

1 Department of Administration

2

3 Adopted Permanent Rules Relating to Business

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5 Rules as Adopted

6 1230.0100 SCOPE.

7 Pursuant to Minnesota Statutes, chapter 16B, parts

8 1230.0100 to 1230.1910 govern the procurement of materials and

9 services for the state under the competitive bidding

10 requirements.

11 1230.0150 DEFINITIONS.

12 Subpart 1. Scope. Within parts 1230.0100 to 1230.1910,

13 the following apply, unless clearly indicated otherwise by the

14 context.

15 Subp. 2. Affiliate or subsidiary of a business dominant in

16 its field of operation.

17 A. "Affiliate or subsidiary of a business dominant in

18 its field of operation" means a business that is at least 20

19 percent owned by a business dominant in its field of operation

20 or by partners, officers, directors, majority stockholders, or

21 their equivalent of a business dominant in that field of

22 operation.

23 B. "Dominant in its field of operation" means

24 exceeding the annual gross revenues or sales specified in part

25 1230.1600, subpart 3.

26 Subp. 3. Broker. "Broker" means a business that carries

27 no inventory and that has no written ongoing agreement with any

28 manufacturer or manufacturer's authorized distributor to sell

29 the products of the manufacturer.

30 Subp. 4. Business. "Business" means a contractor,

31 subcontractor, supplier, consultant, or provider of technical,

32 administrative, or physical services organized as a sole

33 proprietorship, partnership, association, corporation, or other

34 entity formed for the purpose of doing business for profit.

Subp. 5. Contractor. "Contractor" means a business that

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1 is engaged in construction such as general, mechanical, or
2 electrical contracting, or that provides a specific service such
3 as trash removal, snow removal, janitorial services, or
4 consultant, professional, or technical services.

5 Subp. 6. Dealer, jobber, or distributor. "Dealer,"
6 "jobber," or "distributor" means a business that maintains a
7 store, warehouse, or other establishment in which a line or
8 lines of products are kept in inventory and are sold to the
9 public on a wholesale or retail basis.

10 Subp. 7. Debarment. "Debarment" means the
11 disqualification of a person to receive invitations for bids or
12 requests for proposals, or the award of a contract by a
13 governmental body, for a specified time commensurate with the
14 seriousness of the offense, the failure, or the inadequacy of
15 performance.

16 Subp. 8. Director. "Director" means director of the
17 Materials Management Division or a Materials Management Division
18 manager with written delegation of authority from the director.

19 Subp. 9. Division. "Division" means Materials Management
20 Division, Department of Administration, Room 112, State
21 Administration Building, 50 Sherburne Avenue, Saint Paul,
22 Minnesota 55155.

23 Subp. 10. Franchise. "Franchise" means an operating
24 agreement obtained from a franchiser to conduct a business
25 entity, as an affiliate, that does not provide the operator with
26 the exclusive right to profit from the operator's effort,
27 commensurate with ownership and to bear the risk of loss or
28 failure and does not meet the test of ownership outlined in
29 subpart ~~24~~ 26 and part 1230.1700, subparts 5, item C, and 5a,
30 items A to F.

31 Subp. 11. Joint venture. "Joint venture" means the
32 temporary association of two or more businesses to secure and
33 fulfill a procurement bid award. For awards under the
34 preference or set-aside provisions of the small business
35 procurement program in parts 1230.1400 to 1230.1910, all parties
the joint venture must be certified as targeted groups or

1 economically disadvantaged area businesses.

2 Subp. 12. **Liquidated damages.** "Liquidated damages" means
3 a specific sum of money, agreed to as part of a contract to be
4 paid by one party to the other in the event of a breach of
5 contract in lieu of actual damages, unless otherwise provided by
6 law.

7 Subp. 13. **Manufacturer.** "Manufacturer" means a business
8 that makes or processes raw materials into a finished product.

9 Subp. 14. **Manufacturer's representative.** "Manufacturer's
10 representative" means a business that has a written agreement or
11 agreements with one or more manufacturers or manufacturer's
12 authorized distributors to sell the products of the
13 manufacturer, but that is not an employee of the manufacturer.

14 Subp. 15. **Material variance.** "Material variance" means a
15 variance in a bid from specifications or conditions that allows
16 a bidder a substantial advantage or benefit not enjoyed by all
17 other bidders.

18 Subp. 16. **Open market.** "Open market" means purchases made
19 in the marketplace without the need for competitive bids.

20 Subp. 17. **Person.** "Person" means a natural person or a
21 business.

22 Subp. 18. **Principal place of business.** "Principal place
23 of business" means the primary physical location at which or
24 from which a business performs, is maintained, or operates.

25 Subp. 19. **Reinstatement.** "Reinstatement" means a debarred
26 vendor may seek restoration to state bidders lists one year from
27 the date on which debarment ends by submitting an application to
28 the director. If a debarred vendor is restored to the state
29 bidders lists, the vendor will be subject to a one-year
30 probationary period.

31 Subp. 20. **Responsible bidder.** "Responsible bidder" means
32 a bidder who:

33 A. is a manufacturer of, deals in, but is not a
34 broker of, or is the agent of a manufacturer with full knowledge
35 of supplies to be furnished; or

36 B. if services are to be provided, has the necessary

1 skills or is in the business of supplying these services; and

2 C. can demonstrate a satisfactory credit standing,
3 lack of tax liability, and the financial capability to perform a
4 contract as evidenced by the ability to obtain bonding when
5 required; and

6 D. has no unresolved record of failure to perform, or
7 of unsatisfactory performance of, contracts for the state or
8 other customers and is not currently debarred by another
9 government entity for any cause including defaults on contracts,
10 late deliveries, products not meeting specifications,
11 substandard installation, or service; and

12 E. is otherwise qualified under rule and law,
13 including incorporation in or registration to do business in
14 Minnesota; and

15 F. has not engaged in unlawful practices, associated
16 with organized crime, or operated under false names or fronts as
17 a small business or a socially or economically disadvantaged
18 small business; and

19 G. is in compliance with all tax laws of Minnesota,
20 as evidenced by timely filing of all required returns, reports,
21 payments, and possession of all applicable stamps, licenses, or
22 other permits, and freedom from any judgment, lien, or seizure
23 of assets or property to satisfy tax payments or duties; and

24 H. is willing to furnish all information necessary to
25 determine responsibility as outlined in items A to G within 30
26 days or less or within a reasonable amount of time determined by
27 prior consensus between the bidder and the division.

28 Subp. 21. SIC or Standard Industrial Classification. "SIC"
29 or "standard industrial classification" was developed for use in
30 the classification of business establishments by type of
31 activity for the purpose of facilitating the collection,
32 tabulation, presentation, and analysis of data collected by
33 various agencies of the United States government, state
34 agencies, trade associations, and private research organizations
35 for promoting uniformity and comparability in the presentation
36 of statistical data relating to those establishments and their

1 fields of endeavor.

2 Subp. 22. **Suspension.** "Suspension" means to be
3 temporarily suspended from consideration for award of contracts
4 by the director of materials management while the director
5 determines if there is probable cause for debarment. The
6 suspension shall not exceed six months.

7 Subp. 23. **Targeted group businesses.** "Targeted group
8 businesses" means certified businesses designated by the
9 commissioner of administration that are majority owned and
10 operated by women, persons with disabilities, or specific
11 minorities and provide goods, products, or services within
12 purchasing categories designated by the commissioner.

13 Subp. 24. **Terms governing socially disadvantaged persons.**
14 The terms in items A to C have the meanings given them for
15 purposes of administering the small business procurement program.

16 A. "Racial minority" means persons in one or more of
17 the categories in subitems (1) to (5).

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

21 (2) "Hispanic" means persons of Mexican, Puerto
22 Rican, Cuban, Central or South American, or other Spanish
23 culture or origin, regardless of race.

24 (3) "Asian or Pacific Islander" means persons
25 having origins in any of the original peoples of the Far East,
26 Southeast Asia, the Indian subcontinent, or the Pacific Islands.
27 This area includes China, Vietnam, Japan, Korea, the Philippine
28 Islands, and Samoa.

29 (4) "Alaska native" means persons having origins
30 in any of the original peoples of North America and who maintain
31 cultural identification through tribal affiliation.

32 (5) "Indian" means persons having origins in any
33 of the original peoples of North America who are enrolled
34 members of Indian tribes recognized by the governments of the
35 United States and Canada.

36 B. "Women" means persons of the female gender.

1 C. ~~"Persons who have suffered a substantial physical~~
 2 ~~disability"~~ means persons with a physical impairment that is
 3 likely to cause difficulty in securing, retaining, or advancing
 4 in employment, and that substantially limits one or more of the
 5 person's major life activities. "Disabled" means any condition
 6 or characteristic that renders a person a disabled person. A
 7 disabled person is any person who:

8 (1) has a physical, sensory, or mental impairment
 9 which materially limits one or more major life activities;

10 (2) has a record of such an impairment; or

11 (3) is regarded as having such an impairment.

12 Subp. 25. **Third-party lessor.** "Third-party lessor" means
 13 a business that as a lessee acts as a lessor to a third party.

14 Subp. 26. **Small business eligible for certification as**
 15 **socially disadvantaged business or economically disadvantaged**
 16 **area business.** "Small business eligible for certification as
 17 socially disadvantaged business or economically disadvantaged
 18 area business" means a small business entity with its principal
 19 place of business in Minnesota organized for profit, including
 20 an individual, partnership, corporation, joint venture,
 21 association, or cooperative that is 51 percent owned and is
 22 operationally controlled on a day-to-day basis by citizens of
 23 the United States.

24 1230.0300 SOLICITING BIDS.

25 Subpart 1. **Publication.** Any purchase estimated to exceed
 26 the limits established by Minnesota Statutes, section 16B.07,
 27 subdivision 3, shall be purchased on sealed bids, notice of
 28 solicitation of bid will be advertised at least seven days prior
 29 to the bid opening date. Bids shall also be solicited by
 30 sending bid invitations to prospective bidders registered with
 31 the division pursuant to subpart 3.

32 Subp. 2. **Open market.** Any purchase estimated to be less
 33 than the limits established by Minnesota Statutes, section
 34 16B.07, subdivision 4, may be made upon competitive bids or in
 35 the open market.

1 Subp. 3. List of bidders. A list of bidders shall be
2 maintained by the division for various commodities and
3 services. Persons desiring to sell commodities or provide
4 services to the state may request a vendor registration
5 application. Upon approval of the application by the division
6 as meeting the requirements in part 1230.0150, subpart 20, the
7 vendor's name shall be placed on appropriate bid lists to
8 receive invitations to bid. The name of a vendor who fails to
9 respond to three consecutive bid invitations will be removed
10 from the lists of bidders. The name of the vendor so removed
11 will be restored only through specific written request from the
12 vendor.

13 1230.0400 SUBMISSION OF ADVERTISED BIDS.

14 Subpart 1. [See repealer.]

15 Subp. 2. Bid conditions. General bid conditions
16 applicable to all state purchases shall be stated on the
17 standard invitation to bid. Special bid conditions applicable
18 to specific commodities or types of purchase shall be stated in
19 the invitation to bid. In the event of conflict between general
20 bid conditions and special bid conditions, the special bid
21 conditions will govern.

22 Subp. 3. [See repealer.]

23 1230.0500 BID SECURITY.

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

30 Subp. 2. Forfeit. Certified checks or bid bonds of
31 successful bidders shall constitute liquidated damages for
32 failure of a bidder to enter into a contract, and shall also be
33 held as security for delivery and acceptance of merchandise, or
34 satisfactory completion of the contract. A performance bond for
35 25 percent of the award may be substituted.

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

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

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

19 A. for building construction, repair, remodeling, or
20 other public works;

21 B. on which the annual bid security does not amount
22 to five percent of the bid;

23 C. when another bond is required by specification; or

24 D. when bond is used as security on other bids.

25 1230.0600 BIDDER ERRORS.

26 Prior to the opening of sealed bids, any person may
27 withdraw a bid by notifying the director in writing of the
28 desire to withdraw, by appearing in person at the division
29 office and withdrawing the bid, or by telegraphic writing or
30 facsimile received by the director requesting withdrawal of the
31 bid.

32 Subsequent to the opening of sealed bids, a person may
33 withdraw a bid only upon a showing that an obvious error exists
34 in the bid. The showing and request for withdrawal must be made
35 in writing to the director within a reasonable time after the

1 opening of the bids and prior to the state's detrimental
2 reliance on the bid.

3 1230.0700 OPENING OF BIDS.

4 Subpart 1. Division's treatment of bids. Upon receipt in
5 the division, all bids will be time stamped, showing the date
6 and hour received. Bids received after the time set for the
7 opening of bids will be returned unopened to the bidders. Bids
8 shall be opened publicly and read aloud at the time and place
9 established in the bid invitation.

10 Subp. 2. [See repealer.]

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

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

26 1230.0900 TIED BIDS.

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

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

35 Subp. 2. Preference for Minnesota firms. Whenever a tie

1 involves a Minnesota firm and one whose place of business is
2 outside the state of Minnesota, preference shall be given to the
3 Minnesota firm.

4 1230.1000 CONTRACT PERFORMANCE.

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

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

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

23 Subp. 4. **Notice of rejection.** Notice of rejection, based
24 upon apparent deficiencies disclosed by ordinary methods of
25 inspection, shall be given by the receiving agency to both
26 vendor and the carrier (if f.o.b. shipping point) within
27 reasonable time after delivery, with a copy of this notice to
28 the division. A revocation of acceptance for latent
29 deficiencies that would make the items unsatisfactory for the
30 purpose intended shall be given by the state within reasonable
31 time after discovery. The contractor shall satisfactorily
32 repair or replace such items within a reasonable time.

33 Subp. 5. **Removal of rejected items.** The vendor shall
34 remove at the vendor's expense any item rejected by the state.
35 If the vendor fails to remove the items and instead forwards

1 shipping instructions to the agency concerned, the state need
2 not comply, but may sell the item and remit the proceeds of
3 sale, less the expense involved, in accordance with law,
4 including but not limited to, Minnesota Statutes, section
5 336.2-603.

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

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

18 Subp. 8. **Laboratory tests.** The director may require that
19 a laboratory analysis or other tests be made to determine the
20 acceptability of the delivered product(s) and to ensure that
21 those product(s) meet specifications. When analyses or tests
22 are required, acceptance by the state shall not occur nor be
23 deemed to have been made until testing is completed and
24 affirmative results are obtained. Any discount time applicable
25 shall begin after affirmative results are obtained. Vendors
26 shall be notified of unsatisfactory test results.

27 1230.1100 FAILURE TO PERFORM.

28 Subpart 1. **Penalties.** If a bidder who is awarded a
29 contract fails to perform as specified, the bid security as
30 described in part 1230.0500, subpart 1, shall be retained by the
31 state and deposited with the state treasurer as liquidated
32 damages. The vendor may also be determined not to be a
33 responsible bidder. The state may also pursue all other
34 remedies permitted by rule or provided by law.

35 If the bid security is in the form of a bond, the bonding

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

8 Subp. 2. Failure to furnish security. After the award of
 9 a contract, if performance security is required and the vendor
 10 fails to furnish satisfactory performance security, the vendor
 11 shall be considered in default and subject to subpart 1 ~~and this~~
 12 ~~subpart.~~

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

17 A. failure to make deliveries within the time
 18 specified in the contract; or

19 B. deliveries of goods or materials that do not
 20 conform to samples or specifications; or

21 C. delivery of goods or materials that are rejected;
 22 or

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

25 1230.1150 AUTHORITY TO DEBAR OR SUSPEND VENDORS.

26 Subpart 1. Suspension. After written notice to the person
 27 involved and providing for a reasonable opportunity for that
 28 person to be heard, the director shall have the authority to
 29 suspend a person from consideration for awards of contracts ~~for~~
 30 ~~a minimum of one year~~ if the director determines that the person
 31 has engaged in an activity that might lead to debarment.

32 Subp. 2. Debarment causes. A vendor shall be debarred if
 33 one or more of the following occurs:

34 A. conviction for commission of a criminal offense as
 35 an incident to obtaining or attempting to obtain a public or

1 private contract or subcontract, or in the performance of the
2 contract or subcontract;

3 B. conviction under state or federal statutes of
4 embezzlement, theft, forgery, bribery, falsification or
5 destruction of records, receiving stolen property, or other
6 offense indicating a lack of business integrity or business
7 honesty that currently, seriously, and directly affects
8 responsibility as a state contractor;

9 C. conviction under state or federal antitrust
10 statutes arising out of the submission of bids or proposals;

11 D. violation of contract provisions, as set forth in
12 subitems (1) and (2), of a character that is regarded by the
13 director to be so serious as to justify debarment action:

14 (1) failure without good cause to perform
15 according to the specifications or within the time limit
16 provided in the contract; or

17 (2) a recent record of failure to perform, or of
18 unsatisfactory performance, according to the terms of one or
19 more contracts; provided that this failure to perform or
20 unsatisfactory performance was not caused by acts beyond the
21 control of the contractor; or

22 E. any other cause the director determines to be so
23 serious and compelling as to affect responsibility as a state
24 contractor, including, but not limited to, collusion with other
25 bidders to restrain competitive bidding, giving false
26 information on a bidder's application, and all acts that would
27 disqualify the person as a responsible bidder, as defined in
28 part 1230.0150, subpart 20, including debarment by another
29 governmental entity.

30 In the case of debarment by other governmental entities,
31 should that debarment result from action by the federal
32 government, the state of Minnesota, or any of its departments,
33 commissions, or agencies, or any of its political subdivisions,
34 the terms and limits of that debarment are automatically
35 effective for parties so debarred in doing business with the
36 division. Debarments by other governmental entities are cause

1 for suspension until a determination can be made by the division
2 under normal suspension procedures as to whether the debarment
3 applies under Minnesota statutes and rules.

4 Subp. 3. **Written notice.** A written notice to debar or
5 suspend shall be furnished to the affected parties and shall:

6 A. state the reasons for the action taken;

7 B. give the length of time the vendor will be
8 debarred; and

9 C. inform the debarred or suspended person of the
10 person's rights to administrative and judicial review according
11 to subpart 4.

12 Subp. 4. **Suspension or debarment appeals.** If suspended or
13 debarred, a person may file an appeal in writing with the
14 commissioner of administration within 30 days of receipt of a
15 decision to suspend or debar. The commissioner shall, within 45
16 days, decide whether the actions taken were according to
17 statutes and regulations and were fair and in the best interest
18 of the state.

19 Any person receiving an adverse decision from the
20 commissioner may appeal in any appropriate court of the state.

21 Subp. 5. **Length of debarment.** A bidder may be debarred
22 from receiving and submitting bids for not less than one year,
23 nor more than three years. The length of the debarment will
24 depend on the vendor's past performance, the number and
25 seriousness of the current complaints, and the cost to the state
26 associated with correcting the problem.

27 Subp. 6. **Public list of debarred.** The division shall
28 maintain a master list of all suspensions and debarments. The
29 master list will retain all information concerning suspensions
30 and debarments as a public record. The records will be
31 maintained for at least three years following the end of a
32 suspension or debarment. Such public information may be
33 considered in responsible bidder determinations according to
34 part 1230.0150, subpart 20.

35 1230.1175 REINSTATEMENT AND PROBATION.

1 Subpart 1. Review of reinstatement applications. The
2 director will review vendor applications for reinstatement.

3 Subp. 2. Application for reinstatement time limits. A
4 person who has been debarred may not seek reinstatement until
5 one year from the end of the debarment period.

6 Subp. 3. Information in reinstatement application. A
7 request for reinstatement must be made to the director in
8 writing and include:

9 A. all information necessary to qualify as a
10 responsible bidder, as defined in part 1230.0150, subpart 20;

11 B. an explanation of the steps taken by the applicant
12 to resolve the production, financial, or technical problems that
13 caused its previous failure to perform;

14 C. evidence of successful completion of at least four
15 other contracts, including contracts with two public entities in
16 the same commodity class, field, or type of work in which the
17 applicant seeks to bid; or

18 D. a written narrative outlining all steps taken to
19 ensure that the cause for debarment has been corrected with
20 appropriate supporting documentation.

21 Subp. 4. Actions following decision. The director will
22 determine if the person can be reinstated as a responsible
23 bidder and be added to the bidders list. If, after
24 investigation, the petitioner's request for reinstatement is
25 denied, the person cannot reapply for reinstatement for one year
26 from the date of denial. If reinstated, the petitioner will be
27 placed on the bidders list and be subject to a one-year
28 probationary period.

29 Subp. 5. Probationary periods and conditions. Vendor
30 probationary periods apply to formally debarred persons who have
31 been reinstated as responsible bidders.

32 The length of the probationary period will be one year from
33 the date of reinstatement.

34 During the probationary period, the party on probation must
35 respond to all bid requests received from the division.

36 If a bid from a vendor on probation is accepted and the

1 vendor refuses to perform or enters into a contract and
2 performance is substandard, the performance or supply bond, if
3 any, will be retained and the vendor will be deemed not to be a
4 responsible bidder and will be permanently removed from the list
5 of bidders.

6 1230.1200 CONTRACT CANCELLATION.

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

- 10 A. the contractor agrees to the cancellation;
11 B. the contractor has obtained the contract by fraud,
12 collusion, conspiracy, or in conflict with any statutory or
13 constitutional provision of the state of Minnesota;
14 C. failure to deliver as agreed; or
15 D. failure to deliver within the time period stated
16 in the invitation to bid.

17 SMALL BUSINESS PROCUREMENT PROGRAM

18 1230.1400 PURPOSE.

19 Parts 1230.1400 to 1230.1910 are adopted pursuant to
20 Minnesota Statutes, sections 16B.19 to 16B.22 for the purpose of
21 governing procurement procedures relating to the preference
22 programs for targeted group or economically disadvantaged area
23 small businesses. These programs are administered by the
24 Materials Management Division, Department of Administration, 50
25 Sherburne Avenue, Saint Paul, Minnesota 55155.

26 1230.1450 SCOPE.

27 In the event of irreconcilable conflict between the general
28 procurement rules in parts 1230.0100 to 1230.1399 and 1230.1400
29 to 1230.1910 relating specifically to the small business
30 procurement program, parts 1230.1400 to 1230.1910 shall govern.
31 The definitions contained in part 1230.0150 shall apply in the
32 administration of these preference programs.

33 1230.1600 ELIGIBILITY FOR SOCIALLY DISADVANTAGED OR ECONOMICALLY
34 DISADVANTAGED AREA SMALL BUSINESS PROGRAM.

1 Subpart 1. **Eligible businesses.** The following businesses
2 are eligible for participation in the socially disadvantaged or
3 economically disadvantaged area small business program:
4 manufacturer, manufacturer's representative, dealer, jobber,
5 distributor, contractor, and businesses engaged in a joint
6 venture.

7 Subp. 2. **Ineligible businesses.** The following businesses
8 are not eligible for participation in the socially disadvantaged
9 or economically disadvantaged area small business program:
10 brokers, third-party lessors, and franchises.

11 Subp. 3. **Revenue or sales limitations; Minnesota Small
12 Business Program.** For the purpose of identifying businesses
13 eligible to participate in the Minnesota Small Business Program,
14 the preference and set-aside programs for targeted group small
15 businesses; or for small businesses located in economically
16 disadvantaged areas, the qualifying parameter shall be expressed
17 in terms of gross annual revenues or sales as an upper
18 limitation; i.e. "not to exceed." In no case shall the
19 limitation for any category of business enterprise be set at
20 less than \$1,000,000.

21 A. Standard industrial classification (SIC) codes
22 shall be used in classifying limitations among the variety of
23 businesses potentially eligible for participation in the
24 Minnesota Small Business Program.

25 B. Limitations, standards, shall be set for each
26 major, two-digit, SIC group based on the following procedure:

27 (1) Typical financial balance sheet information
28 compiled in annual reports such as the Robert Morris and
29 Associates annual statement studies, Dun and Bradstreet, or
30 similar reporting services will be used to establish the range
31 of annual revenues or sales for a given major group class. This
32 range shall, wherever the data is available, reflect an average
33 of at least three consecutive reporting years, but shall not
34 exceed five years.

35 (2) The upper limitation defining small business
36 based on annual gross revenues or sales is determined by

1 establishing a representative annual market consisting of the
2 total gross revenues or sales generated by the reporting sample
3 class. The lower quartile, 25 percent, of this market shall
4 represent the small business category.

5 (3) The average gross revenues of the number of
6 firms it requires to equal the total lower quartile market shall
7 be the upper limit, defined in gross annual revenues or sales,
8 permitted for definition of a small business ~~in-Minnesota~~ for
9 the purposes of this program.

10 (4) Where the three-digit SIC code data treated
11 in subitems (1) to (3), varies significantly from the two-digit
12 aggregated data or the four-digit data varies significantly from
13 the two- or three-digit classes, a specific limitation shall be
14 established for that three- or four-digit class.

15 (a) Significant variation for differences
16 between two- and three-digit codes shall be five percent above
17 or below the two-digit standard for gross annual revenue or
18 sales.

19 (b) Significant variation for differences
20 between three- and four-digit codes shall be five percent, or
21 ten percent above or below the two-digit standard.

22 (5) After the initial establishment of
23 limitations according to the process described for definition as
24 a small business ~~in-Minnesota~~, for the purposes of this program,
25 the Department of Administration shall in year two of the rule
26 begin a process of reexamining on an annual basis one-third of
27 the groups for appropriate limitations and redefinition where
28 justified.

29 1230.1700 CERTIFICATION OF ELIGIBILITY.

30 Subpart 1. Required information. To qualify for the
31 preference programs established by Minnesota Statutes, section
32 16B.19, subdivisions 2a to 2d, each business shall file with the
33 Materials Management Division the following information on the
34 application forms provided:

35 A. the name and address of the applicant and the

1 principal place of business;

2 B. which type of designation ~~as-a~~ small business;
3 socially disadvantaged small business; or economically
4 disadvantaged area small business; is being applied for:

5 (1) socially disadvantaged small businesses are
6 those businesses owned by socially disadvantaged persons as
7 defined by the Minnesota Department of Administration rules,
8 part ~~1230-1550~~ 1230.0150, subpart 24; or

9 (2) an individual business which is not a
10 targeted group business but is owned by a socially disadvantaged
11 person, as defined in part ~~1230-1550~~ 1230.0150, subpart 24, that
12 is encountering the effects of discrimination as evidenced by
13 the owner lacking adequate external support necessary to operate
14 a competitive business enterprise through a diminished ability
15 to secure:

16 (a) long-term or working capital financing;

17 (b) equipment, raw material, or supplier
18 trade credit;

19 (c) bonding and insurance; or

20 (d) a proportionate share of the market for
21 its goods and services; or

22 (3) the small business is located in an
23 economically disadvantaged area as defined in Minnesota
24 Statutes, section 16B.19, subdivision 2d, and/or

25 (a) the owner resides or is employed in an
26 area designated a labor surplus area by the United States
27 Department of Labor;

28 (b) the owner resides or is employed in a
29 county in which the median income for married couples is less
30 than 70 percent of the state median income for married couples;

31 (c) the business is a rehabilitation
32 facility or a work activity program as certified by the
33 Department of Jobs and Training; or

34 (d) the small business owner resides or is
35 employed in an area designated by the commissioner as an
36 economically disadvantaged area under Minnesota Statutes,

1 section 16B.19, subdivision 2d;

2 C. an indication of the type of business operated and
3 the kinds of service, materials, or supplies which can be
4 delivered;

5 D. a listing of all owners, including percentage of
6 ownership, method of acquisition, ownership in other firms, and
7 copies of the following documents:

8 (1) complete financial statements for the
9 business for each of the preceding three fiscal years, or since
10 the inception of the business if established less than three
11 years;

12 (2) a profile of the owners' management
13 responsibilities and a description of the management
14 responsibilities assigned to other individuals, including a
15 chronological resume for each owner, officer, and other key
16 personnel;

17 (3) a statement indicating whether or not the
18 business is an affiliate or subsidiary of a business dominant in
19 its field of operation;

20 (4) full disclosure of all owners' and officers'
21 direct and indirect involvement in other businesses and
22 enterprises which are in the same field of operation as the
23 applicant, unless ownership is by common stock regularly bought
24 and sold through recognized exchanges; and

25 (5) proof of ownership of business. Owners shall
26 submit proof of their ownership of the requisite percentage of
27 the business at the time the application is submitted, and the
28 proof shall consist of stock certificates, a notarized affidavit
29 of stock ownership from the corporate treasurer, a partnership
30 agreement, a canceled check used to purchase ownership, or other
31 recognized proof of ownership.

32 (a) In the case of a sole proprietorship or
33 where documentary proof of ownership is not available, the owner
34 shall clearly state the reasons for such and be prepared to
35 assist the division in further investigation of proof.

36 (b) If requested, the owners must show how

1 and when the interest in the business was acquired.

2 (c) The division may require additional
3 proof or information necessary to verify ownership.

4 E. In addition, for certification under item B,
5 subitem (2), unit (a), (b), (c), or (d), the following
6 information must be provided for the most recent fiscal year and
7 the preceding four years, if the applicant has operated as a
8 business for four years, identifying the fiscal year reporting
9 system used by the applicant and listing in whole dollar amounts:

10 (1) assets:

11 (a) cash and equivalent: all cash,
12 marketplace securities, and other near-cash items, excluding
13 sinking funds;

14 (b) trade receivables (net): all accounts
15 from trade, less allowance for doubtful accounts;

16 (c) inventory: anything constituting
17 inventory for the business;

18 (d) all other current: any other current
19 assets, not including prepaid items;

20 (e) total current: the total of all current
21 assets shown in subitems (a) to (d);

22 (f) fixed assets (net): all property,
23 plant, leasehold improvements, and equipment, less accumulated
24 depreciation or depletion;

25 (g) intangibles (net): intangible assets,
26 including goodwill, trademarks, patents, catalogs, brands,
27 copyrights, formulas, franchises, and mailing lists, less
28 accumulated amortization;

29 (h) all other noncurrent: prepaid items and
30 any other noncurrent assets;

31 (i) total: total of all items listed above.

32 (2) liabilities:

33 (a) notes payable (short-term debt): all
34 short-term note obligations, including bank and commercial paper
35 excluding trade notes payable;

36 (b) current maturities (long-term debt):

1 that portion of long-term obligations that is due within the
2 next fiscal year;

3 (c) trade payables: open accounts due to
4 the trade;

5 (d) income taxes payable: income taxes,
6 including current portion of deferred taxes. Identify federal,
7 state, and local income taxes in subtotals;

8 (e) all other current: all other current
9 liabilities, including bank overdrafts and accrued expenses;

10 (f) total current: total of all current
11 liabilities listed above;

12 (g) long-term debt: all senior debt,
13 including bonds, debentures, bank debt, mortgages, deferred
14 portions of long-term debt, and capital lease obligations;

15 (h) deferred taxes: all deferred taxes.
16 Identify federal, state, and local taxes in subtotals;

17 (i) all other noncurrent: any other
18 noncurrent liabilities, including subordinated debt and
19 liability reserves;

20 (j) net worth: difference between total
21 liabilities and total assets, including minority interest;

22 (k) total liabilities and net worth: total
23 of all items listed above.

24 (3) income data:

25 (a) net sales: gross sales less returns and
26 discounts allowed, if any;

27 (b) gross profit: net sales less cost of
28 sales;

29 (c) operating expenses: all selling,
30 general, and administrative expenses, including depreciation,
31 excluding interest expense;

32 (d) operating profit: gross profit less
33 operating expenses;

34 (e) all other expenses (net): includes
35 miscellaneous other income less expenses, such as interest
36 expense, miscellaneous expenses not included in general and

1 administrative expenses netted against recoveries, interest
2 income, dividends received, and miscellaneous income;

3 (f) profit before taxes: operating profit
4 minus all other expenses (net).

5 F. If the business seeking certification is a
6 contractor, the information in item E must be submitted in all
7 categories except as modified in the following:

8 (1) assets:

9 (a) accounts receivable - progress
10 billings: amounts billed on current contracts excluding
11 retention;

12 (b) accounts receivable - current
13 retention: amounts held back by customers on current contracts
14 as retention;

15 (c) inventory: costs attributable to
16 equipment, small tools, supplies, and other deferred costs
17 related to contracts in progress where a portion of the cost
18 applies to work not yet performed;

19 (d) costs and estimated earnings in excess
20 of billings: the difference between the total of costs and
21 recognized estimated earnings to date and the total billings to
22 date;

23 (e) total current: total of all current
24 assets shown and as modified, changed, or added in the above
25 definitions;

26 (f) joint ventures and investments: the
27 total of investments and equity in joint ventures.

28 (2) liabilities:

29 (a) accounts payable - trade: open accounts
30 and ~~not~~ note obligations due to the trade;

31 (b) accounts payable - retention: amounts
32 held back as retention in payments to subcontractors on current
33 contracts;

34 (c) billings in excess of costs and
35 estimated earnings: the difference between the total billings
36 to date and the total of costs and recognized estimated earnings

1 to date;

2 (d) total current: total of all current
3 liabilities shown and as modified, changed or added in the above
4 definition;

5 (e) total liabilities and net worth: total
6 of all items shown as modified, changed, or added in the above
7 definitions.

8 (3) income data:

9 (a) contract revenues: revenues recognized
10 under percent of completion method (in place of net sales).

11 G. In separate schedules, all applicants applying
12 under item E or F should show the amounts attributable to
13 depreciation, depletion, amortization, interest income, interest
14 expenses, officers' compensation, and miscellaneous income shown
15 as passive or nonpassive income. A schedule of leased assets
16 with a brief description of type and dollar value must be
17 submitted. A brief outline describing shareholders equity must
18 be submitted, when applicable, for the type of company
19 organization.

20 In addition, supportive documentation must be submitted
21 when seeking certification under various provisions as follows:

22 (1) item B, subitem (2), unit (a): for
23 certification as lacking adequate external support in obtaining
24 long-term or working capital financing, any documentation
25 showing denial of loans or offers of loans at terms and rates
26 not currently normal for similar enterprises;

27 (2) item B, subitem (2), unit (b): for
28 certification as lacking external support in obtaining
29 equipment, raw materials, or supplier trade credit, any
30 documentation showing denial of credit or credit extended at
31 terms, conditions, and rates in excess of the norm expected
32 within similar enterprises;

33 (3) item B, subitem (2), unit (c): for
34 certification as lacking adequate external support in obtaining
35 bonding and insurance, any documentation showing inability to
36 obtain bonding or insurance at rates and terms normally expected

1 within the industry segment of the applicant.

2 (4) In all cases, adequacy of documentation,
3 accuracy of financial data, and development of argument and
4 positions with regard to an applicant's lack of external support
5 within any of the four categories of item B, subitem (2), unit
6 (a), (b), (c), or (d), rests with the applicant and must be
7 submitted in writing with the application for certification.
8 The division retains the right of inquiry and verification of
9 all information submitted.

10 H. When seeking certification under any provision of
11 item B, subitem (1), (2), or (3), or any other certification
12 provision, the applicant shall provide all other relevant or
13 supporting information requested by the division.

14 I. Denials of certification under these provisions
15 are subject to appeal under subpart 7 6.

16 Subp. 2. and 3. [See repealer.]

17 Subp. 4. **Notice of changes.** The director of the division
18 shall be notified in writing of any change in the application or
19 attached information within 30 days of the changes.

20 Subp. 5. **Grounds for rejecting application.** An applicant
21 shall be notified in writing of the acceptance or rejection of
22 the application, within 30 days of receipt of the application
23 form and all supporting documents required by the division. An
24 application shall be rejected on any of the following grounds:

25 A. the applicant is dominant in its field of
26 operation or is an affiliate or subsidiary of a business
27 dominant in its field of operation;

28 B. the applicant has failed to provide all relevant
29 required information;

30 C. the applicant failed to establish that majority
31 ownership and day-to-day operating control are held by socially
32 disadvantaged small business or economically disadvantaged area
33 small business person(s);

34 D. the applicant has failed to comply with laws and
35 rules of the state relating to procurement;

36 E. the applicant has intentionally or negligently

1 falsified application information;

2 F. the applicant is a broker and/or third-party
3 lessor or operates as a franchiser or franchisee;

4 G. the applicant's principal place of business is not
5 in Minnesota;

6 H. ownership of the applicant's business is shared
7 with a previously certified participant who was removed from the
8 bid eligibility list or directory of certified businesses by
9 operation of Minnesota Statutes, section 16B.22, clause (c), and
10 part 1230.1850; and

11 I. the applicant's financial data profile does not
12 fit within the parameters in subpart 5a, item I, subitem (2),
13 unit (a), when applying as an individual business under subpart
14 1, item B, subitem (2).

15 Subp. 5a. **Criteria for determinations.** The following
16 standards shall be used in determining whether, under subpart 5,
17 item C, a firm is owned and operated on a day-to-day basis by
18 one or more socially or economically disadvantaged persons:

19 A. The individual's claim, supported by sufficient
20 documentation, that he or she is a socially disadvantaged small
21 business person or an economically disadvantaged area small
22 business person as defined in these rules.

23 B. The ownership and day-to-day operation of a
24 socially disadvantaged small business or economically
25 disadvantaged area small business must be real, substantial, and
26 continuing, and must go beyond the pro forma ownership of the
27 firm as reflected in its ownership documents. The socially
28 disadvantaged or economically disadvantaged small business
29 owners must have the customary incidents of business ownership
30 and shall share in the risks and profits commensurate with their
31 ownership interests as demonstrated by an examination of the
32 substance, rather than form of the business arrangements.
33 Recognition of the business as a separate entity for tax or
34 corporate purposes is not necessarily sufficient. The division
35 shall consider all relevant factors, including the date the
36 business was established, the adequacy of its resources for the

1 work of the contract, and the degree to which financial
2 arrangements, equipment rental or leasing agreements, and
3 relationships with nontargeted businesses that vary from
4 accepted industry practice.

5 C. The socially disadvantaged or economically
6 disadvantaged area business owner must possess the power and
7 expertise to direct the management and policies of the firm and
8 to make the day-to-day as well as major decisions on matters of
9 management, policy, and operation. The firm must not be subject
10 to any formal or informal restrictions that limit the customary
11 discretion of the socially or economically disadvantaged
12 owners. There must be no restrictions through, for example,
13 bylaw provisions, partnership agreements, or charter
14 requirements for cumulative voting rights or otherwise that
15 prevent the socially or economically disadvantaged business
16 owners from making a business decision for the firm without the
17 cooperation or vote of any owner who is not a socially or
18 economically disadvantaged person.

19 D. If the owners of the firm who are not socially or
20 economically disadvantaged persons are disproportionately
21 responsible for the operation of the firm, then the firm will
22 not be considered to be owned and operated by socially or
23 economically disadvantaged persons.

24 E. All securities that constitute ownership or
25 control or both ownership and control of a corporation must be
26 held directly by socially or economically disadvantaged
27 persons. No securities held in trust or by any guardian for a
28 minor will be considered as held by socially or economically
29 disadvantaged persons in determining the ownership or control of
30 a corporation.

31 F. The contributions of capital or expertise by the
32 socially or economically disadvantaged owners to acquire their
33 interests in the firm must be real and substantial. Examples of
34 insufficient contributions include a promise to contribute
35 capital, a note payable to the firm or its owners who are not
36 socially or economically disadvantaged, or participation as an

1 employee only, rather than as a manager.

2 G. In addition to the standards in items A to F, the
3 following circumstances will be given special consideration in
4 determining eligibility:

5 (1) newly formed firms and firms whose ownership
6 or day-to-day operating control or both ownership and control
7 has changed will be closely scrutinized to determine the reasons
8 for the timing of the formation or of a change in the firm;

9 (2) a previous or continuing employer-employee
10 relationship between or among present owners will be carefully
11 reviewed to ensure that the employee-owner has the management
12 responsibilities and capabilities referred to in subpart 5 and
13 this subpart;

14 (3) any relationship between a socially
15 disadvantaged or economically disadvantaged area business and a
16 business that is not a socially disadvantaged or economically
17 disadvantaged area business that has an interest in the socially
18 disadvantaged or economically disadvantaged area business will
19 be carefully reviewed to determine if the interest conflicts
20 with the ownership and day-to-day operating control requirements.

21 H. The combined gross sales or revenues from
22 businesses operated by the same owners in related fields exceed
23 the highest size standard for the field defined under part
24 1230.1600, subpart 3.

25 I. The following standards, along with supporting
26 documentation, shall be used in reaching a determination to
27 certify an applicant under subpart 1, item B, subitem (2), unit
28 (a), (b), (c), or (d):

29 (1) Financial data for the company seeking
30 certification shall be analyzed using formulas, techniques,
31 processes, and ratios used in the annual statement studies
32 published by Robert Morris and Associates (RMA), Philadelphia.
33 Where RMA data does not reflect or provide adequate comparable
34 data for the applicant's main line of business, the "Industry
35 Norms and Key Business Ratios," published by Dun and Bradstreet
36 Credit Services, or any similar representative reporting service

1 may be used.

2 (2) Certification determination will be made upon
3 careful review of all the evidence submitted. However, to
4 establish eligibility for this review, the financial data
5 applicable to the applicant company shall fall within the
6 following parameters:

7 (a) financial ratios: at any point between
8 the lower quartile and the upper quartile. Upper quartile
9 ratings are indicative of a successful company not in need of
10 the assistance provided through certification. Lower quartile
11 ratings indicate a need for additional assistance before
12 certification. Lower quartile businesses will be referred to
13 the Department of Trade and Economic Development for remedial
14 assistance before becoming eligible for reconsideration for
15 certification.

16 (3) The following ratios and formulas will be
17 used to determine eligibility for certification:

18 (a) lacking adequate external support in
19 obtaining long-term or working capital financing: earnings
20 before interest and taxes (EBIT)/interest, sales/working
21 capital, quick ratio, fixed/worth, debt/worth;

22 (b) lacking adequate external support in
23 obtaining equipment, raw materials, or supplier trade credit:
24 current ratio, quick ratio;

25 (c) bonding and insurance: none - review of
26 documentation only;

27 (d) the business has not captured a
28 proportionate share of the market for its goods and services,
29 based on the most current annual statement studies published by
30 RMA. The national average revenues appropriate for the
31 applicant business's standard industrial code and asset size
32 will be divided by the national average assets determined
33 similarly and multiplied by the applicant's actual total assets
34 to indicate a proportionate market share. The applicant
35 business's actual revenues will be divided by this proportionate
36 market share to indicate the actual percentage of the

1 proportionate market attained. Any percentage at 75 or less
2 shall qualify for eligibility.

3 (4) If eligible under subpart 1, item B, subitem
4 (2), unit (a), (b), (c), or (d), all other documentation shall
5 be reviewed to arrive at a determination to grant or deny
6 certification. The key determinant is "lacking adequate
7 external support...as evidenced by diminished ability to
8 secure..." Even though an applicant qualifies as an eligible
9 business on the basis of financial ratios, if the business has
10 been able to secure sufficient loans, bonding, insurance, or
11 credit at the usual industry norms, it is not qualified as there
12 is no evidence showing lack of support. Conversely, the
13 business may show adequate financial ratios but still find
14 itself unable to obtain any, or only partial, amounts of
15 financing, bonding, credit, or insurance needed to remain
16 competitive, or it can only acquire such at unfavorable terms
17 not normal for its industry segment. Upon finding that such
18 circumstances are not a result of internal management
19 deficiencies as indicated by ratios appropriate to these
20 concerns such as the following:

21 (a) percent profit before taxes/tangible net
22 worth;

23 (b) percent profit before taxes/total
24 assets;

25 (c) percent depreciation, depletion,
26 amortization/sales; and

27 (d) percent officers' compensation/sales;

28 the business can be certified as a targeted group business. The
29 same management efficiency review shall apply when determining
30 certification due to an inability to capture a proportionate
31 market share; however, no other documentation will need be
32 considered under this eligibility criterion. Findings that a
33 business suffers from internal management deficiencies will
34 require a denial of certification until remedial assistance has
35 been obtained through referral to the Department of Trade and
36 Economic Development for help from public or private resources.

1 When the appropriate ratio indicators fall within the eligible
2 zone, the business may again apply for certification.

3 The impact of both short- and long-term business cycles for
4 the economy in general and for the particular business segment
5 in specific shall be considered in arriving at certification
6 findings. When appropriate, an average of two to five years of
7 fiscal data for the applicant company shall be used in
8 determining ratio values.

9 (5) Businesses seeking certification that operate
10 in distinctly defined commodities, construction services, or
11 product lines shall be reviewed for certification under those
12 distinctions. If the company operates in more than one SIC
13 classification, the review shall be made under the primary
14 industry segment if 75 percent or more of its net sales or
15 contract revenues are generated by that segment. The business
16 may seek certification for individual product, service,
17 commodity, or construction activities if 25 percent or more of
18 its net sales or contract revenues is generated by a given
19 category. All other financial data required by this application
20 process must be proportionately attributed to the categories for
21 which certification is sought unless it can be conclusively
22 demonstrated that the dollar amounts shown are directly
23 attributable to specific elements. If the company is unable to
24 provide the breakdown of financial data requested by this rule,
25 it must accept or request certification under the predominant
26 category in its operation.

27 Subp. 6. **Appeal of rejection of application.** After an
28 applicant has received written notice of rejection of the
29 application for certification as a socially disadvantaged small
30 business or economically disadvantaged area small business, the
31 applicant may appeal the decision in writing to the commissioner
32 of administration within 15 calendar days of receipt of the
33 determination. If there are facts in dispute, the commissioner
34 may refer the matter to the Office of Administrative Hearings
35 for a contested case hearing under Minnesota Statutes, sections
36 14.57 to 14.62. The applicant has the burden of proof in

1 establishing qualifications for certification. The commissioner
2 shall, if time permits, refer the appeal to the Small Business
3 Procurement Advisory Council for its recommendation before
4 reaching a final decision. The commissioner shall make a final
5 decision in writing within 45 calendar days of receipt of the
6 appeal.

7 1230.1805 PROCUREMENTS FROM SOCIALLY AND ECONOMICALLY
8 DISADVANTAGED SMALL BUSINESSES.

9 A directory of eligible businesses, certified pursuant to
10 part 1230.1700 shall be established and maintained by the
11 division for various commodity classes.

12 1230.1810 PROPORTIONAL UTILIZATION OF SOCIALLY DISADVANTAGED
13 BUSINESSES.

14 The division shall attempt to achieve utilization of
15 socially disadvantaged small businesses in proportion to their
16 representation in the market. In so doing, the division may use
17 either of the following purchasing methods for awarding
18 requisitions to those socially disadvantaged businesses
19 designated by the commissioner as targeted group businesses.

20 A. When it is likely that three competitive bids will
21 be obtained from certified targeted group small businesses, the
22 requisition may be set aside for bidding only by those
23 businesses.

24 (1) The division shall include a statement on the
25 invitation to bid informing all vendors that the bid is set
26 aside for bidding only by certified targeted group small
27 businesses.

28 (2) The division shall reject any bid by a
29 business not certified as a targeted group small business.

30 (3) Where there are no bids or no acceptable
31 bids, unsatisfactory bids, if any, will be recorded and the
32 requisition shall be rebid.

33 B. A certified targeted group small business may be
34 awarded up to a six percent preference in the amount bid over
35 the lowest responsible bid from another vendor.

1 (1) The division shall include a statement on the
2 invitation to bid informing all vendors that certified targeted
3 group vendors will receive a preference in the amount bid and
4 the amount of the preference to be awarded.

5 (2) When the lowest acceptable bid from a
6 certified targeted group small business is within ~~six~~ the
7 specified percent of the lowest acceptable bid from another
8 vendor, award shall be made to the lowest responsible certified
9 targeted group small business.

10 (3) When there is no acceptable bid from a
11 certified targeted group small business within ~~six~~ the specified
12 percent of the lowest acceptable bid from another vendor, award
13 shall be made to the lowest responsible vendor.

14 1230.1820 REQUIRED SUBCONTRACTING FOR CONSTRUCTION, CONSULTING,
15 OR PROFESSIONAL OR TECHNICAL SERVICES.

16 Subpart 1. Goal setting. The division may set goals that
17 require prime contractors to subcontract a portion of any
18 contract for construction, consulting, or professional or
19 technical services to targeted group small businesses.

20 A. Goals for subcontracting will depend on the type
21 of work involved and the availability of certified, willing, and
22 able targeted group small businesses open to subcontracts from
23 the prime contractor.

24 B. Credit toward the goal established for the
25 contract shall be at 100 percent for subcontractors who provide
26 labor, materials, and supplies and at 60 percent for
27 subcontractors who provide supplies and materials only.

28 Subp. 2. Subcontracting. No contractor receiving a
29 subcontract under this program shall in turn subcontract more
30 than 25 percent of the contract dollar amount. A targeted group
31 small business may exceed the 25 percent limitation if the
32 awarded subcontract is to another targeted group small business.

33 Subp. 3. Waivers. Prime contractors may obtain waivers
34 from the normal subcontracting goals according to the following
35 procedure:

1 A. The invitation to bid or request for proposals may
2 as one of the conditions of contract waive subcontracting
3 requirements for all or specific specialties based on the
4 division's determination of sufficient availability of certified
5 targeted group subcontractors for the specialties involved.

6 B. The prime contractor may request a waiver for some
7 or all specialties based on a documented unsuccessful effort to
8 obtain certified targeted group subcontractors. The request for
9 waiver with documentation showing the effort and steps taken to
10 secure certified targeted group subcontractors and the results
11 thereof shall accompany the bid response, unless the invitation
12 to bid specified a period after bid opening, not to exceed 72
13 hours, where documentation of efforts and steps taken to secure
14 certified targeted group subcontractors will be permitted.

15 C. After the award and the commencement of the
16 project, a prime contractor may request a waiver for a specific
17 specialty if the certified targeted group subcontractor cannot
18 or will not fulfill the subcontract and no suitable alternative
19 subcontractor is available so as to prevent significant project
20 delay. Failure to use the certified targeted group
21 subcontractors specified at the time of award without a grant of
22 waiver will invoke a penalty as outlined in subpart 4.

23 Subp. 4. **Incentives and penalties.** Bid documents will
24 state whether or not the incentive rule applies for the project
25 being bid. If so,

26 A. Prime contractors who exceed the established goal
27 on a given project for use of certified targeted group
28 subcontractors by more than three percent may be awarded a
29 financial incentive over and above the awarded bid price, the
30 incentive to be determined in the following manner:

31 (1) Contracts qualifying for incentive clauses
32 may be prime contracts at \$50,000 or higher in which the goal
33 for subcontractor use has been set at one percent or higher.
34 The maximum goal qualifying for incentives may not exceed 25
35 percent. Contracts between \$2,000 and \$50,000 may qualify for
36 incentive clauses if the approved goal percentage applied to the

1 estimated project cost will provide a minimum of \$500 in
2 potential subcontracting awards.

3 (2) A monetary incentive over and above the
4 awarded contract price shall be paid to the prime contractor
5 upon documented proof of actual use of certified targeted group
6 subcontractors on the project in excess of three percent of the
7 goal set for that project. The monetary incentive in any case
8 shall not exceed six percent of the awarded project price, or
9 \$60,000 at the maximum. The form of documented proof shall be
10 specified in the award agreement.

11 (3) The actual amount of incentive to be paid
12 shall be calculated by the following formula:

13 (a) subtract the established goal plus three
14 percent from 25 percent;

15 (b) divide six percent of the project or
16 \$60,000, as appropriate, by the number of percentage points in
17 unit (a); and

18 (c) multiply the result of unit (b) by the
19 number of percentage points exceeding goal plus three percent.

20 (4) The provisions of subitems (1), (2), and (3),
21 shall be applicable to all prime contractors and shall also
22 apply to certified targeted group contractors acting as prime
23 contractors if the awarded contract was not gained through
24 preference or set-aside bidding procedures.

25 B. Prime contractors who have been awarded a contract
26 and fail to meet the project goal for certified targeted group
27 subcontractor use without approved waiver shall be penalized up
28 to six percent of the total project value, not to exceed
29 \$60,000. The penalty to be assessed will be proportionate to
30 the actual underuse of certified targeted group subcontractors
31 as compared to the project goal. The contractor involved shall
32 be notified in writing of the proposed penalty and the reasons
33 for the penalty. Within 15 calendar days of receipt of the
34 notice the contractor may request a hearing before the director
35 or the director's designee. The director may uphold, modify, or
36 reject the penalty. The decision of the director may be

1 appealed within 30 calendar days to the commissioner. If there
2 are facts in dispute, the commissioner may refer the matter to
3 the Office of Administrative Hearings for a contested case
4 hearing under Minnesota Statutes, sections 14.57 to 14.62, or,
5 if feasible, may affirm or reject the director's decision.

6 C. Prime contractors who fail to meet the project
7 goal without waiver for a project to be awarded and are the
8 apparent low bidder shall have a penalty of up to six percent,
9 not to exceed \$60,000, added to their total project bid to
10 determine responsible low bidder when other prime contractors
11 have submitted bids that meet the specified targeted goal. The
12 penalty to be added shall be proportionate to the underuse
13 determined in the bid proposal as compared to the announced
14 project goal.

15 D. The division reserves the right to cancel the
16 request for bid or proposals and rebid the project when all
17 bidders submit proposals which do not meet the announced goal
18 and the evidence available to the division indicated sufficient
19 responsible certified targeted group subcontractors are willing
20 and able to do the work.

21 1230.1830 PREFERENCE PROCUREMENTS FROM ECONOMICALLY
22 DISADVANTAGED SMALL BUSINESSES.

23 A certified economically disadvantaged small business may
24 be awarded up to a four percent preference in the amount bid
25 over the lowest responsible bid from another vendor.

26 A. The division shall include a statement on the
27 invitation to bid informing all vendors that certified
28 economically disadvantaged vendors will receive a preference in
29 the amount bid and the amount of the preference to be awarded.

30 B. When the lowest acceptable bid from a certified
31 economically disadvantaged small business is within ~~four~~ the
32 specified percent of the lowest acceptable bid from another
33 vendor, award shall be made to the lowest responsible certified
34 economically disadvantaged small business.

35 C. When there is no acceptable bid from a certified

1 economically disadvantaged small business within ~~four~~ the
2 specified percent of the lowest acceptable bid from another
3 vendor, award shall be made to the lowest responsible vendor.

4 D. When the division awards both a preference to a
5 certified targeted group small business and a preference to a
6 certified economically disadvantaged small business on the same
7 requisition, the lowest acceptable bid shall be determined by
8 deducting the preference percent awarded from the acceptable ~~bid~~
9 bids by the certified small ~~business~~ businesses.

10 1230.1850 REMOVAL FROM ELIGIBILITY LISTS OR DIRECTORY OF
11 CERTIFIED BUSINESSES.

12 Subpart 1. **Removal for failure to fulfill contract.** A
13 business shall be removed from the bid eligibility lists and
14 shall be ineligible to be awarded contracts when it fails to
15 satisfactorily fulfill the terms and conditions of a contract as
16 specified in parts 1230.1000 and 1230.1100.

17 Subp. 2. **Reinstatement.** An otherwise eligible business
18 that was removed from the the bid list under ~~this~~ subpart 1 may
19 apply for reinstatement and participation in the preference
20 program according to part 1230.1175.

21 Subp. 3. **Removal from certified directory when a business**
22 **no longer qualifies.** A business shall be removed from the
23 certified directory and will no longer be eligible for bidding
24 on any set-aside or preference contract when the business no
25 longer qualifies for ~~these-preference-program~~ the programs under
26 Minnesota Statutes, section 16B.22, and parts 1230.1400 to
27 1230.1910. Notice of removal and the reasons for removal shall
28 be given in writing to the business by the division. Removal is
29 effective upon receipt of the notice by the business. When
30 removal is for loss of status as an economically disadvantaged
31 area, the business shall remain eligible for 120 days after
32 certified small businesses in the area are notified of the
33 termination of the status by the division.

34 Subp. 4. **Appeal of removal.** When a business is removed
35 from the certified directory under subpart 3, the business may

1 appeal the removal and disqualification to the commissioner of
2 administration in writing within 15 calendar days of the receipt
3 of the notice of removal. Receipt of the appeal shall be
4 acknowledged by the commissioner in writing within 15 calendar
5 days of receipt. The commissioner shall request that the
6 business choose either an informal review of the
7 disqualification under item A or a formal review under item B if
8 facts of the matter are in dispute.

9 A. Under an informal review process, the Small
10 Business Procurement Advisory Council shall consider whether the
11 decision to remove a business from the certified directory was
12 reasonable and whether the removal is in compliance with subpart
13 3. The council will review the facts presented by the business
14 and the division. Within 45 calendar days of the council's
15 receipt of a request for review, the council shall recommend
16 that the commissioner take one of the following actions:

17 (1) reinstate the business to the certified
18 directory;

19 (2) affirm the removal of the business; or

20 (3) refer the matter to the Office of
21 Administrative Hearings for a contested case hearing under
22 Minnesota Statutes, sections 14.57 to 14.62.

23 The council's recommendation to the commissioner shall be
24 in writing and include the reasons for its decision. The
25 commissioner shall consider the recommendation and make a final
26 decision on the matter within 15 calendar days of receiving the
27 council's recommendation. The commissioner shall include
28 written reasons for the decision.

29 B. Within 30 calendar days after a request by the
30 business or the council for formal review, the commissioner will
31 initiate a contested case hearing under Minnesota Statutes,
32 sections 14.57 to 14.62, by filing a request for assignment of
33 an administrative law judge with a notice of an order for
34 hearing. When the commissioner receives the report of the
35 administrative law judge, the commissioner shall forward the
36 report to the Small Business Procurement Advisory Council for

1 its review, and the council shall, within 45 days, make its
2 recommendation. The commissioner shall make a final decision on
3 each appeal.

4 1230.1860 LIMITS TO PROGRAM PARTICIPATION.

5 To ensure equitable distribution of awards and reduce the
6 dependency of any given business on state awards for a major
7 part of its annual revenues, the following limitations apply:

8 A. Eligibility for participation in preference or
9 set-aside provisions of this program shall be temporarily
10 suspended, for the fiscal year only, for any certified
11 economically disadvantaged small business when the total awards
12 under these program to that business exceed three-tenths of one
13 percent of the total anticipated awards. These limitations
14 shall be applied individually and not in the aggregate by the
15 agencies covered under the statute, the Department of
16 Administration, the Department of Transportation, and the
17 University of Minnesota.

18 B. Eligibility for set-aside or preference for a
19 specific business shall be terminated when the annual review of
20 financial statements or the cumulative record of awards compiled
21 by the division from reports submitted by agencies covered under
22 the statute indicate that any of the following conditions exist:

23 (1) more than an average of 80 percent of the
24 business's gross revenues or sales are attained through
25 preference or set-aside awards during the second and third years
26 of participation in the program;

27 (2) for years four and five, the limitation
28 average shall be 50 percent of gross annual revenues or sales;

29 (3) for years six and beyond, the limit shall not
30 exceed 40 percent.

31 There will be no limit on awards acquired through the
32 normal competitive bid process at any time.

33 C. No business shall be permitted to participate in
34 the preference and set-aside programs indefinitely. A business
35 will not be certified but will graduate from the preference and

1 set-aside programs when one of the following circumstances
2 exists:

3 (1) if certified under part 1230.1700 according
4 to Minnesota Statutes, section 16B.19, subdivision 2b,
5 designation of targeted groups, and a new study conducted by the
6 commissioner of administration finds the original conditions
7 defining eligibility and certification no longer exist;

8 (2) demographic statistics justify loss of status
9 as a labor surplus area, a 70 percent median income county, or a
10 disadvantaged area; or

11 (3) the business has captured a proportionate
12 share in its market for assets employed, by the following
13 averages:

14 (a) 200 percent in year one;

15 (b) 175 percent in years one and two;

16 (c) 150 percent in years one, two, and
17 three;

18 (d) 125 percent in years two, three, and
19 four;

20 (e) 125 percent in years three, four, and
21 five, or any three consecutive years thereafter.

22 1230.1900 GENERAL TERMS AND CONDITIONS.

23 Subpart 1. Inability to perform. An eligible business
24 that finds it cannot produce, supply, or construct according to
25 the bid terms and conditions of a contract for reasons beyond
26 its control shall immediately notify the division in writing of
27 the reasons ~~therefor~~ therefore. When the commissioner
28 determines that the business is unable to perform for the
29 reasons stated, the division shall notify the Department of
30 Trade and Economic Development so that the commissioner of trade
31 and economic development can assist the small business in
32 attempting to remedy the causes of the inability to perform.
33 The division shall notify the business of the referral to the
34 Department of Trade and Economic Development and the notice
35 shall include a statement that any records of the Department of

1 Trade and Economic Development in assisting the small business
2 may be discoverable in a contested case or judicial procedure.
3 Failure to enter into a contract, to accept an offered award, or
4 to satisfactorily complete a contract for documented reasons
5 beyond its control will not automatically disqualify a business
6 from further bidding.

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

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

23 Subp. 2. to 4. [See repealer.]

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

28 Subp. 6. [See repealer.]

29 Subp. 7. **Annual reporting requirement.** The following
30 reporting requirements apply to the socially disadvantaged or
31 economically disadvantaged area small business programs:

32 A. Businesses eligible to participate in these
33 programs shall, within 30 calendar days of a request by the
34 division, verify information on file with the division for that
35 business, make any necessary changes, and submit a complete
36 financial statement to the division. The information on file

1 with the division will include:

2 (1) the name and address of the applicant and its
3 principal place of business;

4 (2) the applicant's gross revenues in the most
5 recently completed fiscal year;

6 (3) whether the applicant's business is an
7 affiliate or subsidiary of a business dominant in its field of
8 operation;

9 (4) a listing of all owners, including percentage
10 of ownership, and all officers of the applicant, with full
11 disclosure of all owners' and officers' direct and indirect
12 involvement in other businesses and enterprises that are in the
13 same field of operation as the applicant, unless ownership is by
14 common stock regularly bought and sold through recognized
15 exchanges; and

16 (5) all other relevant or supporting information
17 necessary for verifying status resulting in eligibility under
18 certification procedures if requested in writing by the
19 division, before or after the annual reporting requirement date.

20 B. Failure to provide the information required by
21 item A may result in removal of the noncomplying business from
22 the certified directory.

23 1230.1910 CONSULTANT, PROFESSIONAL, AND TECHNICAL PROCUREMENTS.

24 Subpart 1. **Applicability.** Parts 1230.1400 to 1230.1910
25 apply to the award of consultant, professional, and technical
26 procurements under Minnesota Statutes, section 16B.19,
27 subdivision 2.

28 Subp. 2. **Awards.** Division certification is not required
29 for individuals who provide consultant, professional, or
30 technical services and who are not organized as a business,
31 corporation, partnership, proprietorship, or other recognized
32 business structure. An individual person may be awarded
33 contracts under Minnesota Statutes, section 16B.19, subdivision
34 2, provided that the contracting agency maintains records
35 stating that the individual meets the terms governing socially

1 or economically disadvantaged area persons established in part
2 1230.0150, subparts 24 and 26, and reports the awards in the
3 format required by the division.

4 REPEALER. Minnesota Rules, parts 1230.0200; 1230.0400, subparts
5 1 and 3; 1230.0700, subpart 2; 1230.1500; 1230.1700, subparts 2
6 and 3; 1230.1800; 1230.1900, subparts 2, 3, 4, and 6; 1230.2000;
7 1230.2100; 1230.2200; and 1230.2300, are repealed.