

5000.3415 COMMISSIONER MAY VOID CONTRACT.

If the commissioner has reason to believe that a state agency has awarded a contract in excess of \$100,000 to a contractor who employs more than 40 full-time employees in Minnesota but did not hold a valid certificate of compliance at the time the contract was awarded, the commissioner must notify the agency and the contractor of this potential violation and of the commissioner's information and reason for believing that a violation has occurred, and request a written response from each within ten days. Each response should explain why the state agency or contractor believes the contract was in compliance with Minnesota Statutes, section 363A.36, or explain why the contract should not be voided if not in compliance with Minnesota Statutes, section 363A.36, and include an affirmative action plan in compliance with parts 5000.3400 to 5000.3600. The contracting state agency's response must also include a copy of the contract.

If, after consideration of both responses, and other evidence available to the commissioner and previously shown to the contracting state agency and contractor, the commissioner determines by a preponderance of the evidence that the contract was legally awarded, the commissioner must notify the contracting state agency and the contractor within ten days that the contract will not be voided. If the commissioner determines that a preponderance of the evidence shows the contract was not legally awarded, the commissioner shall consider whether the benefit of voiding the contract outweighs the potential for adverse impact to the public interest. The commissioner shall void the contract if the potential for adverse impact is outweighed by the benefit to be obtained from voiding the contract. The commissioner must notify the contracting state agency and the contractor within ten days of the commissioner's decision.

The commissioner's decision voiding any contract must be served upon the contracting state agency and contractor by certified mail. The commissioner's decision voiding a contract must be mailed simultaneously by regular mail to the commissioners of administration and management and budget, to the assistant attorney general representing the contracting state agency, and to any other parties to the contract. The contract is void after ten days from receipt of the commissioner's decision by the contracting state agency or the contractor, whichever is later.

A contractor may apply for a certificate of compliance at any time.

Statutory Authority: *MS s 363.074; 363A.37*

History: *24 SR 273; L 2009 c 101 art 2 s 109*

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