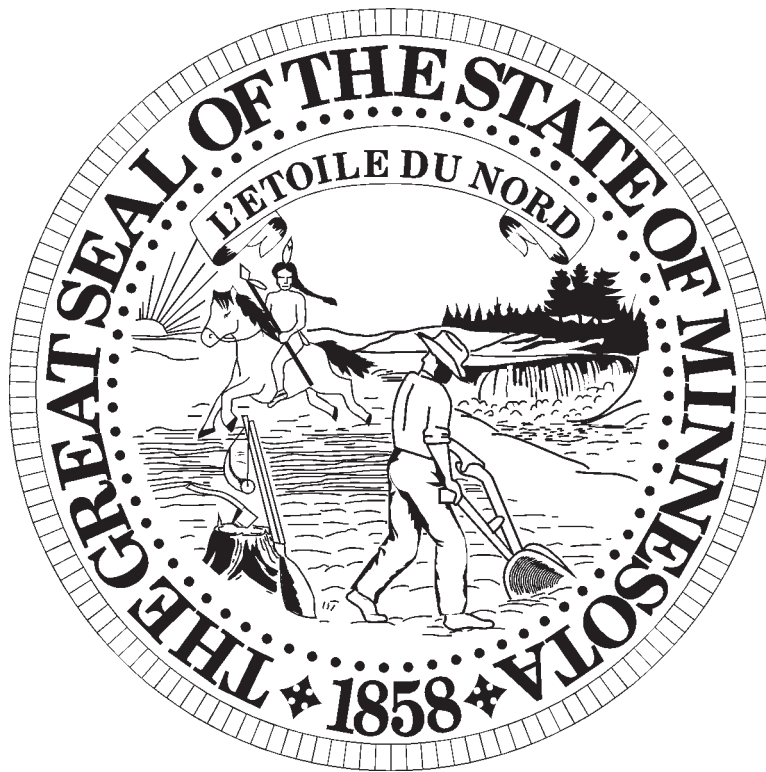


State of Minnesota

State Register



**Rules, Executive Orders, Appointments,
Commissioners' Orders, Revenue Notices, Official Notices, Grants,
State Contracts & Loans, Non-State Bids, Contracts & Grants**

Published every Monday (Tuesday when Monday is a holiday)

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State Register

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# 14	Monday 1 October	Noon Tuesday 25 September	Noon Wednesday 19 September
# 15	Monday 8 October	Noon Tuesday 2 October	Noon Wednesday 26 September
# 16	Monday 15 October	Noon Tuesday 9 October	Noon Wednesday 3 October
# 17	Monday 22 October	Noon Tuesday 16 October	Noon Wednesday 10 October

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NOTICE: How to Follow State Agency Rulemaking in the State Register

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 80 state agencies have the authority to issue rules. Each agency is assigned specific **Minnesota Rule** chapter numbers. Every odd-numbered year the **Minnesota Rules** are published. The current 1999 set is a 13-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Generally speaking, proposed and adopted exempt rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, or within 60 days of the effective date of any new statutory grant of required rulemaking.

When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or a notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the *State Register*. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety in the *State Register*, only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the most current edition of the *Minnesota Guidebook to State Agency Services*.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues #1-13 inclusive; issues #14-25 inclusive; issue #26 cumulative for issues #1-26; issues #27-38 inclusive; issue #39, cumulative for issues #1-39; issues #40-51 inclusive; and issues #1-52 (or 53 in some years), cumulative for issues #1-52 (or 53). An annual subject matter index for rules was separately printed usually in August, but starting with Volume 19 now appears in the final issue of each volume. For copies or subscriptions to the *State Register*, contact Minnesota's Bookstore, 660 Olive Street (one block east of I-35E and one block north of University Ave), St. Paul, MN 55155 (612) 297-3000, or toll-free 1-800-657-3757.

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Monday 1 October 2007

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Proposed Rules

Comments on Planned Rules or Rule Amendments. An agency must first solicit Comments on Planned Rules or Comments on Planned Rule Amendments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

Rules to be Adopted After a Hearing. After receiving comments and deciding to hold a public hearing on the rule, an agency drafts its rule. It then publishes its rules with a notice of hearing. All persons wishing to make a statement must register at the hearing. Anyone who wishes to submit written comments may do so at the hearing, or within five working days of the close of the hearing. Administrative law judges may, during the hearing, extend the period for receiving comments up to 20 calendar days. For five business days after the submission period the agency and interested persons may respond to any new information submitted during the written submission period and the record then is closed. The administrative law judge prepares a report within 30 days, stating findings of fact, conclusions and recommendations. After receiving the report, the agency decides whether to adopt, withdraw or modify the proposed rule based on consideration of the comments made during the rule hearing procedure and the report of the administrative law judge. The agency must wait five days after receiving the report before taking any action.

Rules to be Adopted Without a Hearing. Pursuant to *Minnesota Statutes* § 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing. An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public. The agency then publishes a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

Minnesota Department of Revenue

CORRECTION TO: Proposed Permanent Rules Governing Sales and Use Tax Permits; Reinstatement of Revoked Permits

A mistake was made in the the header for the above-captioned rule, listing it as "adopted" when it should have been "Proposed." We apologize for the error and confusion it may have created. It appeared in the *State Register*, issue #10 of Volume 32, on pages 408-409, dated TUESDAY 4 September 2007.

Minnesota Office of Higher Education

Proposed Permanent Rules Relating to SELF Program

Proposed Amendment to Rules Governing Supplemental Student Loan SELF Program, *Minnesota Rules*, 4850.0010 to 4850.0018

Introduction. The Minnesota Office of Higher Education intends to adopt rules without a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules until November 9, 2007.

Agency Contact Person. Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to: Marilyn Kosir, Minnesota Office of Higher Education, 1450 Energy Park Drive, Suite 350, St. Paul MN 55108, or **E-mail:** marilyn.kosir@state.mn.us.

Subject of Rules and Statutory Authority. The proposed rule amendments would:

- Allow for nonaccrual of interest or payment for up to three years for someone with a temporary total disability.
- Allow for a one-time rehabilitation of a loan within two years of a default date.
- Allow for a loan interest rate reduction for active duty military personnel.
- Increase the cosigner minimum age from 18 to 24 unless the cosigner is a sibling of the loan originator.
- Increase the acceptable limit of negative credit items from \$50 to \$300 to be an eligible cosigner.

Proposed Rules

- Eliminate the personal financial statement as an alternative to a credit report for cosigner credit approval.
- Expedite the loan and further eliminate paper loans by adding language allowing electronic signatures when the process has been adopted by the agency.
- Add language to clarify when a loan is cancelled due to total and permanent disability.

The statutory authority to adopt the rules is *Minnesota Statutes*, 131A.16, Subd. 2., authorizes the Office of Higher Education to adopt rules to carry out the purposes of sections 136A.15 to 136A.1702. A copy of the proposed rules is published in the *State Register*.

Comments. You have until 4:30 p.m. on Friday, November 9, 2007, to submit written comment in support of or in opposition to the proposed rules and any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rules addressed and the reason for the comment. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on Friday, November 9, 2007. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules to which you object or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and cannot be counted by the agency when determining whether a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format. Upon request, this Notice can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact Marilyn Kosir, Minnesota Office of Higher Education, 1450 Energy Park Drive, Suite 350, St. Paul MN 55108, or **E-mail:** marilyn.kosir@state.mn.us.

Modifications. The proposed rules may be modified as a result of public comment. The modifications must be supported by comments and information submitted to the agency, and the adopted rules may not be substantially different than these proposed rules, unless the procedure under *Minnesota Rules*, part 1400.2110, has been followed. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 6512965148 or 18006573889.

Adoption and Review of Rules. If no hearing is required, the agency may adopt the rules after the end of the comment period. The rules and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rules are submitted to the office. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Dated: September 24, 2007

Susan Heegaard, Director
Minnesota Office of Higher Education

4850.0011 DEFINITIONS.

[For text of subs 1 to 8, see M.R.]

Subp. 9. **Creditworthy cosigner.** “Creditworthy cosigner” means one who, ~~in the judgment of the director~~ based on information provided by a national credit bureau, has:

- A. no ~~credit bureau account~~ balances discharged through bankruptcy;
- B. no garnishments, attachments, foreclosure, repossession, or suit;
- C. no ~~delinquent or unsatisfied credit obligation such as tax or mechanics liens, or judgments more than \$300 combined total in unsatisfied credit or unsatisfied payment obligations including, but not limited to, charged-off loans, credit, medical, utility accounts, collection items, and tax or mechanics liens; or and~~
- D. no more than five percent of ~~current total~~ credit bureau balances past due, unless the amount past due is \$300 or less.
A cosigner will be considered creditworthy if the total amount in item C or D does not exceed \$50.

Subp. 10. **Cosigners.** All SELF borrowers ~~from the student educational loan fund~~ shall have a creditworthy cosigner who is either a United States citizen or a permanent resident. The cosigner is jointly and separately responsible for making loan payments (principal, interest, and other charges). A cosigner must:

- A. be a person at least ~~18~~ 24 years old or if a sibling (sister, brother, half-sister, half-brother, stepsister, or stepbrother) of the borrower be at least 18 years old;
- B. agree to the release of information to a consumer credit reporting agency, as described in part 4850.0012, subpart 4; and
- C. permanently reside in the United States.

~~If the cosigner has no credit history, creditworthiness shall be determined by the director, by a review of banking references and a review of net worth data with a minimum test requiring that net worth equal or exceed a sum ten times the size of each loan amount requested.~~

[For text of subp 11, see M.R.]

Subp. 11a. **Default date.** “Default date” means the date the loan is submitted by the office to the loan servicer as a default due to failure to comply with the required terms of the promissory note.

[For text of subs 12 to 14, see M.R.]

Subp. 15. **Eligible student.** “Eligible student” means a student who:

- A. is enrolled in an eligible school in Minnesota, or is a Minnesota resident enrolled in an eligible school in another state, United States territory, or province as defined in *Minnesota Statutes*, section 136A.15, subdivision 5;
- B. is enrolled at least half-time in a program leading to a certificate, associate, baccalaureate, masters, doctorate, or other professional degree;
- C. is making satisfactory academic progress as defined by the school;
- D. is not currently in default, as defined by each specific program, of any student educational loan program (Stafford Loan, GSL, FISL, NDSL, Perkins, HPL, HEAL, ALAS/SLS, or other similar federal, state, private, or institutional student loan program) at the current or any previous school;
- E. is not currently delinquent in payment of interest or principal on an outstanding SELF loan ~~from the student educational loan fund;~~
- F. has a creditworthy cosigner;
- G. demonstrates financial eligibility by meeting the “maximum effort” test; and
- H. has agreed to the release of information to a consumer credit reporting agency, as listed in part 4850.0012, subpart 4.

[For text of subs 16 to 24, see M.R.]

Subp. 24a. **Loan forgiveness.** “Loan forgiveness” means the obligation of the borrower and the cosigner to repay the SELF loan is forgiven due to the death or total and permanent disability of the borrower. ~~The total and permanent disability of the borrower must occur after all disbursements of the loan are made in order for the loan to be totally forgiven.~~

[For text of subs 25 to 26a, see M.R.]

Subp. 27. [See repealer.]

[For text of subs 28a and 28b, see M.R.]

Subp. 28c. **SELF IV loans.** “SELF IV loans” means SELF loans where the interest rate on the loan is determined by the director at a margin in excess of a SELF IV index rate. The SELF IV initial index rate is the arithmetic average rounded to the nearest tenth of one percent of the three-month London Interbank Offered Rates (LIBOR) rate during the calendar quarter immediately preceding the interest rate adjustment date. The LIBOR rate is determined by the British Banker’s Association. Where terms can be obtained for issuance of SELF loans at a rate favorable to borrowers, the director may establish other indexes or utilize a fixed rate as provided for in the promissory note.

Subp. 28d. **Temporary total disability.** “Temporary total disability” means a disability resulting from an injury or illness that is expected to last at least four months and that interferes with the borrower’s ability to make loan payments. A borrower has a temporary total disability if a doctor of medicine or osteopathy, legally authorized to practice in a state, certifies that the borrower is unable to work and earn money because of an injury or illness expected to last at least four months. A borrower is not considered to have a temporary total disability on the basis of a condition that existed at the time the loan was made.

Proposed Rules

Subp. 28e. **Total and permanent disability.** “Total and permanent disability” means a disability resulting from an injury or illness that is expected to continue indefinitely or result in death, that interferes with the borrower’s ability to make loan payments because the borrower is unable to work or earn money, as certified by a doctor of medicine or osteopathy, legally authorized to practice in a state. A borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time the loan was made.

Subp. 29. **Transition period.** “Transition period” means a 12month period immediately following graduation or termination of enrollment. Borrowers may extend the transition period, if permitted by the terms of the promissory note, an additional period not to exceed 24 months. During the transition period, borrowers are billed for interest only.

Subp. 30. **Undergraduate student.** “Undergraduate student” means a student who is not a graduate student.

4850.0012 SCHOOL AGREEMENTS AND STUDENT APPLICATIONS.

[For text of subs 1 and 2, see M.R.]

Subp. 3. **Application and promissory note.** The student shall follow the appropriate SELF application process used at the eligible school. The student shall deliver or mail the application and promissory note to the cosigner who shall complete the cosigner’s portion of the application and promissory note and deliver or mail them to the director. Electronic signatures are acceptable where an electronic signature process has been adopted by the office. The director will check the application and promissory note for completeness, determine the eligibility of the applicant, and conduct a credit check of the borrower and the cosigner. If the director approves the loan application, the document file is forwarded to the servicer. The servicer shall prepare and mail a disclosure statement to the borrower and cosigner, advise the school of the loan approval, schedule disbursements, and place the document file in permanent storage. If the director rejects the loan application, the applicant and the cosigner must be advised in writing of the decision and the reasons for the rejection.

[For text of subp 4, see M.R.]

4850.0014 AMOUNT AND TERMS.

Subpart 1. **Loan amounts.** The minimum SELF loan amount ~~from the student educational loan fund~~ is \$500.

The annual and maximum loan amounts for:

A. ~~an undergraduate student are those prescribed in this part, not to exceed the limits specified in Minnesota Statutes, section 136A.1701, subdivisions 4 and 5. The loan must not exceed the annual SELF borrowing maximums of \$4,500 for grade levels one and two, and \$6,000 for grade levels three, four, and five or the cost of attendance less all other financial aid (including PLUS loans or other similar federal parent loans borrowed on the student’s behalf); and the cumulative SELF loan debt must not exceed the aggregate SELF borrowing maximums by grade level indicated in this subpart. The cumulative undergraduate borrowing maximums for SELF loans are:~~

- (1) grade level 1, \$ 4,500;
- (2) grade level 2, \$ 9,000;
- (3) grade level 3, \$15,000;
- (4) grade level 4, \$21,000; and
- (5) grade level 5, \$25,000.

B. ~~a graduate student are those prescribed in Minnesota Statutes, section 136A.1701. The loan must not exceed the annual SELF graduate student borrowing maximum of \$9,000 for grade levels 6 through 9 or the cost of attendance less all other financial aid (including PLUS loans borrowed on the student’s behalf); and the cumulative SELF student loan debt of the graduate student does not exceed \$40,000 for both undergraduate and graduate educations combined.~~

[For text of subp 2, see M.R.]

Subp. 3. **Interest rate.** For SELF II loans, the interest rate on the loan will be determined by the director at a margin in excess of the SELF II index rate ~~as defined under part 4850.0011, subpart 28a. The SELF II index rate is the average rounded to the nearest quarter of one percent of the bond equivalent yield, for auctions of 13-week treasury bills, during the preceding calendar quarter. If the index rate increases or decreases, the interest rate on the loan automatically increases or decreases on the same day without notice to the borrower. The interest rate on the loan cannot increase or decrease more than two percentage points over any four consecutive calendar quarters exclusive of any individual loan interest rate reductions and reinstatements resulting from the application of benefit programs for military, on-time payments and automated payments or other program interest rate reductions.~~ The director shall set the margin to reflect the costs of the SELF program. If the director determines that the margin does not reflect the costs of the SELF program, the director must increase or decrease the margin. The director shall advise borrowers of changes in the margin.

For SELF III and SELF IV loans, the interest rate on the loan will be determined by the director at a margin in excess of a SELF III and SELF IV index rate rates, as defined under part 4850.0011, subparts 28b and 28c. ~~The SELF III initial index rate to be used is the average rounded to the nearest tenth of one percent of the arithmetic average of the three-month London Interbank Offered Rates (LIBOR) rate during the calendar quarter immediately preceding the interest rate adjustment date. The LIBOR rate is determined by the British Banker’s Association. Where terms can be obtained for issuance of SELF loans at a rate favorable to borrowers, the director may establish other indexes or utilize a fixed rate as provided for in the promissory note. The interest rate on the loan cannot increase or decrease more than~~

three percentage points over any four consecutive calendar quarters exclusive of any individual loan interest rate reductions and reinstatements resulting from the application of benefit programs for military, on-time payments and automated payments or other program interest rate reductions. The director shall set the margin to reflect the costs of the SELF program. If the director determines that the margin does not reflect the costs of the SELF program, the director must increase or decrease the margin.

4850.0018 CLAIMS.

[For text of subpart 1, see M.R.]

Subp. 2. **When paid.** Claims are paid in four categories:

A. A claim for death of the borrower must be filed by the director upon receipt of a death record. The cosigner's obligation to make any further payment of principal and interest or both on a SELF loan is canceled as of the date of death.

B. If the borrower becomes totally and permanently disabled, a claim must be filed by the director upon receipt of proper medical documentation. The borrower's and cosigner's obligation to make any further payment of principal and interest on a SELF loan is canceled as of the date of approval of the medical documentation by the office.

[For text of items C and D, see M.R.]

4850.0020 LOAN FORGIVENESS.

Subpart 1. **Death of borrower.** The obligation of the borrower and the cosigner to repay a SELF loan shall be forgiven upon documentation of the death of the borrower. Payments made after the borrower's death prior to the submission of a death certificate will not be reimbursed.

Subp. 2. **Total and permanent disability of borrower.** The obligation of the borrower and the cosigner to repay the SELF loan shall be forgiven upon written request to the office if the office determines that a borrower has a total and permanent disability and if the total and permanent disability of the borrower occurred after all disbursements of the loan were made. The forgiveness is effective the date the total and permanent disability documentation is approved and accepted by the office.

4850.0021 NONACCRUAL OF INTEREST PERIOD DURING A TEMPORARY TOTAL DISABILITY.

A borrower who has a temporary total disability shall be granted a period of nonaccrual of interest upon written request to the office, effective the date the temporary total disability documentation is approved and accepted by the office, if the office determines that the borrower has a temporary total disability and if the temporary total disability of the borrower occurred after all disbursements of the loan were made. Interest does not accrue during an approved nonaccrual of interest period and no payments will be required to be made during this time. A nonaccrual of interest period may be granted for up to one year at a time with a maximum of no more than three years. Extensions may be requested after the end of each approved period of nonaccrual of interest. Updated medical information is required of the borrower for each extension request. If at any time during a nonaccrual of interest period the borrower qualifies for loan forgiveness due to total and permanent disability status, the borrower may submit the required medical documentation to the office for review. At the end of the nonaccrual of interest period the borrower must resume payments at an amount necessary to repay the loan in the time period required by the promissory note unless a payment extension agreement has been entered into with the office.

4850.0022 ACTIVE MILITARY DUTY INTEREST REDUCTION BENEFIT.

Eligible borrowers on active military duty may qualify for interest rate reductions greater than reductions already required by federal or state law based on a determination by the director of available benefits. The military interest rate reduction availability and the amount of any reduction is determined quarterly. Eligible borrowers must request the reduction and provide a copy of active military orders in order to qualify. An available reduction is only effective for dates the borrower is on active duty. Interest reductions, other than reductions required by federal or state law, shall be discontinued without notice for any quarter in which the benefit is unavailable.

4850.0024 DEFAULTED LOAN REHABILITATION.

Subpart 1. **Availability.** A defaulted loan rehabilitation option is available for loans which default after adoption of parts 4850.0011 to 4850.0024.

Subp. 2. **Exclusions.** A defaulted loan rehabilitation option is not available for loans that have been turned over to a collection entity or that are in default for a second time.

Subp. 3. **Rehabilitation deadline.** Rehabilitation must be completed within two years from the default date.

Subp. 4. **Payment in full option.** A defaulted loan is considered rehabilitated if the outstanding balance of the defaulted loan is paid in full to the office within 90 days from the default date.

Subp. 5. **Payment plan option.** A borrower or cosigner may rehabilitate a defaulted loan upon approval by the office of a rehabilitation request signed by the borrower or cosigner and submitted to the office. If the office approves the rehabilitation request, the borrower or cosigner must make 12 monthly on-time payments on the defaulted loan. If the borrower or cosigner fails to make 12 consecutive on-time

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payments and if there is sufficient time remaining within the maximum two-year rehabilitation period, the borrower or cosigner may submit a second rehabilitation request for approval by the office to make 12 on-time payments. The combined payment amounts must be sufficient so that at the end of the rehabilitation period the loan conforms with the promissory note repayment terms had the loan not defaulted. A payment is considered on time if the payment is received by the office no later than seven calendar days after the agreed upon due date.

Subp. 6. Rehabilitated loan requirement. Once a loan has successfully been rehabilitated, the remaining balance must be repaid within the original time frame and according to the original terms and conditions of the promissory note.

Subp. 7. Deletion of default loan status. Upon completion of the loan rehabilitation, the office shall request deletion of the defaulted loan status from the credit bureaus if deletion is permitted by the credit bureaus. Deletion of the default status is contingent upon approval by the credit bureaus. Any past due reporting to the credit bureaus prior to the default will not be deleted.

REPEALER. Minnesota Rules, part 4850.0011, subpart 27, is repealed.

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A rule becomes effective after the requirements of *Minnesota Statutes* §§ 14.05-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule. If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed. If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

Department of Transportation

Adopted Expedited Permanent Rules Relating to Local StateAid Roads

The rules proposed and published at *State Register*, Volume 31, Number 47, pages 1706-1711, May 21, 2007 (31 SR 1706), are adopted with the following modifications:

8820.4090 NATURAL PRESERVATION ROUTE DESIGNATION REMOVAL.

A county board, after notice and a public hearing, may petition the commissioner by resolution to remove the natural preservation route designation if the board believes the characteristics on which the natural preservation route designation was approved have substantially been lost. The petition for removing the designation must be based on such items as loss of aesthetic qualities, changes in land use, changes in road function, or significant increases in accidents. After receipt of the county board resolution, the commissioner may shall approve or deny the petition to remove the natural preservation route designation from the roadway. The commissioner shall base the decision on the criteria in part 8820.4040, subpart 2, notify the political subdivision in writing of the decision and include a written explanation with the notification.

8820.9920 MINIMUM DESIGN STANDARDS; RURAL AND SUBURBAN UNDIVIDED; NEW OR RECONSTRUCTION PROJECTS.

New or reconstruction projects for rural and suburban undivided roadways must meet or exceed the minimum dimensions indicated in the following design chart.

Pro- jected ADT	Lane Width	Shoulder Width	In- slope	Recovery Area	Design Speed	Sur- facing	Struc- tural Design Strength	Bridges to Remain (f) Width Curb to Curb
(b)		(g)	(c)	(d)	(e)	(h)		
	feet	feet	rise: run	feet	mph		tons	feet
0-49	11	1	1:3	7	30- 60	Agg.		22
50- 149	11	3	1:4	9	40- 60	Agg.		22
150- 749	12	4	1:4	15	40- 60	Paved	9	28
750- 1499	12	4	1:4	25	40- 60	Paved	9	28
1500 and over	12	6(g)	1:4	30	40- 60	Paved	10	30

Engineering judgment may be used to choose a lane-width or shoulder-width dimension other than the widths indicated in the chart for roadways. Factors to consider may be safety, speed, population/land use, benefit/cost analysis, traffic mix, farm equipment, environmental impacts, terrain limitations, bicycle traffic, pedestrian traffic, other nonmotorized uses, functional classification, or other factors. Widths less than those indicated in the chart require a variance in accordance with parts 8820.3300 and 8820.3400.

(a) For rural divided roadways, use the geometric design standards of the Mn/DOT Road Design Manual, with a minimum ten tons structural design and minimum 40 mph design speed.

(b) Use the existing traffic for highways not on the state-aid system.

(c) Applies to slope within recovery area only.

(d) Obstacle-free area (measured from edge of traffic lane). ~~Centerline~~ Culverts with less than 30-inch vertical height allowed without protection in the recovery area.

Guardrail is required to be installed at all bridges where the design speed exceeds 40 mph, and either the existing ADT exceeds 400 or the bridge clear width is less than the sum of the lane and shoulder widths.

Mailbox supports must be in accordance with chapter 8818.

For roadways in suburban areas as defined in part 8820.0100, the recovery area may be reduced to a width of ten feet for projected ADT under 1,000 and to 20 feet for projected ADT of 1,000 or over. Wherever the legal posted speed limit is 40 mph or less, the recovery area may be reduced to a width of ten feet.

(e) Subject to terrain. In suburban areas, the minimum design speed may be equal to the current legal posted speed where the legal posted speed is 30 mph or greater.

(f) Inventory rating of H 15 is required. A bridge narrower than these widths may remain in place if the bridge is not deficient structurally or hydraulically.

(g) Shoulders are required to be a minimum width of eight feet for highways classified as minor arterials and principal arterials with greater than 1,500 ADT projected, at least two feet of which must be paved.

(h) Phased projects must be constructed to attain design strength within three years of completion of final grading. In suburban areas,

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the minimum structural design strength is nine tons or ten tons as needed for system continuity.

Approach sideslopes must be 1:4 or flatter when the ADT exceeds 400.

HS 25 loading with AASHTO Standard Specifications or HL-93 loading with load and resistance factor design (LRFD) is required for new or reconstructed bridges. HS 18 loading is required for all rehabilitated bridges. The curb-to-curb minimum width for new or reconstructed bridges must be no less than either the minimum required lane plus shoulder width or the proposed lane plus shoulder width, whichever is greater, but in no case less than the minimum lane widths plus four feet, and in no case less than required per *Minnesota Statutes*, section 165.04.

For roundabout design, the design criteria of the current edition of the Minnesota State Aid Roundabout Guide are recommended.

8820.9981 MINIMUM DESIGN STANDARDS: NATURAL PRESERVATION ROUTES, DESIGNATED NATIONAL FOREST HIGHWAYS WITHIN NATIONAL FORESTS, AND STATE PARK ACCESS ROADS WITHIN STATE PARKS; NEW OR RECONSTRUCTION PROJECTS.

Subpart 1. **Type I route.** New or reconstruction projects for type I natural preservation routes, designated national forest highways within national forests, and state park access roads within state parks must meet or exceed the minimum dimensions indicated in the following design chart.

Sur-face Type	Design Speed (mph)	Lane Width (feet)	Shoul-der Width (feet)	In-slope (rise:run)	Recov-ery Area (feet)	Design Strength (tons)	Bridge to Remain (feet)
			(a)	(b)	(c)		(d)
Aggre-gate	30	11	1	1:3	3	9	22
Paved	30	11	2	1:3	9	9	22

(a) If the route has scenic vistas that will require parking vehicles along the shoulder, widening the shoulder at these locations is acceptable. The designer will provide a four-foot paved shoulder if the route is a popular bicycle route.

(b) Applies to slope within recovery area only. Other design features, such as guardrails or retaining walls, should be considered in particularly sensitive areas in lieu of reconstructing the inslope in accordance with part 8820.4060.

(c) Obstacle-free area (measured from edge of traffic lane).

Guardrail is required to be installed at all bridges where the design speed exceeds 40 mph, and either the existing ADT exceeds ~~749~~ 400 or the bridge width is less than the sum of the lane and shoulder widths.

Mailbox supports must be in accordance with chapter 8818.

(d) Inventory rating of HS 15 is required. A bridge narrower than these widths may remain in place if the bridge is not deficient structurally or hydraulically.

HS 20 loading with AASHTO Standard Specifications or HL-93 loading with load and resistance factor design (LRFD) is required for new bridges. HS 18 loading is required for all rehabilitated bridges. The curb-to-curb minimum width for new or reconstructed bridges is the sum of the lane and shoulder widths plus four feet.

Ditch depths and widths must be kept to the minimum required to function hydraulically and to provide for adequate snow storage when a standard ditch would negatively impact the surroundings.

The designer shall specify in the plan and special provisions that the clearing width is to be kept to the absolute minimum. In sensitive areas, the normal clearance allowed to a contractor for working room is zero unless otherwise required for special conditions.

Curb and gutter may be used in lieu of a ditch section under the paved option. The lane width, shoulder width, and recovery area must be maintained.

For designated national forest highways within national forests, and state park access roads within state parks, this subpart applies only where the projected ADT is less than 100, unless the route has been designated as a natural preservation route.

For roundabout design, the design criteria of the current edition of the Minnesota State Aid Roundabout Guide are recommended.

[For text of subs 2 and 3, see M.R.]

Subp. 2. **Type II route.** New or reconstruction projects for type II natural preservation routes, designated national forest highways within national forests, and state park access roads within state parks must meet or exceed the minimum dimensions indicated in the

following design chart.

Sur- face Type	Design Speed (mph)	Lane Width (feet)	Shoul- der Width (feet) (a)	In- slope (rise: run) (b)	Recov- ery Area (feet) (c)	Design Strength (tons)	Bridge to Remain (feet) (d)
Aggre- gate	30	11	2	1:3	9		22
Paved	40	11	3	1:4	9	9	22

(a) The designer will provide a six-foot paved shoulder if the route is a popular bicycle route. If the route has scenic vistas that will require parking vehicles along the shoulder, widening the shoulder at these locations is acceptable.

(b) Applies to slope within recovery area only. Other design features, such as guardrail or retaining walls, should be considered in particularly sensitive areas in lieu of reconstructing the inslope in accordance with part 8820.4060. Approach sideslopes must be 1:4 or flatter within the recovery area when the ADT exceeds 400.

(c) Obstacle-free area (measured from edge of traffic lane).

Guardrail is required to be installed at all bridges where the design speed exceeds 40 mph, and either the existing ADT exceeds ~~749~~ 400 or the bridge width is less than the sum of the lane and shoulder widths.

Mailbox supports must be in accordance with chapter 8818.

(d) Inventory rating of HS 15 is required. A bridge narrower than these widths may remain in place if the bridge does not qualify for federal-aid bridge funds.

HS 20 loading with AASHTO Standard Specifications or HL-93 loading with load and resistance factor design (LRFD) is required for new bridges. HS 18 loading is required for all rehabilitated bridges. The curb-to-curb minimum width for new or reconstructed bridges is the sum of the lane and shoulder widths, but may not be less than 30 feet.

Ditch depths and widths must be kept to the minimum required to function hydraulically, to be traversable if within the recovery area, and to provide for adequate snow storage when a standard ditch would negatively impact the surroundings.

The designer shall specify in the plan and special provisions that the clearing width is to be kept to the absolute minimum. In sensitive areas, the normal clearance allowed to a contractor for working room is zero unless required for special conditions.

For designated national forest highways within national forests, and state park access roads within state parks, this subpart may be applied only where the projected ADT is less than 300, unless the route has been designated as a natural preservation route.

For roundabout design, the design criteria of the current edition of the Minnesota State Aid Roundabout Guide are recommended.

Subp. 3. **Type III route.** New or reconstruction projects for type III natural preservation routes, designated national forest highways within national forests, and state park access roads within state parks must meet or exceed the minimum dimensions indicated in the following design chart.

Sur- face Type	Design Speed (mph)	Lane Width (feet)	Shoul- der Width (feet) (a)	In- slope (rise: run) (b)	Recov- ery Area (feet) (c)	Design Strength (tons)	Bridge to Remain (feet) (d)
Aggre- gate	30	12	3	1:4	10		24
Paved (e)	30	12	4	1:4	10	9	24
Paved	40	12	4	1:4	15	9	24

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(a) The designer will provide a six-foot paved shoulder if the route is a popular bicycle route. If the route has scenic vistas which will require parking vehicles along the shoulder, widening the shoulder at these locations is acceptable.

(b) Applies to slope within recovery area only. Other design features, such as guardrail or retaining walls, should be considered in particularly sensitive areas in lieu of reconstructing the inslope in accordance with part 8820.4060. Approach sideslopes must be 1:4 or flatter within the recovery area when the ADT exceeds 400.

(c) Obstacle-free area (measured from edge of traffic lane).

Guardrail is required to be installed at all bridges where the design speed exceeds 40 mph, and either the existing ADT exceeds ~~749~~ 400 or the bridge width is less than the sum of the lane and shoulder widths.

Mailbox supports must be in accordance with chapter 8818.

(d) Inventory rating of HS 15 is required. A bridge narrower than these widths may remain in place if the bridge does not qualify for federal-aid bridge funds.

(e) This standard may be applied only when the project is located in a subdivided area or an area in a detailed development process, and physical restraints are present that prevent reasonable application of another level of these standards.

HS 25 loading with AASHTO Standard Specifications or HL-93 loading with load and resistance factor design (LRFD) is required for new bridges. HS 18 loading is required for all rehabilitated bridges. The curb-to-curb minimum width for new or reconstructed bridges is the sum of the lane and shoulder widths, but may not be less than 32 feet.

Ditch depths and widths must be kept to the minimum required to function hydraulically, to be traversable if within the recovery area, and to provide for adequate snow storage when a standard ditch would negatively affect the surroundings.

The designer shall specify in the plan and special provisions that the clearing width is to be kept to the absolute minimum. In sensitive areas, the normal clearance allowed to a contractor for working room is zero unless required for special conditions.

For roundabout design, the design criteria of the current edition of the Minnesota State Aid Roundabout Guide are recommended.

8820.9995 MINIMUM BICYCLE PATH STANDARDS.

Minimum Bicycle Path Standards

For OffRoad Design, the following shall apply:

Minimum Surface Width (two-way)	8 ft (b)
Shoulder/Clear Zone	2 ft (c) (d)
Inslope	1:2 (rise:run)
Design Speed	20 mph (e)
Vertical Clearance	10 ft

(a) For on-road bicycle facilities, the appropriate tables in the Minnesota Bicycle Transportation Planning and Design Guidelines are recommended for design purposes.

(b) Ten feet is desired for a combined bicycle/pedestrian path. Five feet is required for a one-way bicycle path.

(c) Whenever practicable, the shoulder/clear zone of an off-road bike path should be carried across bridges and through underpasses. ~~Maximum~~ Minimum structure clear width must be 12 feet. When the full width of the approach bike path (surface width plus shoulder/clear zone) is greater than the proposed clear width of the structure, then lead-in bicycle safety railing is required at each end of the bridge or underpass. As an alternative to lead-in bicycle safety railing, the surface width of the approach bike path may be narrowed at a 1:50 taper while maintaining minimum surface width and shoulder/clear zone through the structure.

(d) Clear zone is measured from the edge of the bicycle travel lane.

(e) Use a 30 mph design speed for grades longer than 500 feet and greater than four percent, from the uphill point where the grade equals four percent to 500 feet beyond the downhill point where the grade becomes less than four percent. The maximum allowable grade is 8.3 percent.

Commissioners' Orders

Various agency commissioners are authorized to issue "commissioner's orders" on specified activities governed by their agency's enabling laws. See the *Minnesota Statutes* governing each agency to determine the specific applicable statutes. Commissioners' orders are approved by assistant attorneys general as to form and execution and published in the *State Register*. These commissioners orders are compiled in the year-end subject matter index for each volume of the *State Register*.

Office of Administrative Hearings for the Department of Transportation

In the Matter of the Petition of the Treated Wood Council for a Declaration that a Department of Transportation Memorandum Regarding a Hazard Evaluation Process of Products and Waste Materials Is an Unadopted Rule

OAH 03-3000-18088-2

ORDER

By Petition filed May 23, 2007, the Treated Wood Council (Petitioner) seeks an order directing the Department of Transportation (Department) to cease enforcement of an unadopted rule. The Department filed a written response on June 12, 2007. Oral argument was held on the Petition on July 19, 2007, at the Office of Administrative Hearings. The record closed on August 2, 2007, following submission by the parties of post-argument memoranda.

Stephen A. Melcher, Fabyanske, Westra, Hart & Thomson, PA, 920 Second Avenue South, Suite 1100, Minneapolis, Minnesota 55402 appeared on behalf of the Treated Wood Council. Patrick Whiting, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, Minnesota 55101 appeared on behalf of the Department of Transportation (Department or Mn/DOT).

Based upon all of the filings by the parties, the oral argument, and for the reasons set out in the Memorandum which follows,

IT IS HEREBY ORDERED THAT:

1. The Department of Transportation's February 1, 2006, Technical Memorandum No. 06-05-ENV-01 regarding its Hazard Evaluation Process of Products and Waste Materials is not an unadopted amendment to a rule or an unadopted rule.
2. Treated Wood Council's Petition is DISMISSED.

Dated: September 6, 2007

signed: KATHLEEN D. SHEEHY
Administrative Law Judge

NOTICE

This decision is the final administrative decision under *Minnesota Statutes* § 14.381. It may be appealed to the Minnesota Court of Appeals under *Minnesota Statutes* §§ 14.44 and 14.45.

MEMORANDUM

Petitioner is an international trade association of organizations involved in the treated wood industry, at least eight of which have offices and/or facilities, and conduct business, in Minnesota.¹ Petitioner's members produce pressured-treated wood products.² The Petitioner seeks an order determining that the Department is improperly implementing a policy requiring vendors of treated wood products to submit their products to a "hazard evaluation process" as though there were a duly adopted rule requiring such a process. Petitioner brings this challenge pursuant to *Minnesota Statutes* § 14.381, which permits a person to "petition the Office of Administrative Hearings seeking an order of an administrative law judge determining that an agency is enforcing or attempting to enforce a policy, guideline, bulletin, criterion, manual standard, or similar pronouncement as though it were a duly adopted rule."

¹ Petition at 2; Affidavit of Jeffrey T. Miller ¶¶ 2-3.

² Miller Aff. ¶¶ 4-5.

Commissioners' Orders

Background Facts

The Minnesota Department of Transportation has used treated wood products in highway construction projects since at least 1976.³ Traditionally, treated wood has been used in retaining walls, noise walls, vehicle bridge structures, guardrail posts, pilings, and buildings (such as salt sheds). The most common current uses for treated wood are as non-structural parts of noise walls.⁴

Over time, the Department has decreased its use of wood products treated with chromated copper arsenate (CCA) because of its propensity to leach contaminants, particularly arsenic, into the ground.⁵ In October 2002 the Commissioner of the Minnesota Pollution Control Agency strongly recommended that the Department examine the possibility of purchasing alternative materials, because of issues concerning the disposal of CCA-treated wood in solid waste landfills.⁶ Studies conducted by the Department confirmed that there is soil contamination adjacent to noise barriers in the Twin Cities and recommended further investigation of the scope and extent of metals migration and identification of high-risk areas near residential dwellings.⁷ In January 2004, the U.S. Environmental Protection Agency (EPA) prohibited the use of CCA to preserve wood intended for most residential uses.⁸

Because of these concerns, in late 2003 the Department began permitting or requiring the use of borate-treated wood (one such product is Envirosafe Plus) for noise walls on its projects.⁹ Borate-treated wood does not contain arsenic, heavy metals, or chromium.¹⁰ In late 2004, the Department issued a draft Policy Guideline providing that it would no longer use chemically treated wood products on its projects unless and until the products were reviewed and approved by the Department's Office of Environmental Services (OES).¹¹ This draft policy was not implemented.¹²

In February 2006 the review procedures contained in the draft Policy Guideline were, however, substantially incorporated into the Department's policies concerning review of products used in construction and recycling of waste materials. The document at issue is a Technical Memorandum issued by the Department's Engineering Services Division, entitled "Hazard Evaluation Process of Products and Waste Materials," Technical Memorandum No. 06-05-ENV-01 (Memorandum).¹³ The Memorandum provides that it replaces an earlier technical memorandum and will continue in force until February 1, 2011, unless superseded prior to that date. The Memorandum's introduction provides that it is the policy of the Department to comply with state and federal regulatory requirements and to provide evidence of due diligence in preventing, detecting, and correcting violations of environmental requirements, as required by Minn. Stat. § 114C.21, subd. 2a. It further provides that in determining whether the Department will procure particular types of new products or reuse/recycle waste materials, "Mn/DOT must balance public health and safety, environmental risks and potential liabilities with the possible benefits received by using the product or waste material."¹⁴

The "Guidelines" section of the Memorandum provides:

Vendors that would like Mn/DOT to consider using their products or waste materials should be directed to contact the Mn/DOT Product Evaluation Committee (PEC). The vendor must follow the application process established by the PEC. The PEC will distribute the product information to the appropriate Mn/DOT functional groups for review and possible inclusion in the Mn/DOT Qualified Products List. The Office of Environmental Services will inform the PEC which product types must be sent to OES for review using the Hazard Evaluation Process.¹⁵

The Memorandum further outlines the procedural steps OES will use to evaluate the product and specifies the information a vendor must submit for completion of the Hazard Evaluation Process (HEP).¹⁶ It describes the general principles that OES will use in making product procurement decisions, including consideration of short- and long-term environmental liabilities associated with using the product, as well as current and future legal and financial liability issues associated with the intended use of the product. Upon completion of the review, it provides that OES will make a recommendation to the Engineering Services Division Director as to whether the product

³ Affidavit of John Sampson ¶ 8.

⁴ *Id.* ¶ 11.

⁵ *Id.* ¶ 13.

⁶ Dept. Ex. 11. This recommendation was repeated in February 2006. See Dept. Ex. 12.

⁷ Dept. Ex. 9. See also Dept. Exs. 19 & 20.

⁸ Dept. Ex. 19 at CRS-2.

⁹ Petitioner's Exs. 19-24; Miller Aff. ¶¶ 7a-7f.

¹⁰ Petitioner's Ex. 24; Dept. Exs. 13-14.

¹¹ Petitioner's Ex. 28; Miller Aff. ¶ 10.

¹² Sampson Aff. ¶ 31.

¹³ Petitioner's Ex. 29; Dept. Ex. 1.

¹⁴ *Id.*

¹⁵ Dept. Ex. 1 at 2.

should be included in the Department's Qualified Product List or rejected based on the product's expected environmental performance.¹⁷ To date, the OES has completed reviews of approximately 20 new products.¹⁸

As indicated above, the Department maintains a Qualified Product List identifying products of various kinds that are acceptable for use in road projects.¹⁹ The list includes hundreds if not thousands of products ranging from joint and crack sealer, cement, epoxies, concrete curing compounds, grouts, paints, pavement markers, soil stabilizers, and erosion control blankets. The list also includes treated wood products.²⁰ The current Approved Treated Wood Products page lists the product name or the type of protective treatment in the wood as well as restrictions on the use of each type of wood or treatment listed. For example, EnviroSafe Plus has been approved for structural members that are not in contact with soil; another product is approved for use except within 100 feet of surface water bodies; and treated wood products currently in Mn/DOT stock are approved for their intended purpose until Mn/DOT's supply is exhausted. A note at the bottom of this list states that "[m]anufacturers or distributors of treated wood products can submit a request to Mn/DOT for product evaluation by the Product Evaluation Committee."²¹

In addition, approximately every five years the Department publishes a book of standard contract specifications for highway construction contracts.²² The last such book was published in 2005. The Department's book of Standard Specifications (2005) includes, among many other things, requirements for various types and uses of wood products, such as timber bridges, guardrail and fence posts, structural timber, bridge wearing course planks, timber piling, traffic signal poles, and light poles. The book of Standard Specifications describes the type and quality of wood products required for each intended use, and generally requires the use of timber treated with a preservative in accordance with Section 3491 of the Standard Specifications.²³ Section 3491 of the Standard Specifications is captioned "Preservatives and Preservative Treatment of Timber Products," and it requires the use of products treated in accordance with standards developed by the American Wood Preservers Association (AWPA).²⁴ The AWPA does not approve the use of borate-treated wood for exterior applications; it only lists applications for borate-treated wood that are above ground and continuously protected from liquid water.²⁵

Legal Issues

The Petitioner asserts that, because the Department's book of Standard Specifications requires compliance with AWPA standards, it cannot, by issuing a Technical Memorandum, cease to rely on those standards in determining whether a particular treated wood product or preservative is approved by the Department for use in its construction projects. Petitioner argues that the Department must accept products and product uses consistent with AWPA approvals, regardless of the outcome of the HEP outlined in the Memorandum. The foundation for this argument is that the Memorandum constitutes either an improperly adopted amendment to the Standard Specifications or that the Memorandum is itself an improperly adopted rule that should have been adopted, if at all, through formal rule-making procedures, during which the Department would be required to demonstrate the need for and reasonableness of its policy. The Petitioners seek an order requiring the Department to "cease its implementation of the Policy and return to its historic practice of specifying wood treated with EPA-registered pesticides and in accordance with AWPA standards."

The Department maintains the February 2006 Memorandum is not a rule; and in the alternative, if it is considered a rule, then it falls within several exceptions to rule-making requirements contained in the Minnesota Administrative Procedure Act.

¹⁶ *Id.* at 3-5.

¹⁷ *Id.* at 5.

¹⁸ Dept. Exs. 23-42; Affidavit of Dr. Robert Edstrom.

¹⁹ The list is titled "Approved Products and Certified Products and Sources for Acceptance on Mn/DOT and Federal-Aid Projects." See <http://www.mrr.dot.state.mn.us/materials/apprprod.asp>.

²⁰ Dept. Ex. 5; <http://www.mrr.dot.state.mn.us/materials/apprprod.asp>.

²¹ Petitioner's Ex. 10; <http://www.mrr.dot.state.mn.us/materials/ApprovedProducts/approvedwood.pdf>. Two other treated wood products have been submitted for review under the HEP. TimberSil was reviewed and given a low risk hazard rating and a recommendation that it could be safely used on Mn/DOT projects, but it was not yet on the approved product list when the record closed. Another product, Merichem CuNap-8, was submitted for review in September 2006 and is still under review. See Miller Aff. ¶¶ 15 & 16; Petitioner's Exs. 37 and 41.

²² Dept.'s Letter Brief at 1 (Aug. 2, 2007); <http://www.dot.state.mn.us/tecsup/spec>.

²³ Department of Transportation Standard Specifications §§ 2403, 3412, 3413, 3426, 3457, 3471, and 3840 (2005) (Petitioner's Exs. 11-16, 18).

²⁴ Petitioner's Ex. 17.

²⁵ Affidavit of Scott W. Conklin ¶¶ 10-11.

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Discussion

The Minnesota Administrative Procedure Act (MAPA) defines a rule as:

every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure.²⁶

Certain agency statements are expressly excluded from the statutory definition of a rule, including rules concerning only the internal management of the agency or other agencies that do not directly affect the rights of or procedures available to the public.²⁷ Unless an agency statement is excluded from the definition of a rule, it is subject to the rulemaking requirements set forth in Chapter 14 of *Minnesota Statutes*. However, an agency may adopt rules “only pursuant to authority delegated by law.”²⁸

In general, an agency is not deemed to have engaged in rulemaking if its interpretation of a statute or rule coincides with the plain meaning of that statute or rule.²⁹ In other words, if an interpretation is consistent with the plain meaning of the statute or rule that is being interpreted, the agency action is authorized by the statute or rule itself, and the fact that no rule was adopted does not render the interpretation invalid.³⁰ However, if an agency’s announced policy is inconsistent with the statute or rule, the courts have often invalidated that policy. And, if the policy makes new law without the public input required by the APA, the policy will be invalidated.

The Memorandum As an Unadopted Amendment to a Rule

Petitioner’s claim that the Memorandum is an unadopted amendment to a rule rests on two main ideas: that the Standard Specifications are a rule; and, that the Memorandum, by eliminating reference to the AWP standards, is an unadopted amendment to those parts of the Standard Specifications that refer to the AWP standards. To prevail on this argument, the Petitioner would have to demonstrate that the book of Standard Specifications is itself a product of statute or rule and that the Memorandum is inconsistent with such statute or rule.

In general, the Department is required to comply with a variety of statutory mandates concerning the environment. It is charged with providing “a balanced transportation system” for the State of Minnesota.³¹ In planning and implementing all modes of transportation, the Commissioner of Transportation is required to ensure that they are consistent with the State’s environmental and energy goals.³² The Commissioner must:

consider the social, economic, and environmental effects resulting from existing and proposed transportation facilities and . . . make continuing efforts to mitigate any adverse effects. The commissioner shall utilize a systematic, interdisciplinary approach which shall insure the integrated use of the natural, social, and physical sciences and the environmental design arts in plans and decisions which may affect the environment.³³

In addition, the state’s Environmental Policy Act requires all state agencies to “identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given *at least equal consideration* in decision making along with economic and technical considerations.”³⁴ Other state laws and executive orders make state agencies responsible for “a release or threatened release of a hazardous substance” from a state facility and require state agencies to “encourage pollution prevention through their purchasing policies and specifications.”³⁵

With regard to the Department’s own purchasing policies and specifications, the Commissioner has authority to “construct and maintain transportation facilities as authorized by law.”³⁶ In order to accomplish these tasks, “[t]he commissioner may conduct the work

²⁶ Minn. Stat. § 14.02, subd. 4.

²⁷ Minn. Stat. § 14.03, subd. 3 (1).

²⁸ *Id.* § 14.05, subd. 1.

²⁹ *Cable Communications Board v. Nor-west Cable Communications Partnership*, 356 N.W.2d 658, 667 (Minn. 1984); *In the Matter of the Petition for Review of the Minnesota Department of Commerce Policy Pronouncement and Guidance Document Regarding Insurance/Credit Scoring Filings*, OAH Docket No. 1-1004-15233-2 (2003) at 3.

³⁰ *Sellner Manufacturing Co. v. Commissioner of Taxation*, 202 N.W.2d 886, 888-89 (Minn. 1972).

³¹ Minn. Stat. § 174.01, subd. 1.

³² *Id.* § 174.01, subd. 2 (10).

³³ Minn. Stat. § 174.03, subd. 6.

³⁴ *Id.* § 116D.03, subd. 2 (emphasis added).

³⁵ *Id.* § 115B.03, subd. 1; Dept. Exs. 6-7 (Minnesota Executive Orders No. 99-4 and 03-04).

³⁶ *Id.* § 174.03, subd. 4(1).

Commissioners' Orders

or any part of the work incidental to the construction and maintenance of the trunk highways . . . by contract.”³⁷ The legislature has explicitly warned that “the opportunity to be awarded [transportation] department contracts or to supply goods or services to the department is a privilege, not a right”³⁸ Department contracts “must be based on specifications prescribed by the commissioner.”³⁹

In accordance with the requirement to prescribe specifications, the Department publishes its book of Standard Specifications. The book recognizes that, despite the apparent purpose of making specifications uniform and predictable, specifications will change over time and with individual projects:

These Standard Specifications, the Plans, Special Provisions, supplemental Specifications, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work.

*In case of discrepancy, calculated dimensions will govern over scaled dimensions; Special Provisions will govern over Standard and supplemental Specifications and Plans; Plans will govern over Standard and supplemental Specifications; supplemental Specifications will govern over Standard Specifications.*⁴⁰

“Special Provisions” are defined in the book as “[a]dditions and revisions to the standard and supplemental Specifications covering conditions peculiar to an individual Project.”⁴¹ “Supplemental Specifications” are defined as “[a]dditions and revisions to the standard Specifications that are approved subsequent to issuance of the printed book of standard Specifications.”⁴²

Importantly, the Petitioner does not contend that the Department’s book of Standard Specifications is itself an improperly adopted rule. The Petitioner argues that it both “assumes” and “hopes” that the Standard Specifications were adopted pursuant to the rulemaking process set forth in the MAPA, but the Petitioner has pointed to no legal or factual basis to support such assumptions or hopes. The Petitioner has identified no statutory requirement that the book of Standard Specifications be subject to rulemaking, nor is there any evidence that the Department, despite the lack of express authority to do so, chose to use the rulemaking process in publishing it. On the contrary, the Department maintains it was not required to adopt the Standard Specifications through MAPA rulemaking procedures and that it did not in fact do so.

The HEP outlined in the Memorandum is consistent with the statutory mandate that the Department must weigh environmental considerations heavily as it fulfills its road-building responsibilities. It is also consistent with executive orders requiring it to prevent pollution in developing its purchasing policies and specifications. And the Commissioner of Transportation has statutory authority to “prescribe” standard contract specifications pursuant to *Minnesota Statutes* § 161.32, subd. 1a (2006). When the legislature wishes to authorize or require rulemaking, the legislature uses the language of rulemaking.⁴³ In requiring the Commissioner of Transportation to

³⁷ *Id.* § 161.32, subd. 1. The Commissioner of Administration is required to approve any contract entered into by the Department of Transportation, and make all decisions regarding acquisition activities, unless that approval authority has been delegated to the Department of Transportation pursuant to the Commissioner of Administration’s power to make such a delegation. See Minn. Stat. § 16C.03, subs. 3, 4a, & 5. See also Minn. Stat. § 16C.03, subd. 16. The Commissioner of Administration has specific rulemaking authority relating to:

- (1) solicitations and responses to solicitations, bid security, vendor errors, opening of responses, award of contracts, tied bids, and award protest process;
- (2) contract performance and failure to perform;
- (3) authority to debar or suspend vendors, and reinstatement of vendors;
- (4) contract cancellation;
- (5) procurement from rehabilitation facilities; and
- (6) organizational conflicts of interest.

Minn. Stat. § 16C.03, subd. 2. The rules promulgated pursuant to this rulemaking authority are at Minn. R. 1230 *et. seq.* These rules are essentially procedural and do not pertain to the development of contract specifications or product procurement.

³⁸ Minn. Stat. § 161.315, subd. 1(2).

³⁹ *Id.* § 161.32, subd. 1a.

⁴⁰ Minnesota Department of Transportation, Standard Specifications § 1504 (2005) (emphasis added).

⁴¹ *Id.* § 1103.

⁴² Minnesota Department of Transportation, Standard Specifications § 1103 (2005).

⁴³ *See, e.g.*, Minn. Stat. § 161.321, subd. 6 (permitting the Commissioner to promulgate rules regarding small business contracting); Minn. Stat. § 16C.03, subd. 2 (permitting the Commissioner of Administration to adopt rules relating to specific contracting topics).

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“prescribe” contract specifications, the legislature chose to permit the Commissioner to dictate the terms of those specifications, not to require them to be adopted through the rulemaking process. The Administrative Law Judge has found no authority that would either authorize or require the Department to “adopt” standard contract specifications as rules. Because the Standard Specifications are not required to be adopted through rulemaking, there is no basis for concluding that the February 2006 Memorandum’s departure from those specifications is an unadopted amendment to a rule.

In the alternative, the Petitioner argues that the Standard Specifications can be considered “rules” based on long-held, unchanging agency policy. Petitioner’s argument cannot succeed because the book of Standard Specifications, by its own terms, contains clear language indicating that the specifications are subject to change in any given contract.⁴⁴ Because the Standard Specifications are not rules, a document reflecting a process that departs from them cannot be said to be an amendment of a rule.

The Memorandum Itself As an Unadopted Rule

In order to be considered a rule, an agency statement must be “of general applicability.” Although it is true that, according to the procedures spelled out in the Memorandum, all products submitted to the Department for approval must be submitted to the PEC for review and possible evaluation under the HEP, it does not necessarily follow that the Memorandum is a statement of general applicability. The process applies only to those vendors who wish to have their products reviewed and recommended for possible inclusion in the specifications for road construction contracts. The HEP provides a process and guidelines to make the review consistent and orderly, but does not impose blanket rules applicable to all products, or even to all wood-treated products. The Administrative Law Judge accordingly concludes the Memorandum is not a statement of general applicability and that it falls outside the definition of a rule.⁴⁵

In addition, Minnesota courts have found that an agency’s development of policy on a case-by-case basis falls outside of the definition of a rule. For example, in *Reserve Life Insurance Co. v. Commissioner of Commerce*, the Minnesota Court of Appeals found that the Commerce Department’s evaluation of an insurance company’s policy forms did not amount to rulemaking. There, the Commerce Department reviewed the forms on a case-by-case basis to determine whether the forms contained terms that were unfair, inequitable, misleading, or deceptive.⁴⁶ In this case, as in *Reserve Life*, the Department is conducting a case-by-case review of products submitted by vendors to determine, in part, whether any environmental hazards posed by the product are sufficiently acceptable to justify their use in public road construction projects. The Administrative Law Judge accordingly concludes the rulemaking requirements are not applicable.

Even if the Memorandum were within the general definition of a rule, however, the Department maintains the Memorandum is not subject to rulemaking because it falls within a statutory exception to the definition of a rule, which exempts rules concerning only the internal management of the agency that do not directly affect the rights of or procedures available to the public.⁴⁷

The Memorandum describes the process by which the Department will review and specify products to be used in highway construction contracts. This concerns the internal management of the agency’s road-building responsibilities and does not directly affect the rights of or procedures available to the public. It does not preclude the Petitioner’s members from selling their products in Minnesota or anywhere else; it simply describes the process by which the Department will review products that it may potentially purchase for use in transportation-related construction projects. The implication of the argument that the Department should be required to adopt this policy through rulemaking is that all state agencies should have to open rulemaking dockets and conceivably hold public hearings to establish contract specifications for purchases ranging from computer hardware and software to paper clips. This would impose an extraordinary

⁴⁴ Minnesota Department of Transportation, Standard Specifications § 1103 (2005).

⁴⁵ Cf. *MacNeil Environmental, Inc. v. Allmon*, 2002 WL 767754 (Minn. App.) (unpublished) (contract provision was not a statement of general applicability and future effect).

⁴⁶ *Reserve Life Insurance Co. v. Commissioner of Commerce*, 402 N.W. 2d 631, 634 (Minn. App. 1987), *pet. for review denied* (Minn. May 20, 1987); *In the Matter of Hibbing Taconite*, 431 N.W. 2d 885, 894 (Minn. App. 1988).

⁴⁷ Minn. Stat. § 14.03, subd. 3(a)(1); *see also In re the Matter of Assessment Issued to Leisure Hills Health Care Center*, 518 N.W.2d 71, 74 (Minn. App. 1994), *pet. for rev. denied*, (Minn. Sept. 16, 1994) (agency procedure for performing inspections not subject to rulemaking).

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burden and expense on state agencies. There is simply no precedent for the notion that, when a state agency is in the role of consumer, it must engage in rulemaking before it can determine which particular product to purchase.⁴⁸

Neither Petitioner's member producers nor anyone else has a right to sell goods to the Department.⁴⁹ Nor do Petitioners have a right to dictate the process by which the Department evaluates the various products it may or may not purchase. The agency has the discretion to determine what products will suit its needs and to balance the sometimes-competing interests such as environmental hazard, cost, and long-term efficacy. The HEP process, if it does fall within the general definition of a rule, is statutorily excluded from rulemaking requirements because it concerns the internal management of the agency.

Finally, much of Petition is devoted to addressing the efficacy of borate-treated products, as opposed to products treated in accordance with AWPAs standards. The Department agrees that the HEP was never intended to address efficacy considerations; by its terms it is intended to address other issues, including environmental impacts and potential liability.⁵⁰ These arguments are irrelevant to this proceeding, which, under *Minnesota Statutes* §14.381, can only consider whether the Memorandum, and specifically the HEP, is an unadopted rule. The ALJ concludes that the Memorandum is not an unadopted rule.

K. D.S.

⁴⁸ Cf. *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 127 (1940) ("Like private individuals and businesses, the Government enjoys the unrestricted power to produce its own supplies, to determine those with whom it will deal, and to fix the terms and conditions upon which it will make needed purchases.").

⁴⁹ See Minn. Stat. § 161.315, subd. 1(2).

⁵⁰ Sampson Aff. ¶ 28.

Official Notices

Pursuant to *Minnesota Statutes* §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

The *State Register* also publishes other official notices of state agencies and non-state agencies, including notices of meetings and matters of public interest.

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Minnesota Agricultural and Economic Development Board Notice of Public Hearing on the Proposed Issuance of Bonds by the Colorado Health Facilities Authority to Refinance Projects of the Evangelical Lutheran Good Samaritan Society, a North Dakota Nonprofit Corporation, Previously Financed under the Minnesota Agricultural and Economic Development Board Act

NOTICE IS HEREBY GIVEN that the Minnesota Agricultural and Economic Development Board (the "Ag Board") or its designee representative, shall meet on October 16, 2007 at 9:00 a.m., at 1st National Bank Building, 332 Minnesota Street, Saint Paul, Minnesota, for the purpose of conducting a public hearing on a proposed issue of one or more series of bonds by the Colorado Health Facilities Authority (the "CoHFA Bonds") to finance or refinance projects on behalf of The Evangelical Lutheran Good Samaritan Society, a North Dakota nonprofit corporation (the "Applicant"). Such persons as desires to be heard with reference to said issue of bonds will be heard at this public hearing.

The projects whose debt is to be financed or refinanced, and the estimated principal amounts of the financing or refinancing attributable to each project, are:

- Comforcare Good Samaritan Center, 205 14th Street NW, Austin, MN - \$8,100,000;
- Lakeview Good Samaritan Center, 515 S Franklin Street, Glenwood, MN - \$720,000;
- Hoffman Good Samaritan Center, 104 6th Street, Hoffman, MN - \$625,000;
- Pleasant View Good Samaritan Center, 1000 2nd St. S., St. James, MN - \$3,900,000;
- Waconia Good Samaritan Center, 333 W. 5th St., Waconia, MN - \$715,000;
- Westview Acres, 433 W. 5th St., Waconia, MN - \$625,000;
- Good Samaritan Communities of Windom, 705 Sixth St., Windom, MN - \$710,000;

The Applicant is the initial owner of the projects, and the projects will be owned, operated and managed by the Applicant. It is contemplated that the projects will continue to be used as nursing homes, senior housing, assisted living or related facilities. The total estimated amount of the CoHFA Bonds attributable to the projects is \$15,395,000. The CoHFA Bonds and the interest thereon shall be payable solely from the revenue pledged to the payment thereof, and no holders of any such bonds shall ever have the right to compel any exercise of the taxing powers of the State of Minnesota or any political subdivision thereof to pay the CoHFA Bonds or the interest thereon nor to enforce payment against any property of said State or said political subdivision.

Official Notices

This Notice of Public Hearing is being given pursuant to Section 147(f) of the *Internal Revenue Code of 1986*, as amended.

A copy of the Ag Board's resolution regarding the Ag Board's "approval", as such term is used in *Internal Revenue Code* §147(f) and for the sole purpose of complying with the requirements therein, of the CoHFA Bonds is available for public inspection at the offices of the Ag Board at 500 Metro Square, 121 7th Place East, Saint Paul, Minnesota from the date of this notice to the date of the public hearing hereinabove identified, during normal business hours.

All persons interested may appear and be heard at the time and place set forth above, or may file written comments with the Executive Director prior to the date of the hearing set forth above.

Dated: October 1, 2007

BY ORDER OF THE MEMBERS OF THE
MINNESOTA AGRICULTURAL AND ECONOMIC
DEVELOPMENT BOARD

Signed: Paul Moe, Executive Director

Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design REQUEST FOR COMMENTS on Possible Amendment to Rules Governing Land Surveying Education and Experience Licensure Requirements, *Minnesota Rules*, Chapter 1800.3505

Subject of Rules. The Minnesota Board of Architecture, Engineering, Land Surveying, Geoscience and Interior Design requests comments on its possible amendments to rules pertaining generally to all licensees and specifically governing land surveying. The Board is considering rule amendments that will require persons preparing to sit for the professional land surveying examination to complete a minimum of 160 hours of office experience in plat computations.

Persons Affected. The amendment to the rules would likely affect all licensees and specifically pertain to the licensure of land surveyors.

Statutory Authority. *Minnesota Statutes*, section 326.06, authorizes the Board to "make all rules, not inconsistent with law, needed in performing its duties."

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing or orally until Friday, 4:30 p.m. on October 26, 2007 or until further notice is published in the *State Register* that the Board intends to adopt or to withdraw the rules. The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design is preparing a draft of the possible rules amendment. Written or oral comments, questions, requests to receive a draft of the rules when it has been prepared, and requests for information on these possible rules should be directed to: Patricia J. Litchy, J. D. at the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design, 85 East Seventh Place, Suite 160, St. Paul, Minnesota 55101; **phone:** (651) 296-2379, **fax:** (651) 297-5310 and **e-mail:** patricia.litchy@state.mn.us **TTY** users may call 1-800-627-3529.

Alternative Format. Upon request, this Request for Comments can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

Note: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submit comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Dated: September 14, 2007

Doreen Johnson Frost, Executive Director
**Minnesota Board of Architecture, Engineering, Land
Surveying, Landscape Architecture, Geoscience
and Interior Design**

Official Notices

Minnesota Comprehensive Health Association Notice of Meeting of the Board of Directors October 5, 2007

NOTICE IS HEREBY GIVEN that a meeting of the Minnesota Comprehensive Health Association's (MCHA) Board of Directors will be held at 9:00 a.m. on Friday, October 5, 2007, at the MCHA Executive Office, 5775 Wayzata Blvd., Suite 910, St. Louis Park, MN.

For additional information, please call Lynn Gruber or Mary McCaffrey at (952) 593-9609.

Minnesota Department of Health

Division of Health Policy

Notice of Intent to Adopt Exempt Rules Regarding a Uniform, Standard Companion Guide for Eligibility Inquiry and Response Electronic Transactions; Pursuant to *Minnesota Statutes, Section 62J.536*

Introduction. Notice is hereby given that the Minnesota Department of Health (MDH) is seeking information or opinions from outside sources on a Uniform, Standard Companion Guide for Eligibility Inquiry and Response Electronic Transactions, as developed by the Commissioner of the Department of Health in consultation with the Minnesota Administrative Uniformity Committee (AUC), and its Eligibility Technical Advisory Group.

Contact Person. MDH requests information and opinions concerning the applicability and functionality of the Uniform, Standard Companion Guide for Eligibility Inquiry and Response Electronic Transactions. Interested persons or groups may submit data or views in writing. Written statements should be addressed to Colleen Morse, MDH, P.O. Box 64882, St. Paul, MN 55164-0822, or **e-mail** at colleen.morse@health.state.mn.us or **fax:** (651) 201-5179.

Description of the Rules. Minnesota Statutes, section 62J.536, requires the Minnesota Commissioner of Health, in consultation with the Minnesota Administrative Uniformity Committee, to promulgate rules pursuant to section 62J.61 establishing and requiring group purchasers and health care providers to use electronic claims and eligibility transactions with a single, uniform companion guide to the implementation guides described under Code of Federal Regulations, title 45, part 162. The statute requires that beginning January 15, 2009: all group purchasers must accept from health care providers the eligibility for a health plan transaction described under Code of Federal Regulations, title 45, part 162, subpart L; and all group purchasers must also transmit to providers the eligibility for a health plan transaction as described under Code of Federal Regulations, title 45, part 162, subpart L. The statute also requires that beginning January 15, 2009, all health care providers must: submit to group purchasers the eligibility for a health plan transaction described under Code of Federal Regulations, title 45, part 162, subpart L; and all health care providers must also accept from group purchasers the eligibility for a health plan transaction, as described under Code of Federal Regulations, title 45, part 162, subpart L. The statute further requires that each transaction described above shall use a single, uniform companion guide to the implementation guide described under the Code of Federal Regulations, title 45, part 162. In addition, the statute requires all group purchasers and health care providers to exchange claims and eligibility information electronically using the transactions, companion guides, implementation guides, and timelines set forth in subdivision 1 of the statute. The statute requires the Commissioner of Health to promulgate rules pursuant to section 62J.61, at least 12 months prior to the timelines required in subdivision 1 of *Minnesota Statutes, section 62J.536*. Under *Minnesota Statutes, section 62J.61*, the Commissioner of Health is exempt from chapter 14, including section 14.386, in implementing sections 62J.50 to 62J.54, subdivision 3, and 62J.56 to 62J.59. Because the Commissioner of Health has determined that it is unduly cumbersome to publish the entire text of the proposed rules, the Commissioner of Health is publishing this notice of the proposed rules with a detailed description.

Public Review Process. MDH will provide free copies of the draft Uniform, Standard Companion Guide for Eligibility Inquiry and Response Electronic Transactions, in paper or electronic PDF format, to persons and organizations interested in reviewing them. The draft companion Guide will be available as of Monday, October 1, 2007. **Comments and suggestions for improvements on this document will be accepted at the above address until 4 PM Tuesday, October 30, 2007.** After the Commissioner of Health has considered all comments received, the Commissioner will publish a notice of adoption in the State Register. The rules will take effect 30 days subsequent to that notice.

How to Obtain the Uniform, Standard Companion Guide for Eligibility Inquiry and Response Electronic Transactions; A free copy of the proposed rules is available upon request. Persons who wish to obtain a paper copy should call Colleen Morse at MDH, 651/201-3570, or fax a request to 651/201-3574 or write to the address above. The document will also be available for downloading on the World Wide Web at: <http://www.health.state.mn.us/asa/index.html>

Dated: October 1, 2007

Dianne M. Mandernach, Commissioner
Department of Health

Minnesota Historical Society State Review Board Regular Meeting

A meeting of the State Review Board of the Minnesota Historical Society to consider nominations to the National Register of Historic Places will be held on Tuesday, October 16, 2007 in the Cargill Commons, MacMillan Education Wing, Minnesota Historical Society History Center, St. Paul, Minnesota. The State Review Board will meet at 6:45 p.m. for an informational presentation on program activities made by the Preservation Office staff. The meeting will be called to order and consideration of the meeting's agenda will begin at 7:00 p.m. A sign language interpreter is available with two weeks notice, and auxiliary aids are available with two weeks notice. Call (651) 259-3450, or TTY (651) 282-6073. For further information contact the State Historic Preservation Office, Minnesota Historical Society, 345 Kellogg Boule-vard West, St. Paul, MN 55102, (651) 259-3450.

Public Employees Retirement Association Notice of Meeting Cancellation of the Board of Trustees for October 11, 2007

The meeting of the Board of Trustees of the Public Employees Retirement Association (PERA) scheduled to be held on Thursday, October 11, 2007, at 9:30 a.m., in the PERA offices, 60 Empire Drive, Room 117, Saint Paul, Minnesota, **has been cancelled.**

Minnesota Sentencing Guidelines Commission Notice of Public Hearing to Consider Modifications to the Sentencing Guidelines

The Minnesota Sentencing Guidelines Commission will hold a public hearing on Thursday, November 1, 2007, at 2:00 p.m. in Room 107 at the State Capitol Building, 75 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155. The public hearing is being held to consider proposed modifications to the severity level rankings of controlled substance possession crimes in the first and second-degree mandated by the Legislature in the 2007 Minnesota Session Laws – **Chapter 54**, Section 15.

Copies of the proposed modifications are available free of charge on the agency's website at www.msgc.state.mn.us or by contacting the Minnesota Sentencing Guidelines Commission at 525 Park Street, Suite 220, St. Paul, MN 55103, or by calling Voice: (651) 296-0144. Deaf/Hard of Hearing/Speech Impaired Only TTY users may call this agency through the MN Relay Service: 1 (800) 627-3529; ask for (651) 296-0144. If you need special accommodations to attend, please contact the Minnesota Sentencing Guidelines Commission as soon as possible. This notice is available in alternative formats upon request.

All interested persons are encouraged to attend the hearing and offer comments. Persons wishing to speak may register in advance by contacting the Commission's office at the above address/telephone number.

The Commission will hold the record open for five days after the public hearing to accept additional written comments on the proposed modifications. On Thursday, November 15, 2007, the Commission will meet at 2:00 p.m. at the Minnesota Department of Corrections, 1450 Energy Park Drive, Suite 200, St. Paul, MN 55108 to formally adopt or reject the proposed modifications. If adopted, the proposed modifications will become effective August 1, 2008, if the Legislature does not pass a bill to the contrary.

State Contracts

Informal Solicitations: Informal solicitations for professional/technical (consultant) contracts valued at over \$5,000 through \$50,000, may either be published in the *State Register* or posted on the Department of Administration, Materials Management Division's (MMD) Web site. Interested vendors are encouraged to monitor the P/T Contract Section of the MMD Web site at www.mmd.admin.state.mn.us for informal solicitation announcements.

Formal Solicitations: Department of Administration procedures require that formal solicitations (announcements for contracts with an estimated value over \$50,000) for professional/technical contracts must be published in the *State Register*. Certain quasi-state agency and Minnesota State College and University institutions are exempt from these requirements.

Requirements: There are no statutes or rules requiring contracts to be advertised for any specific length of time, but the Materials Management Division strongly recommends meeting the following requirements:

\$0 - \$5000 does not need to be advertised. Contact the Materials Management Division: (651) 296-2600

\$5,000 - \$25,000 should be advertised in the *State Register* for a period of at least seven calendar days;

\$25,000 - \$50,000 should be advertised in the *State Register* for a period of at least 14 calendar days; and

anything above \$50,000 should be advertised in the *State Register* for a minimum of at least 21 calendar days

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It's all E-mailed to you, at end-of-day on Friday, instead of waiting for the non-subscriber's issue released on Monday. Contact Cathy Hoekstra, our subscriptions manager, at (651) 297-8777, or Fax: (651) 297-8260, or E-mail: cathy.hoekstra@state.mn.us

Capitol Area Architectural and Planning Board Notice of Request for Proposals for a Rewriting and Update of the Rules Governing Zoning and Design for the Minnesota State Capitol Area

The Capitol Area Architectural and Planning Board (CAAPB) is soliciting proposals from qualified consultants to revise and update the official *Rules Governing Zoning and Design for the Minnesota State Capitol Area*.

A complete Request for Proposal is available from:

Paul Mandell, CAAPB
Suite 204 Administration Building
50 Sherburne Avenue
Saint Paul MN 55155
Phone: (651) 296-6719
E-mail: paul.mandell@state.mn.us

The CAAPB has estimated the cost of this project should not exceed \$35,000 (thirty-five thousand dollars), and the anticipated project period is mid-October, through the fall of 2008, due to the fact that as a state agency, the work will be required to follow Administrative Procedures Act (APA).

Responses are due by Friday, October 12, 2007, at 4:00 p.m. CDT. Late proposals, fax, or email proposals, will not be accepted.

This request does not obligate the State to award a contract or complete the work contemplated in this notice, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest. All expenses incurred in responding to this notice are solely the responsibility of the responder.

Minnesota State Colleges and Universities (MnSCU)**Bemidji State University****Notice of Request for Sealed Bids for Residential Life Public Space Furniture**

NOTICE IS HEREBY GIVEN that Bemidji State University will receive sealed bids for Residential Life Public Space Furniture for Linden Hall, which is currently under redevelopment. Bid specifications will be available October 2, 2007, via e-mail request to blindell@bemidjistate.edu or telephone request to Belinda Lindell at (218) 755-2043. Sealed bids must be received by 2:00 PM, Thursday, October 18, 2007, at the following location:

Belinda Lindell, Director of Logistical Services
Bemidji State University, Deputy 204, Box 8,
1500 Birchmont Drive NE, Bemidji, MN 56601

Bemidji State University reserves the right to reject any or all proposals and to waive any irregularities or informalities in proposals received. The University further reserves the right to cancel the solicitation if it is considered to be in its best interest.

Minnesota State Colleges and Universities**Notice of Request for Information (RFI) for Architectural, Owner's Representative, Real Estate and other related Professional and Technical services for a Master List of Consultants**

The State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities ("MnSCU"), requests information of Minnesota registered consultants, as appropriate, to assist MnSCU in providing Architectural/Engineering, Owner Representative, Real Estate and other related Professional and Technical services as needed for up to a five-year period. Projects will vary in scope and may involve due diligence services, new construction, remodeling, commissioning, site and utility work, facilities, roads and grounds, and land development.

The Request for Information documents can be found online at: www.facilities.mnscu.edu under Solicitation Announcements. Copies of the RFI may also be requested from:

Nancy Marandola - Minnesota State Colleges & Universities
(651) 297-7862
E-mail: Nancy.marandola@so.mnscu.edu

Proposals must be delivered to:

Minnesota State Colleges & Universities
ATTN: Construction and Support Services
30 Seventh Street East, Suite 350
St. Paul, Minnesota 55101-7804

Proposals must be received NOT later than November 2, 2007 at 4:00 P.M. CST; late responses will not be considered.

MnSCU reserves the right to cancel this solicitation if it is considered to be in MnSCU's best interest. The RFI is not a guarantee of work and does not obligate MnSCU to award any contracts. MnSCU reserves the right to discontinue the use or cancel all or any part of this Master List of Consultants program if it is determined to be in its best interest. All expenses incurred in responding to this notice are solely the responsibility of the responder.

State Contracts

Minnesota State Colleges and Universities

Minneapolis Community & Technical College

NOTICE OF INTENT to request bids for printing and mailing of *Spring 2008 Class Schedule*

Specifications: Spring schedule will be approximately 32 pages self-cover.

Tabloid-size 10 3/4" x 17" saddle-stitched and trimmed. Refold to 10 3/4" x 8 1/2". Image area approximately 9 3/4" x 15 7/8" w/no bleeds. 35# white groundwood offset 80B self-cover. Cover is black and 2 PMS. Text is black and 1 PMS. Bids requested for quantities of 120,000 & 130,000 copies. Include cost for additional pages in 4 page increments. Request printer with onsite mailing capabilities. Approximately 108,000 schedules to be mailed. This includes approximately 8,000 provided addresses and about 100,000 residential zip code zoning bulk-mail. Include delivery to two Minneapolis locations.

Creatives will be provided in .pdf and InDesign format unless otherwise requested. Also, printer must able to provide MCTC with a CD of the final document in a format that can be edited.

Print schedule: Files to printer approximately 10/16/2007 and deliver schedules within seven working days of final approved proofs and files. Expected completion date is 10/31/2007.

Bid Questions: David Tajima – 612-659-6224 or by email at David.Tajima@minneapolis.edu

Deadline for Bids: 10:00 a.m. – Friday, October 5, 2007

Submit bids: Prefer bid to be emailed to:
David.Tajima@minneapolis.edu
Or by mail to:
David Tajima / Marketing
Room K1100
Minneapolis Community and Technical College
1501 Hennepin Avenue
Minneapolis, MN 55403

NOTE: Preference will be given to vendors located in Minnesota as permitted by state law.

Minnesota State Colleges and Universities

Minnesota West Community and Technical College,

Worthington Campus

Notice of Availability of Request for Proposal (RFP) for Designer Selection for Fieldhouse Renovation and Addition Project (State Project No. 07-06)

The State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of Minnesota West Community and Technical College, is soliciting proposals from interested, qualified consultants for architectural and engineering design services for the above referenced project.

A full Request for Proposals is available on the Minnesota State Colleges and Universities website: www.facilities.mnscu.edu, click on "Solicitation Announcements."

An informational meeting is scheduled for **10:30 A.M., Thursday, October 11, 2007** in Room 115 of the Classroom/Administration

Building at Minnesota West Community and Technical College, 1450 College Way, Worthington, MN 56187. All firms interested in this meeting should e-mail Jeff Harms at jeff.harms@mnwest.edu to indicate they plan to attend. The meeting will include a tour of the proposed project areas and a review of the scope of work.

Proposals must be delivered to Mary Golike, Executive Secretary, State Designer Selection Board, in the Real Estate and Construction Services Office, 301 Centennial Office Building, 658 Cedar Street, St. Paul, MN 55155, not later than **1:00 P.M., Monday, October 22, 2007**. Late responses will not be considered.

Minnesota State Colleges and Universities is not obligated to complete the proposed project and reserves the right to cancel the solicitation if it is considered to be in its best interest.

Minnesota State Colleges and Universities (MnSCU) North Hennepin Community College Notice of Request for Proposals for New Design of Web Presence

Notice of Request for Proposals for consultation and development of a new design and improved functionality of North Hennepin Community College's web presence. Bids are due Monday, October 8, 2007 at 2:00 P.M. CST.

North Hennepin Community College's agent for purpose of responding to inquiries about this RFP is:

Name: Wade Nelson
Title: Chief Information Officer
Address: 7411 85th Ave. N
Brooklyn Park, MN 55445
Phone: (763) 424-0964
Fax: (763) 488-0489
E-mail: wnelson@nhcc.edu

Optional pre-award vendors' conference is Thursday, September 27, 2007 at 3:00 P.M. in conference room ES-01 at North Hennepin Community College.

Submission information see Section VI of the RFP. The website for the RFP is www.nhcc.edu/rfp.

For purposes of this RFP, posting on this web site (www.nhcc.edu/rfp) constitutes notification to all vendors. Vendors are expected to check the web site frequently.

Minnesota State Colleges and Universities (MnSCU) South Central College South Central College is seeking bids for: 7 Topcon GTS-235W Total Stations, 7 Topcon FC-200 Data Collectors with TopSurv Software, 7 Seco TLV 8-Foot Prism Poles, 7 CST 63-1010 Prisms, 30mm, and On-site Training

South Central College is seeking bids for: 7 Topcon GTS-235W total stations. 7 Topcon FC-200 data collectors with topsurv software. 7 Seco TLV 8 foot prism poles. 7 CST 63-1010 prisms, 30mm. In addition to the equipment, we are asking that you also include in the package 8 hours of on-site training over 3 separate days. Technical questions about this bid solicitation should be directed to Mr. Jay Stencel at (507) 389-7356 or **e-mail** at jay.stencel@southcentral.edu. The bid opening is scheduled for Wednesday October 24, 2007 at 2:00 pm. Only bids in sealed envelopes will be accepted. Fax copies will not be accepted. Questions about the bidding process should be directed to Mr. Doug Midthun at (507) 389-7287 or doug.midthun@southcentral.edu.

State Contracts

Minnesota State Colleges and Universities (MnSCU) St. Cloud Technical College Request for Proposals for Consulting Services for Elevator Upgrade

NOTICE IS HEREBY GIVEN that St. Cloud Technical College will receive proposals for consulting services to provide assistance in upgrading an existing elevator. The complete Request for Proposal will be available on Monday, September 24th, 2007, on the website <http://www.sctc.edu/rfp>.

Proposal responses must be delivered in a sealed envelope or package clearly marked "Consulting Services for Elevator Upgrade" to Sue Meyer at St. Cloud Technical College, Room 1-401H, 1540 Northway Drive, St. Cloud, MN 56303 by 4:00 p.m. on Tuesday, October 9th, 2007. St. Cloud Technical College reserves the right to reject any or all proposals, or portions thereof, or to waive any irregularities or informalities, in proposals received.

Background/Purpose:

The purpose of this Request for Proposal (RFP) is to evaluate and select a vendor to provide consulting services and assistance to upgrade an existing elevator. The scope of work includes investigating the existing elevator and related equipment, preparing bid documents and overseeing the bid process to upgrade the elevator to meet current codes, and preparing bid documents and overseeing the bid process to refurbish the elevator cab and related elements. This RFP is for an existing elevator at St. Cloud Technical College's main campus site located at 1540 Northway Drive, St. Cloud, Minnesota.

Questions:

All questions and inquiries related to this RFP must be in writing and directed to Lori Kloos, Vice President of Administration, St. Cloud Technical College, 1540 Northway Drive, St. Cloud, MN 56303; **e-mail:** lkloos@sctc.edu, **phone:** (320) 308-5026. Other department personnel are NOT allowed to discuss the Request for Proposal with anyone, including responders, before the proposal submission deadline.

St. Cloud Technical College Request for Proposals for Campus Wayfinding Program

NOTICE IS HEREBY GIVEN that St. Cloud Technical College will receive proposals for the development of a campus wayfinding program. The complete Request for Proposal will be available on Monday, September 24th, 2007, on the website <http://www.sctc.edu/rfp>.

Proposal responses must be delivered in a sealed envelope or package clearly marked "Campus Wayfinding Program" to Sue Meyer at St. Cloud Technical College, Room 1-401H, 1540 Northway Drive, St. Cloud, MN 56303 by 2:00 p.m. on Tuesday, October 9th, 2007. St. Cloud Technical College reserves the right to reject any or all proposals, or portions thereof, or to waive any irregularities or informalities, in proposals received.

Background/Purpose:

The purpose of this Request for Proposal (RFP) is to evaluate and select a vendor to create a comprehensive wayfinding package for St. Cloud Technical College. The proposal will include the use of traditional, electronic, and technologically advanced signage and/or sign elements. The vendor will be responsible for manufacturing new signs and/or sign elements (either in-house or with a subcontractor contracted directly to the vendor), oversight of the installation process by any subcontractors, and the provision of warranty on all manufactured signs or sign elements. This RFP is in relation to St. Cloud Technical College's main campus site located at 1540 Northway Drive, St. Cloud, Minnesota and includes the incorporation of two newly acquired existing adjacent buildings into the overall wayfinding package.

Questions:

All questions and inquiries related to this RFP must be in writing and directed to Lori Kloos, Vice President of Administration, St. Cloud Technical College, 1540 Northway Drive, St. Cloud, MN 56303; **e-mail:** lkloos@sctc.edu, **phone:** (320) 308-5026. Other department personnel are NOT allowed to discuss the Request for Proposal with anyone, including responders, before the proposal submission deadline.

Minnesota Department of Corrections Notice of Request for Proposals (RFP) for Dental and Specialty Services to Offenders under the Authority of the Commissioner of the Minnesota Department of Corrections

The Minnesota Department of Corrections (DOC) is seeking proposals to provide dental and oral maxillofacial surgery services to all offenders, male and female, adult and juvenile, residing in DOC correctional facilities or committed to the care and custody of the DOC. Dental services include, but are not limited to, dentistry and oral and maxillofacial surgical services appropriate under State license as a DDS, and as referred by a state-employed dentist.

The contract(s) period is November 13, 2007 - November 12, 2009, with the option to extend for three one- year periods at the discretion of the DOC and as mutually agreed between the DOC and contractor. The contract cost for all services is estimated not to exceed \$100,000 for the two-year contract period; however, this RFP does not obligate the DOC to spend the estimated dollar amount.

The full RFP will be sent free-of-charge in response to written, e-mailed, or faxed requests to the contact person listed below. Proposals must be submitted to the DOC contact person. Other personnel are NOT allowed to discuss the RFP with anyone, including responders, before the proposal submission deadline. Proposals must be received by the contact person listed below no later than 2:30 p.m. central time on October 22, 2007.

David Barker, Program Administrator
Department of Corrections Health Services Unit
1450 Energy Park Drive Suite 200
St. Paul, Minnesota 55108-5219
Telephone: (651) 361-7279
Fax: (651) 523-7139
E-mail: *dtbarker@co.doc.state.mn.us*

Minnesota Department of Corrections Notice of Request for Proposals to Recruit and Train Volunteers for Minnesota Circles of Support and Accountability (MnCoSA)

The Department of Corrections (DOC) is seeking proposals for a contractor to assist the DOC in engaging Minnesota communities in recruitment and training of volunteers to participate in Circles of Support and Accountability. (MnCoSA) These circles are designed to assist sex offenders and hold them accountable as they transition from incarceration to community thereby increasing safety and quality of life in the community. The contractor will be responsible to assist the department in recruitment, training, and support of volunteers in Ramsey, Hennepin, and Olmsted Counties. The contract(s) period is November 15, 2007 - September 30, 2009, with the option to extend for three one-year periods at the discretion of the DOC and mutual agreement between the DOC and contractor.

The full RFP will be sent free-of-charge in response to written, e-mailed, or faxed requests to the contact person listed below. Proposals must be submitted to the DOC contact person. Other personnel are NOT allowed to discuss the RFP with anyone, including responders, before the proposal submission deadline. Proposals must be received by the contact person listed below no later than October 22, 2007, 2:30 p.m. central daylight time.

Joann Dillavou, MnCoSA State Coordinator
Department of Corrections
1450 Energy Park Drive Suite 200
St. Paul, Minnesota 55108-5219
Telephone: (651) 361-7593
Fax: (651) 603-0020
E-mail: *jdillavou@fs.doc.state.mn.us*

State Contracts

Minnesota Department of Health

Notice of Intent to Request Proposals from Qualified Firms and Individuals to Serve as a Monitor at the Minnesota Veterans Home Minneapolis

NOTICE IS HEREBY GIVEN that the Minnesota Department of Health is seeking proposals from qualified firms and individuals to conduct oversight monitoring to determine compliance with Minnesota Department of Health nursing home licensure rules and regulations.

The purpose of this contract is to evaluate compliance with *Minnesota Statutes* 144.651, 144A.01 to 144A.162, 626.557 and all rules and regulations under those provisions to protect the health, safety and welfare of residents in the Minnesota Veterans Home, Minneapolis.

It is estimated that the amount available for monitoring services will not exceed \$250,000. This proposal does not obligate the Minnesota Department of Health to spend the estimated dollar amount.

Eligibility to Submit a Proposal

Applicants must be knowledgeable of state and federal laws and regulations regarding nursing homes, have practical experience in nursing home operations, and have employment experience as an administrator, director of nursing or in other management positions in a nursing home.

Requirements of the Monitor

Minnesota Statutes 144A.155, subd. 2 establishes the general duties of the monitor to include the observation of the operation of the nursing home, the provision of advice to the nursing home on methods of complying with state and federal laws and regulations, and the submission of reports to the Department of Health. Specific requirements and responsibilities are detailed in the full Request For Proposal.

Contact Person

Questions about this proposal must be submitted in writing. Only the following individual is authorized to answer questions regarding this request for proposals, Darcy Miner, darcy.miner@health.state.mn.us Fax: (651) 215-9695

Procedure for Receiving Full Request for Proposal

A written request (by direct or e-mail) is required to receive the full Request for Proposal, which will be sent free of charge to interested vendors. To request a copy of the full proposal contact:

Mary Cahill
Minnesota Department of Health
Compliance Monitoring Division
P.O. Box 64900
St. Paul, MN 55164-0900
Fax: (651)215-9695
E-mail: mary.cahill@health.state.mn.us

Procedures for Submitting Proposals

No proposals submitted by facsimile machine will be considered. A copy of the completed proposal must be received no later than 4:00pm on Monday, October 15, 2007 by:

Darcy Miner
U.S. Mail Service:
Minnesota Department of Health
Compliance Monitoring Division
P.O. Box 64900
St. Paul, Minnesota 55164-0900

Darcy Miner
Courier or Walk-In-Service
Minnesota Department of Health
Compliance Monitoring Division
85 East Seventh Place, Room 220
St. Paul, Minnesota 55101

Late proposals will NOT be considered.

This request for proposal does not obligate the state to award a contract or complete the project, and the state reserves the right to cancel solicitation if it is considered to be in its best interest.

Minnesota State Legislature

Legislative Coordinating Commission

Legislative Electric Energy Task Force

Request for Proposals for Expert Economic Analysis for its Community Based Economic Development Advisory Task Force

I. Background

The Legislative Electric Energy Task Force (LEETF) is soliciting proposals from qualified individuals and organizations interested in providing expert economic analysis for its Community Based Economic Development (C-BED) Advisory Task Force

The Legislative Electric Energy Task Force is a joint House-Senate body that studies electricity issues (see *Minnesota Statutes* 216C.051). Legislation enacted by the Minnesota Legislature in 2007 directs the LEETF to appoint and oversee an advisory task force to examine the state's policies with respect to community-based energy development and to report recommendations to the Legislature by January 15, 2008 (Appendix A).

Minnesota's community-based energy development (C-BED) statutes were enacted in 2005 and amended in 2007 (Appendix B). The statutes reflect the Legislature's desire to ensure that local economies benefit from the development of renewable sources of energy through ownership restrictions, a requirement that a majority of financial benefits over the life of such projects flows to Minnesota residents, and by providing these C-BED projects some measure of priority in the efforts of utilities to meet the Renewable Energy Standard.¹

In part, the C-BED Advisory Task Force is to study and make recommendations on the following issues:

- (1) the definition of a C-BED qualifying owner;
- (2) the definition of gross revenues with respect to community benefits;
- (3) the ability of Minnesota and non-Minnesota financial institutions to provide capital;
- (4) feed-in tariffs for community energy;
- (5) community energy models/project structure;
- (6) credits toward utility renewable energy standard requirements for utility participation;
- (7) utility compensation for additional work for community ownership projects; and
- (8) types of incentives, compensation, and encouragement for utility participation.

The C-BED Advisory Task Force requires economic analysis assistance in its studies and in making recommendations regarding these issues.

II. Purpose

The purpose of this contract is to provide economic analysis requested by the Advisory Task Force related to the issues listed in section I.

Specific tasks will likely include:

- 1) Becoming familiar with the C-BED statute and financial models used to develop wind projects in Minnesota.
- 2) Obtaining information regarding existing and proposed wind project contract arrangements from task force members to use

(Footnotes)

¹ In 2001, the Legislature adopted a Renewable Energy Objective calling for the state's largest electric utility, Xcel Energy, to generate 10 percent of the state's electricity from renewable sources by 2015. The state's next 15 largest utilities were to make a "good faith effort" to meet that objective. In 2007, the law was amended to require Xcel to generate 30 percent of its retail electric sales in 2020 from renewable sources; other utilities must reach a level of 25 percent by 2025. (Laws of Minnesota 2007, chapter 3, section 1, <http://ros.leg.mn/bin/getpub.php?type=law&year=2007&sn=0&num=3>.)

State Contracts

as inputs to economic models that estimate the financial impacts on communities of different financial models. Making reasonable assumptions using different scenarios, if necessary, for additional economic parameters in order to measure impacts.

- 3) Measuring the impact of different definitions of C-BED “qualifying owner” and “gross revenues” and “C-BED project” on community economic impacts of wind development.
- 4) Analyzing the ability of Minnesota financial institutions to provide capital for C-BED wind projects and how barriers might be eliminated.
- 5) Analyzing the costs and benefits of feed-in tariffs for C-BED wind projects.
- 6) Analyzing impact of different incentives to promote utility energy purchases from/ownership of C-BED projects.
- 7) Other analytical tasks assigned by the task force.

The consultant will report to the Director of the Legislative Coordinating Commission (LCC). The consultant will only perform analysis and evaluation of issues that have been assigned by the Director.

This project is anticipated to be completed by January 15, 2008.

III. Proposal Contents

The proposal to perform the tasks listed in Section II should demonstrate the consultant’s capabilities to carry out the tasks listed in Section II. The proposal should, at a minimum:

- 1) Describe the consultant’s experience constructing and using computer models to measure the economic impacts of development projects on rural economies.
- 2) Describe the consultant’s knowledge of financing models for renewable energy projects in rural areas.
- 3) Describe how the model would be adapted to reflect Minnesota conditions.
- 4) Describe the consultant’s experience analyzing the economic impacts of renewable energy projects on rural economies.
- 5) Provide an explanation of how each of the tasks in Section II will be accomplished.
- 6) List of the personnel to be employed on the project, describing their relevant experience and education, their roles, and hourly rates, and the minimum number of hours estimated to complete the work.
- 7) Describe the consultant’s overall cost proposal to carry out the assigned tasks.
- 8) Provide resumes for each professional staff participating in the project.
- 9) Provide names of contact persons, phone numbers, and a list of organizations for which the consultant has provided similar services in the past.

IV. General Instructions for Submitting Proposals

- 1) Submit the proposal electronically to lcc@leg.mn or by hard copy to:
LEETF Economic Analysis Proposal
Legislative Coordinating Commission
72 State Office Building
St. Paul, MN 55155
Phone: (651) 296-9002
- 2) The LCC must receive the proposals by 4:00 p.m., October 15, 2007. Late submittals may not be considered.
- 3) All questions and other communication concerning this Request for Proposals should be directed to the number listed above in this proposal.
- 4) The LCC reserves the right to reject any and all consultant proposals received as a result of this Request for Proposals, or to negotiate separately with any consultant in any manner necessary to serve the best interests of the LCC.
- 5) The LCC reserves the right to require a consultant to make an oral presentation of its proposal to the LCC, or to staff designated by the LCC Director to permit a better understanding of the specifics of a consultant’s proposal.
- 6) The LCC is not responsible for any cost incurred by the consultant in responding to this Request for Proposals.
- 7) Payment for any contract entered into as a result of the Request for Proposals will be made on a monthly basis after receipt of billings accompanied by the appropriate verification of work time and satisfactory completion of tasks to billing date. In accordance with *Minnesota Statutes*, section 3.225, subdivision 6, paragraph b, no more than 90 percent of the amount due under the contract may be paid until the LCC’s authorized agent has certified that the consultant has satisfactorily fulfilled the terms of the contract.

- 8) All contractors and subcontractors must conform to the labor laws of the State of Minnesota, and to all other laws, ordinances, and legal requirements affecting the work in this state. The consultant must conform with and agree to the provisions of *Minnesota Statutes*, section 181.59, which prohibits discrimination in the hiring of labor by reason of race, creed, or color. The statute reads as follows:

181.59 DISCRIMINATION ON ACCOUNT OF RACE, CREED, OR COLOR PROHIBITED IN CONTRACT.

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
 - (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
 - (3) that a violation of this section is a misdemeanor; and
 - (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.
- 9) In accordance with *Minnesota Statutes*, section 176.182, a consultant must provide to the LCC acceptable evidence of compliance with the Worker's Compensation insurance coverage requirement of *Minnesota Statutes*, section 176.181, subdivision 2.
- 10) If the amount of this contract exceeds \$100,000 and the consultant has employed more than 40 full-time employees in this state or in the state in which the consultant has its primary place of business on a single working day in the 12 months immediately preceding the due date for the proposal, the consultant must comply with the affirmative action plan requirements of *Minnesota Statutes*, section 363A.36, as follows:
- (a) If the 40 full-time employees were employed in Minnesota, consultant must, prior to submission of the proposal, either have a certificate of compliance issued by Minnesota Commissioner of Human Rights or that commissioner must have received from the consultant an application for such a certificate. Prior to signing a contract resulting from a successful proposal, the consultant must have the certificate of compliance.
 - (b) If the consultant did not have more than 40 full-time employees in Minnesota but did have that number in another state in which the consultant has its primary place of business; the consultant must, prior to signing a contract resulting from a successful proposal, either have a certificate of compliance issued by the Minnesota Commissioner of Human Rights or certify that the consultant is in compliance with federal affirmative action requirements.
- 11) *Minnesota Statutes*, section 363A.073, and *Minnesota Rules*, parts 5000.3400 to 5000.3600, are hereby incorporated into this Request for Proposals and will be incorporated into any resulting contracts, by reference.
- 12) As required by *Minnesota Statutes*, section 270C.65 subdivision 3, a consultant must provide to the LCC either its federal taxpayer identification number or its Social Security number and its Minnesota tax identification number (if applicable). This information may be used in the enforcement of federal and state tax laws. Supplying these numbers could result in action to require consultant to file state tax returns and pay delinquent state tax liabilities. This contract will not be approved unless these numbers are provided. These numbers will be available to federal and state tax authorities and state personnel involved in approving the contract and the payment and audit of state obligations. These numbers will not be made available to any other person without the express written permission of the consultant.
- 13) The consultant must agree to comply with the Government Data Practices Act, *Minnesota Statutes*, Chapter 13, as it applies to all data provided by the LCC in accordance with this agreement and as it applies to all data created, gathered, generated, or acquired in accordance with this agreement.
- 14) All work product and interim and final reports prepared by the consultant in the performance of its obligations under this agreement are the property of the LCC and must be remitted to the LCC upon completion or termination of this agreement. The consultant must not use, willingly allow the use of, or cause to have the materials used for any purpose other than performance of the obligations under this agreement without the prior written consent of the LCC.
- 15) Work would begin within the timeframe set in the signed contract between the LCC and the consultant. The signed contract will terminate upon full performance by both parties of the contract agreement.

State Contracts

- 16) This contract may be terminated by the LCC as permitted under *Minnesota Statutes*, section 3.225, subdivision 6, in whole or in part, whenever the LCC determines that termination is in the interest of the LCC. The LCC will pay all reasonable costs associated with this contract that the consultant has incurred up to the termination date of the contract and all reasonable costs associated with termination of the contract.

Minnesota State Legislature

Legislative Coordinating Commission

Legislative Electric Energy Task Force

Request for Proposals to Conduct an Analysis of the Economic and Environmental Costs of Constructing a 600-Megawatt Nuclear-powered Electric Generating Plant in Minnesota

I. Background

The 2007 session of the Minnesota Legislature enacted a provision directing the Legislative Electric Energy Task Force, composed of both state senators and representatives, to conduct an analysis of the economic and environmental costs of constructing a 600-megawatt nuclear-powered electric generating plant in Minnesota. The analysis must include predesign, design, and construction costs and waste storage costs. The study must compare these costs with the costs of constructing a pulverized coal plant with carbon capture and sequestration technology and a coal-gasification plant with carbon capture and sequestration technology. The study's findings must be submitted in a report to the chairpersons and ranking minority members of the committees of the House of Representatives and the Senate with primary jurisdiction over energy policy by March 1, 2008.

II. Purpose

The purpose of this contract is to provide analysis to the Task Force comparing costs of a nuclear powered electric generating plant to other types of generating plants.

Specific tasks will include:

- 1) Review recent studies on the technological feasibility and costs of coal-fired and nuclear power generation, including, but not limited to:
 - National Energy Technology Laboratory, *Cost and Performance Baselines for Fossil Energy Plants, Volume I*, DOE/NTEL-2007/1281, 2007 (<http://www.netl.doe.gov/energy-analyses/pubs/deskreference/index.html>)
 - J. Deutch and E. Moniz, *The Future of Coal: An Interdisciplinary MIT Study*, MIT Press, Cambridge, 2007 (<http://web.mit.edu/coal/>)
 - J. Deutch and E. Moniz, *The Future of Nuclear Power: An Interdisciplinary MIT Study*, MIT Press, Cambridge, 2003 (<http://web.mit.edu/nuclearpower/>)
 - International Energy Agency, *The Projected Costs of Generating Electricity, 2005 Update* (http://www.iea.org/Textbase/publications/free_new_Desc.asp?PUBS_ID=1472)
- 2) Utilize the most salient parameters and assumptions contained in the reports in 1), modifying them when necessary, to develop a single consistent framework of analysis across power generation technologies to assess the capital and operating costs of new electric generating plants of the following types:
 - subcritical pulverized coal;
 - supercritical pulverized coal;
 - ultrasupercritical pulverized coal;
 - Integrated Gasification Combined Cycle; and
 - nuclear power.

The generation technologies evaluated should be commercially available now or within the immediately foreseeable future. The analytical framework should be consistent with best practices, as reflected in the studies listed above. The framework should allow for per MW or per MWH comparisons of capital costs, operating costs (fuel, operations, and maintenance) and 20-year levelized generation costs.

- 3) Assemble the most up-to-date estimates of capital and operating costs for 600-MW generation facilities constructed in Minnesota utilizing the technologies listed in 2). Sources of cost information should include but are not limited to: the studies noted in 1) above, other published estimates in the scientific and engineering literature, proceedings before the Minnesota Public Utilities Commission, and information from vendors. The costs of new coal-fired generation must include the costs of carbon capture and sequestration. Where possible, the coal input cost estimates should account for transportation costs from both a western and an eastern coal source.
- 4) Estimate the comparative costs of power generation across the different technologies that include all costs incurred by the owner/operator.
- 5) Estimate life-cycle environmental costs associated with nuclear and coal plants (from mining and transporting fuel through emissions, waste storage, and decommissioning), including air, water, and land pollution and resulting human health costs. These should include all costs that are not formally internalized in the levelized cost of generation for coal-fired and nuclear power generation.

The consultant will report to the Director of the Legislative Coordinating Commission (LCC). The consultant will only perform analysis and evaluation of issues that have been assigned by the Director.

This project is anticipated to be completed by January 15, 2008.

III. Proposal Contents

The proposal to perform the tasks listed in Section II should demonstrate the consultant's capabilities to carry out the tasks listed in Section II. The proposal should, at a minimum:

- 1) Describe your engineering expertise with respect to state-of-the-art coal and nuclear plants and carbon capture and storage technologies.
- 2) Describe your familiarity with recent and likely near-future developments in plant design for coal and nuclear power generation technologies and acquaintance with recent trends in power generation costs.
- 3) Describe your experience in developing cost estimates for state-of-the-art coal and nuclear generating plants.
- 4) Describe your experience developing cost estimates for state-of-the-art coal and nuclear generating plants, including use of cost models.
- 5) Describe your engineering and economic expertise regarding state-of-the-art coal and nuclear plants and carbon capture and storage technologies.
- 6) Provide contact information for three clients for whom you provided similar services.
- 7) List the personnel to be employed on the project, describing their relevant experience and education, their roles, and hourly rates, and the minimum number of hours estimated to complete the work.
- 8) Describe your overall cost proposal to carry out the assigned tasks.
- 9) Provide resumes for each professional staff participating in the project.

IV. General Instructions for Submitting Proposals

- 1) Submit the proposal electronically to lcc@leg.mn or by hard copy to:
LEETF Economic Analysis Proposal
Legislative Coordinating Commission
72 State Office Building
St. Paul, MN 55155
Phone: (651) 296-9002
- 2) The LCC must receive the proposals by 4:00 p.m., October 15, 2007. Late submittals may not be considered.
- 3) All questions and other communication concerning this Request for Proposals should be directed to the number listed above in this proposal.
- 4) The LCC reserves the right to reject any and all consultant proposals received as a result of this Request for Proposals, or to negotiate separately with any consultant in any manner necessary to serve the best interests of the LCC.
- 5) The LCC reserves the right to require a consultant to make an oral presentation of its proposal to the LCC, or to staff designated by the LCC Director to permit a better understanding of the specifics of a consultant's proposal.
- 6) The LCC is not responsible for any cost incurred by the consultant in responding to this Request for Proposals.

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- 7) Payment for any contract entered into as a result of the Request for Proposals will be made on a monthly basis after receipt of billings accompanied by the appropriate verification of work time and satisfactory completion of tasks to billing date. In accordance with *Minnesota Statutes*, section 3.225, subdivision 6, paragraph b, no more than 90 percent of the amount due under the contract may be paid until the LCC's authorized agent has certified that the consultant has satisfactorily fulfilled the terms of the contract.
- 8) All contractors and subcontractors must conform to the labor laws of the State of Minnesota, and to all other laws, ordinances, and legal requirements affecting the work in this state. The consultant must conform with and agree to the provisions of *Minnesota Statutes*, section 181.59, which prohibits discrimination in the hiring of labor by reason of race, creed, or color. The statute reads as follows:

181.59 DISCRIMINATION ON ACCOUNT OF RACE, CREED, OR COLOR PROHIBITED IN CONTRACT.

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
 - (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
 - (3) that a violation of this section is a misdemeanor; and
 - (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.
- 9) In accordance with *Minnesota Statutes*, section 176.182, a consultant must provide to the LCC acceptable evidence of compliance with the Worker's Compensation insurance coverage requirement of *Minnesota Statutes*, section 176.181, subdivision 2.
 - 10) If the amount of this contract exceeds \$100,000 and the consultant has employed more than 40 full-time employees in this state or in the state in which the consultant has its primary place of business on a single working day in the 12 months immediately preceding the due date for the proposal, the consultant must comply with the affirmative action plan requirements of *Minnesota Statutes*, section 363A.36, as follows:
 - (a) If the 40 full-time employees were employed in Minnesota, the consultant must, prior to submission of the proposal, either have a certificate of compliance issued by Minnesota Commissioner of Human Rights or that commissioner must have received from the consultant an application for such a certificate. Prior to signing a contract resulting from a successful proposal, the consultant must have the certificate of compliance.
 - (b) If the consultant did not have more than 40 full-time employees in Minnesota but did have that number in another state in which the consultant has its primary place of business, the consultant must, prior to signing a contract resulting from a successful proposal, either have a certificate of compliance issued by the Minnesota Commissioner of Human Rights or certify that the consultant is in compliance with federal affirmative action requirements.
 - 11) *Minnesota Statutes*, section 363A.073, and *Minnesota Rules*, parts 5000.3400 to 5000.3600, are hereby incorporated into this Request for Proposals and will be incorporated into any resulting contracts, by reference.
 - 12) As required by *Minnesota Statutes*, section 270C.65, subdivision 3, a consultant must provide to the LCC either its federal taxpayer identification number or its Social Security number and its Minnesota tax identification number (if applicable). This information may be used in the enforcement of federal and state tax laws. Supplying these numbers could result in action to require consultant to file state tax returns and pay delinquent state tax liabilities. This contract will not be approved unless these numbers are provided. These numbers will be available to federal and state tax authorities and state personnel involved in approving the contract and the payment and audit of state obligations. These numbers will not be made available to any other person without the express written permission of the consultant.
 - 13) The consultant must agree to comply with the Government Data Practices Act, *Minnesota Statutes*, Chapter 13, as it applies to all data provided by the LCC in accordance with this agreement and as it applies to all data created, gathered, generated, or acquired in accordance with this agreement.
 - 14) All work product and interim and final reports prepared by the consultant in the performance of its obligations under this agreement are the property of the LCC and must be remitted to the LCC upon completion or termination of this agreement. The consultant must not use, willingly allow the use of, or cause to have the materials used for any purpose other than performance of

the obligations under this agreement without the prior written consent of the LCC.

- 15) Work would begin within the timeframe set in the signed contract between the LCC and the consultant. The signed contract will terminate upon full performance by both parties of the contract agreement.
- 16) This contract may be terminated by the LCC as permitted under *Minnesota Statutes*, section 3.225, subdivision 6, in whole or in part, whenever the LCC determines that termination is in the interest of the LCC. The LCC will pay all reasonable costs associated with this contract that the consultant has incurred up to the termination date of the contract and all reasonable costs associated with termination of the contract.

Minnesota State Legislature

Legislative Coordinating Commission

Legislative Electric Energy Task Force

Request for Proposals from Qualified Individuals and Organizations Interested in Providing Expert Analysis and Advice for its Community Based Economic Development Advisory Task Force

I. Background

The Legislative Electric Energy Task Force (LEETF) is soliciting proposals from qualified individuals and organizations interested in providing expert analysis and advice for its Community Based Economic Development (C-BED) Advisory Task Force.

The Legislative Electric Energy Task Force is a joint House-Senate body which studies electricity issues (see *Minnesota Statutes*, section 216C.051). Legislation enacted by the Minnesota Legislature in 2007 directs the LEETF to appoint and oversee an advisory task force to examine the state's policies with respect to community-based energy development and to report recommendations to the Legislature by January 15, 2008 (Appendix A).

Minnesota ranks fourth among states in total wind energy capacity installed, with approximately 900 MW in early 2007, and more than an additional 500 MW expected to be added during the year. During the 2007 legislative session, the state's Renewable Energy Standard was strengthened significantly, requiring the state's largest utility, Xcel Energy, to generate 30 percent of its retail electric sales in 2020 from renewable sources; the requirement for the next 15 largest utilities is 25 percent by 2025.¹

Minnesota's community-based energy development (C-BED) statutes were enacted in 2005 and amended in 2007.² The statutes reflect the Legislature's desire to insure that local economies benefit from the development of renewable sources of energy through ownership restrictions, a requirement that a majority of financial benefits over the life of such projects flows to Minnesota residents, and by providing these C-BED projects some measure of priority in the efforts of utilities to meet the Renewable Energy Standard.

Concern over the possible "stockpiling" of wind development rights by large developers led the Legislature to enact the following amendment (underlined language) to *Minnesota Statutes* 2006, section 500.30, subdivision 2:

Subd. 2. **Like any conveyance.** Any property owner may grant a solar or wind easement in the same manner and with the same effect as a conveyance of an interest in real property. The easements shall be created in writing and shall be filed, duly recorded, and indexed in the office of the recorder of the county in which the easement is granted. No duly recorded easement shall be unenforceable on account of lack of privity of estate or privity of contract; such easements shall run with the land or lands benefited and burdened and shall constitute a perpetual easement, except that an easement may terminate upon the conditions stated therein or pursuant to the provisions of section 500.20. A wind easement, easement to install wind turbines on real property, option, or lease of wind rights shall also terminate after seven years from the date the easement is created or lease is entered into, if a wind energy

(Footnotes)

¹ Laws of Minnesota 2007, chapter 3, section 1, <http://ros.leg.mn/bin/getpub.php?type=law&year=2007&sn=0&num=3>.

² Laws of Minnesota 2007, chapter 136, article 4, <http://ros.leg.mn/bin/getpub.php?type=law&year=2007&sn=0&num=136>.

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project on the property to which the easement or lease applies does not begin commercial operation within the seven-year period.

EFFECTIVE DATE. This section is effective the day following final enactment, and applies to wind easements created and wind rights leases entered into on and after the effective date of this section.

Legislation enacted during the session also requires the LEETF to study whether the state should regulate easements, leases, and other agreements to acquire an interest in real property for the purpose of wind energy development. The purpose of the study is to determine whether the duration and other terms of those interests should be limited to promote wind energy development. The task force must report the results of its study and any recommendations to the chairpersons of the energy finance and policy committees of the Legislature by February 1, 2008.

This work is to be done in conjunction with other issues examined by a C-BED Advisory Task Force created by the Legislature.

II. Purpose

The purpose of this contract is to provide legal advice and analysis requested by the Advisory Task Force related to the issues listed in Section I.

Specific tasks will likely include:

- 1) Attend C-BED Advisory Task Force meetings at which wind easement issues are to be discussed.
- 2) Advise C-BED Advisory Task Force members regarding legal implications of suggested statutory changes. Propose options for statutory changes that accomplish goals of the Task Force.
- 3) Other analytical tasks assigned by the task force.

The consultant will report to the Director of the Legislative Coordinating Commission (LCC). The consultant will only perform tasks that have been assigned by the Director.

This project is anticipated to be completed by January 15, 2008.

III. Proposal Contents

The proposal to perform the tasks listed in Section II should demonstrate the consultant's capabilities to carry out the tasks listed in Section II. The proposal should, at a minimum:

- 1) Describe the consultant's knowledge and experience regarding the creation and operation of easements in Minnesota, preferably for wind energy projects. Knowledge and experience in water law and/or mineral rights law may also be helpful.
- 2) List the personnel to be employed on the project, describing their relevant experience and education, their roles, and hourly rates.
- 3) Provide resumes for each professional staff member participating in the project.
- 4) Provide names of contact persons, phone numbers, and a list of organizations for which the consultant has provided similar services in the past.

IV. General Instructions for Submitting Proposals

- 1) Submit the proposal electronically to lcc@leg.mn or by hard copy to:

LEETF Economic Analysis Proposal
Legislative Coordinating Commission
72 State Office Building
St. Paul, MN 55155
Phone: (651) 296-9002

- 2) The LCC must receive the proposals by 4:00 p.m., October 15, 2007. Late submittals may not be considered.
- 3) All questions and other communication concerning this Request for Proposals should be directed to the number listed above in this proposal.
- 4) The LCC reserves the right to reject any and all consultant proposals received as a result of this Request for Proposals, or to negotiate separately with any consultant in any manner necessary to serve the best interests of the LCC.
- 5) The LCC reserves the right to require a consultant to make an oral presentation of its proposal to the LCC, or to staff designated by the LCC Director to permit a better understanding of the specifics of a consultant's proposal.

- 6) The LCC is not responsible for any cost incurred by the consultant in responding to this Request for Proposals.
- 7) Payment for any contract entered into as a result of the Request for Proposals will be made on a monthly basis after receipt of billings accompanied by the appropriate verification of work time and satisfactory completion of tasks to billing date. In accordance with *Minnesota Statutes*, section 3.225, subdivision 6, paragraph b, no more than 90 percent of the amount due under the contract may be paid until the LCC's authorized agent has certified that the consultant has satisfactorily fulfilled the terms of the contract.
- 8) All contractors and subcontractors must conform to the labor laws of the State of Minnesota, and to all other laws, ordinances, and legal requirements affecting the work in this state. The consultant must conform with and agree to the provisions of *Minnesota Statutes*, section 181.59, which prohibits discrimination in the hiring of labor by reason of race, creed, or color. The statute reads as follows:

181.59 DISCRIMINATION ON ACCOUNT OF RACE, CREED, OR COLOR PROHIBITED IN CONTRACT.

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
 - (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
 - (3) that a violation of this section is a misdemeanor; and
 - (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.
- 9) In accordance with *Minnesota Statutes*, section 176.182, a consultant must provide to the LCC acceptable evidence of compliance with the Worker's Compensation insurance coverage requirement of *Minnesota Statutes*, section 176.181, subdivision 2.
 - 10) If the amount of this contract exceeds \$100,000 and the consultant has employed more than 40 full-time employees in this state or in the state in which the consultant has its primary place of business on a single working day in the 12 months immediately preceding the due date for the proposal, the consultant must comply with the affirmative action plan requirements of *Minnesota Statutes*, section 363A.36, as follows:
 - (a) If the 40 full-time employees were employed in Minnesota, consultant must, prior to submission of the proposal, either have a certificate of compliance issued by Minnesota Commissioner of Human Rights or that commissioner must have received from the consultant an application for such a certificate. Prior to signing a contract resulting from a successful proposal, the consultant must have the certificate of compliance.
 - (b) If the consultant did not have more than 40 full-time employees in Minnesota but did have that number in another state in which the consultant has its primary place of business, the consultant must, prior to signing a contract resulting from a successful proposal, either have a certificate of compliance issued by the Minnesota Commissioner of Human Rights or certify that the consultant is in compliance with federal affirmative action requirements.
 - 11) *Minnesota Statutes*, section 363A.073, and *Minnesota Rules*, parts 5000.3400 to 5000.3600, are hereby incorporated into this Request for Proposals and will be incorporated into any resulting contracts, by reference.
 - 12) As required by *Minnesota Statutes*, section 270C.65, subdivision 3, a consultant must provide to the LCC either its federal taxpayer identification number or its Social Security number and its Minnesota tax identification number (if applicable). This information may be used in the enforcement of federal and state tax laws. Supplying these numbers could result in action to require consultant to file state tax returns and pay delinquent state tax liabilities. This contract will not be approved unless these numbers are provided. These numbers will be available to federal and state tax authorities and state personnel involved in approving the contract and the payment and audit of state obligations. These numbers will not be made available to any other person without the express written permission of the consultant.
 - 13) The consultant must agree to comply with the Government Data Practices Act, *Minnesota Statutes*, Chapter 13, as it applies to all data provided by the LCC in accordance with this agreement and as it applies to all data created, gathered, generated, or acquired in accordance with this agreement.
 - 14) All work product and interim and final reports prepared by the consultant in the performance of its obligations under this agreement are the property of the LCC and must be remitted to the LCC upon completion or termination of this agreement. The

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consultant must not use, willingly allow the use of, or cause to have the materials used for any purpose other than performance of the obligations under this agreement without the prior written consent of the LCC.

- 15) Work would begin within the timeframe set in the signed contract between the LCC and the consultant. The signed contract will terminate upon full performance by both parties of the contract agreement.
- 16) This contract may be terminated by the LCC as permitted under *Minnesota Statutes*, section 3.225, subdivision 6, in whole or in part, whenever the LCC determines that termination is in the interest of the LCC. The LCC will pay all reasonable costs associated with this contract that the consultant has incurred up to the termination date of the contract and all reasonable costs associated with termination of the contract.

Department of Natural Resources

Notice of Availability of Contract for Safe Harbors Planning, Grant Writing, Outreach and Public Participation Coordinator

CERTIFICATION # 13548

Amount of proposed contract: \$ 85,000

The Minnesota Department of Natural Resources is requesting proposals to provide planning, technical, administrative and facilitation services, manage public information, grant writing, outreach and staff support to the Safe Harbors Program informing the public through newsletters, minutes and public meetings.

Work is proposed to start after October 24, 2007.

A Request for Proposals will be available by mail from this office through October 12, 2007. **A written request (by direct mail or fax) is required to receive the Request for Proposal.** After October 12, 2007, the Request for Proposal must be picked up in person.

The Request for Proposal can be obtained from:

Debra Lohmeyer
Division of Trails and Waterways
500 Lafayette Road
St. Paul, MN 55155-4052
Fax: (651) 297-5475

Proposals submitted in response to the Request for Proposals in this advertisement must be received at the address above no later than **October 17, 2007, 2:30 pm.** **Late proposals will not be considered.** Fax or e-mailed proposals will **not** be considered.

This request does not obligate the State to complete the work contemplated in this notice. The State reserves the right to cancel this solicitation. All expenses incurred in responding to this notice are solely the responsibility of the responder.

Minnesota State Lottery

Request for Proposals for Sponsorship Agreements

Description of Opportunity

The Minnesota State Lottery develops sponsorship agreements throughout the year with organizations, events, and sports teams to create excitement for lottery players, to interest new players and increase the visibility of lottery games. The Lottery encourages and continually seeks new sponsorship agreements to help achieve current Lottery marketing goals.

Proposal Content

A sponsorship proposal presented to the Lottery should meet the following three criteria:

1. Maximize Lottery Visibility – the event, sports or tie-in proposal should draw a large number of desired participants (typically 50,000 or more) whose demographics match the Lottery player profile. The Lottery is interested in effectively delivering its message of fun and entertainment to Minnesota adults whose demographics skew primarily towards those aged 25-64, with a household income of \$35,000-\$75,000, and having an educational background of some college or higher. The Lottery does not market to those under the age of 18, and family events with high levels of children present are generally not accepted. Attendance, on-site signage visibility and paid media exposure will be critical components that will be evaluated.

2. Enhance Lottery Image- – the event, sports or tie-in proposal should inherently project the attitude that the Lottery is a fun and socially acceptable part of the community. The Lottery’s presence should fit well within the lineup of other sponsors. The Lottery is interested in creating opportunities whereby the sponsorship can translate into sales revenue, either via on-site sales from a Lottery booth, from sales-generating promotions with Lottery retailers or from joint programs with the sponsor’s media partners.

3. Provide Promotional Extensions – the event, sports or tie-in proposal should offer exciting, value-added ways to interact with our players and have opportunities to motivate attendees, listeners and viewers to participate in and purchase Lottery games. The proposal must include proper staffing availability or other considerations to help the Lottery implement any appropriate promotional extension ideas.

Proposals should address all pertinent elements of the sponsorship and how the Lottery criteria as stated above and on the Evaluation Form are to be met. To view or print copies of the Request for Proposal go to: <http://www.mnlottery.com/vendorops.html>

This Solicitation does not obligate the state to award a contract or pursue a proposed sponsorship opportunity, and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

Questions

Questions concerning this Solicitation should be directed to:

John Mellein, Marketing Director
Minnesota State Lottery
2645 Long Lake Road
Roseville, MN 55113
Telephone: (651) 635-8230
Toll-free: (888) 568-8379 ext. 230
Fax: (651) 297-7496
TTY: (651) 635-8268
E-mail: johnm@mnlottery.com

Other personnel are not authorized to answer questions regarding this Solicitation.

Response Delivery

All responses must be in writing and delivered to the contact noted above. Proposals will be accepted on an ongoing basis.

Department of Transportation (Mn/DOT) Engineering Services Division Notice of Potential Availability of Contracting Opportunities for a Variety of Highway Related Technical Activities (“Consultant Pre-Qualification Program”)

This document is available in alternative formats for persons with disabilities by calling Brad Hamilton at (651) 366-4626 for persons who are hearing or speech impaired by calling Minnesota Relay Service at (800) 627-3529.

Mn/DOT, worked in conjunction with the Consultant Reform Committee, the American Council of Engineering Companies of Minnesota (ACEC/MN), and the Department of Administration, to develop the Consultant Pre-Qualification Program as a new method

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of consultant selection. The ultimate goal of the Pre-Qualification Program is to streamline the process of contracting for highway related professional/technical services. Mn/DOT awards most of its consultant contracts for highway-related technical activities using this method, however, Mn/DOT also reserves the right to use Request for Proposal (RFP) or other selection processes for particular projects. Nothing in this solicitation requires Mn/DOT to use the Consultant Pre-Qualification Program.

Mn/DOT is currently requesting applications from consultants. Refer to Mn/DOT's Consultant Services web site, indicated below, to see which highway related professional/technical services are available for application. Applications are accepted on a continual basis. All expenses incurred in responding to this notice will be borne by the responder. Response to this notice becomes public information under the Minnesota Government Data Practices.

Consultant Pre-Qualification Program information, application requirements and applications forms are available on Mn/DOT's Consultant Services web site at: <http://www.dot.state.mn.us/consult>.

Send completed application material to:

Brad Hamilton
Consultant Services
Office of Technical Support
Minnesota Department of Transportation
395 John Ireland Blvd. Mail Stop 680
St. Paul Minnesota 55155

Note: DUE DATE: APPLICATION MATERIAL WILL BE ACCEPTED ON A CONTINUAL BASIS.

Department of Transportation (Mn/DOT) Engineering Services Division Notice Concerning Professional/Technical Contract Opportunities

NOTICE TO ALL: The Minnesota Department of Transportation (Mn/DOT) is now placing additional public notices for professional/technical contract opportunities on Mn/DOT's Consultant Services **website** at: www.dot.state.mn.us/consult.

New public notices may be added to the website on a daily basis and be available for the time period as indicated within the public notice.

Department of Transportation (Mn/DOT) State Aid for Local Transportation Division Request for Information (RFI) for replacing an existing Crash Data Mapping Tool Application ('MnCMAT') (Originally published Monday 10 September 2007)

The Minnesota Department of Transportation ('Mn/DOT'), State Aid for Local Transportation Division ('State Aid') is exploring what options may be available for replacing an existing Crash Data Mapping Tool application ('MnCMAT').

MnCMAT is a GIS viewer that displays the locations of reported crashes on a state map. The crash points are displayed at the appropriate location on a graphic representation of the state map overlaid with recorded highways, bridges, RR crossings, lakes, etc.

Multiple crashes at the same point are graphically represented as 'stacked' points. Users are able to filter the crashes displayed using the crash details such as location, date range, case number, severity of injury, time of day, weather conditions, driver age, et al. Statistical data about the displayed crashes is accessible by 'hovering', clicking on a crash indicator, or via generation of a pre-defined report, chart,

or exportable data file.

A Request for Information (RFI) soliciting information about potential solutions has been issued. Responses are due October 05, 2007.

An electronic copy of the RFI is available for download at Mn/DOT Consultant Services website:

<http://www.dot.state.mn.us/consult/files/notices/notices.html>

For further information, contact the Mn/DOT State Aid for Local Transportation Division via email to MnCMAT Administration. (E-mail to MnCMAT@dot.state.mn.us).

Non-State Bids, Contracts & Grants

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *State Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector. It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of commodity, project or tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from the date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact editor for further details.

Dakota County Community Corrections, Juvenile Services, and Social Services, Children and Family Services

Notice of Request for Request for Proposals (RFP's): Seeking Contractors to Provide Community-Based and In-Home Services to Youth and Families

NOTICE IS HEREBY GIVEN that Dakota County is soliciting proposals from interested and qualified parties for the purpose of providing community-based and in-home services to youth and families referred by either Dakota County Community Corrections, Juvenile Services, or Social Services, Children and Family Services.

Three types of Community-Based Services will be purchased. These include Case Planning, Family Group Decision Making (FGDM) Services, and Follow-Up Services to Either Case Planning or FGDM. *Five types of In-Home Services will be purchased.* These include Community Reintegration Services (CRS), Family and Individual Life Skills, In-Home Family Therapy Services, Parenting Education, and Systemic Family Therapy (SFT).

Dakota County is looking for proposals that speak to the applicants' professional qualifications, experience, and ability to provide community-based and in-home services for youth and families. Proposals that meet the RFP requirements will be reviewed and evaluated by a review committee made up of Dakota County Community Corrections, Social Services and Contract staff. The review committee will make recommendations to determine which proposals will be selected for funding.

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The applicants chosen will be expected to enter into a contractual agreement with Dakota County beginning with the contract implementation date of January 1, 2008 through December 31, 2009, subject to approval by the Dakota County Board of Commissioners and funding availability. Funding for some of the services in this proposal are reimbursable through Medical Assistance (MA), CTSS (Children's Therapeutic Services and Support), and PMAP's or private insurance, while other services are reimbursable entirely through Dakota County funds.

Dakota County reserves the right to reject any or all proposals which do not, in its opinion, serve the best interest of Dakota County. While it is Dakota County's intent to enter into a contractual agreement with qualified applicants, the RFP does not obligate Dakota County to complete the RFP process or enter into a contract. Dakota County reserves the right to cancel this RFP at any time for any reason.

To access the RFP online, or to acquire additional information about Dakota County, visit the website at: www.dakotacounty.us, click on doing business, and select *Bids & Proposals* from the menu. For questions or information, please contact:

Dee Skeens, Contract Manager
Dakota County Community Services Administration
Dakota County Northern Service Center
1 West Mendota Road, Suite 500
West Saint Paul MN 55118-4773
Phone: (651) 554-5874
E-mail: deanne.skeens@co.dakota.mn.us

The deadline for response is no later than 4:00 P.M. Central Standard Time on October 22, 2007.

Dakota County – Office of Transit Request for Proposals (RFP) for the Lakeville Bus Rapid Transit Station Siting Study

Dakota County's Office of Transit is requesting written proposals from qualified firms related to the production of a bus rapid transit siting study for the Cedar Avenue Corridor Transitway area defined as County Road 23 (Cedar Avenue) from County Road 9 (Dodd Road) to 195th Street in Lakeville, Minnesota. The siting study will assess potential station siting locations, determine the most efficient station configurations, identify costs for station alternatives, develop environmental documentation that meets state and federal requirements and conduct the appropriate public involvement process for the study. This information will be used as a means of providing decision makers and stakeholders with the tools necessary to potentially implement the most appropriate transportation solution(s).

To obtain a RFP document in .PDF format, please send an e-mail request to Matt Mendenhall. Your e-mail request should include the name of your organization, a project contact designee and their mailing address, e-mail address and phone number. For a hard copy of the RFP, please send a written request with the above information to:

Contact Person: Matt Mendenhall
Administration Management Fellow
Dakota County
1590 Highway 55
Hastings, MN 55033-2343
E-mail: matt.mendenhall@co.dakota.mn.us

Questions about this project shall be directed to Matt Mendenhall and must be transmitted via e-mail by 3:30 pm (Central Time), October 10, 2007. Answers to all questions received will be sent via e-mail to each requesting organization's project designee on October 17, 2007. Other county personnel are NOT allowed to discuss the RFP with anyone, including responders, before the proposal submission deadline.

Deadline for proposals is 3:30 pm (Central Time), Friday, October 26, 2007.

Non-State Bids, Contracts & Grants

Metropolitan Council

Notice of Invitation for Bids (IFB) for Empire/Rosemount Process Chemicals

Reference Number 07P119

The Metropolitan Council is requesting bids for 15% Bleach (Azone15) delivered in totes (330/gal totes) approximately 35,000 gallons per year at the Empire/Rosemount locations over a two-year period.

The tentative schedule for this procurement is as follows:

<i>Issue Invitation for Bids</i>	October 2, 2007
<i>Bids Due</i>	October 23, 2007
<i>Award Contract</i>	November, 2007

All firms interested in submitting bids for this contract and desiring to receive an IFB package are invited to make a request by e-mail, fax, or mail to:

Sunny Jo Emerson
Metropolitan Council
390 N Robert Street
St Paul, MN 55101-1805
Fax: (651) 602-1083
E-mail: sunnyjo.emerson@metc.state.mn.us

Metropolitan Council - Metro Transit

Notice of Invitation for Bids (IFB) for Alarm Monitoring

Project Number 7524

NOTICE IS HEREBY GIVEN that on October 16, 2007 at 2:00 PM, Metro Transit a division of the Metropolitan Council will receive and publicly open separate sealed bids for Metro Transit's Project Number 7524 at 515 North Cleveland Avenue, Saint Paul, Minnesota 55114-1878. Sealed bids should be delivered to the second floor Purchasing Department.

Metro Transit is requesting bids for fire and security alarms monitoring services at various facilities for a period of 5-years.

Bidding Documents may be obtained from:

Metro Transit, Purchasing Department
Attn: Candace Osiecki
515 North Cleveland Avenue
St. Paul, MN 55114-1878
Phone: (612) 349-5070
Fax: (612) 349-5069
E-mail: candace.osiecki@metc.state.mn.us

A site visit will be held October 9, 2007 at 10:00 AM, starting at the following location: Metro Transit Fred T. Heywood Office Facility, located at 560 Sixth Avenue North, Minneapolis, MN 55411, meeting at the Flagpole. Bidders are encouraged to attend and participate in the site visit.

Dated this 25th day of September, 2007

Non-State Bids, Contracts & Grants

Metropolitan Council - Metro Transit Sealed Bids Solicited for Blast Mitigating Trash Containers

Metro Transit, a service of the Metropolitan Council, is soliciting sealed bids for Blast Mitigating Trash Containers. Bids are due at **2:00 P.M.** on October 25, 2007. Bids must be submitted in accordance with the Invitation for Bids document available from:

Attn: Candace Osiecki
Metropolitan Council
Metro Transit Purchasing Department
515 N. Cleveland Avenue
St. Paul, MN 55114
Phone: (612) 349-5070
E-mail: candace.osiecki@metc.state.mn.us

Metropolitan Council - Metro Transit Sealed Bids Solicited for Go-Greener Bus Wraps

Metro Transit a service of the Metropolitan Council is soliciting sealed bids for 18 Go-Greener Bus Wraps (complete exterior transit bus graphics) with an option for an additional three. Bids are due at **2:00 P.M.** on October 8, 2007. Bids must be submitted in accordance with the Invitation for Bids document available from:

Attn: Candace Osiecki
Metropolitan Council
Metro Transit Purchasing Department
515 N. Cleveland Avenue
St. Paul, MN 55114
Phone: (612) 349-5070
E-mail: candace.osiecki@metc.state.mn.us

Metropolitan Council Sealed Bids Solicited for Transit Vehicle Tire Lease and Service Procurement No. 7548

Metro Transit, a division of the Metropolitan Council, is soliciting sealed bids for tire lease and service for Metro Transit's fleet of transit buses. The contractor will provide approximately 6,500 transit vehicle tires and all associated tire servicing at Metro Transit service garages.

Bids are due no later than **2:00 P.M.** on October 19, 2007.

Bids must be submitted in accordance with the Invitation for Bids document available by contacting:

Candace Osiecki
Metro Transit Purchasing Department
515 N. Cleveland Avenue
St. Paul, MN 55114
Phone: (612) 349-5070
Fax: (612) 349-5069
E-mail: candace.osiecki@metc.state.mn.us

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University of Minnesota Subscribe to Bid Information Service (BIS)

The University of Minnesota offers 24 hour/day, 7day/week access to all Request for Bids/Proposals through its web-based Bid Information Service (BIS). Subscriptions to BIS are free. Visit our website at bidinfo.umn.edu or call the BIS Coordinator at (612) 625-5534.

Request for Bids/Proposals are also available to the public each business day from 8:00 a.m. to 4:30 p.m. in the Purchasing Services lobby, Suite 560, 1300 S. 2nd Street, Minneapolis, Minnesota 55454.

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