

Clearinghouse Rule 08-003



State of Wisconsin
Department of Workforce Development
Equal Rights Division

**Adjustment of Thresholds for Application of Prevailing Wage Rates
and Payment and Performance Assurance Requirements**

DWD 290.155 (1) and DWD 293.02 (1) and (2)

The Wisconsin Department of Workforce Development proposes to amend ss. 290.155 (1), 293.02 (1), and 293.02 (2), relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements and affecting small businesses.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 66.0903 (5), 103.49 (3g), 779.14 (1s), and 227.11, Stats.
Statutes interpreted: Sections 66.0903 (5), 103.49 (3g), and 779.14, Stats.

Explanation of agency authority. The prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Sections 66.0903 (5) and 103.49 (3g), Stats., set initial estimated project cost thresholds for application of the prevailing wage rate requirements and direct the Department to adjust the thresholds each year in proportion to any change in construction costs since the thresholds were last determined.

Section 779.14, Stats., sets payment and performance assurance requirements that apply to contracts for the performance of labor or furnishing of materials for a public improvement project or public work. Section 779.14 (1s), Stats., requires the Department to biennially adjust the thresholds for various requirements in proportion to any change in construction costs since the last adjustment if the adjustment to be made would not be less than 5%.

Summary of the proposed rule. Section DWD 290.155 (1) currently provides that the prevailing wage rate requirements do not apply to any single-trade public works project for which the estimated cost of completion is below \$44,000 and do not apply to any multi-trade public works project for which the estimated cost of completion is below \$216,000. The proposed rule will adjust the thresholds from \$44,000 to \$45,000 for a single-trade project and from \$216,000 to \$221,000 for a multi-trade project based on a 2.25% increase in construction costs between December 2006 and December 2007.

Chapter DWD 293 provides adjusted thresholds for various payment and performance assurance requirements that apply to contracts with state or local governments for the performance of labor or furnishing of materials for a public improvement or public work. The proposed rule will adjust these thresholds to reflect a 5.78% increase in construction costs from December 2005 to December 2007.

Summary of factual data and analytical methodology. Sections DWD 290.15 and 293.01 provide that the Department will adjust the thresholds on the basis of the change in the construction cost index as published in the *Engineering News-Record*, a national construction trade publication. Thresholds are rounded to the nearest thousand.

Comparison to federal law. The threshold for application of the federal prevailing wage law is a contract greater than \$2,000. The threshold for application of the federal contractor payment and performance bond requirements is \$100,000. These thresholds are in statute and are rarely adjusted.

Comparison of prevailing wage law thresholds in adjacent states. Minnesota has a statutory threshold of \$2,500 for a single-trade project and \$25,000 for a multi-trade project. Illinois does not have a threshold in its prevailing wage law. The law covers public works projects and defines public works projects as projects financed under various other specified laws. Michigan does not have a threshold in its prevailing wage law. The law covers projects that must be bid and relies on other agencies to determine the thresholds for what projects must be bid. Iowa does not have a prevailing wage law.

Comparison of payment and performance bond thresholds in adjacent states. Minnesota has a public contractors' performance and payment bond requirement that applies to a contract that exceeds \$75,000. Illinois requires a bond if a contract for a public work exceeds \$5,000. Neither state appears to have a mechanism for adjustment of the thresholds, other than statutory amendment. Michigan has a performance bond requirement without a clear statutory threshold. The Department is not aware of a performance bond requirement for public works contracts in Iowa.

Effect on small business. The rule affects small businesses as defined in s. 227.114 (1), Stats., but does not have a significant economic impact on a substantial number of small businesses.

Analysis used to determine effect on small business. Many construction companies are small businesses. The adjustment of the thresholds for application of the prevailing wage and payment and performance bond requirements prevent these provisions from

affecting more and more public works projects over time due solely to the effects of inflation.

Agency contact person. Julie Eckenwalder, Construction Wage Standards Section Chief, (608) 266-3148, julie.eckenwalder@dwd.state.wi.us.

Place where comments are to be submitted and deadline for submission. Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946 or elaine.pridgen@dwd.state.wi.us. The comment deadline is February 15, 2008.

SECTION 1. DWD 290.155 (1) is amended to read:

DWD 290.155 (1) This chapter does not apply to any single-trade public works project for which the estimated cost of completion is below ~~\$44,000~~ \$45,000 and any multi-trade public works project for which the estimated cost of completion is below ~~\$216,000~~ \$221,000.

SECTION 2. DWD 293.02 (1)(a), (1)(b), (1)(c), (2)(a), (2)(b), and (2)(c) are amended to read:

DWD 293.02 (1) STATE CONTRACTS. (a) The payment and performance assurance requirements in s. 779.14 (1m) (c) 1., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$14,000~~ \$15,000 but not exceeding ~~\$131,000~~ \$139,000.

(b) The payment and performance assurance requirements in s. 779.14 (1m) (c) 2., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$131,000~~ \$139,000 but not exceeding ~~\$326,000~~ \$345,000.

(c) The payment and performance assurance requirements in s. 779.14 (1m) (c) 3., Stats., shall apply to contracts with the state for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$326,000~~ \$345,000.

(2) LOCAL GOVERNMENT CONTRACTS. (a) The payment and performance assurance requirements in s. 779.14 (1m) (d) 1., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public

improvement or public work with a contract price exceeding ~~\$14,000~~ \$15,000 but not exceeding ~~\$65,000~~ \$69,000.

(b) The payment and performance assurance requirements in s. 779.14 (1m) (d) 2., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$65,000~~ \$69,000 but not exceeding ~~\$131,000~~ \$139,000.

(c) The payment and performance assurance requirements in s. 779.14 (1m) (d) 3., Stats., shall apply to contracts, other than contracts with the state, for the performance of labor or furnishing materials for a public improvement or public work with a contract price exceeding ~~\$131,000~~ \$139,000.

SECTION 3. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro.), Stats.