

Minnesota Attorney General: Administrative Rules Proceedings

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SF-00006-03

STATE MINNESOTA

DEPARTMENT

Office Memorandum

ATTORNEY GENERAL

TO: CAROL ZAZUBEL
Materials Management Division
Department of Administration

DATE: 3/16/87

FROM: MARTHA CASSERLY
Special Assistant
Attorney General

PHONE: 6-4692

SUBJECT: In the Matter of the Adopted Rules Relating to Competitive Bidding

The above-referenced rule has been approved as to its legality by the Attorney General on March 11, 1987.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:nah

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Adminsitrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RULE REVIEW CHECKLIST

File No. 1352 Docket No. 05.0009.0005

DATE RECEIVED 3/02/87
REVIEW DATE 3/11/87
DUE DATE 3/16/87

APPROVED 3-11-87 mjc
DISAPPROVED
WITHDRAWN

ADOPTED W/O HEARING ✓
EMERGENCY RULE

REVISOR APPROVED
REVISOR DISAPPROVED
FILED W/SEC. STATE
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

___ ~~Notice to Solicit Outside Information/Opinion~~
~~Date published in State Register~~
~~Comments~~

___ ~~Petition for Adoption of a Rule~~

___ ~~Board's Authorizing Resolution~~

✓ Proposed rule
yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
16B.07 Subd 3 Statutory Authority
no Small business statement
no Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
Jan 26, 1987 Date (30)/25 days before adoption

✓ Publication in State Register
Jan 19, 1987 Date (30)/25 days before adoption

___ Resolution Adopting

✓ Findings of Fact, Conclusions & Order Adopting
Feb 24, 1987 Date

___ Written requests, submissions or comments

✓ Declaration of attorney
J. Michael Myles Name of SAAG representing agency

___ ~~Notice of Submission to Attorney General~~

___ ~~Affidavit of Mailing Notice to Attorney General~~

Department of Administration

Adopted Permanent Rules Relating to Competitive Bidding

Rules as Adopted

1230.0300 SOLICITING BIDS.

Subpart 1. **Publication.** Any purchase estimated to exceed $15,000 shall be purchased on sealed bids, notice of solicitation of bid to be inserted once in a newspaper of general circulation at least seven days prior to the bid opening date. Bids shall also be solicited by sending bid invitations to all prospective bidders registered with the Division of Procurement pursuant to subpart 3 and by posting notice on a public bulletin board in the Division of Procurement Office at least five days prior to the bid opening date.

Subp. 2. **Open market.** Any purchase estimated to be $15,000 or less may be made upon competitive bids or in the open market, but in either case will be based on three competitive bids, so far as practicable.

Subp. 3. [Unchanged.]

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 11 1987
Joan Anderson Growe
Secretary of State
3:46 PM

APPROVED AS TO FORM AND LEGALITY
March 11 1987
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Administration

Proposed Permanent Rules Relating to Competitive Bidding

Rules as Proposed

1230.0300 SOLICITING BIDS.

Subpart 1. **Publication.** Any purchase estimated to exceed ~~$5,000~~ $15,000 shall be purchased on sealed bids, notice of solicitation of bid to be inserted once in a newspaper of general circulation at least seven days prior to the bid opening date. Bids shall also be solicited by sending bid invitations to all prospective bidders registered with the Division of Procurement pursuant to subpart 3 and by posting notice on a public bulletin board in the Division of Procurement Office at least five days prior to the bid opening date.

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Subp. 3. [Unchanged.]

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Competitive Bidding

AGENCY: Department of Administration

MINNESOTA RULES: Chapter 1230

The attached rules are approved for publication
in the State Register

Craig E. Lindeke
Senior Assistant Revisor

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING.

Department of Administration

In the Matter of the Proposed Adoption of the Rule of the State Department of Administration Governing State Procurement Formal Bid Requirements

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Administration intends to adopt the above entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sectons 14.22 to 14.28.[1] The statutory authority to adopt the rule is M.S. 16B.07, Subd. 3.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged.[2] Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.[3]

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing.[4] Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.[6] If a public hearing is required, the agency will proceed pursuant to Minesota Statutes, sections 14.131 to 14.20.[7]

Comments or written requests for a public hearing must be submitted to:[5]

Carol Zazubek
Dept. of Administration
Materials Management Division
G-4 Administration Bldg.
phone: 296-9109

The proposed rule may be modified if the modifications[8] are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A Statement of Need and Reasonableness[12] that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Carol Zazubek upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality.[9] Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this materials to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Carol Zazubek.

Date January 26, 1987

Sandra J. Hale

Sandra J. Hale

Commissioner
Department of Administration

State of Minnesota
Department of Administration

In the matter of the Proposed Adoption of a Rule Concerning Bid Requirements

Statement of Need and Reasonableness

In 1986, the Legislature revised M.S. section 16B.07, Subdivision 3 by changing the amount of an expenditure for which formal bids are required from $5,000 to $15,000.

The rationale for the revision includes the following:

1) The formal bid requirement for municipalities in M.S. 471.345 is $15,000.
2) The formal bid requirement has not been changed to keep pace with inflation for 15 years.
3) The revision will provide increased efficiencies because informal bids take less time and are less costly to process.

Consideration of Small Businesses

We have carefully reviewed this change in accordance with MCAR 14.115 and found no significant impact on small business in Minnesota. The reduced visibility created by the increased advertised bid limit would impact equally on the other classes of business. If anything, it may have a greater impact on business outside of Minnesota making it harder for them to compete for the smaller dollar purchases which would result in an advantage to Minnesota's small business enterprises.

In the Matter of the Proposed Adoption
of the Rule of the State Dept. of Administration
Governing State Procurement Formal Bid Requirements

AFFIDAVIT OF MAILING
THE NOTICE OF
INTENT TO ADOPT A
RULE WITHOUT A PUBLIC
HEARING AND CERTIFICATE
OF MAILING LIST

STATE OF MINNESOTA

COUNTY OF RAMSEY

Carol Zazubek, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision la and 14.22 to 14.30, that their names be placed on the state Department of Administration rulemaking mailing list is accurate, complete, and current as of this 26th day of January, 1987.

That on the 26th day of January, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States Mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Carol Zazubek
Dept. of Admin., Mat. Mgmt. Div.

Subscribed and sworn to before me
this 5 day of February, 19 87.

NANCY A. HALEY
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES OCTOBER 3, 1992

PROPOSED RULES

Pursuant to Minn. Stat. of 1984, §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.**

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Administration

Proposed Permanent Rules Relating to Competitive Bidding

Notice of Intent to Adopt a Rule without a Public Hearing

Notice is hereby given that the State Department of Administration intends to adopt the above entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in ***Minnesota Statutes***, sections 14.22 to 14.28. The statutory authority to adopt the rule is M.S. 16B.07, Subd. 3.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Carol Zazubek
Dept. of Administration
Materials Management Division
G-4 Administration Bldg.
phone: 296-9109

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Carol Zazubek upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of these materials to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Carol Zazubek.

Sandra J. Hale
Commissioner
Department of Administration

Rules as Proposed

1230.0300 SOLICITING BIDS.

Subpart 1. **Publication.** Any purchase estimated to exceed ~~$5,000~~ $15,000 shall be purchased on sealed bids, notice of solicitation of bid to be inserted once in a newspaper of general circulation at least seven days prior to the bid opening date. Bids shall also be

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING THE RULE WITHOUT PUBLIC HEARING.

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed Adoption of the Rule of the State Dept of Administration Governing State Procurement Formal Bid Requirements	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on January 19, 1987 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on January 26, 1987. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. The agency received no requests for a public hearing.

Based on the comments and evidence in the record before the agency, I find the following:

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as 1230.0300 is adopted this 24th day of February, 1987, pursuant to authority vested in me by Minnesota Statutes, section 16B.04.

Sandra J. Hale

Sandra J. Hale
Commissioner of Administration

DECLARATION OF COUNSEL.

In the Matter of the Adoption of the Rule of the State Dept of Administration Governing State Procurement Formal Bid Requirements

DECLARATION OF COUNSEL

I, J. Michael Miles, Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0005.

J. Michael Miles
Assistant Attorney General

Dated: 3/2/87

Carol 6-9109

Notice of Intent

1. Rule not attached or described — required by § 14.22
2. Citation is incorrect - rqd by 14.22 "most specific stat auth"
3. No Small Business Statement — SNR says "no sig impact" no effect b/c conflicts w/stat

~~3. No~~

Rule

OK

Authorization

16B.07 subd 3 No authorization here
Authorization appears in 16B.04 subd 1.

→ according to Carol Z, a copy of the rule was enclosed to all the mailed notices
- I asked her if she enclosed anything with the notice, + she volunteered the rule

→ close call, but I will let go, it is a reference to the statutory change in the amt

rule

Carol - mailed Notice of Intent on Jan 26,
did you only mail notice?
is that all