

**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 290.15, DWD 290.155(1), and DWD 293

The Wisconsin Department of Workforce Development proposes to amend ss. 290.15 and 290.155(1) and create chapter DWD 293, relating to the adjustment of thresholds for application of prevailing wage rates and payment and performance assurance requirements.

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.

Adjustment of thresholds for application of prevailing wage rates. The state prevailing wage laws require that when a state agency or local governmental unit contracts for the construction 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. Under current law the state prevailing wage rate laws do not apply to any single-trade public works project for which the estimated cost is below \$35,000, and do not apply to any multi-trade public works project for which the estimated cost is below \$172,000.

Pursuant to ss. 66.0903(5) and 103.49(3g), Stats., and s. DWD 290.15, the Department is required to adjust the dollar amounts of the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. The threshold adjustment is based on changes in the construction cost index published in the *Engineering News-Record*, a national construction trade publication. This rule adjusts the thresholds from \$35,000 to \$36,000 for single-trade projects and from \$172,000 to \$175,000 for multi-trade projects based on a 1.7% increase in the construction cost index between December 2000 and December 2001. Section DWD 290.15 is also amended to clarify that the department rounds off the thresholds to the nearest thousand.

Adjustment of thresholds for payment and performance assurance requirements.

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 adjust the thresholds for various requirements in proportion to any change in construction costs since the statute was effective or the last adjustment. This is the first adjustment since the statute was effective in June 1998. The thresholds are adjusted to reflect a 8.7% increase in the construction cost index from June 1998 to December 2001. These adjustments are also based on changes in the construction costs index as published in the *Engineering News-Record* and are rounded to the nearest thousand.

SECTION 1. DWD 290.15 is amended to read:

DWD 290.15 Every year, the department shall adjust the minimum estimated project cost of completion figures for both single-trade and multi-trade public works projects on the basis of the change in the construction cost index as published in the engineering news-record. The adjusted minimum estimated project cost of completion figures shall be rounded to the nearest thousand.

SECTION 2. 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 ~~\$35,000~~ \$36,000, and any multi-trade public works project for which the estimated cost of completion is below ~~\$172,000~~ \$175,000.

SECTION 3. Chapter DWD 293 is created to read:

Chapter DWD 293

PAYMENT AND PERFORMANCE ASSURANCE REQUIREMENTS

DWD 293.01 Payment and performance assurance requirements. The department of workforce development shall biennially adjust the contract prices that determine the payment and performance assurance requirements that apply to contracts with state and local governments for the performance of labor or furnishing materials for a public improvement or public work. These contract prices shall be adjusted on the basis of the change in the construction cost index as published in the engineering news-record and will be rounded to the nearest thousand. No adjustment shall be made for a biennium if the adjustment to be made would be less than 5%.

Note: The *Engineering News-Record* is a weekly publication of the McGraw-Hill Companies, 1221 Avenue of the Americas, New York, NY 10020. A construction cost index is published in the "Construction Economics" section of each issue.

DWD 293.02 Indexing of contract thresholds for payment and performance assurance requirements. (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 \$11,000 but not exceeding \$109,000.

(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 \$109,000 but not exceeding \$272,000.

(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 \$272,000.

(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 \$11,000 but not exceeding \$55,000.

(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 \$55,000 but not exceeding \$109,000.

(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 \$109,000.

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.