

## STATUTES AND ADMINISTRATIVE RULES REGARDING STATE PROCESSING OF CONTRACTS WITH ARCHITECTS/ENGINEERS

This article reviews the provisions of the Wisconsin Administrative Code promulgated by the Wisconsin Department of Administration regarding the processing of contracts with architects/engineers and performance reporting under ss. Adm 20.09 and 20.10.

The Department has a responsibility of preparing the contracts between the State of Wisconsin and the architect/engineer firm. Under Adm 20.09(2), final approval authority for contracts are guided by the following:

- (a) The approving authority for contracts less than the threshold prescribed in s. 16.87(3), Stats., is vested in the department secretary, or the secretary's designee.
- (b) Contracts of the threshold prescribed in s. 16.87(3), Stats., or more must be signed by the department secretary, or the secretary's designee, and forwarded to the governor for approval.

Section 16.87(3) of the Wisconsin Statutes provides for the approval of contracts by the secretary of the Department of Administration and the governor. Under s. 16.87, Stats., "construction work" includes all labor and materials used in the framing or assembling of component parts in the erection, installation, enlargement, alteration, repair, moving, conversion, raising, demolition or removal of any appliance or device, equipment, building, structure, or facility. Under s. 16.87(2), Wis. Stats., a contract for engineering services or architectural services is exempt from the statutory requirements requiring the state to purchase at the low bid price. The Department is required to attempt to insure that 5% of the total amount expended in each fiscal year is paid to minority businesses.

Under 16.87(3), Wis. Stats., all contracts involving an expenditure of over \$60,000 must be approved by the governor, otherwise approval by the secretary or the secretary's designated assistant is sufficient. The governor is authorized to delegate the authority to approve any such contract requiring the governor's signature to the secretary for any project involving an expenditure of less than \$150,000.

Under Adm 20.09(3)(c) a change order to the architect/engineer contract must contain specific information which will document the reason for the contract change, a description of the work involved, and any change to the schedule and the maximum cost limit. Under s. 16.87(3), any change order to a contract requires a prior approval by the secretary and if the change order involves an expenditure of over \$60,000, approval by the governor unless the governor has delegated his or her authority to the secretary for expenditures of less than \$150,000.

Under Adm 20.10 of the Wisconsin Administrative Code, upon award of the construction contract and upon completion of the construction phase, and at any other time deemed necessary by the Department, Department staff members will submit independent written evaluations of the architect's/engineer's performance of the professional service to the Department's representative who is responsible for the general supervision of the project. Similar performance evaluations shall be completed on the subconsultants of the architect/engineer.

Under Adm 20.10(2), the performance evaluation reports are based on the following:

- (a) Design ability to meet program, schedules, and budgets.
- (b) Accuracy and completeness of contract documents as evidenced by the number and character of addenda and change orders required.
- (c) Administration of contracts, payments and construction documents as evidenced by the timeliness of the service rendered.
- (d) Responsiveness to field observations and construction activities and requirements as evidenced by the timeliness of the service rendered.
- (e) Overall professional responsibilities demonstrated.

The performance evaluation reports are the basis for evaluation summaries prepared by the Department setting forth the significant evaluations of strengths and weaknesses of the firm and are utilized as a report to the selection committee and a basis for later review with the architect/engineer. The evaluation summary is placed in the evaluation file.

Under Adm 20.10(5), the evaluation summary will be reviewed with the architect/engineer upon request. The evaluation file will reflect the review with the

architect/engineer and any corrective measures to be taken pertinent to providing good performance services, or comments the architect/engineer desires to have included as part of the record. The architect/engineer may appeal to the Department any portion of the evaluation summary within a period of 30 calendar days after the architect/engineer has been notified of the evaluation. The file copy of the evaluation summary is available for review by the selection committee, the secretary of the Department of Administration, members of the Wisconsin State Building Commission, Examining Board of Architects, Professional Engineers, Designers and Land Surveyors and the state auditor. The contents of the evaluation summary may be treated as confidential if it appears that it may unduly damage the reputation of the architect/engineer and its use by all recipients is to be limited to discussions related to the selection of the architect/engineer for state projects. If it appears that the material contained in the evaluation summary will not unduly damage reputations then it will be open for public inspection and copying.

Design professionals are also selected by municipalities and other units of local government, including school districts. Selection standards by those governmental units will vary, depending upon the identity of the governmental unit, but the state standards that have been reviewed in this article are often looked at by local units of government in their adoption of standards for the selection of architects/engineers.