

1230.1900 GENERAL TERMS AND CONDITIONS.

Subpart 1. **Inability to perform.** An eligible business that finds it cannot produce, supply, or construct according to the terms and conditions of a contract shall immediately notify the division in writing of the reasons therefore. When the commissioner determines that the business is unable to perform for the reasons stated, the division shall notify the Department of Employment and Economic Development so that the commissioner of employment and economic development can assist the small business in attempting to remedy the causes of the inability to perform. The division shall notify the business of the referral to the Department of Employment and Economic Development and the notice must include a statement that any records of the Department of Employment and Economic Development in assisting the small business may be discoverable in a contested case or judicial procedure. Failure to enter into a contract, to accept an offered award, or to satisfactorily complete a contract for documented reasons beyond its control will not automatically disqualify a business from future participation in the solicitation process.

A. The division may, if circumstances permit, delay an award or completion of a contract to allow the commissioner of the Department of Employment and Economic Development to provide assistance or to allow the business to remedy the business's inability to perform. If the division decides that delay is inappropriate because of the nature of the bid or contract, the division may seek other solutions. The decision to proceed shall not be prejudicial to the record of the business in question.

B. Failure of the business in question to reasonably cooperate with either the division or the Department of Employment and Economic Development shall be considered a failure to fulfill the terms of a contract and shall be handled according to parts 1230.1000 and 1230.1100. The records of the division shall document the actions taken relative to each case of inability to perform handled under this subpart.

Subp. 2. [Repealed, 16 SR 194]

Subp. 3. [Repealed, 16 SR 194]

Subp. 4. [Repealed, 16 SR 194]

Subp. 5. **Dividing solicitations.** The director of the division shall divide solicitations by dollar amounts, units of production, or duration of contract to facilitate awarding set-aside or preference contracts where economically feasible.

Subp. 6. [Repealed, 16 SR 194]

Subp. 7. **Reporting requirements.** The following reporting requirements apply to the Minnesota small business procurement program:

A. Businesses eligible to participate in the program shall, within 30 calendar days of a request by the division, verify information on file with the division for that business, make any necessary changes, and submit a complete financial statement and personal net worth statement to the division. The information on file with the division will include:

- (1) the name and address of the applicant and its principal place of business;
- (2) the applicant's gross revenues in the most recently completed fiscal year;
- (3) whether the applicant's business is an affiliate or subsidiary of a business dominant in its field of operation;
- (4) a 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 that are in the same field of operation as the applicant, unless ownership is by common stock regularly bought and sold through recognized exchanges; and
- (5) all other relevant or supporting information necessary for verifying status resulting in eligibility under certification procedures if requested in writing by the division, before or after the reporting requirement date.

B. Failure to provide the information required by item A may result in removal of the noncomplying business from the Minnesota small business procurement program.

Statutory Authority: *MS s 16B.04; 16B.18; 16B.19; 16B.22; 16C.03; 16C.16; 16C.19*

History: *L 1983 c 289 s 115 subd 1; L 1987 c 312 art 1; 16 SR 194; L 2003 1Sp4 s 1; 28 SR 499; 42 SR 543*

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