read:

TCS 6.05(2)(e) Competitive selection. Provide for competitive selection procedures in lieu of competitive bids for procuring the services of accountants, physicians, lawyers, dentists, and other providers of services where the district board determines that competitive selection in lieu of competitive bids is in the best interest of the district.

SECTION 7. TCS 6.05(2)(f) (title) is created and (2)(f) is amended to read:

TCS 6.05(2)(f) Solicitation of written quotes. Except as required provided under pars. (d), (e), and (i) of this subsection, require that all procurements where the total cost

equals or exceeds \$3,000 \$10,000 and does not exceed \$40,000 \$25,000 be accomplished through the solicitation of written quotations from a minimum of 2 3 contractors or proposed contractors.

SECTION 8. TCS 6.05(2)(g) (title) is created and (2)(g) is amended to read:
TCS 6.05(2)(g) Procurements less than \$10,000. Establish a procedure for all procurements where the total cost is less than \$3,000 \$10,000.

SECTION 9. TCS 6.05(2)(h) is repealed and (2)(h) is recreated to read:
TCS 6.05(2)(h) Annual review. Require an annual review, based on a report that aggregates multiple purchases of similar goods, supplies, and services of all procurements made under pars. (f) and (g) of this subsection, to determine if a more competitive procurement process should be used in succeeding years. The district board shall take formal action on this report and such report shall be reflected in the district board's proceedings.

SECTION 10. TCS 6.05(2)(i) (title) is created to read:
TCS 6.05(2)(i) Emergency procurement. Establish a procedure for emergency procurements where there exists a threat to the continued operation of the district or to the health, safety or welfare of students, employees or residents of the district.
Emergency procurements shall be evidenced by a written determination of the basis of the emergency and the selection of a particular contractor. *State Board notification?*

SECTION 11. TCS 6.05(2)(j) (title) is created and (2)(j)(intro.) is amended to read: *separate JCC?*
TCS 6.05(2)(j) Records required. Require that records be created and retained for all procurements where the total cost equals or exceeds \$3,000 \$10,000. These records shall include:

1. The rationale for the method of procurement.
2. The rationale for selection or rejection of any contractor or proposed contractor.
3. The basis for the cost or price.

SECTION 12. TCS 6.05(2)(k) (title) is created to read:
TCS 6.05(2)(k) Audits. Establish a procedure for audit and oversight of all procurements.

SECTION 13. TCS 6.05(2)(l) is repealed and (2)(l) is recreated to read:
TCS 6.05(2)(l) Disclosure of evaluation criteria. Require that evaluation criteria related to bids and competitive selection procedures be disclosed in the specifications provided to prospective vendors.

SECTION 14. TCS 6.05(2)(m) (title) is created and (2)(m) is amended to read: *separate JCC?*
TCS 6.05(2)(m) Adherence to federal regulations. Require that all federally funded procurements funded by federal funds be made in accordance with according to the appropriate federal regulations.

SECTION 15. TCS 7.03(1) and (4) are amended to read:
TCS 7.03(1) **ADOPTION OF STANDARDS BY REFERENCE.** (1) Pursuant to s. ~~227.025~~ 227.21, Stats., the attorney general and revisor of statutes have consented to the incorporation by reference of ~~Statement 1, Governmental Accounting and Reporting Principles, The National Council on Governmental Accounting, Municipal Finance Officers Association of the United States and Canada, 180 North Michigan Avenue, Chicago Illinois 60604~~ the Codification of Governmental Accounting and Financial Reporting Standards, Governmental Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, Connecticut 06856-5116.

note / TCS 7.03(4) Standards under sub. (1) may be obtained by contacting the ~~Municipal Finance Officers Association of the United States and Canada, 180 North Michigan Avenue, Chicago, Illinois 60604~~ Governmental Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, Connecticut 06856-5116.

SECTION 16. TCS 8.06(1) is amended to read:
TCS 8.06(1) ~~Monthly, the~~ The district board shall submit to the board a report as required under s. 38.14(3)(e), Stats.

SECTION 17. TCS 8.06(2) is amended to read:
TCS 8.06(2) Annually by ~~August 31~~ December 1 and ~~on forms provided in a form determined by the board~~ the district board shall report to the board the reimbursed and non-reimbursed costs for each accounting function, the type of service rendered under each contract, and if the contract involves instruction for credit, the number of students served under each contract and the total credits granted course, section, and location number of each course offered under each contract.

SECTION 18. Chapter TCS 9 (title) is amended to read:

CHAPTER TCS 9 (title)
DISTRICT REPORTING OF STUDENT PARTICIPATION STUDENTS
PARTICIPATING IN COMPULSORY SCHOOL ATTENDANCE, POSTSECONDARY
YOUTH OPTIONS AND TECHNICAL PREPARATION PROGRAMS: REQUIREMENTS
AND PROCEDURES

SECTION 19. TCS 9.01 is amended to read:
TCS 9.01 **PURPOSE.** This chapter establishes standards the format and procedures pursuant to s. 38.04(11)(a)2., Stats., for districts to report the number of students participating in district courses under the compulsory education provisions of s. ss. 118.15(1)(b), (cm) and (d), 118.34, and 118.55(7r), Stats., and the number of students participating in the postsecondary enrollment options program under the provisions of s. 118.37, Stats., and the number of students participating in technical preparation programs under s. 118.34, Stats., including the number of courses taken for advanced standing in a technical college district's associate degree or vocational diploma program and for postsecondary credit.

SECTION 20. TCS 9.02(7) is amended to read:

TCS 9.02(7) "~~Postsecondary enrollment~~ Youth options program" means enrollment under the provisions of s. ~~118.37~~ 118.55(7r), Stats.

SECTION 21. TCS 9.03(1) (intro.) is amended to read:

TCS 9.03(1) Annually, by ~~June~~ August 15, technical college districts shall compile a report for the board containing the data elements of sub. (2) to report participation in technical college courses or programs for the following students:

SECTION 22. TCS 9.03(1)(a) is amended to read:

TCS 9.03(1)(c)1. Students attending a technical college of the district under the compulsory school attendance provisions of s. ~~118.15(1)(b), (cm) and (d)~~, Stats.

SECTION 23. TCS 9.03(1)(b) is amended to read:

TCS 9.03(b) Students attending a technical college of the district under the ~~postsecondary enrollment~~ youth options program provisions of s. ~~118.37~~, Stats.

SECTION 24. TCS 9.03(1)(c)1. is amended to read:

TCS 9.03(1)(c)1. Students ~~enrolled in~~ who have completed a secondary course, authorized through an articulation agreement, for which advanced standing ~~may be~~ has been granted by a technical college district under the technical preparation program, s. ~~118.34~~, Stats.

SECTION 25. TCS 9.03(1)(c)2. is amended to read:

TCS 9.03(1)(c)2. Students ~~enrolled in a secondary~~ who have completed a postsecondary course for which transcribed credit ~~may be~~ has been granted by the technical college and the school district under the technical preparation program provisions of s. ~~118.34~~, Stats.

SECTION 26. TCS 9.03(3) is repealed and recreated to read: ^{collected}

TCS 9.03(3) [~~Collection of~~] personally identifiable information, ^{collected} under sub. (2) shall be used solely for determining student participation in technical college courses or programs under ss. 118.15(1)(b), (cm) and (d), 118.34, and 118.55(7r), Stats., ~~including those courses taken for advanced standing in a technical college district's associate degree or vocational diploma program and for postsecondary credit.~~ *Done*

EFFECTIVE DATE

This rule shall take effect on the first day following the date of publication in the Wisconsin Administrative Register as provided in s. 227.22(2) (intro.), Stats.

FISCAL ESTIMATE

The functions required by these rules can be absorbed within existing staff. Therefore, there is no fiscal effect on the agency.

CONTACT PERSON

Questions concerning these rules may be directed to Jesús G.Q. Garza, Legal Counsel, Wisconsin Technical College System Board, 310 Price Place, P.O. Box 7874, Madison, Wisconsin 53707-7874, telephone (608) 267-9540.

Date: July 24, 1998

Wisconsin Technical College System Board



Edward Chin, Director