

Clearinghouse Rule 06-090

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION

PROPOSED RULE RELATING TO COST BENEFIT ANALYSES OF CONTRACTURAL SERVICES

The Wisconsin Department of Administration proposed a rule relating to cost benefit analyses of contractual services. 2005 Wisconsin Act 89 (“Act 89”) renumbered and amended § 16.705(8), Stats., amended §§ 16.705(1) and (2), Stats., and created §§ 16.70(3g) and 16.705(8)(a) and (b), Stats., in order to prescribe uniform procedures for determining whether services are appropriate for contracting under the State procurement system.

Analysis Prepared by the Department of Administration

- 1. Statutes Interpreted:** ss. 16.004(1), 16.705(2) and 227.11, Stats.
- 2. Statutory Authority:** ss. 16.004(1), 16.705(2) and 227.11, Stats.
- 3. Explanation of agency authority:** 2005 Wisconsin Act 89 (“Act 89”) renumbered and amended § 16.705(8), Stats., amended §§ 16.705(1) and (2), Stats., and created §§ 16.70(3g) and 16.705(8)(a) and (b), Stats., in order to prescribe uniform procedures for determining whether services are appropriate for contracting under the State procurement system.
- 4. Related statute or rule:** Administrative rule chapter 10.
- 5. Plain language analysis:** The department intends to promulgate a rule as required by Act 89 to require a cost-benefit analysis to be completed for each bid or request for proposal to compare the cost of contracting for services versus providing the services with state employees.

Currently, all state agencies and UW System campuses may contract for services between \$25,000 and \$200,000 if they can show that the services can be performed more economically or efficiently by such a contract than by state employees. Currently, if the contractual services would be greater than \$200,000, the contracting agency must complete a more rigorous and detailed cost/benefit analysis to demonstrate that the services can be performed more economically or efficiently by such a contract than by state employees. This more rigorous and detailed analysis includes total cost, quality and nature of services required, specialized skills, time factors, risk factors and legal barriers. Act 89 requires agencies to conduct uniform cost-benefit analysis of each proposed contractual service procurement involving an estimated expenditure of more than \$25,000 in accordance with standards prescribed in the rules. Cost benefit-analysis is defined to include total cost, quality, technical expertise and timeliness of a service.

Act 89 also requires agencies to review periodically, and before any renewal, the continued appropriateness of contracting under each services agreement involving an estimated expenditure of more than \$25,000. Act 89 requires the department to complete an annual summary report of

the cost benefit-analysis prepared by state agencies in the preceding fiscal year and recommendations for elimination of unneeded contractual service procurements and for the consolidation or resolicitation of existing contractual service procurements.

6. Summary of, and comparison with, existing or proposed federal regulations: This proposed rule is specific to State of Wisconsin procurement laws and is completely separate from, and unaffected by, federal regulations.

7. Comparison with rules in adjacent states.

Michigan: The department is unaware of and was unable to locate any rules in this state pertaining to this subject.

Minnesota: The department is unaware of and was unable to locate any rules in this state pertaining to this subject.

Illinois: The department is unaware of and was unable to locate any rules in this state pertaining to this subject.

Iowa: The department is unaware of and was unable to locate any rules in this state pertaining to this subject.

8. 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.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact statement: The proposed rule prescribes uniform procedures for determining whether services are appropriate for contracting, however the rule does not require agencies and UW System campuses to make a procurement decision based upon the cost benefit analysis and therefore is expected to have no effect on small business.

10. Effect on small business: The proposed rule prescribes uniform procedures for determining whether services are appropriate for contracting, however the rule does not require agencies and UW System campuses to make a procurement decision based upon the cost benefit analysis and therefore is expected to have no effect on small business.

11. Agency contact person: Requests for copies of the proposed rule should be submitted to Terri Lenz, Department of Administration, Division of Enterprise Operations, P.O. Box 7867, Madison, WI 53707-7867. You may also contact Ms. Lenz at (608) 261-2298, by fax at (608) 267-0600 or by email at terri.lenz@wisconsin.gov.

12. Place where comments are to be submitted and deadline for submission: Comments on the proposed rule should be submitted to Terri Lenz, Department of Administration, Division of Enterprise Operations, P.O. Box 7867, Madison, WI 53707-7867. You may also contact Ms. Lenz at (608) 261-2298, by fax at (608) 267-0600 or by email at terri.lenz@wisconsin.gov.

13. Fiscal effect: The fiscal estimate for the act is attached.

TEXT OF PROPOSED RULE

Cost-Benefit Analyses of Contractual Services

Amending Chapter Adm 10, Contractual Services

SECTION 1: Adm 10.035 is created to read:

Adm 10.035 Cost-benefit analysis. A uniform cost benefit analysis shall be completed by a contracting agency or its designated agents of each proposed contractual service procurement involving an estimated expenditure of more than \$25,000. Each cost-benefit analysis shall include the information set forth in (1) to (5).

(1) **SERVICE OVERVIEW.** Cost-benefit analysis statements shall include the following:

- (a) Provide 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) List and describe any federal mandates, state statutes or administrative rules that dictate how the proposed service must be performed.

(2) **TOTAL COST.** Each proposed contractual service procurement shall include a total cost component. For services expected to cost more than \$25,000 annually, provide a detailed cost benefit analysis showing why 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 will 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 agency must use and submit the State of Wisconsin Cost Analysis Methodology as set forth in the State Procurement Manual.

(3) **QUALITY.** Provide 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 agency will ensure that the contractor will provide services and quality as promised without financial losses to the State.

(4) **TECHNICAL EXPERTISE.** (a) **Capacity.** Describe whether agency employees have the capacity to perform the proposed service.
(b) **Expertise.** Describe whether the agency employees have the expertise to perform the proposed service.

(5) **TIMELINES.** (a) **Timelines.** Provide complete schedules and timetables for the proposed service.
(b) **Project term.** Provide a statement indicating whether the proposed service is a short-term project or is it a long-term need for the agency.

SECTION 2: Adm 10.037, Adm 10.038 and Adm 10.039 are created to read:

Adm 10.037 Continued appropriateness of contracting: The department and its designated agents shall review periodically, and before any renewal, the continued appropriateness of contracting under each contractual service agreement involving an estimated annual expenditure of more than \$25,000.

Adm 10.038 Submittal of cost-benefit analysis. The original detailed cost-benefit analysis in 10.035 and continued appropriateness of contracting periodic reviews in 10.037 shall be submitted to the Department of Administration, Bureau of Procurement.

SECTION 3: Effective Date. This rule shall take effect on the first day of the month after publication in the Wisconsin Administrative Register, pursuant to s.227.22(2), Stats.

Dated: _____

Stephen E. Bablitch, Secretary
Department of Administration