

CHAPTER 1230
DEPARTMENT OF ADMINISTRATION
DIVISION OF PROCUREMENT
STATE CONTRACTS

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1230.0100 SCOPE.

Pursuant to Minnesota Statutes, chapter 16B, parts 1230.0100 to 1230.2300 govern the procurement of materials and services for the state under the competitive bidding requirements.

Statutory Authority: *MS s 16B.04 subd 1*

1230.0200 DEFINITIONS.

Subpart 1. Scope. Within parts 1230.0100 to 1230.2300, the following apply, unless clearly indicated otherwise by the context.

Subp. 2. Division of Procurement. "Division of Procurement" means Division of Procurement, Department of Administration, Room 112, State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155.

Subp. 3. Director. "Director" means director of the Division of Procurement.

Subp. 4. Liquidated damages. "Liquidated damages" means a specific sum of money, agreed to as part of a contract to be paid by one party to the other in the event of breach of contract in lieu of actual damages, unless otherwise provided by law.

Subp. 5. Material variance. "Material variance" means a variance in a bid from specifications or conditions which allows a bidder a substantial advantage or benefit not enjoyed by all other bidders.

Subp. 6. Newspaper of general circulation. "Newspaper of general circulation" means Finance and Commerce for general commodities and services and Construction Bulletin for construction projects, or an alternate approved by the director.

Subp. 7. Responsible bidder. "Responsible bidder" means a bidder who:

A. is a manufacturer of, regular dealer in, or an agent of a manufacturer of supplies of the general character to be furnished; or

- B. is in the business of furnishing the services to be provided; and
- C. is financially and otherwise able to perform the contract, as evidenced by integrity, ability, skill, experience, and performance of past contracts for the state or other purchasers; and
- D. is otherwise qualified under law and rule, including incorporation or registration to do business in the state of Minnesota; and
- E. is in compliance with all tax laws thereof.

Statutory Authority: *MS s 16B.04 subd 1*

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. List of bidders. A list of bidders shall be maintained by the Division of Procurement for various commodity classes. Any persons desiring to sell supplies to the state may file with the director of procurement a letter showing their business address, the commodities they desire to sell to the state, and proof of incorporation or registration to do business in the state. The firm name shall then be placed on the permanent bid list to receive invitations to bid. The name of a bidder who fails to respond to three consecutive bid invitations shall be removed from the list of bidders upon written notice. The name of the bidder so removed shall be restored only by specific written request.

Statutory Authority: *MS s 16B.04 subd 1; 16B.07 subd 3*

History: *11 SR 1784*

1230.0400 SUBMISSION OF ADVERTISED BIDS.

Subpart 1. Invitation to bid. Each invitation to bid shall include the following information and any other relevant information required by the nature of the individual bid, as called for in the bid specifications:

- A. department, division, and requisition number;
- B. name and address of using agency;
- C. date of issuance;
- D. time and place of delivery of bid;
- E. date, hour, and place for opening bids;
- F. security requirements, if any;
- G. quantity of supplies and/or services to be furnished;
- H. description of supplies and/or services to be furnished;
- I. place, method, and conditions of inspection or testing, if required; and
- J. applicable general and special conditions.

Subp. 2. Bid conditions. Bid conditions applicable to all state purchases shall be stated on the standard invitation to bid. Bid conditions applicable to specific commodities or types of purchase shall be stated in the invitation to bid. Special conditions supersede general conditions, if conflicting.

Subp. 3. Form and delivery of bids. In each instance, the bids shall be on the form provided, in a sealed bid envelope or an envelope clearly identified with the commodity, time and date of opening, and the name of bidder on the front of

the envelope. Bids shall be completed, signed, and submitted by each bidder in accordance with the instructions contained in each invitation for bid. Telegraphic bids shall not be considered unless expressly permitted in the invitation to bid. Bids shall be delivered to the Division of Procurement at address shown on bid invitation.

Statutory Authority: *MS s 16B.04 subd 1*

1230.0500 BID SECURITY.

Subpart 1. Payment. Each bid invitation shall set forth the bid security required by the division. Such bid security shall be made payable to "State of Minnesota" and shall be made upon the condition or guarantee that in the event the bidder's offer is accepted, the bidder shall enter into contract in accordance with the proposal.

Subp. 2. Forfeit. Certified checks or bid bonds of successful bidders shall constitute liquidated damages for failure of a bidder to enter into a contract, and shall also be held as security for delivery and acceptance of merchandise, or satisfactory completion of the contract. A performance bond for 25 percent of the award may be substituted.

Subp. 3. Return. Checks of unsuccessful bidders shall be returned to vendor by placing them in the mail within five working days after an award is made. Checks of successful vendors shall be returned as soon as delivery is completed and acceptance is made by the agency, or the contract is satisfactorily completed. No interest shall be paid on any moneys held as security.

Subp. 4. Annual bid and supply bond. Bidders may file with the director of procurement an annual bid and supply bond in lieu of individual bonds or other security required in various individual bid invitations. Annual bid and supply bonds, when accepted by the director of procurement, shall cover all bids by the vendor for materials, commodities, and supplies during the effective period of the annual bond, except as provided in subpart 5. The vendor shall be notified in writing if the necessity arises to attach the bond for breach of contract.

Subp. 5. Bids excluded from annual bid and supply bonds. Annual bid and supply bonds shall not cover bid:

- A. for building construction, repair, remodeling, or other public works;
- B. on which the annual bid security does not amount to five percent of the bid;
- C. when another bond is required by specification; or
- D. when bond is used as security on other bids.

Statutory Authority: *MS s 16B.04 subd 1*

1230.0600 BIDDER ERRORS.

Prior to the opening of sealed bids, any person may withdraw his bid by notifying the director in writing of his desire to withdraw, by appearing in person at the Division of Procurement Office and withdrawing the bid, or by telegraphic writing received by the director requesting withdrawal of his bid.

Subsequent to the opening of sealed bids, a person may withdraw his bid only upon a showing that an obvious error exists in the bid. The showing and request for withdrawal must be made in writing to the director within a reasonable time after the opening of the bids and prior to the state's detrimental reliance on the bid.

Statutory Authority: *MS s 16B.04 subd 1*

1230.0700 OPENING OF BIDS.

Subpart 1. Division's treatment of bids. Upon receipt in the Division of Procurement, all bids will be time stamped, showing the date and hour received. Bids received after the time set for the opening of bids will be returned unopened

to the bidders. Bids shall be opened publicly and read aloud at the time and place established in the bid invitation. All original bids will be retained pursuant to Minnesota Statutes, section 16B.07, subdivision 3, for public inspection in the Division of Procurement.

Subp. 2. Recording and tabulation of bids. The names of bidders, prices bid, and other pertinent data shall be recorded on a tabulation form which shall be available for public inspection in the Division of Procurement.

Subp. 3. Rejection of bids. The state may reject any or all bids or portions thereof. All bids shall be rejected for good and sufficient cause, including but not limited to, abandonment of the project by the state, or insufficient state funds. A vendor whose sealed bid is rejected shall be given notice of the rejection and the reason(s) for rejection of the bid.

Subp. 4. Informalities and minor deficiencies. The state reserves the right to waive minor deficiencies or informalities in bids. Minor informalities shall be waived if, in the judgment of the director of procurement, the best interest of the state would be served without prejudice to the rights of the other bidders. Examples of minor deficiencies include, but are not limited to, omission of the title of the signatory; failure to furnish required catalog cuts; and minor detail omissions.

Statutory Authority: *MS s 16B.04 subd 1*

1230.0800 AWARD OF CONTRACTS.

Award of contracts shall be made in conformity with Minnesota Statutes, section 16B.09 and with no material variance from the terms and conditions of the bid invitation.

Statutory Authority: *MS s 16B.04 subd 1*

1230.0900 TIED BIDS.

Subpart 1. Resolving tied bids. Tied low bids for less than \$500 shall be resolved by drawing lots among the tied low bidders, except as provided in subpart 2.

Except as provided in subpart 2, tied low bids for \$500 or more shall be referred to the director or assistant director of procurement for disposition. The director of procurement may enter into negotiation with tied low bidders when the director deems such action to be in the best interest of the state.

Subp. 2. Preference for Minnesota firms. Whenever a tie involves a Minnesota firm and one whose place of business is outside the state of Minnesota, preference shall be given to the Minnesota firm.

Statutory Authority: *MS s 16B.04 subd 1*

1230.1000 CONTRACT PERFORMANCE.

Subpart 1. Shipment. The director of procurement or authorized agents of state departments shall place orders with successful bidders using official state purchase orders. Upon award, shipment shall be made in accordance with delivery instructions in the invitation to bid.

Subp. 2. Inspection. The state may require that the vendor permit inspection of the commodities prior to shipment at the factory, plant, or establishment where produced, manufactured, or stored. Unless provision for inspection is made in the invitation to bid, costs thereby incurred will be paid by the state.

Subp. 3. Grounds for rejection. All deliveries shall conform to specifications of the bid. Failure in this respect shall be cause for rejection of the goods. Commodities that fail to comply with specifications, fail to conform to the vendor's sample, are not as provided on the purchase order, or arrive in an unsatisfactory condition shall be rejected except as provided in subpart 7.

Subp. 4. Notice of rejection. Notice of rejection, based upon apparent deficien-

cies disclosed by ordinary methods of inspection, shall be given by the receiving agency to both vendor and the carrier (if f.o.b. shipping point) within reasonable time after delivery, with a copy of this notice to the Division of Procurement. Revocation of acceptance for latent deficiencies that would make the items unsatisfactory for the purpose intended shall be given by the state within reasonable time after discovery. The contractor shall satisfactorily repair or replace such items within a reasonable period of time.

Subp. 5. Removal of rejected items. The vendor shall forthwith remove at his expense any item rejected by the state. If the vendor fails to remove such an item, or to forthwith forward shipping instructions to the agency concerned, the state may sell the item and remit the proceeds of sale, less the expense involved, in accordance with law including but not limited to Minnesota Statutes, section 336.2-603.

Subp. 6. Replacing rejected items. If the needs of a state agency do not permit time to replace rejected merchandise, or if deliveries are not made within the time specified in the contract, the agency may, with the approval of the director of procurement, buy on the open market supplies of the nature required. The vendor shall be liable for all additional costs and expenses.

Subp. 7. Adjusting price of nonconforming items. If it is determined that an item does not conform strictly to specifications, but can be used satisfactorily, the director of procurement may adjust the price with written acquiescence of the vendor, and authorize the agency to keep and use such part of the order when such action is required to sustain continued operation.

Subp. 8. Laboratory tests. The director of procurement may direct that a laboratory analysis or other tests be made to determine the acceptability of the delivered product(s) and to ensure that product(s) meet specifications. In these instances, acceptance by the state shall not occur nor be deemed to have been made, and the discount time shall not begin, until testing is completed and affirmative results are obtained. Vendors shall be notified of unsatisfactory test results.

Statutory Authority: *MS s 16B.04 subd 1*

1230.1100 FAILURE TO PERFORM.

Subpart 1. Penalties. If a bidder who is awarded a contract fails to perform as specified, the bid security shall be retained by the state and deposited with the state treasurer as liquidated damages. The vendor may also be determined not to be a responsible bidder. The state may also pursue all other remedies permitted or provided by law.

If the bid security is in the form of a bond, the bonding company shall be notified in writing of the default. A vendor who fails to enter into contract that has been awarded to him may be determined not to be a responsible bidder regardless of whether bid security was required. The state may seek further damages and shall not be limited by the absence or existence of a bond. In all cases of default, the vendor may be determined not to be a responsible bidder.

Subp. 2. Failure to furnish security. After the award of a contract, if the vendor fails to furnish satisfactory performance security, if required, the vendor shall be deemed in default and subject to the above provisions.

Subp. 3. Types of failure to conform to specifications. A vendor shall be held in default for failure to conform to bid specifications or standard commercial practices including, but not limited to the following:

- A. failure to make deliveries within the time specified in the contract;
- or
- B. deliveries of goods or materials that do not conform to samples or specifications and are not promptly replaced; or
- C. delivery of goods or materials that are repeatedly rejected; or

D. misbranding or materially misrepresenting goods or materials purchased under the contract.

Statutory Authority: *MS s 16B.04 subd 1*

1230.1200 CONTRACT CANCELLATION.

The director of procurement may cancel a purchase entered into under competitive bidding under any one of the following conditions including, but not limited to:

A. the contractor agrees to the cancellation;

B. the contractor has obtained the contract by fraud, collusion, conspiracy, or in conflict with any statutory or constitutional provision of the state of Minnesota; or

C. failure to deliver as agreed.

Statutory Authority: *MS s 16B.04 subd 1*

1230.1300 REHABILITATION FACILITY.

Any rehabilitation facility wishing to apply to receive notice of available state contracts pursuant to Minnesota Statutes, section 16B.18 shall apply in writing to the director of the Minnesota Association of Rehabilitation Facilities.

Statutory Authority: *MS s 16B.04 subd 1*

History: *L 1988 c 689 art 2 s 268*

SMALL BUSINESSES OWNED BY DISADVANTAGED PERSONS

1230.1400 PURPOSE.

Parts 1230.1300 to 1230.1900 are promulgated pursuant to Minnesota Statutes, sections 16B.22 and 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, Saint Paul, Minnesota 55155. Parts 1230.1300 to 1230.1900 shall also govern procurement under this program.

Statutory Authority: *MS s 16B.22*

1230.1500 SCOPE.

Subpart 1. **Priority of set-aside rules.** In the event of irreconcilable conflict between the general procurement rules in parts 1230.0100 to 1230.1300 and these rules relating specifically to the set-aside program, the rules of the set-aside program shall govern.

Subp. 2. **Definitions.** The definitions contained in Minnesota Statutes, section 645.445 shall apply in the administration of the set-aside program. In addition, the following definitions shall apply.

Subp. 3. **Terms governing minorities.** The terms "racial minorities," "women," and "persons who have suffered a substantial physical disability" contained in Minnesota Statutes, section 645.445, subdivision 5 shall have the following meanings:

A. "Racial minorities" means all persons in one or more of the following categories:

(1) "Black (not of Hispanic origin)" means all persons having origins in any of the Black racial groups of Africa.

(2) "Hispanic" means 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" means 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" means all persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation.

(5) "Indian" means 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" means all persons of the female gender.

C. "Persons who have suffered a substantial physical disability" means 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.

Subp. 4. **Small business owned and operated by disadvantaged person.** "A small business owned and operated by a socially or economically disadvantaged person(s)" means a small business as defined in Minnesota Statutes, section 645.445, subdivision 2 which is 51 percent owned and operated on a day-to-day basis by a socially or economically disadvantaged person as defined in Minnesota Statutes, section 645.445, subdivision 5.

Subp. 5. **Broker.** "Broker" means a business that carries no inventory and that has no written agreement with any manufacturer to sell the products of such manufacturer.

Subp. 6. **Contractor.** "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.

Subp. 7. **Dealer, jobber, or distributor.** "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.

Subp. 8. **Joint venture.** "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.

Subp. 9. **Manufacturer.** "Manufacturer" means a business that makes and/or processes raw materials into a finished product.

Subp. 10. **Manufacturer's representative.** "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).

Subp. 11. **Third-party lessor.** "Third-party lessor" means a business that as a lessee acts as a lessor to a third party.

Statutory Authority: *MS s 16B.22*

1230.1600 ELIGIBILITY FOR SET-ASIDE PROGRAM.

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

Statutory Authority: *MS s 16B.22*

1230.1700 SELF-CERTIFICATION OF ELIGIBILITY.

Subpart 1. **Required information.** 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:

- A. name and address of applicant and principal place of business;
- B. 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;
- C. number of employees;
- D. gross revenues in the preceding fiscal year;
- E. whether the business is an affiliate or subsidiary of a business dominant in its field of operation;
- F. 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; and
- G. all other relevant information requested by the division.

Subp. 2. Grounds for claiming disadvantaged status. 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 Minnesota Statutes, section 645.445, subdivision 5 and these rules for each officer and owner of the business.

Subp. 3. Income statement. 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.

Subp. 4. Notice of changes. 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 30 days of such change(s).

Subp. 5. Grounds for rejecting self-certification. 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 the Division of Procurement. An application shall be rejected on any of the following grounds:

- A. applicant is dominant in its field of operation or is an affiliate or subsidiary of a business dominant in its field of operation;
- B. applicant has failed to provide all relevant required information;
- C. 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);
- D. applicant has failed to comply with laws and rules of the state relating to procurement;
- E. applicant's failure to comply with the requirements of these rules or Minnesota Statutes, section 16B.19, et seq. faith in application for inclusion in this program; and
- F. applicant is a broker and/or third-party lessor.

Subp. 6. Appeal. 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 30 days of receipt of such notice. The director shall render a decision in writing on the application within 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 30 days of receipt of such determination. The commissioner shall render the final decision in writing within 30 days of receipt of such appeal.

Statutory Authority: *MS s 16B.22*

1230.1800 ESTABLISHMENT OF SET-ASIDE PROCUREMENTS.

Subpart 1. List of set-aside businesses. A list of set-aside businesses, properly certified pursuant to part 1230.1700 shall be established and maintained by the division for various commodity classes.

Subp. 2. 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:

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

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

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

D. 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.

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

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

G. No award shall be made when the low bid is more than five percent over the estimated price.

H. 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.

I. 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.

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

Statutory Authority: *MS s 16B.22*

1230.1900 GENERAL TERMS AND CONDITIONS.

Subpart 1. Inability to perform. 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 calendar days after receipt of notice as low bidder, notify the Division of Procurement in writing of the reasons therefor. When the commissioner of administration finds that the low bidder is unable to perform, the Department of Trade and Economic Development shall be notified by the Division of Procurement in accordance with Minnesota Statutes, section 16B.20, so that the commissioner of trade and economic development can assist the small business in attempting to remedy the causes of the inability to perform. Failure to enter into the contract or to accept an offered award will not automatically disqualify a business from further bidding. The records of the Procurement Division shall show the reason(s) for such failure.

Subp. 2. Removal from set-aside list for failure to fulfill contract. 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 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.

Subp. 3. Removal from list when business no longer qualifies. 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 Minnesota Statutes, sections 16B.19 to 16B.22, and 645.445 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.

Subp. 4. Appeal of removal. 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 part 1230.1700, subpart 6.

Subp. 5. Dividing bid invitations. 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.

Subp. 6. Subcontracting. No contractor awarded a contract under the set-aside program shall subcontract 50 percent or more of the dollar value of the work under such contract. In construction contracts, the amount of specialty subcontracting shall be excluded in determining the total amount of permissible subcontracting.

Statutory Authority: *MS s 16B.22*

History: *L 1983 c 289 s 115 subd 1; L 1987 c 312 art 1.*

PARTIAL INDEMNIFICATION

1230.2000 STATE-FUNDED PARTIAL INDEMNIFICATION OF SMALL BUSINESSES AND SMALL BUSINESSES OWNED BY DISADVANTAGED PERSONS.

Pursuant to Minnesota Statutes 1977, section 574.262, parts 1230.2000 to 1230.2300 establish procedures relating to state funding of partial indemnification for certain state contractors which are small businesses and small business owned by economically and socially disadvantaged persons. Rules establishing eligibility standards are exempted from the provisions of Minnesota Statutes, chapter 14.

Statutory Authority: *MS s 574.262*

1230.2100 APPLICATION CONTENTS.

Any person, corporation, or other legal entity wishing to apply for partial indemnification shall contact the Division of Procurement, State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155. The application for determination of eligibility shall include the following:

- A. a current certified financial statement or equivalent approved by the director;
- B. reasons for requesting partial indemnification;
- C. a list of all bonding companies contacted;
- D. copies of all denials of application(s) for bonding received from bonding companies or bonding agencies;
- E. a summary of all other efforts undertaken to obtain bonding; and
- F. all other relevant information requested.

Statutory Authority: *MS s 574.262*

1230.2200 DETERMINING ELIGIBILITY.

Upon receipt of an application for determination of eligibility, the commissioner shall make an eligibility determination and notify the applicant within a reasonable time.

Statutory Authority: *MS s 574.262*

1230.2300 RESTRICTIONS.

Participation in partial indemnification pursuant to these rules shall be restricted or limited as set forth in Minnesota Statutes, section 574.262, subdivision 2.

Statutory Authority: *MS s 574.262*

DEBARMENT AND SUSPENSION**1230.3000 SCOPE.**

Parts 1230.3000 to 1230.4300 apply to all Mn/DOT contracts.

Statutory Authority: *MS s 16B.04 subd 1; L 1984 c 654 art 2 s 8*

History: *9 SR 1186*

1230.3100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 1230.3000 to 1230.4300 have the meanings given them in this part.

Subp. 2. **Administrative law judge.** "Administrative law judge" means a person appointed under Minnesota Statutes, section 14.48 or 14.49 and assigned under Minnesota Statutes, section 14.50 to hear contested cases.

Subp. 3. **Business.** "Business" means a sole proprietor doing business as a contractor, subcontractor, or supplier, or a partnership, association, corporation, or other entity formed for the purpose of doing business as a contractor, subcontractor, or supplier.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Administration.

Subp. 5. **Contract crime.** "Contract crime" means a violation of state or federal antitrust law, fraud, theft, embezzlement, bribery, forgery, misrepresentation, making false statements, falsification or destruction of records, or other criminal offense in connection with obtaining, attempting to obtain, or performing a public or private contract or subcontract.

Subp. 6. **Contractor.** "Contractor" means a person to whom the Minnesota commissioner of transportation has awarded a Mn/DOT contract for which competitive bids are required or taken.

Subp. 7. **Conviction.** "Conviction" has the meaning given to it in Minnesota Statutes, section 609.02, subdivision 5.

Subp. 8. **Debar.** "Debar" means to disqualify under parts 1230.3100 to 1230.4300 from entering into or receiving a Mn/DOT contract or from serving as a subcontractor or material supplier under a Mn/DOT contract.

Subp. 9. **Mn/DOT contract.** "Mn/DOT contract" means a written instrument:

A. containing the elements of offer, acceptance, and consideration to which the Minnesota Department of Transportation is a party, or acts as an agent for a party under Minnesota Statutes, section 161.36, subdivisions 2 and 3, 360.016, subdivisions 2 and 3, or 360.039, subdivisions 2 and 3;

B. for which competitive bids are required or taken; and

C. which is subject to the approval of the commissioner.

Subp. 10. **Person.** "Person" means a natural person or a business.

Subp. 11. **Principal.** "Principal" means an officer, director, or partner, or an employee or shareholder engaged in management of the business.

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Subp. 12. **Suspend.** "Suspend" means to temporarily disqualify from entering into or receiving a Mn/DOT contract or from serving as a subcontractor or material supplier under a Mn/DOT contract.

Statutory Authority: *MS s 16B.04 subd 1; L 1984 c 654 art 2 s 8*

History: *9 SR 1186*

1230.3200 GROUNDS FOR DEBARMENT.

Subpart 1. **Contract crime.** A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

Subp. 2. **Violation of antitrust laws.** A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for violating Minnesota Statutes, sections 325D.49 to 325D.66 or federal antitrust laws, or when a conviction is imputed to the business under part 1230.3300.

Statutory Authority: *MS s 16B.04 subd 1; L 1984 c 654 art 2 s 8*

History: *9 SR 1186*

1230.3300 CONVICTION OF PERSON IMPUTED TO BUSINESS.

The conviction of a person for offenses listed in part 1230.3200 is imputed to a business when the conduct which gave rise to the conviction occurred in connection with the person's performance of duties for or on behalf of that business and in the course of employment or with the knowledge, approval, acquiescence, or subsequent ratification of the conduct by the business.

Statutory Authority: *MS s 16B.04 subd 1; L 1984 c 654 art 2 s 8*

History: *9 SR 1186*

1230.3400 DEBARMENT PROCEDURE.

Subpart 1. **Requirement.** A business must be debarred by the Minnesota Department of Transportation when one or more of the grounds set forth in part 1230.3200 are established at a hearing or opportunity for hearing conducted under Minnesota Statutes, chapter 14.

Subp. 2. **Three-year limitation.** A debarment or a suspension must be initiated within three years from the date of the conviction of a business for an offense described in part 1230.3200.

Statutory Authority: *MS s 16B.04 subd 1; L 1984 c 654 art 2 s 8*

History: *9 SR 1186*

1230.3500 TERM OF DEBARMENT.

The administrative law judge shall recommend and the commissioner of transportation shall establish the term of debarment. The term of debarment depends upon: the seriousness of the offense; whether restitution has been made; whether the debarred person cooperated in civil or criminal lawsuits; the state's need to preserve the competitive bidding process; and whether the business is debarred or has been debarred in another jurisdiction. The length of the debarment period in another jurisdiction must be taken into account in determining the term of debarment in Minnesota.

Statutory Authority: *MS s 16B.04 subd 1; L 1984 c 654 art 2 s 8*

History: *9 SR 1186*

1230.3600 DEBARMENT BASED ON AFFILIATION.

Subpart 1. **Conviction of business imputed to person.** The conviction of a business in any jurisdiction, for offenses listed in part 1230.3200 is imputed to any principal or other person associated with the business subject to debarment

or suspension, who participated in, knew of, or had reason to know of the conduct.

Subp. 2. Debarment. A business must be debarred when it:

A. employs a former principal of a debarred or suspended business or person described in subpart 1 as an officer, director, manager, or in another significant decision-making capacity;

B. is owned by or associated in a joint venture with a debarred or suspended business or is controlled by a principal or former principal of a debarred or suspended business; or

C. is a business in which a former principal of a debarred or suspended business has a significant financial interest and the former principal has the authority to or will control, direct, manage, or influence any activities of the business with respect to the Mn/DOT contract in question.

Subp. 3. Procedure. A business described in subpart 2 must be debarred after a hearing or opportunity for hearing conducted under Minnesota Statutes, chapter 14.

Subp. 4. Duration. The period of debarment must be the same as that of the debarred former principal or business.

Statutory Authority: *MS s 16B.04 subd 1; L 1984 c 654 art 2 s 8*

History: *9 SR 1186*

1230.3700 DEBARMENT LIMITATION.

A person may not be debarred for more than three years for conduct which gave rise to the grounds for debarment. If new or different grounds arise, a new debarment hearing must be held.

Statutory Authority: *MS s 16B.04 subd 1; L 1984 c 654 art 2 s 8*

History: *9 SR 1186*

1230.3800 EFFECTIVE DATE OF DEBARMENT.

A debarment takes effect on the date of the mailing of the order for debarment by the Minnesota Department of Transportation. The order for debarment must be sent by certified mail.

Statutory Authority: *MS s 16B.04 subd 1; L 1984 c 654 art 2 s 8*

History: *9 SR 1186*

1230.3900 TERMINATION OF DEBARMENT OR AWARD DURING DEBARMENT.

The commissioner of transportation may terminate a debarment by order or may award a Mn/DOT contract to a debarred or suspended business when:

A. that business is the sole supplier of a material or service required by the Minnesota Department of Transportation;

B. the commissioner of transportation determines that an emergency exists as defined in Minnesota Statutes, section 161.32, subdivision 3;

C. the commissioner of administration determines that an emergency exists as defined in Minnesota Statutes, section 16B.08, subdivision 6; or

D. the contract is for purchasing materials or renting equipment for routine road maintenance.

Statutory Authority: *MS s 16B.04 subd 1; L 1984 c 654 art 2 s 8*

History: *9 SR 1186*

1230.4000 CONTINUATION OF CONTRACTS.

Mn/DOT contracts in existence at the time of debarment or suspension are not terminated by the debarment or suspension except as provided in part 1230.1200.

Statutory Authority: *MS s 16B.04 subd 1; L 1984 c 654 art 2 s 8*

History: *9 SR 1186*

1230.4100 PROHIBITIONS.

Subpart 1. Mn/DOT contracts. Except as provided in part 1230.3900, the Department of Transportation may not award a Mn/DOT contract to a debarred or suspended person and may not approve a contract under which a debarred or suspended person will serve as a subcontractor or material supplier.

Subp. 2. Subcontracts and purchase of materials. Except as provided in part 1230.3900, a contractor to whom a Mn/DOT contract has been awarded by the Minnesota Department of Transportation may not subcontract with or purchase materials or services from a debarred or suspended person for performance of that contract.

Statutory Authority: *MS s 16B.04 subd 1; L 1984 c 654 art 2 s 8*

History: *9 SR 1186*

1230.4200 SUSPENSION.

Subpart 1. Order of suspension. The commissioner of transportation shall suspend a person or business by order upon receiving notice or learning of a conviction for conduct described in part 1230.3200 or upon receiving evidence of an affiliation described in part 1230.3600, subpart 2.

Subp. 2. Commencement of proceedings. The commissioner of transportation shall start debarment proceedings within ten days of the mailing of the suspension order.

Subp. 3. Notice and content. The order for suspension must describe the reason for suspension and must be sent by certified mail to the person suspended.

Subp. 4. Effective date of suspension; term. The order for suspension takes effect on the date the order is mailed. No suspension may exceed 60 days.

Statutory Authority: *MS s 16B.04 subd 1; L 1984 c 654 art 2 s 8*

History: *9 SR 1186*

1230.4300 NOTICE TO PUBLIC.

Subpart 1. Notice to commissioner. The Minnesota Department of Transportation shall provide to the commissioner a copy of each suspension, debarment, or termination order on the same day that the order is mailed to the debarred or suspended person.

Subp. 2. Publication. The commissioner shall publish weekly, in the State Register, a list of debarred and suspended persons, the effective date of each suspension and debarment, and the term of each debarment. The commissioner shall also publish notice of debarment terminations under part 1230.3900 and the effective date of the termination.

Statutory Authority: *MS s 16B.04 subd 1; L 1984 c 654 art 2 s 8*

History: *9 SR 1186*