

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Department of Administration (Agency or Board)

Regulation No. Admin 91

Subject: Eligibility for the Small Business Procurement Act

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

FEB 20 1976

BY Eda Staudenmaier
AUTH. SIGNATURE

Stamped and filed with the Secretary of State Feb 20, 1976, 4:00 PM R 54:10 Pm

Rev. 9-72

DEPARTMENT OF ADMINISTRATION

CHAPTER TEN: PROCUREMENT

Adopted

Admin. 91 Eligibility for the Small Business Procurement Act

A. Eligibility for the set-aside of 10% of the State Procurement budget shall include small businesses organized for profit with their principal place of business in Minnesota.

1. Eligibility shall include individuals, partnerships, corporations, joint ventures, associations and cooperatives.

2. The business cannot be dominant or an affiliate or subsidiary of a business that is dominant in its field of operation.

3. A manufacturing business must employ 100 or less persons and have less than $15,000,000 in total gross receipts in the 3-year period preceding the application.

4. A general construction business must have less than $6,000,000 in total gross receipts in the 3-year period preceding the application.

5. A specialty construction business must have less than $3,000,000 in total gross receipts in the 3-year period preceding the application.

6. A non-manufacturing business must employ 25 or less persons and have less than $3,000,000 in total gross receipts in the 3-year period preceding the application.

7. An affiliate or subsidiary of a business dominant in its field of operation may be eligible if it retains atleast 80% self-ownership.

B. Eligibility for 10% of 10% set-aside program.

1. Eligibility shall include small businesses owned and operated by socially or economically disadvantaged persons.

a. Such disadvantage may be caused by cultural, social or economic circumstances or background, or by location in an area with surplus labor as declared by the U.S. Department of Commerce or other related causes.

C. Self-Certification of Eligibility.

1. To become eligible to receive invitations for bids each small business shall complete, certify and file with the Division of Procurement form Admin. 527A or 527B.

a. The form shall provide for designation as a small business and/or as an economically or socially disadvantaged person.

1. Designation shall be made as to the type of business operated and the kinds of services, materials or supplies which can be delivered.

2. Designation shall be made if the business is an affiliate or subsidiary of a dominant business.

2. To assist in verification of the Self-Certification the Commissioner of Administration may require each business to submit a copy of its income statement for the three preceding fiscal years as well as a statement of the number of employees.

a. If a business does not have three years' experience, the date the business was organized and a current income statement shall be submitted.

3. Each business shall complete and file an application for a certificate of compliance with the Department of Human Rights (form DHR-31) if it has not already filed one.

D. Lists of eligible small businesses to be established.

1. Based on filing of Admin. form 527A or 527B, businesses shall be coded to show those eligible as socially or economically disadvantaged persons.

a. By types of business, manufacturing, general or special construction and non-manufacturing; and

b. By types of services, materials, goods and supplies.

2. Statistical information shall be prepared for the annual report to the Governor and Legislature as required by Laws 1975, Chapter 383.

E. Establishment of set-aside.

1. After reviewing the capabilities of the small businesses and matching this with estimated needs:

a. At least 10% of the estimated procurement dollars for the fiscal year will be allocated and set aside for this program.

b. At least 10% of the dollar figure computed in a. will be allocated and set aside for purchases from socially or economically disadvantaged persons.

2. When a requisition is received by the Division of Procurement:

a. It shall determine if the required goods, services or construction can be provided by small businesses or socially or economically disadvantaged persons.

1. If it is a set-aside purchase, first attempt at purchase will be made from a socially or economically disadvantaged person.

2. When feasible, competitive bids shall be obtained; if not, a price may be negotiated.

b. For all such requisitions the Division of Procurement will establish an estimated price for the goods or services.

c. No award will be made when the low bid or the negotiated price is more than 5% over the estimated price.

d. Acceptable bids shall be recorded and the award made to the lowest acceptable bidder.

e. Where there are no acceptable bids, unsatisfactory bids will be recorded and the contract will be rebid under normal procurement procedures.

f. If an acceptable bid is received under normal procurement procedures, cost or price will be recorded for report purposes.

F. Problem Areas

1. A business which is offered an award but finds it cannot produce, supply or construct according to the bid terms and conditions shall, within seven (7) calendar days after receipt of notice as low bidder, notify the Division of Procurement of the reasons therefor.

a. In such cases, the Department of Economic Development shall be notified by the Division of Procurement so that they can assist the small business in attempting to remedy the causes of the inability to perform.

2. Failure to enter into contract or accept an offered award will not automatically disqualify a business from further bidding or negotiation.

a. The records shall show the reason for such failure.

3. Failure to satisfactorily complete and meet the terms and conditions of a bid after a contract or award has been made and accepted will disqualify a business from further bidding or negotiation until assurance of ability to perform is provided, documenting the corrections made to assure performance of future contracts.

G. Miscellaneous

1. The Commissioner of Administration may divide bid invitations by dollar amounts, units of production, or duration of contract to facilitate awarding contracts to businesses in the set-aside program.

a. State agencies shall purchase from approved small businesses, within the guidelines of Statutes and these rules.

2. Small businesses and socially or economically disadvantaged persons shall be governed by State Purchasing Statutes and Division of Procurement rules and procedures subject to modifications expressed herein.

APPROVED AS TO FORM AND LEGALITY
2/19 1976
WARREN SPANNAUS, ATTORNEY GENERAL
BY [signature]
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 20 1976 - 4:00 pm
Joan Anderson Growe
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
FEB 20 1976
BY Edna Staudenmaier R.S.
AUTH. SIGNATURE
4:10 pm

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed Adoption
of Rules of Procurement Division
Governing Small Business Set Aside Act.

I hereby certify that the attached twenty one sheets constitute the complete list of persons, associations, and other interested groups who as of 10:00 A.M., this 16th day of October, 1975, have requested pursuant to M.S. 1975, Chapter 383, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above, pursuant to M.S. Sec. 15.0412.

Secretary of State

Joan Anderson Growe

By Ceil Dion

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE R.L. Brubacher

COMMISSIONER OF ADMINISTRATION

In the matter of the Proposed Adoption of Rules of the State Division of Procurement Governing Minnesota Small Business Procurement Act.

ORDER FOR HEARING

To effectively implement Chapter 383 of the laws of 1975, the Minnesota Commissioner of Administration deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in me be the above cited statute.

NOW, THEREFORE, IT IS ORDERED this 20th day of November, 1975, that a public hearing on the proposed rules captioned above be held in the State Administration Building, Room 116 A., St. Paul, Minnesota commencing at 9:00 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of assoceations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA

PROCUREMENT DIVISION

Richard J Brubacher

COMMISSIONER OF ADMINISTRATION

B

STATE OF MINNESOTA BEFORE R.L. Brubacher

COUNTY OF RAMSEY COMMISSIONER OF ADMINISTRATION

In the matter of the Proposed Adoption of Rules of the State Procurement Division Governing Minnesota Small Business Procurement Act.

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to M.S. 1967, Section 15.0412, Subdivision 4, in the above entitled matter in Room 116 A, State Administration Building, St. Paul, Minnesota, November 20th, 1975, commencing at 9:00 A.M., and continuing until all representatives of associations of other interested groups or persons have had an opportunity to be heard concerning adoption of the proposed rules captioned be submitting either oral or written data, statements or arguments. Statements or briefs may be submitted without appearing at the hearing.

A copy of the Proposed Rules may be obtained from the Division of Procurement, Room 112, State Administration Building, St. Paul, Minnesota 55155

STATE OF MINNESOTA

PROCUREMENT DIVISION

Richard R Brubacher

COMMISSIONER OF ADMINISTRATION

C

AFFIDAVIT

Theodore Pegues, being duly sworn on oath deposes and says:

1) That he is an employee of the Procurement Division of the State of Minnesota.

2) That on the 16th day of October, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 16th day of October, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not. Theodore Pegues

Subscribed and sworn to before
this 16th day of October, 1975.
Joyce D. Dehn
Notary Public,
Ramsey County, Minnesota
My Commissionexpires May 1, 1980

JOYCE D. DEHN
Notary Public, Ramsey Co. Mn.
MY COMMISSION EXPIRES
May 1, 1980

C-1

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of Rules of the State Procurement Division Governing Minnesota Small Business Procurement Act.

AFFIDAVIT
OF MAILING

Theodore Pegues, being first duly sworn, deposes and says:

That on the 21st day of October, 1975, at the City of St. Paul, County of Ramsey, State of Minnesota--he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the address listed on the attached Certificate of the Secretary of State as well as to all persons listed on the attached sheet as presently being members of the Minnesota Legislature.

Theodore Pegues

Subscribed and sworn to before me
this 21st day of October, 1975

Joyce D. Dehn
Notary Public
Ramsey County, Minnesota
My Commission Expires
May 1, 1980

JOYCE D. DEHN
Notary Public, Ramsey Co. Mn.
MY COMMISSION EXPIRES
May 1, 1980

D

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE R.L. Brubacher

COMMISSIONER OF ADMINISTRATION

In the matter of Proposed Rules
Relating to Minnesota Small Business
Procurement Act.

STATEMENT OF NEED

The above-captioned rules are not amendments to existing rules.

The adoption of these rules is necessary for the following reasons:

1. Chapter 383 of the Laws of 1975 mandatorily calls for the adoption of such rules;

2. These rules clarify and define the policy and procedure of the Department of Administration, Division of Procurement in implementing the above-cited law;

3. These rules will assist in identifying small business as defined by the above-cited law for the purposes of consideration for and award of bids for state procurement of goods and services, including construction;

4. These rules assist in effecting the statutory purposes of publication of and encouragement of participation in the small business set-aside program.

Richard J Brubacher
COMMISSIONER OF ADMINISTRATION

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE R. L. BRUBACHER

COMMISSIONER OF ADMINISTRATION

In the matter of the Proposed Adoption of Rules of the State Procurement Division Governing Small Business Set Aside

FINDINGS OF FACT

The above-entitled matter came on for hearing before the Commissioner of Administration of the State of Minnesota on the 20th day of November, 1975, at 9:00 A.M. in the State Administration Building, St. Paul, Minnesota, after proper notice required by M.S. 1975, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, I find the following:

1. Administration 91 is promulgated pursuant to the statutory mandate contained in Chapter 383 of the Laws of 1975.

2. Administration 91A and B are clarifications of the eligibility provisions of the above-cited statute. Concern was expressed by PETER LUND on pp. 12-13 of the hearing transcript relative to an apparent statutory conflict between the above-cited statute and Chapter 344 of the Laws of 1975 regarding eligibility to be designated a small business. Further testimony on pp. 12-13 of the transcript by R. NATHANIEL SCOTT and MICHAEL MILLER explains that, while the above-cited statutes may conflict, the Hearing Board has no jurisdiction over the matter and only testimony on Rules as derived from Chapter 383 of the Laws of 1975 is pertinent to the hearing. The rules stand as proposed.

3. Administration 91C provides the procedure for self-certification of eligibility for the small business set-aside program; this provision provides the method by which small businesses are so designated as called for by Chapter 383, Laws of 1975. Testimony concerning 91C was limited to questions by E. L. MACINTOSH and NATE BATTLE on p. 16 and p. 22 of the transcript, which were answered by members of the Board. The rule stands as proposed.

4. Administration 91D fulfills the statutory mandate to establish lists of small businesses. Testimony concerning this rule was limited to questioning of the Board by MR. BATTLE, on p. 15 of the transcript, concerning how the ten percent set-aside would be enforced. Questions were answered by members of the Board, and the rule stands as proposed.

5. Administration 91E provides the procedure for procuring goods and services from small businesses. A number of questions and comments may be located at pp. 39-41, 44-45, 48-58, 72 and 85 of the transcript. Opposition to the proposed rule was expressed by PETER LUND on p. 49 and p. 58 of the transcript when he objected to the use of the word "minorities" in 91E. 2. a., and suggested that the word be replaced by the term "socially or economically disadvantaged persons" so as to conform to the enabling legislation. The suggested change is hereby adopted for the aforementioned reason.

6. Administration 91F and 91G provide methods of implementing the above-cited law and assisting small businesses so that they may participate in the set-aside program. Testimony pertinent to these rules centered upon the degree of flexibility to be followed by the Department of Administration in administering the Small Business Set Aside Program, and the means available to small businesses to receive assistance with problem areas. Said testimony was rendered by ROSALIND CARROLL, LEON RANKIN, JAMES SHELTON, EARTHIA WILEY, and MR. ANDERSON on pp. 65-81 of the transcript. Responses were made by Board Members regarding the intent of 91F and the availability of assistance from the Departments of Administration and Economic Development. No testimony was rendered pertaining to 91G, and both rules stand as proposed.

STATE OF MINNESOTA

PROCUREMENT DIVISION

Richard H Bunbacher

COMMISSIONER OF ADMINISTRATION

Dated: January 21, 1976

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE R. L. BRUBACHER

COMMISSIONER OF ADMINISTRATION

In the matter of the Proposed Adoption of Rules of the State Procurement Division Governing Small Business Procurement Act

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Administration Commissioner of the State of Minnesota on the 20th day of November, 1975, at 9:00 A.M. in the State Administration Building, St. Paul, Minnesota after proper notice required by M.S. 1975, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW, THEREFORE IT IS ORDERED that these rules identified as Administration 91 - Eligibility for Small Business Procurement Act are adopted this 21st day of January, 1976, pursuant to authority vested in me by Laws of 1975, Chapter 383.

STATE OF MINNESOTA

PROCUREMENT DIVISION

Richard L Brubacher

COMMISSIONER OF ADMINISTRATION

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Michael B. Miller, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Michael B Miller

Special Assistant Attorney General

Dated: January 30, 1976