

Minnesota Attorney General: Administrative Rules Proceedings

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STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : James J. Hiniker
Attn. Jerry Anderson

DATE: January 30, 1981

FROM : H. Theodore Grindal HTG
Special Assistant
Attorney General

PHONE: 6-1288

SUBJECT: In the Matter of the Proposed Rules Pertaining to the Small Business Procurement Program of the Department of Administration

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Our File No. 669

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 1.19
DATE FOR REVIEW [redacted]
DATE DUE 2.2

Adopted w/a hearing _____
Adopted w/o a hearing X
Temporary rule _____

Approved 1/29/81 Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____

✓ Rule as Adopted

✓ Rule as Proposed See SR 11.24.80

✓ Order Adopting 1.9.81

✓ 7.21.80 Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
_____ ~~Date of Hearing~~

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice of rulemaking
✓ 11.18.80 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
✓ 11.24.80 At least 30/~~20 days prior to hearing~~/adoption

N/A Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
— Approving H.E.'s Report
— Approving agency action

___ Agency's Findings of Fact not submitted

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (~~includes transcript or tape~~, exhibits, comments received by agency, ~~requests for a hearing~~, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

___ Affidavit of Mailing Notice of Submission to Attorney General } not submitted

___ Notice of Submission to the Attorney General

✓ Affidavit, no persons requested notice

✓ Approval of Governor

IN THE MATTER OF THE PROPOSED RULES PERTAINING TO THE SMALL BUSINESS PROCUREMENT PROGRAM OF THE DEPARTMENT OF ADMINISTRATION

APPROVAL OF THE GOVERNOR

Pursuant to Minn. Stat. secs. 16.05 and 16.28, the attached rules, 2 MCAR secs. 1.6601, 1.6701-1.6705, proposed for adoption by the Department of Administration, Division of Procurement, which were published at State Register, Volume 5, Number 21, pages 847-852, November 24, 1980 (5 S.R. 847) are hereby approved.

1/9/81
Date

Albert H. Quie
Governor of the State of Minnesota

Department of Administration

Procurement Division

Rules as Adopted

1.6601 Sheltered workshop.

A. Any sheltered workshop wishing to apply to receive notice of available state contracts pursuant to Minn. Stat. sec. 16.281, shall apply in writing to Director, Minnesota Association of Rehabilitation Facilities.

1.6701 Purpose, scope, definitions.

A. Purpose: 2 MCAR 1.6701 - 1.6705 are promulgated pursuant to Minn. Stat. secs. 16.081 - 16.086 and Minn. Stat. sec. 645.445 for the purpose of establishing procedures relating to the small business and small business owned by socially or economically disadvantaged persons set-aside program administered by the Division of Procurement, Department of Administration, 50 Sherburne Avenue, St. Paul, Minnesota 55155. 2 MCAR 1.6501 - 1.6601 shall also govern procurement under this program.

B. Scope: In the event of irreconcilable conflict between the general procurement rules in 2 MCAR 1.6501 - 1.6601 and these rules relating specifically to the set-aside program, the rules of the set-aside program shall govern.

C. Definitions: The definitions contained in Minn. Stat. sec. 645.445 shall apply in the administration of the set-aside program. In addition, the following definitions shall apply:

1. The terms "racial minorities", "women" and "persons who have suffered a substantial physical disability" contained in Minn. Stat. sec. 645.445, subd. 5 shall have the following meanings:

a. "Racial minorities" - All persons in one or more of the following categories:

(1) Black (not of Hispanic origin) - All persons having origins in any of the Black racial groups of Africa;

(2) Hispanic - All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(3) Asian or Pacific Islander - All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands. This area includes, but is not limited to, China, Vietnam, Japan, Korea, the Phillippine Islands, and Samoa;

(4) Alaska Native - All persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation;

(5) Indian - An individual having origins in any of the original people of North America who is an enrolled member of an Indian tribe recognized as such by the government of the United States and Canada.

b. "Women" - All persons of the female gender;

c. "Persons who have suffered a substantial physical disability" - All persons suffering a physical impairment that is likely to cause difficulty in securing, retaining and/or advancing in employment, and that substantially limits one or more of his or her major life activities, including but not limited to visual, hearing or special learning impairments.

2. "A small business owned and operated by a socially or economically disadvantaged person(s)" means a small business as defined in Minn. Stat. sec. 645.445, subd. 2 which is 51% owned and operated on a day-to-day basis by a socially or economically disadvantaged person as defined in Minn. Stat. sec. 645.455, subd. 5.

3. "Manufacturer" means a business that makes and/or processes raw materials into a finished product;

4. "Manufacturer's representative" means a business that has a written agreement or agreements with one or more manufacturers to sell the products of such manufacturer(s), but that is not an employee of such manufacturer(s);

5. "Dealer, jobber or distributor" means a business that maintains a store, warehouse or other establishment in which a line or lines of products are kept in inventory and are sold to the public on a wholesale and/or retail basis;

6. "Contractor" means a business that is engaged in construction including but not limited to general, mechanical, and/or electrical contracting, or that provides a specific service including but not limited to trash removal, snow removal, janitorial services;

7. "Joint venture" means the association of two or more businesses, all of which are certified businesses in the small business and/or small business owned and operated by socially and economically disadvantaged persons program, for the purpose of receiving a procurement bid award;

8. "Broker" means a business that carries no inventory and that has no written agreement with any manufacturer to sell the products of such manufacturer;

9. "Third-party lessor" means a business that as a lessee acts as a lessor to a third party.

1.6702 Eligibility for set-aside program.

A. The following businesses shall be eligible for participation in the set-aside program: manufacturer, manufacturer's representative, dealer, jobber, distributor,

contractor, and businesses engaged in a joint venture.

B. The following businesses shall not be eligible for participation in the set-aside program: brokers and third-party lessors.

1.6703 Self-certification of eligibility.

A. To become eligible to receive invitations for set-aside bids, each business shall certify and file with the Division of Procurement the following information on the application forms provided:

1. name and address of applicant and principle place of business;

2. whether applicant is applying for designation as a small business or a small business owned and operated by a socially or economically disadvantaged person(s); designation shall be made as to the type of business operated and the kinds of service, materials, or supplies which can be delivered;

3. number of employees;

4. gross revenues in the preceding fiscal year;

5. whether the business is an affiliate or subsidiary of a business dominant in its field of operation;

6. listing of all owners, including percentage of ownership, and all officers of the applicant with full disclosure of all owners' and officers' direct and indirect involvement in other businesses and enterprises which are in the same field of operation as the applicant, unless ownership is by common stock regularly bought and sold through recognized exchanges;

7. all other relevant information requested by the Division.

B. If the applicant is certifying itself for designation as a business owned and operated by socially or economically disadvantaged persons, the applicant shall also provide information indicating the basis of claim for designation under the standards established by Minn. Stat. sec. 645.455, subd. 5 and these rules for each officer and owner of the business.

C. To assist in verification of the self-certification, the Division of Procurement on behalf of the Commissioner of Administration shall require each business to submit a copy of its income statement for the preceding fiscal year as well as a statement of the number of employees. If a business does not have one year's experience, it shall indicate the date the business was organized and provide an income statement for that period since the business was organized.

D. The Director of the Division of Procurement shall be notified in writing of any and all changes in the applicant's business which may alter the information provided above within thirty (30) days of such change(s).

E. Each applicant shall be notified in writing of the acceptance or rejection of the application, within 30 days of receipt of the self-certification form by Division of Procurement. An application shall be rejected on any of the following grounds:

1. Applicant is dominant in its field of operation or is an affiliate or subsidiary of a business dominant in its field of operation;

2. Applicant has failed to provide all relevant required information;

3. Where applying for designation as a business owned and operated by socially or economically disadvantaged person(s) applicant failed to establish that majority ownership and operating control are held by socially or economically disadvantaged person(s);

4. Applicant has failed to comply with laws and rules of the state relating to procurement;

5. Applicant's failure to comply with the requirement of these rules or Minn. Stat. sec. 16.083, et seq. or bad faith in application for inclusion in this program;

6. Applicant is a broker and/or third-party lessor.

F. After an applicant has received written notice of rejection of its application to participate in the set-aside program, applicant may appeal this decision in writing to the Director of the Division of Procurement within thirty (30) days of receipt of such notice. The Director shall render a decision in writing on the application within thirty (30) days of receipt of the appeal. If the applicant's rejection is sustained by the director, applicant may appeal this decision in writing to the Commissioner of Administration within thirty (30) days of receipt of such determination. The commissioner shall render the final decision in writing within thirty (30) days of receipt of such appeal.

1.6704 Establishment of set-aside procurements.

A. A list of set-aside businesses, properly certified pursuant to 2 MCAR 1.6703 shall be established and maintained by the Division for various commodity classes.

B. Determination of contracts for set-aside. When a requisition is received by the Division of Procurement and is placed on the list of set-aside contracts, the contract for a particular commodity shall be offered to those businesses on that commodity list and awarded as follows:

1. For all such requisitions, the Division of Procurement shall establish an estimated price for the goods or services;

2. All businesses on the set-aside list shall be notified of the estimated price;

3. First attempt at purchase shall be made from a small business owned and operated by a socially or economically disadvantaged person(s);

4. Where there is only one business in a given commodity class the business shall be invited to submit a bid based on the estimated price;

5. Where there are two or more businesses in a given commodity class, competitive bids shall be obtained;

6. Acceptable bids shall be recorded and the award made to the lowest responsible bidder;

7. No award shall be made when the low bid is more than 5% over the estimated price;

8. Where there are no bids or no acceptable bids, unsatisfactory bids, if any, will be recorded and the requisition shall thereafter be rebid through normal procurement procedures;

9. If it is necessary to reject original bids and the bid specifications are substantially changed or were in error, specifications shall be revised and the project rebid under set-aside rules;

10. If an acceptable bid is received and awarded under normal procurement procedures, the cost or price shall be recorded for report purposes.

1.6705 General Terms and conditions.

A. A business which, if offered an award, finds that 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 in writing of the reasons therefor.

B. When the Commissioner of Administration finds that the low bidder is unable to perform, the Department of Economic Development shall be notified by the Division of Procurement in accordance with Minn. Stat. sec. 16.084, so that the

Commissioner of Economic Development can assist the small business in attempting to remedy the causes of the inability to perform.

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

D. The records of the Procurement Division shall show the reason(s) for such failure.

E. A business shall be removed from the set-aside list and disqualified from further bidding on any set-aside contract for failure to satisfactorily complete and fulfill the terms and conditions of a set-aside contract after an award has been made and accepted. Notice of removal and disqualification and the reasons therefor shall be provided in writing to the business by the Division of Procurement and shall be effective thirty (30) days after receipt by the business. Disqualification shall remain in effect until the business documents in writing the corrections made and the steps taken to assure performance of future contracts. Such documentation shall be directed to the Director, Division of Procurement.

F. A business shall be removed from the set-aside list and disqualified from further bidding on any set-aside contract when the business no longer qualifies for the set-aside program pursuant to Minn. Stat. secs. 16.081 - 16.086, Minn. Stat. sec. 645.455 and these rules. Notice of such removal and the reasons therefor shall be provided in writing to the business by the Division of Procurement and shall be effective upon receipt by the business.

G. When a business is removed from the set-aside list and disqualified from further bidding on any set-aside contract the business may appeal such removal and disqualification according to the procedure described in 2 MCAR 1.6703 F.

H. The Director of the Division of Procurement may divide bid invitations by dollar amounts, units of production, or duration of contract to facilitate awarding contracts to business in the set-aside program.

I. No contractor awarded a contract under the set-aside program shall sub-contract fifty percent (50%) or more of the dollar value of the work under such contract. In construction contracts, the amount of specialty sub-contracting shall be excluded in determining the total amount of permissible sub-contracting.

APPROVED AS TO FORM AND LEGALITY

Jan 29 19 81

WARREN SPANNAUS, ATTORNEY GENERAL

BY H. Gordon Durrell

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 30 1981
Joan Anderson Growe
Secretary of State
3:40 PM

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Public Hearings on Agency Rules
December 1-7, 1980

Date	Agency and Rule Matter	Time & Place
Dec. 2	Department of Transportation Operating Standards for Special Transportation Service Hearing Examiner: George A. Beck	10:00 a.m., Rm. 81, State Office Bldg. St. Paul, MN
Dec. 4	Board of Animal Health Establishment and Operation of Public Stockyards; and Slaughter Cattle & Slaughter Swine Identification Hearing Examiner: Peter Erickson	9:30 a.m., Conference Rm. A, Capitol Square Bldg., 550 Cedar St., St. Paul, MN
Dec. 5	Transportation Department Weight Limitations on Interstate Highways and Designated Routes Hearing Examiner: Harry Seymour Crump	10:00 a.m., Rm. 81, State Office Bldg. (between Aurora and Fuller), St. Paul, MN

Department of Administration Procurement Division

Proposed Amendments to Existing Rules Governing the Small Business Procurement Program

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the Department of Administration proposes to adopt the above-entitled rules without a public hearing. The department has determined that the proposed adoption of these rules is noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subd. 4h (1980) for adoption of noncontroversial rules.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, it will be held according to the provisions of Minnesota Statutes, § 15.0412, subds. 4-4f.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Charles A. Ball
Department of Administration
203 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155
(612) 296-3083

Authority for adoption of these rules is contained in Minn. Stat. §§ 16.05 (1978), and 16.085 (1978) as amended by Minn. Laws of 1980, ch. 361, § 4, in Minn. Stat. § 16.28 (1978) and in Minn. Laws of 1980, ch. 361, § 3 (Minn. Stat. § 645.445). Additionally, a statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mr. Ball upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to the Office of the Attorney General. The Attorney General's Office will review the rules for form and legality. Persons who wish to be advised of the submission of this material to that office, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Ball.

A copy of the proposed rules is attached to this notice. Additional copies may be obtained by contacting Mr. Ball.

Please be advised that Minnesota Statutes, ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes § 10A.01, subd. 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, Minnesota, 55155, telephone (612) 296-5615.

James J. Hiniker, Jr.
Commissioner of Administration

Amendments as Proposed

All existing rules presently promulgated, adopted, and published as 2 MCAR § 1.6601 and 2 MCAR §§ 1.6701-1.6705 are proposed to be amended as follows:

2 MCAR § 1.6601 Sheltered workshop.

A. Any sheltered workshop wishing to apply to receive notice of available state contracts pursuant to Minn. Stat. § 16.281, shall apply in writing to Director, Minnesota Association of Rehabilitation Facilities~~, 550 South Snelling Avenue, St. Paul, Minnesota 55116~~.

2 MCAR § 1.6701 ~~Scope and purpose~~ Purpose, scope, definitions.

A. Purpose. 2 MCAR §§ 1.6701~~-1.6704~~ 1.6705 are promulgated pursuant to Minn. Stat. §§ 16.081-16.086 and Minn. Stat. § 645.445 for the purpose of establishing procedures relating to the small business and small business owned by socially or economically disadvantaged persons set-aside program administered by the Division of Procurement ~~Division~~, Department of Administration, 50 Sherburne Avenue, St. Paul, Minnesota 55155. 2 MCAR §§ 1.6501-1.6601 shall also govern procurement under this program.

B. Scope. In the event of irreconcilable conflict between the general procurement rules in 2 MCAR §§ 1.6501-1.6601 and these rules relating specifically to the set-aside program, the rules of the set-aside program shall govern.

C. Definitions. The definitions contained in Minn. Stat. § 645.445 shall apply in the administration of the set-aside program. In addition, the following definitions shall apply:

1. The terms "racial minorities," "women" and "persons who have suffered a substantial physical disability" contained in Minn. Stat. § 645.445, subd. 5 shall have the following meanings:

a. "Racial minorities"—All persons in one or more of the following categories:

(1) Black (not of Hispanic origin)—All persons having origins in any of the Black racial groups of Africa;

(2) Hispanic—All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(3) Asian or Pacific Islander—All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands. This area includes, but is not limited to, China, Vietnam, Japan, Korea, the Philippine Islands, and Samoa;

(4) Alaska Native—All persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation;

(5) Indian—An individual having origins in any of the original people of North America who is an enrolled member of an Indian tribe recognized as such by the government of the United States and Canada.

b. "Women"—All persons of the female gender;

c. "Persons who have suffered a substantial physical disability"—All persons suffering a physical impairment that is likely to cause difficulty in securing, retaining and/or advancing in employment, and that substantially limits one or more of his or her major life activities, including but not limited to visual, hearing or special learning impairments.

2. "A small business owned and operated by a socially or economically disadvantaged person(s)" means a small business as defined in Minn. Stat. § 645.445, subd. 2 which is 51% owned and operated on a day-to-day basis by a socially or economically disadvantaged person as defined in Minn. Stat. § 645.455, subd. 5.

3. "Manufacturer" means a business that makes and/or processes raw materials into a finished product;

4. "Manufacturer's representative" means a business that has a written agreement or agreements with one or more manufacturers to sell the products of such manufacturer(s), but that is not an employee of such manufacturer(s);

5. "Dealer, jobber or distributor" means a business that maintains a store, warehouse or other establishment in which a line or lines of products are kept in inventory and are sold to the public on a wholesale and/or retail basis;

6. "Contractor" means a business that is engaged in construction including but not limited to general, mechanical, and/or electrical contracting, or that provides a specific service including but not limited to trash removal, snow removal, janitorial services;

7. "Joint venture" means the association of two or more businesses, all of which are certified businesses in the small business and/or small business owned and operated by socially and economically disadvantaged persons program, for the purpose of receiving a procurement bid award;

8. "Broker" means a business that carries no inventory and that has no written agreement with any manufacturer to sell the products of such manufacturer;

9. "Third-party lessor" means a business that as a lessee acts as a lessor to a third party.

2 MCAR § 1.6702 Eligibility for set-aside program.

A. The following businesses shall be eligible for participation in the set-aside program: manufacturer, manufacturer's representative, dealer, jobber, distributor, contractor, and businesses engaged in a joint venture.

B. The following businesses shall not be eligible for participation in the set-aside program: brokers and third-party lessors.

2 MCAR § ~~1.6702~~ 1.6703 Self-certification of eligibility.

A. To become eligible to receive invitations for set-aside bids, each business shall certify and file with the Division of Procurement the following information on the application forms provided:

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

1. name and address of applicant and principal place of business;

2. whether applicant is applying for designation as a small business or a small business owned and operated by a socially or economically disadvantaged person(s); designation shall be made as to the type of business operated and the kinds of service, materials, or supplies which can be delivered;

3. number of employees;

4. gross ~~receipts for each of the past 3 years~~ revenues in the preceding fiscal year;

5. whether the business is an affiliate or subsidiary of a ~~dominant~~ business dominant in its field of operation ~~as defined in Minn. Stat. ch. 16.082~~;

6. listing of all owners, including percentage of ownership, and all officers of the applicant with full disclosure of all owners' and officers' direct and indirect involvement in other businesses and enterprises which are in the same field of operation as the applicant, unless ownership is by common stock regularly bought and sold through recognized exchanges;

7. all other relevant information requested by the division.

B. If the applicant is certifying itself for designation as a business owned and operated by socially or economically disadvantaged persons, the applicant shall also provide information indicating the basis of claim for designation under the standards established by ~~Minn. Stat. ch. 16.082 subd. 5~~ Minn. Stat. § 645.455, subd. 5 and these rules for each officer and owner of the business.

C. To assist in verification of the self-certification, the Division of Procurement on behalf of the Commissioner of Administration ~~may~~ shall require each business to submit a copy of its income statement for the ~~three~~ preceding fiscal ~~years~~ year as well as a statement of the number of employees. If a business does not have ~~three years~~ one year's experience, it shall indicate the date the business was organized and provide ~~income statements~~ an income statement for ~~since~~ that ~~time~~ period ~~including a current income statement~~ since the business was organized.

D. The Director of the ~~Procurement~~ Division of Procurement shall be notified in writing of any and all changes in the applicant's business which may alter the information provided above within thirty (30) days of such change(s).

E. ~~Applicants~~ Each applicant shall be notified in writing of the acceptance or rejection of the application, within 30 days of receipt of the self-certification form by ~~only if~~ the ~~Procurement~~ Division of Procurement. ~~rejects an applicant's self-certification. Applicants~~ An application shall be rejected on any of the following grounds:

1. Applicant is dominant in its field of operation or is an affiliate or subsidiary of a ~~dominant~~ business~~,~~ dominant in its field of operation; ~~as prohibited by Minn. Stat. ch. 16.082, subd. 2; or given figures provided pursuant to 2 MCAR § 1.6702 e.1., applicant is dominant in its field or operation for the period of operation.~~

2. Applicant has failed to provide all relevant required information~~.~~ ;

3. Where applying for designation as a business owned and operated by socially or economically disadvantaged person(s) applicant failed to establish that majority ownership and operating control are held by socially or economically disadvantaged persons(s)~~.~~;

4. Applicant has failed to comply with laws and rules of the state relating to procurement~~.~~;

5. Applicant's failure to comply with the requirement of these rules or Minn. Stat. § 16.083, *et seq.* or bad faith in application for inclusion in this program~~.~~;

6. Applicant is a broker and/or third-party lessor.

F. After an applicant has received written notice of rejection of its application to participate in the set-aside program, applicant may appeal this decision in writing to the Director of the Division of Procurement within thirty (30) days of receipt of such notice. The director shall render a decision in writing on the application within thirty (30) days of receipt of the appeal. If the applicant's rejection is sustained by the director, applicant may appeal this decision in writing to the Commissioner of Administration within thirty (30) days of receipt of such determination. The commissioner shall render the final decision in writing within thirty (30) days of receipt of such appeal.

2 MCAR § ~~1.6703~~ 1.6704 Establishment of set-aside procurements.

A. A list of set-aside ~~contractors~~ businesses, properly certified pursuant to 2 MCAR § ~~1.6702~~ 1.6703 shall be established and maintained by the Division for various commodity classes.

B. Determination of contracts for set-aside. When a requisition is received by the Division of Procurement and is placed on

the list of set-aside contracts, the contract for a particular commodity shall be offered to those businesses on that commodity list and awarded as follows:

1. ~~2.~~ For all such requisitions, the Division of Procurement shall establish an estimated price for the goods or services~~.~~;

2. All businesses on the set-aside list shall be notified of the estimated price;

3. ~~1.~~ First attempt at purchase shall be made from a small business owned and operated by a socially or economically disadvantaged person(s)~~.~~; ~~When feasible, competitive bids shall be obtained; if not a price may be negotiated.~~

4. Where there is only one business in a given commodity class the business shall be invited to submit a bid based on the estimated price;

5. Where there are two or more businesses in a given commodity class, competitive bids shall be obtained;

6. ~~4.~~ Acceptable bids shall be recorded and the award made to the lowest responsible bidder~~.~~;

7. ~~3.~~ No award shall be made when the low bid ~~or the negotiated price~~ is more than 5% over the estimated price~~.~~;

8. ~~5.~~ Where there are no bids or no acceptable bids, unsatisfactory bids, if any, will be recorded and the requisition shall thereafter be rebid through normal procurement procedures~~.~~;

9. ~~6.~~ If it is necessary to reject original bids and the bid specifications are substantially changed or were in error, specifications shall be revised and the project rebid under set-aside rules~~.~~;

10. ~~7.~~ If an acceptable bid is received and awarded under normal procurement procedures, the cost or price shall be recorded for report purposes.

2 MCAR § ~~1.6704~~ 1.6705 General terms and conditions.

A. A business which, if offered an award, finds that 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 in writing of the reasons therefor.

B. When the Commissioner of Administration finds that the low bidder is unable to perform, the Department of Economic Development shall be notified by the Division of Procurement in accordance with Minn. Stat. § 16.084, so that the Commissioner of Economic Development can assist the small business in attempting to remedy the causes of the inability to perform.

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

D. The records of the Procurement Division shall show the reason(s) for such failure.

E. ~~Failure to satisfactorily complete and meet the terms and conditions of a bid after an award has been made and accepted shall 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. Such assurances shall be given in writing to the Director, Procurement Division.~~ A business shall be removed from the set-aside list and disqualified from further bidding on any set-aside contract for failure to satisfactorily complete and fulfill the terms and conditions of a set-aside contract after an award has been made and accepted. Notice of removal and disqualification and the reasons therefore shall be provided in writing to the business by the Division of Procurement and shall be effective thirty (30) days after receipt by the business. Disqualification shall remain in effect until the business documents in writing the corrections made and the steps taken to assure performance of future contracts. Such documentation shall be directed to the Director, Division of Procurement.

F. A business shall be removed from the set-aside list and disqualified from further bidding on any set-aside contract when the business no longer qualifies for the set-aside program pursuant to Minn. Stat. §§ 16.081-16.086, Minn. Stat. § 645.455 and these rules. Notice of such removal and the reasons therefor shall be provided in writing to the business by the Division of Procurement and shall be effective upon receipt by the business.

G. When a business is removed from the set-aside list and disqualified from further bidding on any set-aside contract the business may appeal such removal and disqualification according to the procedure described in 2 MCAR § 1.6703 F.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

H. ~~F.~~ The ~~Commissioner of Administration~~ Director of the Division of Procurement may divide bid invitations by dollar amounts, units of production, or duration of contract to facilitate awarding contracts to business in the set-aside program.

I. ~~G.~~ No contractor awarded a contract under the set-aside program shall sub-contract fifty percent (50%) or more of the dollar value of the work under such contract. In construction contracts, the amount of specialty sub-contracting shall be excluded in determining the total amount of permissible sub-contracting.

Department of Health
Vital Statistics

Proposed Amendment of Vital Statistics Rule 7 MCAR § 1.008

Notice of Intent to Amend Rule without A Public Hearing

Notice is hereby given that the Minnesota Commissioner of Health (hereinafter "commissioner") proposes to amend rule 7 MCAR § 1.008. The amendment of this rule would also necessitate the renumbering of 7 MCAR § 1.008 E.-H. as D.-G. to conform with the elimination of paragraph D. The rule currently provides:

7 MCAR § 1.008

D. Out-of-wedlock reports. Every out-of-wedlock birth shall be reported within 24 hours after the birth of the child, to the Commissioner of Public Welfare, on a form furnished by him.

The necessity for this paragraph was removed through the adoption by the legislature of amendments to Minn. Stat. § 257.33 (Minn. Laws of 1980, ch. 589, § 31).

The commissioner has determined that the amendment of this rule will be uncontroversial in nature, due to the above-referenced legislative change. Therefore, this proceeding is being made under the provisions of Minn. Stat. § 15.0412, subd. 4(g) (Minn. Laws of 1980, ch. 615 § 7), which provides for an expedited process for the adoption of uncontroverted administrative rule changes without the holding of a public hearing.

The public is hereby advised that:

1. There is a period of 30 days in which to submit comment on the proposed rule;

2. No public hearing will be held on this matter unless seven or more persons make a written request for a hearing within the 30 day comment period;

3. All comments and any written requests for a public hearing shall be submitted to Frederick L. King, State Registrar of Vital Records, 235 Minnesota Health Department Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440;

4. The proposed amendment may be modified if modifications are supported by the data and views submitted;

5. The agency now has available a "Statement of Need and Reasonableness" supporting the proposed rule amendment. Anyone wishing to receive a copy of this document may contact Mr. King at the above-listed address;

6. Under this expedited procedure, the agency must submit any action on its rules to the Attorney General for review of the form and legality of the rule change. Notice of the submission of this matter to the Attorney General will be made to all persons who request to be informed of the submission. Requests to be informed must be submitted to Mr. King at the above listed address;

7. If seven or more persons request a public hearing on this matter, notice of any such hearing will be given in the same manner as has this notice;

8. Any rule change made pursuant to this proceeding shall be effective five days after publication in the *State Register* of notice of the adoption of the change.

November 5, 1980

George R. Pettersen, M.D.
Commissioner of Health

Amendments as Proposed

~~7 MCAR § 1.008 D. Out-of-wedlock reports. Every out-of-wedlock birth shall be reported within 24 hours after the birth of the child, to the Commissioner of Public Welfare, on a form furnished by him.~~

[7 MCAR § 1.008 E.-H. Reletter as D.-G.]

In the Matter of the Proposed Adoption
of Rules of the State Department of
Administration Governing the Small Business
Procurement Program

AFFIDAVIT

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Charles A. Ball, being first duly sworn, deposes and says:

That as of the 5th day of JANUARY, 1981, no persons or associations have requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Charles A. Ball.

Subscribed and sworn to before me this
5 day of January, 1981.

Dianne M. Boemer

DIANNE M. BOEMER
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
My Commission Expires April 24, 1985.

STATEMENT OF COMPLIANCE WITH

RULEMAKING PROCEDURES

I, Special Assistant Attorney General Jerry Anderson, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Jerry Anderson

Special Assistant
Attorney General

Dated: 1-19-81

DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Amendments to the Existing Rules Governing the Small Business Procurement Program

Statement of Need and Reasonableness.

These proposed amendments to existing rules, 2 MCAR sec . 1.6601 and 2 MCAR secs. 1.6701-1.6705, govern the implementation of the Commissioner of Administration's responsibilities pursuant to the procurement provisions of Minn. Stat. ch. 16 (particularly the small business procurement provisions of Minn. Stat. secs. 16.081-16.086) and Minn. Stat. sec. 645.445. These rule amendments are proposed primarily in response to the 1980 legislative enactment of Minn. Stat. sec. 645.445 and the amendments to Minn. Stat. sec. 16.085. In Minn. Stat. sec. 645.445 the definitions for the small business set aside program were established. The definitions were originally contained in Minn. Stat. sec. 16.082 subds. 2,3,4 and 5. Minn. Stat. sec. 16.085 governing the Commissioner's rulemaking authority regarding the small business set aside program was also amended and the rule amendments also reflect this change. Finally, the Commissioner of Administration is proposing other substantive changes as well as some editorial and housekeeping types of changes. These changes are deemed to be necessary and reasonable based upon the Department of Administration's experience in applying the existing rules and administering the program since January 1979.

Representatives of the Department have had numerous meetings with persons representing groups who are interested and affected by the small business set aside program. Many of the rule amendments which are proposed are based upon the input of these individuals. The Commissioner's authority to promulgate these rules is contained in Minn. Stat. secs. 15.0412, subd. 3, 16.05, 16.085 and 16.28.

2 MCAR 1.6601. This amendment is needed and reasonable to inform the public that the Minnesota Association of Rehabilitation Facilities is no longer located at the Snelling address. In order to avoid the future need for amending this rule when the Association again moves, no address is contained in the amendment. The current address can be found by the reader through other sources including the Department of Administration.

2 MCAR 1.6701-6705. These are the amended small business set aside program rules.

2 MCAR 1.6701. The rule has been amended by dividing the existent text into three paragraphs: paragraph A regarding the purpose of the rule, paragraph B regarding the scope and paragraph C regarding definitions. The changes in paragraphs A and B are necessary and reasonable as "housekeeping" amendments, and to clarify the relationship of these rules and the 1980 statutory changes. The original text of paragraph B on scope is based upon the language of

Minn. Stat. sec. 16.083, subd. 6.

Paragraph C incorporates the new small business procurement definitions of Minn. Stat. sec. 645.445. This cross-reference is necessary and reasonable to put readers on notice of the existence of this statute which supersedes the old definitions of Minn. Stat. sec. 16.082. In 1.6701 C. 1. a, b and c the definition section of the rule goes on to identify and define certain terms which were added in the 1980 legislative session to the definition of "socially or economically disadvantaged person": "racial minorities, women or persons who have a substantial physical disability." Because the Commissioner has the authority pursuant to Minn. Stat. sec. 16.085 to promulgate rules to carry out the duties set forth in the small business procurement act, it is necessary and reasonable to define the terms used in the 1980 statutory amendments. These definitions will provide uniformity and consistency in the Department's administration of the set aside program.

The language contained in the definition of "racial minorities" is adapted from the federal definitions used in the federal regulations relating to the Equal Employment Opportunity Commission and does not denote scientific definitions of anthropological origins. The definition of "women" is self-explanatory. The definition of "persons who have suffered a substantial physical disability" was developed with the assistance of the Minnesota Council on the Handicapped. It is necessary and reasonable to provide a definition for this reference so that the reader can determine how the rules are to be applied and interpreted. The definition appropriately describes a physical disability in terms of employment difficulties and the limitation of life activities.

In 1.6701 C. 2., the Department is providing a definition of a phrase which is used several times in Minn. Stat. ch. 16 including Minn. Stat. secs. 16.083 and 16.085. It is necessary and reasonable to provide this definition because this is in fact how this language has been interpreted and applied by the Department and it is also contained in existent rule 1.6702 E. 3. (renumbered as 1.6703 E. 3 in these amendments).

The definitions contained in 1.6701 C. 3 , 4,5,6,7,8 and 9, are commonly accepted definitions of various types of businesses or business arrangements. These definitions include any and all business entities which have applied for certification in the set aside program in the past. It is necessary and reasonable for the Department to specify its interpretation of commonly used business terms and to put readers of the rules on notice of such interpretation. This is particularly significant in light of 1.6702 A. and B. which specify those businesses which will be eligible and ineligible for the small business procurement program. These definitions were developed with the input and assistance of the Metropolitan Economic Development Association.

Specifically, in regard to the definition of joint venture it is the Department's position that this definition is necessary and reasonable because the purpose of the Minnesota Small Business Procurement Act is to assist "small businesses" by encouraging participation in the set aside program. The program should not be used as a vehicle to benefit other business entities. Therefore, any joint venture must be limited to certified businesses for the purposes of these rules.

1.6702 A. and B. Based upon the definitions contained in 1.6701, rule 1.6702 details those businesses which are eligible to apply for participation in the small business set aside program. The Department's authority to exclude certain businesses from participation in the program is contained in the 1980 statutory amendments to Minn. Stat. sec. 16.085 which states, "The Commissioner may make rules which exclude or limit the participation of nonmanufacturing businesses including third-party lessors, jobbers, manufacturers' representatives and others from eligibility under this act." After determining that it was necessary and reasonable to define in 1.6701 the various types of businesses which can apply for program certification, the Department has determined that it is necessary and reasonable to exclude two of these business entities from program participation: brokers and third-party lessors. Exclusion of these businesses will prevent abuse of the set aside program which was instituted by the legislature to promote small business entities, particularly those owned by the disadvantaged. The exclusion of brokers and third-party lessors precludes the brokering of State contracts through businesses which might tehcnically fall within the definitions of Minn. Stat. sec. 645.445. The purpose of this exclusion is to prohibit larger nonqualifying businesses from being the beneficiaries of State set aside awards, to the detriment of competing small businesses.

1.6703 Many of the amendments to existent rule 1.6702 A,B,C and D (now renumbered 1.6703 A,B,C,D) are nonsubstantive, "housekeeping", clarifying types of changes. However the more substantive changes included in 1.6703 A. 4,5, B and C were made specifically to conform to the 1980 definitions contained in Minn. Stat. sec. 645.445, subds. 2,3 and 5. It is necessary and reasonable to delete those parts of the rule so as to be consistent with Minn. Stat. sec. 645.445.

1.6703 E (formerly 1.6702 E) has been amended to require the Division of Procurement to notify every applicant in writing as to whether an application has been accepted or rejected. The present rule only requires notification of rejection. It is necessary and reasonable to inform an applicant of the status of his/her application so that there will be no question or confusion as to the action taken by the Division. It is also necessary and reasonable to place a time limitation on the State to respond to an application. This places the applicant on notice as to when to expect a decision from the State regarding the set aside program. The amendment to 1.6703 E. 1 (formerly 1.6702 E. 1) is necessary and reasonable to make the rule consistent with the language of Minn. Stat. sec. 645.445; the reference to Minn. Stat. sec. 16.082 is now outdated and inapplicable.

The remainder of the changes in 1.6703 E. are nonsubstantive, editorial changes with the exception of the additional language of 1.6703 E. 6. This amendment is necessary and reasonable to correspond with the exclusion of broker and third-party lessor from the program in 1.6702 B. It is only logical that if these business entities are ineligible for the set aside program at the outset, any application from such businesses must be rejected by the State.

1.6703 F. is a totally new provision in these rules. Based upon experience with the set aside program it is the Department's position that it is necessary and reasonable to provide an appeal process to applicants who are rejected from the program. The process in paragraph F entitles an applicant to petition the Director and the Commissioner in writing within reasonable (30 day) time periods. The rule also requires the Director and Commissioner to render

written decisions within 30 days. This rule will insure a fair and thorough review of the disputed rejection of an application.

1.6704. This rule (formerly 1.6703) was amended for several reasons. The title of the rule was amended for clarification. The amendments to paragraph A are intended to reflect in writing what is in fact routinely done by the Procurement Division for all types of procurements. The Division has established lists for various types of commodities and bids for particular commodities are let to those vendors on the relevant list. It is necessary and reasonable that the rule accurately describe this process. The process itself is fair and needed to administer a large number of procurement bids to many vendors with ease and efficiency. The application of this process to the set aside program will not burden set aside businesses. The reference to "contractors" in the rule was changed to "businesses" because "contractor" has now been more narrowly defined in rule 1.6701 C. 6. The changes in paragraph B were made to correspond with paragraph A. Therefore the rationale for these changes is the same.

The provisions of the existent rule (formerly 1.6703 B. 1-7) have been reorganized and expanded in 1.6704 B. 1-10. The reorganization is necessary and reasonable to make the sequence of the bid award process clear and understandable. The reorganization does not affect the meaning of the rule. This reorganization has also resulted in some nonsubstantive housekeeping types of changes.

The following substantive changes in B. 1-10 deserve a more detailed discussion of need and reasonableness. A new provision numbered 2 was added to this rule. Because the determination of an estimated price is required by Minn. Stat. sec. 16.083, subd. 2 and the existent rule, it is only fair to notify all businesses of that price. Currently, a business can determine what the State's estimated price is, by contacting the Procurement Division prior to submitting a bid.

The text of existent Section B. 1 has been renumbered and amended in the proposed Section B. 3. The first sentence of the existing rule has been changed for grammatical purposes and the addition of the words "and operated" is merely an addition to assure that this rule is consistent with the language of Minn. Stat. sec. 16.085 and proposed rule 1.6701 C. 2., and amended rule 1.6703 A.2. It is not intended to change the meaning or application of the existent provision . The original rule reflects the legislature's preference for small businesses owned and operated by the disadvantaged, as stated in Minn. Stat. sec. 16.083, subd. 4. The second sentence of the existing rule has been deleted. This sentence stated that competitive bids shall be obtained "when feasible" for set aside awards, otherwise "a price may be negotiated." The Department has not had a situation when a competitive bid was not feasible. In fact, competitive bids are in the best interests of the State. Furthermore, while Minn. Stat. sec. 16.083, subd. 2 refers to the Commissioner's option to use "a negotiated price", it also states that no award shall be made if it "exceeds by more than five percent the Commissioner's estimated price." The Department interprets this law to mean that a price cannot be negoatiated to exceed this five percent differential. This interpretation is also reflected in amended B. 7. Therefore, it is necessary and reasonable to eliminate the reference to an optional "negotiated price" in the rule. Section B.7. has also been amended for the same reasons and to assure that all provisions of the rule are consistent.

The only instance in which it would be inappropriate to solicit competitive bids for a contract would be if there is only one business in a

particular commodity class. This situation is provided for in section B.4., which is a totally new rule. In that case the particular business shall be invited to submit a bid based on the estimated price. Again, the bid cannot be awarded if the price exceeds the five percent limit discussed above. This is reflected in amended section B.7., as noted above.

Section B.5., has also been added to this rule. Again it is necessary and reasonable for the rules to be clear and specific on the Department's requirement for competitive set aside bids. As stated above the competitive bid process is appropriate and in the public interest in all cases when two or more businesses are available to make a bid. Therefore the rule has been amended in this manner.

1.6705. To be consistent with the deletion of the references to negotiations discussed above, 1.6705 C has been amended by the deletion of the words "or negotiation." The major amendments to the existent rule are contained in paragraphs E,F and G discussed below. The existent language of paragraph E has been deleted and new language is proposed. The basic meaning of the original rule is the same: a business failing to perform and complete a set aside contract shall be disqualified from further bidding until the business provides the State with written assurances of its ability to perform future contracts. The new language further provides that such a business will also be removed from the set aside list and that the business shall be notified 30 days prior to such removal and disqualification. It is necessary and reasonable for the State to limit the program in this manner because it is a fundamental premise of government purchasing that awards should only be made to the lowest responsible bidder. See Minn. Stat. secs. 16.08 and 16.083, subd. 6 and 2 MCAR sec. 1.6501 B.6. It is also important that the Procurement Division give a disqualified business advance notice of the State's determination to remove and disqualify the business from further set aside bidding.

Paragraph F contains a new provision which is not in the currently effective rule. The necessity and reasonableness of the rule is apparent. A business, which due to some change in circumstances no longer qualifies for the set aside program, shall be removed and disqualified from the set aside program. Obviously, the State cannot violate the statutes and rules by awarding a contract to a business which does not conform to the small business set aside definitions. The rule provides that written notice of such action shall be given to the business. It is necessary and reasonable for this removal and disqualification to take effect immediately because the State is not authorized to award set aside contracts to unqualified businesses for any time period. Thus this paragraph F differs from the 30 day advance notice provision of paragraph E.

Finally, paragraph G is also an entirely new addition to the current rule. This provision entitles a disqualified business to pursue the appeal procedure described above in regard to rejected set aside applications (amended 1.6703 F.). It is necessary and reasonable to offer a business due process if the business disputes the Procurement Division's disqualification determination. The appeal process provides for a reasonable time period for both the business and the State to document its position. The process will allow a thorough re-examination of the Procurement Division's decisions.

The reference in paragraph H. to the Commissioner has been amended to refer to the Director of Procurement. The existing rule is based upon the language of Minn. Stat. sec. 16.083, subd. 1. Because the Commissioner delegates his authority regarding State procurements to the Director, the reference in this rule has been changed for clarity and consistency with the other rules.

State of Minnesota

James J. Hiniker, Jr.
Commissioner of Administration

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed
Amendments to the Existing Rules
Governing the Small Business
Procurement Program

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. sec. 15.0412, subd. 4, that their names be placed on file with and maintained by the State Department of Administration for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 11:00 A.M., this 18 day of November, 1980.

Colleen T. Koch

Exhibit E

In the Matter of the Proposed
Amendments to the Existing Rules
Governing the Small Business
Procurement Program

AFFIDAVIT
OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marlys E. Lockman, being first duly sworn, deposes and says:

That on the 18th day of November, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Department of Administration for the purpose of receiving notice of the proposed adoption of rules by this Department.

Marlys E. Lockman

Subscribed and sworn to before me
this 18 day of November, 1980.

Dianne M. Boemer

DIANNE M. BOEMER
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
My Commission Expires April 24, 1985.

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Amendments to the Existing Rules Governing the Small Business Procurement Program

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Department of Administration proposes to adopt the above-entitled rules without a public hearing. The Department has determined that the proposed adoption of these rules is noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sec. 15.0412, subdivision 4h (1980) for adoption of noncontroversial rules.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, it will be held according to the provisions of Minnesota Statutes section 15.0412, subdivisions 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Charles A. Ball
Department of Administration
203 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155
(612) 296-3083

Authority for adoption of these rules is contained in Minn. Stat. secs. 16.05 (1978), and 16.085 (1978) as amended by Minn. Laws, 1980 Chapter 361, sec. 4, in Minn. Stat. sec. 16.28 (1978) and in Minn. Laws 1980, Chapter 361, sec. 3 (Minn. Stat. sec. 645.445). Additionally, a statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mr. Ball upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Office of the Attorney General. The Attorney General's Office will review the rules for form and legality. Persons who wish to be advised of the submission of this material to that office, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Ball.

A copy of the proposed rules is attached to this Notice. Additional copies may be obtained by contacting Mr. Ball.

Please be advised that Minnesota Statutes Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes sec. 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to

influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, Minnesota, 55155, telephone (612) 296-5615.

STATE OF MINNESOTA

James J. Hiniker, Jr.
Commissioner of Administration

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Adoption of the Amendments to the Existing Rules Governing the Small Business Procurement Program

ORDER FOR NOTICE

IT IS ORDERED this 18th day of November, 1980 that a Notice of Intent to Adopt Rules Without a Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Department of Administration for that purpose and be published in the State Register.

STATE OF MINNESOTA

James Wintersteen

COMMISSIONER OF ADMINISTRATION

If you wish to receive notice of rulemaking proceedings of the Minnesota State Building Code Division, please notify the division in writing by August 31, 1980. You will then receive notice of any rulemaking proceedings initiated after that date. Please note that this procedure will put you *only* on the list of the Minnesota State Building Code Division; other agencies and departments will be establishing their own lists. Please send your written request to the following address:

Building Code Division
Attn: Peggi Opalinski
408 Metro Square Building
7th and Robert Streets
St. Paul, Minnesota 55101

July 11, 1980

Department of Administration Procurement Division

Notice of Intent to Solicit Outside Opinion Concerning Rules Relating to Small Businesses

Notice is given that the Department of Administration, Procurement Division, is soliciting information and opinions from sources outside the agency for the purpose of making rules relating to the Minnesota Small Business Procurement Act, Minn. Stat. §§ 16.081-16.086 (1978). This Act was recently amended by Minnesota Laws of 1980, ch. 361, §§ 1-6. The department is considering amendments to the existent rules governing small businesses, including businesses owned and operated by socially or economically disadvantaged persons, 2 MCAR §§ 1.6701-1.6704. Specifically, the department is reviewing amendments to the small business procurement rules including, but not limited to the following areas:

1. Negotiation of bid prices.

2. Definition and participation of non-manufacturing business, including third party lessors, jobbers, manufacturers' representatives, and others from eligibility under this act.

3. Determination of eligibility criteria for:

a) Self-certification by a business.

b) Verification of eligible racial minorities, women, or persons who have suffered a substantial physical disability.

All persons desiring to submit information or views on these or related subjects may do so either orally or in writing. Written or oral comment should be addressed to:

Mr. Charles A. Ball
Minnesota Department of Administration
Management Analysis Division
2nd Floor Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155
Telephone : (612) 296-3083

All statements of information and comment must be received by August 11, 1980. Any written material received by this date will become part of the record of any rules hearing on these subjects.

July 11, 1980

Department of Employee Relations

Notice of Intent to Prepare Department of Employee Relations List for Future Rulemaking Hearings

In accordance with Minnesota Laws of 1980, Chapter 615, the Department of Employee Relations is establishing a list of persons to receive official notice of its rulemaking proceedings. That law requires each agency or department to establish and maintain such a list to replace the existing Secretary of State's list.

If you wish to receive notice of rulemaking proceedings of the Department of Employee Relations, please notify this department in writing by August 15, 1980. You will then receive notice of any rulemaking proceedings initiated after that date. Please note that this

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Adoption of Rules of the State Department of Administration Governing the Small Business Procurement Program

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on November 24, 1980 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on November 18, 1980. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as the Small Business Procurement Program are adopted this 9th day of January, 1981 pursuant to authority vested in me by Minnesota Statutes section 16.05 (1978) and 16.085 (1978) as amended by Minnesota Laws of 1980, ch. 361, section 4, in Minnesota Statutes section 16.28 (1978) and in Minnesota Laws of 1980, Chapter 361, section 3 (Minnesota Statute section 645.445).

STATE OF MINNESOTA

COMMISSIONER OF ADMINISTRATION