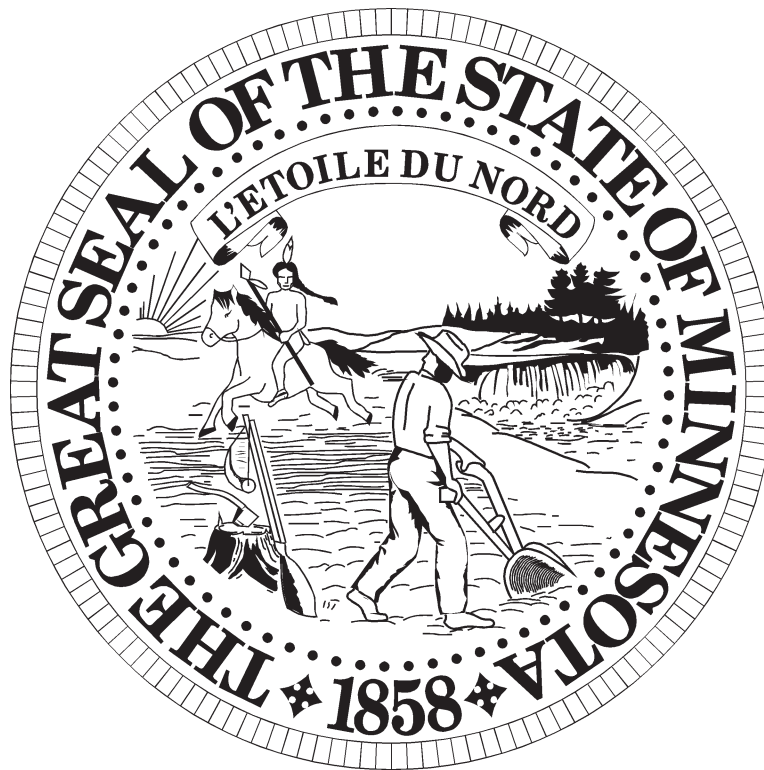


Minnesota State Register

(Published every Monday (Tuesday when Monday is a holiday.)



**Proposed, Adopted, Emergency, Expedited, Withdrawn, Vetoed Rules;
Executive Orders; Appointments; Commissioners' Orders; Revenue Notices;
Official Notices; State Grants & Loans; State Contracts;
Non-State Public Bids, Contracts & Grants**

**Monday 21 July 2014
Volume 39, Number 3
Pages 51 - 78**

Minnesota State Register

Judicial Notice Shall Be Taken of Material Published in the *Minnesota State Register*

The *Minnesota State Register* is the official publication of the State of Minnesota's Executive Branch of government, published weekly to fulfill the legislative mandate set forth in *Minnesota Statutes*, Chapter 14, and *Minnesota Rules*, Chapter 1400. It contains:

- Proposed Rules
- Adopted Rules
- Exempt Rules
- Expedited Rules
- Withdrawn Rules
- Vetoed Rules
- Executive Orders of the Governor
- Appointments
- Proclamations
- Commissioners' Orders
- Revenue Notices
- Official Notices
- State Grants and Loans
- Contracts for Professional, Technical and Consulting Services
- Non-State Public Bids, Contracts and Grants

Printing Schedule and Submission Deadlines

Vol. 39 Issue Number	PUBLISH DATE (BOLDFACE shows altered publish date)	Deadline for: all Short Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical-Consulting Contracts, Non-State Bids and Public Contracts	Deadline for LONG, Complicated Rules (contact the editor to negotiate a deadline)
# 4	Monday 28 July	Noon Tuesday 22 July	Noon Thursday 17 July
# 5	Monday 4 August	Noon Tuesday 29 July	Noon Thursday 24 July
# 6	Monday 11 August	Noon Tuesday 5 August	Noon Thursday 31 July
# 7	Monday 18 August	Noon Tuesday 12 August	Noon Thursday 7 July

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Website: www.senate.mn

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State Office Building, Room 175,
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Minnesota Rules: Amendments & Additions

Vol. 39, #1-3: Monday 7 - 21 July 2014..... 54

Expedited Rules

Education Department (MDE)

Proposed Expedited Permanent Rules Relating to
Special Education Case Loads and Rule Alignment..... 55

Commissioners' Orders

Administrative Hearings Office

AH 8-0902-31449: In the Matter of the Affidavit
and Petition to Cease Enforcement of an Unadopted
Rule by the Minnesota Board of Dentistry..... 60

Natural Resources Department (DNR)

Commissioner's Order #1 ML 2014:
Lifting the Night Fishing Ban on Mille Lacs Lake..... 65

Official Notices

Transportation Department (Mn/DOT)

Notice to Bidders: Suspensions/Debarments
as of July 15, 2014..... 66

Transportation Department (Mn/DOT)

Office of Transportation System Management:
Solicitation for Public Review and Comment on the
Draft State Transportation Improvement Program (STIP)
for State Fiscal Years 2015-2016-2017-2018
(July 1, 2014 through June 30, 2018)..... 67

State Grants & Loans

Health Department (MDH)

Request for Proposals for Exceptions to the
Nursing Home Moratorium..... 68

Human Services Department (DHS)

Economic Assistance and Employment Supports Division:

Addendum to Request for Proposals to Develop and
Implement Subsidized Employment Strategies and
Address Racial and Ethnic Disparities in Employment
Outcomes for Families Served by the Minnesota Family
Investment Program (MFIP)..... 70

State Contracts

Colleges and Universities, Minnesota State (MnSCU) / Administration Department (Admin)

State Designer Selection Board Project No. 14-07:
Availability of Request for Proposal for Designer Selection
for Winona State University Education Village,
Phase I Renovation..... 71

Colleges and Universities, Minnesota State (MnSCU)

Anoka Ramsey Community College/Anoka Technical College:
Availability of Request for Proposals for Facilities
Master Planning Services..... 71

Bemidji State University:

Request for Proposals for Website Development,
Rebranding and Promotional Materials..... 72

Central Lakes College:

Request for Proposal for Costa Rica Travel Study Program..... 72

Pine Technical and Community College:

Request for Bids for Interested Software Providers..... 73

St. Cloud Technical & Community College:

Formal Request for Proposal for Curriculum Development
and Instruction: Precision Machining, Finishing, Welding,
and Machine Programming and Operation..... 74

Minnesota Historical Society (MHS)

Request for Bids for Visitor Center Roof Replacement
at the Charles A. Lindbergh Historic Site, Little Falls, MN.... 74

Request for Proposals for Development and Implementation
of a Communications Strategy to Educate Minnesotans

on MNHS' Leadership in Historic Preservation..... 75

Transportation Department (Mn/DOT)

Engineering Services Division:

Contracting Opportunities for a Variety of Highway
Related Technical Activities ("Consultant
Pre-Qualification Program")..... 75

Engineering Services Division:

Professional/Technical Contract Opportunities and
Taxpayers' Transportation Accountability Act Notices..... 76

Non-State Public Bids, Contracts & Grants

Metropolitan Airports Commission (MAC)

Minneapolis-Saint Paul International Airport:
Call for Bids for Checkpoint 7 Expansion..... 77

Minnesota's Bookstore..... 77

Other Helpful Resources:

For additional contracts go to:

<http://www.mmd.admin.state.mn.us/solicitations.htm>

Contract information is available from the Materials Management (MMD)

Helpline (651) 296-2600, or Web site: www.mmd.admin.state.mn.us

For additional grants go to the Office of Grants Management (OGM) at:

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Revisor of Statutes - RULES STATUS:

https://www.revisor.mn.gov/rules/rule_search.php

Statewide Integrated Financial Tools (SWIFT) Supplier Portal:

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Minnesota Rules: Amendments and Additions

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. 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, but 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.

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 #40-52 inclusive, with final index (#1-52, or 53 in some years). 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, phone: (612) 297-3000, or toll-free 1-800-657-3757. TTY relay service phone number: (800) 627-3529

Volume 39 - Minnesota Rules

Index for Rules Appearing in Issues # 1- 3: Monday 7 July - Monday 21 July 2014

Education Department

3525.0210; .1335; .2340; .2710; .2900; .3010; .3600; .3700; .3900; .4770 (proposed expedited).....	31, 55
3525.4010, change headnote to HEARING SYSTEM DATA (term change).....	31, 55
3525.4010 s. 1, 2 (proposed expedited repealer).....	31, 55

Natural Resources Department

6240.0650 (adopted expedited emergency).....	36
6262.0200; 6264.0400 (adopted).....	5
6264.0400 s. 3, (repealed).....	5

Secretary of State

8290.0200; .1100; .1300 (proposed).....	25
8290.0100 s. 17; .1300 s. 4 (proposed repealer).....	25

Expedited Rules

Provisions exist for the Commissioners of some state agencies to adopt expedited rules when conditions exist that do not allow the Commissioner to comply with the requirements for normal rules. The Commissioner must submit the rule to the attorney general for review and must publish a notice of adoption that includes a copy of the rule and the conditions. Expedited rules are effective upon publication in the State Register, and may be effective up to seven days before publication under certain conditions.

Expedited rules are effective for the period stated or up to 18 months. Specific *Minnesota Statute* citations accompanying these expedited rules detail the agency's rulemaking authority.

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 Education (MDE)

Proposed Expedited Permanent Rules Relating to Special Education Case Loads and Rule Alignment

NOTICE OF INTENT TO ADOPT EXPEDITED RULES WITHOUT A PUBLIC HEARING

Proposed Expedited Permanent Rules Relating to Special Education Case Loads and Rule Alignment; Revisor's ID Number: RD4273; Proposed Repealer of *Minnesota Rules*, part 3525.4010, Subparts 1 and 2, Are Repealed

Introduction

The Department of Education intends to adopt rules under the expedited rulemaking process following the rules of the Office of Administrative Hearings, *Minnesota Rules*, part 1400.2410, and the Administrative Procedure Act, *Minnesota Statutes*, section 14.389. You may submit written comments on the proposed expedited rules until August 22, 2014.

Agency Contact Person

You must submit comments or questions on the rules to: Kerstin Forsythe Hahn, the Minnesota Department of Education, 1500 Hwy 36 West, Roseville, MN 55113; **phone:** (651) 582-8583; or **e-mail:** Kerstin.Forsythe@state.mn.us. **TTY** users may call the Department of Education at (651) 582-8201.

Subject of the Expedited Rules and Statutory Authority

The proposed expedited rules are about special education, including special education case loads. The proposed rules align the current special education rules to state statute and eliminate inconsistencies and outdated references in the rules. Topics addressed include a definition of "workload," caseload limits, prior written notice, transition, other health disabilities criteria, evaluations and reevaluations, conciliation conference, due process hearings, and expedited hearings. A more in depth description of the proposed changes to the special education rules is available in the legislative report submitted to the legislature by the Department of Education on February 14, 2014. This report is available on the [department's legislative reports webpage](http://education.state.mn.us/MDE/Welcome/Legis/LegisRep/index.html):

<http://education.state.mn.us/MDE/Welcome/Legis/LegisRep/index.html>.

(MDE<Welcome<Legislation). The legislative report is titled "Special Education Caseload Task Force Report."

The statutory authority to adopt the rules under the expedited rulemaking process is the Omnibus Supplemental Budget bill, 2014 Minnesota Laws Chapter 312, Article 17, Section 12. A copy of the proposed rules is published in the State Register and attached to this notice as mailed. The proposed expedited rules may also be viewed on the [department's special education rulemaking webpage](http://education.state.mn.us/MDE/Welcome/Rule/ActiveRule/SpecialEducationRules/index.htm) <http://education.state.mn.us/MDE/Welcome/Rule/ActiveRule/SpecialEducationRules/index.htm>.

(MDE<Welcome to MDE<Rulemaking<Active Rulemaking Projects<Special Education).

Comments

You have until 4:30 p.m. on August 22, 2014, to submit written comment in support of or in opposition to the proposed expedited 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. The Department encourages comment. Your comment should identify the portion of the proposed expedited rules addressed and the reason for the comment. In addition, you are encouraged to propose any change desired. You must also make any comments on the legality of the proposed rules during this comment period.

Expedited Rules

Request for Hearing

In addition to submitting comments, you may also request that a hearing be held on the rules. You must make your request in writing and the agency contact person must receive it by 4:30 p.m. on August 22, 2014. Your written request 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 the agency cannot count it when determining whether it must hold a public hearing. 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 100 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 100, 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 the agency is required to hold a public hearing, it will follow the procedures in *Minnesota Statutes*, section 14.131 to 14.20.

Modifications

The agency may modify the proposed expedited rules using either of two avenues: The agency may modify the rules directly so long as the modifications do not make them substantially different as defined in *Minnesota Statutes*, section 14.05, subdivision 2, paragraphs (b) and (c). Or the agency may adopt substantially different rules if it follows the procedure under *Minnesota Rules*, part 1400.2110. If the final rules are identical to the rules originally published in the *State Register*, the agency will publish a notice of adoption in the *State Register*. If the final rules are different from the rules originally published in the *State Register*, the agency must publish a copy of the changes in the *State Register*. If the proposed expedited rules affect you in any way, the agency encourages you to participate in the rulemaking process.

Alternative Format

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

Lobbyist Registration

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions regarding this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 651-296-5148 or 1-800-657-3889.

Adoption and Review of Expedited Rules

The agency may adopt the rules at the end of the comment period. The agency will then submit rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date that the agency submits the rules. 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: 14 July 2014

Brenda Cassellius, Commissioner
Minnesota Department of Education

3525.0210 DEFINITIONS.

[For text of subps 1 to 10, see M.R.]

Subp. 11. **Days.** “Days” means business day, calendar day, or school day as defined in *Code of Federal Regulations*, title 34, section 300.9 300.11.

[For text of subps 12 to 48, see M.R.]

Subp. 49. **Workload.** “Workload” means a special education teacher’s workload and is defined as the total number of minutes required for all due process responsibilities including direct and indirect services, evaluation and reevaluation time, IEPs managed, travel time, parental contact, and other services required in the IEPs.

3525.1335 OTHER HEALTH DISABILITIES.

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

Expedited Rules

Subp. 2. **Criteria.** The team shall determine that a pupil is eligible and in need of special education instruction and services if the pupil meets the criteria in items A and B.

A. There is:

[For text of subitem (1), see M.R.]

(2) in the case of a diagnosis of Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder (ADD or ADHD), there is written and signed documentation of a medical diagnosis by a licensed physician, an advanced practice nurse, or a licensed psychologist. The diagnosis of ADD or ADHD must include ~~documentation that DSM-IV criteria in appropriate documentation using DSM criteria that~~ items A to E have been met. ~~DSM-IV DSM~~ criteria documentation must be provided by either a licensed physician or a mental health or medical professional licensed to diagnose the condition.

For initial evaluation, all documentation must be dated within the previous 12 months.

[For text of item B, see M.R.]

[For text of subp 3, see M.R.]

3525.2340 CASE LOADS.

[For text of subps 1 to 3, see M.R.]

Subp. 4. **Case loads for school-age educational service alternatives.**

A. The maximum number of school-age pupils that may be assigned to a teacher:

(1) for pupils who receive direct special instruction from a teacher ~~50 percent or more~~ than 60 percent of the instructional day, but less than a full school day:

(a) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired, three pupils;

(b) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with one ~~program support assistant~~ paraprofessional, six pupils;

(c) developmental cognitive disability: mild-moderate range or specific learning disabled, 12 pupils;

(d) developmental cognitive disability: mild-moderate range or specific learning disabled with one ~~program support assistant~~ paraprofessional, 15 pupils;

(e) all other disabilities with one ~~program support assistant~~ paraprofessional, ten pupils; ~~and~~

(f) all other disabilities with two ~~program support assistants~~ paraprofessionals, 12 pupils; and

(g) under special circumstances, for children who receive special education services for 60 percent or more of the instructional day, that are highly disruptive or create an unsafe environment due to the high behavioral or mental health needs of the students, such as students who are identified with EBD, districts have the option of lowering the number of such students in the classroom, so that both students and staff are safe and there is a functional learning environment in which all students have the opportunity to receive a free appropriate public education; and

(2) for pupils who receive direct special education for a full day:

(a) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with one ~~program support assistant~~ paraprofessional, four pupils;

(b) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with two ~~program support assistants~~ paraprofessionals, six pupils; and

(c) all other disabilities with one ~~program support assistant~~ paraprofessional, eight pupils.

B. For pupils who receive direct special education ~~less than 50~~ 60 percent or less of the instructional day, ~~easeloads are to be determined by the local district's policy based on the amount of time and services required by pupils' IEP plans~~ the school district must

Expedited Rules

establish a board-approved policy for determining workload limits for special education staff based on student contact minutes, evaluation and reevaluation time, indirect services, IEPs managed, travel time, and other services required in the IEPs of eligible students.

Subp. 5. **Case loads for early childhood program alternatives.** A teacher's case load must be adjusted downward based on pupils' severity of disability or delay, travel time necessary to serve pupils in more than one program alternative, and if the pupils on the teacher's case loads are receiving services in more than one program alternative or the pupils are involved with other agencies. The maximum number of pupils that can be assigned to a teacher in any early childhood program alternative is:

[For text of items A and B, see M.R.]

C. birth through six years: 14 pupils per teacher. District early childhood special education (ECSE) classes must have at least one paraprofessional employed while pupils are in attendance. The maximum number of pupils in an ECSE classroom at any one time with a teacher and a ~~program support assistant~~ paraprofessional is eight. The maximum number of pupils in an ECSE classroom at any one time with an early childhood team is 16.

3525.2710 EVALUATIONS AND REEVALUATIONS.

Subpart 1. **Initial evaluations.** A school district shall conduct a full and individual initial evaluation according to this part before the initial provision of special education and related services to a pupil under this chapter. The initial evaluation shall consist of procedures to determine whether a child is a pupil with a disability that adversely affects the child's educational performance as defined in *Minnesota Statutes*, section 125A.02, who by reason thereof needs special education and related services, and to determine the educational needs of the pupil. The district proposing to conduct an initial evaluation to determine if the child qualifies as a pupil with a disability shall obtain an informed consent from the parent of the child before the evaluation is conducted. A district may not override the written refusal of a parent to consent to an initial evaluation or reevaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services. ~~If the parents of the child refuse consent for the evaluation, the district may continue to pursue an evaluation by utilizing mediation and due process procedures.~~

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

Subp. 4. **Additional requirements for evaluations and reevaluations.**

[For text of items A to E, see M.R.]

F. Prior to using any ~~conditional procedure~~ restrictive procedures, the IEP team must conduct a functional behavioral assessment (FBA) as defined in part 3525.0210, subpart 22. The team must also document that it has ruled out any other treatable cause for the behavior, for example, a medical or health condition, for the interfering behavior.

[For text of subps 5 and 6, see M.R.]

3525.2900 TRANSITION AND BEHAVIORAL INTERVENTION PLANNING.

[For text of subps 1 to 3, see M.R.]

Subp. 4. **Transition planning.** By grade nine ~~or age 14, whichever comes first~~, the IEP plan shall address the pupil's needs for transition from secondary services to postsecondary education and training, employment, and community living.

[For text of items A and B, see M.R.]

Subp. 5. MR 2011 [Repealed, L 2009 c 96 art 3 s 22]

3525.3010 EDUCATIONAL PLACEMENT.

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

Subp. 2. **General least restrictive environment requirements.** Each district must ensure that pupils are placed in the least restrictive environment according to ~~part 3525.0400 and Code of Federal Regulations, title 34, section 300.552~~ 300.113.

[For text of subps 3 and 4, see M.R.]

3525.3600 PRIOR WRITTEN NOTICE.

When a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a pupil, or the provision of FAPE to the pupil, the district must serve prior written notice on the parent. The district must serve the notice on the parent within a reasonable time, and in no case less than 14 calendar days before the proposed effective date of change or evaluation. If the notice only includes a refusal of a request, it must be served on the parent within 14 calendar days of the date the request was made.

Expedited Rules

The notice must meet the requirements of *Minnesota Statutes*, section 125A.091, subdivisions 3 and 4. The notice must also:

[For text of item A, see M.R.]

B. inform the parents that except for the initial placement and provision of services, the district will proceed with the proposed placement and provision of services unless the parents object in writing on the enclosed response form or otherwise in writing within 14 calendar days ~~after the receipt of~~ when the district sends the prior written notice to the parent; and

[For text of item C, see M.R.]

3525.3700 CONCILIATION CONFERENCE.

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

Subp. 1a. **When and where held; results.** A conciliation conference must be held in accordance with items A to E.

A. A conciliation conference must be held within ten calendar days from the ~~district's receipt of the parent's agreement or request to participate in a conciliation conference~~ date the district receives a parent's objection and at a time and place mutually convenient to the parent and school district representatives.

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

D. Within five ~~business school~~ days after the final conciliation conference, the district must serve the parent with a written memorandum that conforms with *Minnesota Statutes*, section 125A.091, subdivisions 3 and 4, and must provide the parent with any proposed IEP resulting from the conciliation conference. The memorandum and IEP are admissible evidence in a due process hearing.

E. If the proposed action is an initial evaluation ~~or~~ initial placement, or the initial provision of special education, the district must not proceed until the parents give written informed consent. For all other proposed actions, the district must proceed ten business days after the memorandum is ~~served on~~ provided to the parents, unless the parent objects in writing to the proposed action within that time period.

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

3525.3900 INITIATING A DUE PROCESS HEARING.

[For text of subps 1 to 3, see M.R.]

Subp. 4. **Requirements of basic procedures and safeguards notice.** The statement of the basic procedures and safeguards in subpart 3, item J, must include:

[For text of items A to E, see M.R.]

F. a statement that the burden of proof at a due process hearing is on the ~~district to demonstrate~~ party seeking relief, by a preponderance of the evidence, that it is complying with the law and offered or provided a free appropriate public education to the child in the least restrictive environment. If the district has not offered or provided a free appropriate public education in the least restrictive environment and the parent wants the district to pay for a private placement, the burden of proof is on the parent to demonstrate, by a preponderance of the evidence, that the private placement is appropriate;

[For text of items G to N, see M.R.]

[For text of subp 5, see M.R.]

3525.4770 EXPEDITED HEARINGS, TIMELINES.

[For text of subps 1 to 7, see M.R.]

Subp. 8. **Decision.** A written decision for an expedited hearing shall be rendered by the hearing officer in ten ~~calendar school~~ days from the date the hearing was requested. An extension of up to five calendar days may be granted by the hearing officer for good cause shown on the record. The decision is effective upon issuance consistent with *Code of Federal Regulations*, title 34, section 300.514. All regulations in this chapter apply to expedited due process hearings to the extent not modified by this part.

TERM CHANGE. *Minnesota Rules*, part 3525.4010, change the part headnote to HEARING SYSTEM DATA.

REPEALER. *Minnesota Rules*, part 3525.4010, subparts 1 and 2, are repealed.

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*.

Minnesota Office of Administrative Hearings

AH 8-0902-31449: In the Matter of the Affidavit and Petition to Cease Enforcement of an Unadopted Rule by the Minnesota Board of Dentistry

ORDER

This matter came before Administrative Law Judge Eric L. Lipman on May 19, 2014, for an oral argument.

Earlier, on April 15, 2014, the American Safety and Health Institute, Inc. (ASHI) petitioned the Office of Administrative Hearings for an Order under *Minnesota Statutes* § 14.381. It asks the tribunal to determine that the Board of Dentistry is enforcing an informally-developed policy on course accreditation as though it were a duly adopted rule.

Michael J. Ahern, Dorsey & Whitney LLP, appeared on behalf of ASHI. Sara P. Boeshans, Assistant Attorney General, appeared on behalf of Minnesota Board of Dentistry (Board).

ASHI is a provider of cardiopulmonary resuscitation (CPR) training services. It maintains that its coursework in CPR is "equivalent" to the training provided by the American Heart Association and the American Red Cross, as those terms are used in *Minnesota Statutes* Chapter 150A and *Minnesota Rules* Part 3100. ASHI seeks an order directing the Board to cease its practice of withholding accreditation for any coursework in CPR that is not rendered by either the American Heart Association or the American Red Cross.

On April 29, 2014, the Board replied to ASHI's Petition. The Board acknowledges that, for a time, it did withhold accreditation from CPR coursework that was not rendered by either the American Heart Association or the American Red Cross. However, it asserts that it no longer limits course approvals in this way. The Board argues that because it has changed its practices, the ASHI Petition is now moot.

ASHI requested an oral argument on its Petition.

Based upon all of the contents of the hearing record, and for the reasons set out in the Memorandum below,

IT IS HEREBY ORDERED THAT:

1. Until such time as the Board is permitted by statute or rule to exclude CPR coursework by entities other than the American Heart Association or the American Red Cross, the Board may not limit the accreditation of CPR certificates to courses from the American Heart Association and the American Red Cross.
2. The Board shall publish this decision in the *State Register*.
3. The Board shall bear the costs associated with this proceeding.

Dated: June 18, 2014

Eric L. Lipman
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

Factual and Regulatory Background

Since 2005, Minnesota has required all dentists, dental hygienists and licensed dental assistants to be certified in CPR. A set of statutes

Commissioner's Orders

and regulations directs license holders to obtain “a CPR certificate ... through the American Heart Association healthcare provider course, the American Red Cross professional rescuer course, or an equivalent entity.”¹

Licensees must maintain documentation of their CPR certification² and furnish this documentation upon a request from the Board.³ The Board performs random audits of professional development portfolios. It also audits the portfolios of licensees who are the subject of complaints, investigations or disciplinary proceedings.⁴

On September 20, 2012, the Board's Professional Development Committee resolved to urge the full Board to revise the CPR accreditation rules so as to limit the range of acceptable coursework. The Committee urged the Board to revise Minnesota Rules Part 3100 to limit accreditation of CPR training to certificates from the American Heart Association Healthcare Provider course and the American Red Cross Professional Rescuer course.⁵ As the Committee members reasoned, the process of determining “equivalency” with those two courses was difficult for both licensees and Board staff as new training providers entered the market.⁶

On September 21, 2012, the Board adopted the recommendation of the Committee to undertake a revision of the CPR accreditation rules through the rulemaking process.⁷

In addition, so as to dissuade licensees from enrolling in courses that might not be accredited following the rule change,⁸ on March 7, 2013, the Board staff posted the following advisory on the Board's website:

**** Effective Immediately ****

Minnesota Rules require all licensed dental professionals to have and maintain current certification in a CPR healthcare provider course or equivalent. This is a requirement of the professional development portfolio and mandatory to renew your license. In the course of public meetings of the Professional Development Committee and the Executive Committee, the difficulty of determining equivalence of a CPR course that is not offered directly through the American Heart Association or the American Red Cross has been addressed. It is too difficult and onerous for the Board to review each alternative course, and ultimately equivalence cannot be determined.

The concern was brought forward to the full Board at the September 21, 2012 public meeting. At that meeting, the Board unanimously passed a motion that it cannot determine equivalency and therefore adopted a motion that the Board will only accept the *American Heart Association Healthcare Provider* or the *American Red Cross Professional Rescuer* CPR courses for Professional Development and licensure requirements.

(Footnotes)

¹ See, Minn. Stat. § 150A.06, subd. 2d(c)(2) (regulating the activities of dental professionals on “volunteer and retired” status); Minn. Stat. § 150A.10, subd. 1a(4) (regulating the activities of dental hygienists); see also, Minn. R. 3100.0100, subp. 9a (defining CPR and stating “[a] CPR certificate shall be obtained through the AHA health care provider course, the ARC professional rescuer course, or an equivalent course”); Minn. R. 3100.1130, subps. 1(E)(5), 2(B), and 2(F)(4) (regulating the activities of limited general dentists); Minn. R. 3100.1700, subp. 2 (requiring consecutive and current CPR certification for renewal of licensees); Minn. R. 3100.3600, subps. 2(A)(4), 3(A)(3), 4(C), 5(C)(2), and 9a (regulating the activities of dentists administering anesthesia and sedation); Minn. R. 3100.5100, subps. 2(A), 3(A)(3) and 4(B) (requiring licensees to maintain CPR certification).

² See, Minn. R. 3100.5100, subp. 2(A) (“each dentist, dental therapist, dental hygienist, and licensed dental assistant shall establish a portfolio to record, monitor, and retain acceptable documentation of fundamental and elective professional development activities, CPR certification, and self-assessments”); Minn. R. 3100.5100, subp. 4(B) (“Acceptable documentation includes, but is not limited to, the following ... a copy of the front and back of a completed CPR card or certificate from the American Heart Association, the American Red Cross, or other equivalent organization”).

³ See, Minn. R. 3100.5300, subps. 1 and 2.

⁴ See, *id.*; see also, Minn. Stat. §§ 150A.08, 214.10 and 214.103.

⁵ See, Exhibit 1 to Affidavit of Sandra Howard, at 7-15.

⁶ *Id.*, at 3-4.

⁷ Exhibit 2 to Affidavit of Sandra Howard, at 5-8.

⁸ See, *id.*, at 4 (Remarks of Mr. Schragg, Executive Director, at the Board of Dentistry Meeting on September 21, 2013) (“I think the objective here was to provide clarity to everybody so that they would not take a course and submit it – we talked about most of which are submitted at the last minute – and find that it's the wrong course. So if we can provide clarity and say here are the two courses that are acceptable: American Red Cross, American Heart Association, zippo, that's it”).

Commissioner's Orders

This change was effective immediately beginning September 21, 2012. Any CPR course that is not the American Heart Association's Healthcare Provider course or the American Red Cross's Professional Rescuer course will not be accepted.⁹

On March 15, 2013, Ralph Shenefelt, ASHI's Senior Vice President, wrote to the Board and asked it to remove the March 7 advisory from its website. Mr. Shenefelt asserted that the Board was violating Minnesota statutes and rules by excluding those CPR training providers that could establish equivalence with coursework provided by the American Heart Association or the American Red Cross. He asserted that ASHI was such a provider.¹⁰

At or about the same time, House File 1463 and Senate File 1484 were introduced in the Minnesota House of Representatives and Minnesota Senate.¹¹ While these proposals addressed various features of dental practice, on the date of their introduction they did not amend the statutory requirements relating to CPR course equivalency.¹²

Neither bill was heard in committee, or enacted, during the 2013 regular session of the Minnesota Legislature.¹³

On January 13, 2014, the Board published a Request for Comments in the *State Register*. Among the items on which the Board requested feedback from the public was its proposal to delete the CPR equivalency requirements from Minn. R. Part 3100.¹⁴ As the Board noted:

[T]he Board concluded that it is too difficult and onerous for the Board to review each alternative course, and ultimately equivalence cannot be determined by the Board. Additionally, the inclusion of an option for an equivalent course has created some degree of confusion as to what the Board will accept. Some courses are offered strictly online with no hands-on component, while others vary considerably from class to class. The focus on a nationally recognized standard offered through the American Heart Association or the American Red Cross provides ready availability, and ensures clarity and consistency. Thus, the Board considers these changes to be necessary and reasonable.¹⁵

On February 7, 2014, Mr. Shenefelt submitted written response to the Board's Request for Comments. In his comments, Mr. Shenefelt was sharply critical of the proposal to limit CPR accreditation to two course providers, a plan that he characterized as "unreasonable, unjust, unfair, illogical, arbitrary and capricious."¹⁶

On March 12, 2014, House File 1463 was heard in the House Committee on Human Services Policy. During those proceedings, the bill's Chief Author, Representative Will Morgan, added an "author's amendment" to the text of the bill.¹⁷ This amendment deleted the CPR course equivalency provisions from two different statutes: The first of those statutes regulated the activities of dental professionals who perform public health work while on "volunteer and retired" status. The second statute regulated the practice of dental hygienists.¹⁸

(Footnotes)

⁹ ASHI Petition, at 4 (emphasis in original).

¹⁰ *Id.*, at 8-15.

¹¹ See, Meeting of the Minnesota House Health and Human Services Policy Committee, Audio Recording, at 05:00:00 (Introductory Remarks from Representative Will Morgan) (March 12, 2014).

¹² See, House File 1463 (2013) (As Introduced) and Senate File 1484 (2013) (As Introduced).

¹³ See, e.g., 2013 Journal of the House 857 and 2014 Journal of the House 7087.

¹⁴ See, 38 State Register 1003-1005 (January 13, 2014); see also, Draft Proposed Permanent Rules Relating to Licensing Dentists, Dental Hygienists and Dental Assistants, RD4228 (October 28, 2013).

¹⁵ See, Response of the Minnesota Board of Dentistry, at 4.

¹⁶ See, ASHI Petition, at 114.

¹⁷ See, Audio Recording, Meeting of the Minnesota House Health and Human Services Policy Committee, at 05:00:23 (Adoption of the A14-0761 Amendment) (March 12, 2014).

¹⁸ See, A14-0761 Amendment (<http://www.house.leg.state.mn.us/comm/minls88/A14-0761.htm>); see also, House File 1463 (2013) (1st Engrossment); Audio Recording, Meeting of the Minnesota House Health and Human Services Policy Committee, at 05:04:20 (March 12, 2014) (Testimony Marshall Schragg) (the deletion of the words "or an equivalent entity" from Minn. Stat. §§ 150A.06, subd. 2d and 150A.10, subd. 1a was needed to "eliminate that language that causes confusion").

Commissioner's Orders

On April 15, 2014, ASHI filed its Petition with this Office. Following the service of ASHI's Petition on the Board, the March 7, 2013 bulletin was removed from the Board's website.¹⁹

The two statutory changes to the CPR accreditation practice were enacted by the Minnesota Legislature and signed into law by Governor Dayton in May of 2014.²⁰ The effective date of these measures is August 1, 2014.²¹

At the oral argument on ASHI's Petition, the Board acknowledged that between September of 2012 and April of 2014, some license holders who had taken CPR courses from organizations other than the American Heart Association or the American Red Cross were denied credit for their coursework. The Board staff does not know, however, either the number or the identity of those persons whom it denied credit for CPR coursework.²²

An "equivalency review" of ASHI's CPR coursework is now underway at the Board.²³

Analysis

Under *Minnesota Statutes* § 14.381, subd. 1(a), a person may 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. Does the March 7, 2013 Bulletin Qualify as a Rule?

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.²⁴

Further, interpretations of existing rules which "make specific the law enforced or administered by the agency," and are not either long-standing positions of the agency or within the plain meaning of the statute, are deemed to be "interpretative rules."²⁵

With limited exceptions, not applicable in this case, an agency's interpretative rules are valid only if they are promulgated in accordance with MAPA.²⁶

(Footnotes)

¹⁹ See generally, Affidavit of Amy Howard, at ¶ 11 (April 29, 2014).

²⁰ 2014 Minn. Laws Chapter 291, §§ 34 and 40.

²¹ Id. See also, Minn. Stat. § 645.02 ("Each act, except one making appropriations, enacted finally at any session of the legislature takes effect on August 1 next following its final enactment, unless a different date is specified in the act").

²² See, Digital Recording, OAH 8-0902-31449; see also, ASHI Petition, at 114 (E-mail from ASHI CPR Trainer James Cooper).

²³ Affidavit of Amy Johnson, at ¶ 10.

²⁴ Minn. Stat. § 14.02, subd. 4.

²⁵ See, e.g., *Mapleton Community Home, Inc. v. Minnesota Dep't of Human Services*, 391 N.W.2d 798, 801 (Minn. 1986) ("[a]n agency interpretation that 'make[s] specific the law enforced or administered by the agency' is an interpretive rule that is valid only if promulgated in accordance with the [Minnesota Administrative Procedures Act]") (quoting *Minnesota-Dakotas Retail Hardware Ass'n v. State*, 279 N.W.2d 360, 364 (Minn. 1979)).

²⁶ See, Minn. Stat. § 14.03, subd. 3(b); *In re Application of Q Petroleum*, 498 N.W.2d 772, 780 (Minn. Ct. App.), review denied (Minn. 1993) (citing, *Mapleton Community Home*, and *Minnesota-Dakotas Retail Hardware Ass'n*, supra).

Commissioner's Orders

The Board's March 7, 2013 advisory is a "statement of general applicability." The Board declared that it "will only accept the American Heart Association Healthcare Provider or the American Red Cross Professional Rescuer CPR courses for Professional Development and licensure requirements." This declaration makes clear that the Board's plan is to reject all other coursework for obtaining a CPR certificate and that no policy will be developed later on a case-by-case basis.²⁷

The March 7, 2013 announcement is also a "statement of future effect." The Board declared that "effective immediately ... [a]ny CPR course that is not the American Heart Association's Healthcare Provider course or the American Red Cross's Professional Rescuer course will not be accepted."²⁸ Indeed, the Board stated that the new accreditation policy had been in effect for a period of four months before the advisory was first posted to the Board's website.²⁹

Finally, the accreditation practice implemented by the Board in September of 2013 was "adopted to implement or make specific the law enforced or administered by that agency." As the Board explained in its advisory, "Minnesota Rules require all licensed dental professionals to have and maintain current certification in a CPR healthcare provider course or equivalent," and that the Board was adjusting this procedure because "[i]t is too difficult and onerous for the Board to review each alternative course, and ultimately equivalence cannot be determined."³⁰

For these reasons, unless some exception to the requirement to promulgate an interpretative rule applies in this case, the policy change made by the Board in September of 2013 is an administrative "rule."

2. Does the Agency Pronouncement Follow Directly from the Plain Meaning of the Statute?

It is important to note that when an agency's interpretation of the law follows from the plain meaning of a statute, the agency is not deemed to have engaged in rulemaking.³¹ Here, however, the Board's new accreditation policy did not follow from the plain meaning of the relevant statutes – either Minn. Stat. §§ 150A.04, 150A.06 or 150A.10. In fact, the Board's website announcement contravenes those statutes. The Board may not contradict, or abandon, statutory requirements by approving a resolution or posting notices to its website.³²

3. Are ASHI's Claims for Relief Moot?

The Board asserts that "this matter is moot because [it] has taken down the March 7, 2013, Bulletin and is considering whether ASHI's CPR course is equivalent to those offered by the [American Heart Association] and or the [American Red Cross]."³³

The Administrative Law Judge disagrees. As the Minnesota Supreme Court explained in *State v. Rud*:

Ordinarily when a dispute between two litigants is settled or in some other way resolved during the pendency of an appeal, we dismiss the appeal as moot. However, the mootness doctrine is a flexible discretionary doctrine, not a mechanical rule that is invoked automatically whenever the underlying dispute between the particular parties is settled or otherwise resolved....

(Footnotes)

²⁷ Compare, *Reserve Life Insurance Co. v. Commissioner of Commerce*, 402 N.W.2d 631 (Minn. Ct. App.) review denied (Minn. 1987) (it was reasonable for the Commissioner to assess the validity of insurance policy provisions on a case-by-case basis where it would be "nearly impossible" to state in advance all of the possible applications of the statutory terms 'unfair, inequitable, misleading (and deceptive)').

²⁸ ASHI Petition, at 4.

²⁹ *Id.*

³⁰ *Id.*

³¹ See, e.g., *Cable Communications Bd. v. Nor-West Cable Communications P'ship*, 356 N.W.2d 658, 667 (Minn. 1984) ("Generally, if the agency's interpretation of a rule corresponds with its plain meaning, or if the rule is ambiguous and the agency interpretation is a long-standing one, the agency is not deemed to have promulgated a new rule").

³² See, Minn. Const. Art. V, § 3 (The Executive Department "shall take care that the laws be faithfully executed"); Minn. Stat. § 14.06 (a) ("Each agency shall adopt rules, in the form prescribed by the revisor of statutes, setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public").

³³ See, Response of the Minnesota Board of Dentistry, at 9.

Commissioner's Orders

....

A case is functionally justiciable if the record contains the raw material (including effective presentation of both sides of the issues raised) traditionally associated with effective judicial decision-making.³⁴

In this case, not only is this matter “functionally justiciable” as described by *State v. Rud*, there is a controversy that survives the Board’s withdrawal of its March 7 circular;³⁵ namely, how can those licensees who enrolled in ASHI coursework in 2013 and early 2014 establish that they are deserving of credit from the Board?

In this respect, a declaration from this tribunal that the March 7, 2014 circular was an unadopted rule, publication of this Order in the *State Register* and service of this opinion on the Legislative Coordinating Commission,³⁶ may contribute to identifying those persons who were wrongfully denied accreditation from the Board. This is meaningful relief to ASHI, its affiliates, and their students.

The case is not moot and ASHI is entitled to relief.

E. L. L.

(Footnotes)

³⁴ See, *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984).

³⁵ See, *Hous. & Redevelopment Auth. ex rel. City of Richfield v. Walser Auto Sales, Inc.*, 641 N.W.2d 885, 891 (Minn. 2002) (challenge to the actions of a condemning authority’s actions was not mooted by the fact that physical changes to the underlying property “made it impossible to return appellants’ property in the condition it existed prior to respondent’s acquisition of title”); *Zuehlke v. Indep. Sch. Dist. No. 316*, 538 N.W.2d 721, 724-25 (Minn. Ct. App. 1995) (the challenge to School District’s placement decisions was not mooted because each of the relators were later assigned to other positions in affiliated school districts); *Star Tribune v. Board of Educ., Spec. Sch. Dist. No. 1*, 507 N.W.2d 869, 871 (Minn. Ct. App.) review denied (Minn. 1993) (under the doctrine of collateral legal consequences, this court may consider “the continuing effects of a challenged but completed action”).

³⁶ See, Minn. Stat. § 14.381 (“The order of the administrative law judge must direct the agency to cease enforcement of the unadopted rule that is the subject of the petition. The order must be served upon the parties and the legislative coordinating commission by first class mail and must be published by the agency in the *State Register*”).

Minnesota Department of Natural Resources (DNR) Commissioner's Order #1 ML 2014: Lifting the Night Fishing Ban on Mille Lacs Lake

Date: July 21, 2014
Statutory authority: *Minnesota Statutes*, section 97C.005, subd. 3 & subd.

Supersedes Expedited Emergency Game and Fish Rules:
Mille Lacs Lake Fishing as published in the April 21, 2014 *State Register*.

Chapter 6264.0400, subp. 4, item C for only that portion dealing with the taking of fish and possession of equipment whereby fish may be taken between 10 pm and 6 am.

BACKGROUND

- Mille Lacs Lake is governed under the terms of the Federal District Court which directed the State and the Indian bands to maintain exploitation rates of walleye at or below 24% and northern pike at or below threshold levels agreed upon based on best available data by the 1837 Fisheries Committee in the treaty area.
- Estimates of total kill are based on an angler creel survey that has high statistical precision. The sound biological data generated by the creel survey for current estimates of total kill indicate that Mille Lacs should stay below the State’s allocation levels even with the night closure lifted if current harvest pressure stays at current levels. Consequently, there is no need to continue the restrictive regulations that close the taking of fish at night as published in the April 21, 2014 *State Register*.

Commissioner's Orders

- MS 97C.005, Subd 3 allows the possession of fish to be modified through a Commissioner's Order published in the *State Register*.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to authority vested in me by law, including but not limited to *Minnesota Statutes*, section 97C.005, subdivision 3, that

Equipment used to take fish may be possessed and fish may be taken and possessed on Mille Lacs Lake between the hours of 10 pm and 6 am starting at 10 pm on July 21, 2014 through midnight on Feb 22, 2015.

Dated: 14 July 2014

Tom Landwehr, Commissioner
Department of Natural Resources

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.

Minnesota Department of Transportation (Mn/DOT) Notice to Bidders: Suspensions/Debarments as of July 15, 2014

NOTICE OF SUSPENION

NOTICE IS HEREBY GIVEN that MnDOT has ordered that the following vendors be suspended effective July 8, 2014:

- Marlin Dahl, Granada, MN
- Dahl Trucking, Elmore, MN
- Elmore Truck and Trailer, Inc., Elmore, MN

NOTICE OF DEBARMENT

NOTICE IS HEREBY GIVEN that MnDOT has ordered that the following vendors be debarred for a period of three (3) years, effective May 6, 2013 until May 6, 2016:

- Gary Francis Bauerly and his affiliates, Rice, MN

- Gary Bauerly, LLC and its affiliates, Rice, MN
- Watab Hauling Co. and its affiliates, Rice, MN

Minnesota Statute section 161.315 prohibits the Commissioner, counties, towns, or home rule or statutory cities from awarding or approving the award of a contract for goods or services to a person who is suspended or debarred, including:

- 1) any contract under which a debarred or suspended person will serve as a subcontractor or material supplier,
- 2) any business or affiliate which the debarred or suspended person exercises substantial influence or control, and
- 3) any business or entity, which is sold or transferred by a debarred person to a relative or any other party over whose actions the debarred person exercises substantial influence or control, remains ineligible during the duration of the seller's or transfer's debarment.

Minnesota Department of Transportation (Mn/DOT) Office of Transportation System Management Notice of Solicitation for Public Review and Comment on the Draft State Transportation Improvement Program (STIP) for State Fiscal Years 2015-2016-2017-2018 (July 1, 2014 through June 30, 2018)

The Minnesota Department of Transportation is offering an opportunity for public review and comment on a draft list of projects to be included in the *State Transportation Improvement Program (STIP)* for state fiscal years 2015-2016-2017-2018 (July 1, 2014 through June 30, 2018). The program of transportation projects annually utilizes about \$590 million federal funds, \$290 million of state trunk highway funds, plus funds from trunk highway bonds, local agencies and other sources. Projects include local road and bridge projects utilizing federal funds; transit capital investments; state highway road and bridge projects; Transportation Alternative Program (TAP) projects; Congestion Mitigation and Air Quality (CMAQ) projects; and other projects intending to utilize federal highway funds, federal transit funds, or state trunk highway funds. The draft list of projects in the STIP is available for review at the Department of Transportation District Offices:

- District 1 – Duluth, 1123 Mesaba Avenue, Duluth, MN 55811 - Phone (218) 725-2700
- District 2 – Bemidji, 3920 Highway 2 West, Bemidji, MN 56601 - Phone (218) 755-6500
- District 3 – Baxter, 7694 Industrial Park Road, Baxter, MN 56425-8096 - Phone 1-800-657-3971
- District 4 – Detroit Lakes, 1000 Hwy. 10 West, Detroit Lakes, MN 56501 - Phone 1-800-657-3984
- District 6 – Rochester, 2900 48th Street NW, Rochester, MN 55901-5848 - Phone (507) 286-7500
- District 7 – Mankato, 2151 Bassett Dr, Mankato, MN 56001-6888 - Phone 1-800-657-3747
- District 8 – Willmar, 2505 Transportation Road, Willmar, MN 56201 - Phone 1-800-657-3792
- Metro District – Water's Edge Building, 1500 W. Co. Rd. B-2, Roseville, MN 55113-3174 - Phone (651) 234-7500
Or the Office of Transportation System Management, Mail Stop 440, 395 John Ireland Boulevard,
Third Floor South, St. Paul, MN 55155.

You have 30 days to submit written comments. Comments must be received by 4:30 p.m. on August 19, 2014. Comments are encouraged and should identify the portion of the STIP addressed, reason for the comment, and any change proposed. Please direct all correspondence to:

Deb Peña
Office of Transportation System Management
Minnesota Department of Transportation
Mail Stop 440
395 John Ireland Boulevard
St. Paul, MN 55155
E-mail: Debbie.Pena@state.mn.us
Phone: (651) 366-3775
Office Phone: (651) 366-3798

State Grants & Loans

In addition to requests by state agencies for technical/professional services (published in the State Contracts Section), the *State Register* also publishes notices about grants and loans available through any agency or branch of state government. Although some grant and loan programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself. Agencies are encouraged to publish grant and loan notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

SEE ALSO: Office of Grants Management (OGM) at: <http://www.grants.state.mn.us/public/>

Minnesota Department of Health (MDH) Request for Proposals for Exceptions to the Nursing Home Moratorium

Purpose

The commissioner of health is accepting written proposals from nursing homes and certified boarding care homes requesting funding through the moratorium exception process, according to *Minnesota Statutes* 144A.073. The commissioner of health, in coordination with the commissioner of human services, may approve such requests under conditions listed in *Minnesota Statutes*. These conditions refer to categories of exceptions which are defined as:

- (a) "Conversion" means the relocation of a nursing home bed from a nursing home to an attached hospital.
- (b) "Relocation" means the movement of licensed nursing home beds or certified boarding care beds as permitted by state statute to promote equitable access across the state or to move the beds to another site.
- (c) "Renovation" means extensive remodeling of an existing facility with a total cost exceeding ten percent of the appraised value of the facility or \$200,000, whichever is less. A renovation may include the replacement or upgrade of existing mechanical or electrical systems.
- (d) "Replacement" means the construction of a complete new facility.
- (e) "Addition" means the construction of new space to an existing facility.
- (f) "Upgrading" means a change in the level of licensure of a bed from a boarding care bed to a nursing home bed in a certified boarding care facility.
- (g) "Phased project" means a proposal that identifies construction occurring with more than one distinct completion date. To be considered a distinct completion, each phase must have construction that is ready for resident use, as determined by the commissioner, that is not dependent on similar commissioner approval for future phases of construction. The commissioner of human services shall only allow rate adjustments for construction projects in phases if the proposal from a facility identifies construction in phases and each phase can be approved for use independent of the other phases.

Appropriation Available

The amount of the legislative appropriation available for the total annual additional costs to the Medical Assistance program for this Request for Proposals (RFP) is approximately \$1,119,560.

NOTE: As of 10-01-14, *Minnesota Statutes* 256B.434, subd. 4f, allows projects with costs less than \$1,526,480 to proceed without applying for a moratorium exception under this process.

Eligibility to Submit a Proposal

A proposal for an exception to the nursing home moratorium may be submitted by an organization or individual authorized by a facility's governing board or management to prepare and submit a proposal to the commissioner of health.

Method for Estimating Proposal Cost

The method that the commissioner will use in evaluating proposals for approval or disapproval for estimating the cost of a proposal is detailed in the application materials.

Criteria for Review

Minnesota Statutes 144A.073, subd. 4a, states the criteria the commissioner of health is to consider in reviewing moratorium exception proposals:

Subd. 4a. **Criteria for review.** In reviewing the application materials and submitted costs by an applicant to the moratorium process, the review panel shall consider the following criteria in recommending proposals:

State Grants & Loans

- (1) the extent to which the proposed nursing home project is integrated with other health and long-term care services for older adults;
- (2) the extent to which the project provides for the complete replacement of an outdated physical plant;
- (3) the extent to which the project results in a reduction of nursing facility beds in an area that has a relatively high number of beds per thousand occupied by persons age 85 and over;
- (4) the extent to which the project produces improvements in health; safety, including life safety code corrections; quality of life; and privacy of residents;
- (5) the extent to which, under the current facility ownership and management, the provider has shown the ability to provide good quality of care based on health-related findings on certification surveys, quality indicator scores, and quality-of-life scores, including those from the Minnesota nursing home report card;
- (6) the extent to which the project integrates the latest technology and design features in a way that improves the resident experience and improves the working environment for employees;
- (7) the extent to which the sustainability of the nursing facility can be demonstrated based on the need for services in the area and the proposed financing of the project; and
- (8) the extent to which the project provides or maintains access to nursing facility services needed in the community.

Procedure for Receiving Application Materials

The application materials, including instructions, format and necessary forms, are available at the following website:

<http://www.health.state.mn.us/divs/fpc/moratoriumapp14/>

or upon written or facsimile request to:

Mary Cahill

MDH – Division of Compliance Monitoring

U.S. Mail Service:

MDH – Division of Compliance Monitoring

P.O. Box 64900

St. Paul, Minnesota 55164-0900

Phone: (651) 201-3701

Fax: (651) 215-9695

E-mail: mary.cahill@state.mn.us

Review and Approval of Proposals

Proposals will be reviewed by a committee composed of organizations that represent consumers and providers of nursing home services; persons who provide engineering, building construction, or design services; and, state agencies involved in long term care issues, housing and finance. Applicants will have the opportunity to present their proposal, in person, to the Proposal Review Committee (Committee) prior to the Committee submitting comments and recommendations to the commissioner. Details on this meeting, including date, time and location will be made available to the contact person listed in each moratorium exception proposal. The commissioner of health will approve or disapprove project proposals based on criteria established in law and rule. The commissioner will make the final decision no later than March 30, 2015.

Questions Concerning the RFP

Any questions relating to the RFP process must be submitted by prospective applicants in writing via Fax, US mail or e-mail to:

Mary Cahill

Minnesota Department of Health

Division of Compliance Monitoring

P.O. Box 64900

St. Paul, MN 55164-0900

Fax: (651) 215-9695

E-mail: mary.cahill@state.mn.us

No answers will be provided in response to phone calls. Each question must cite the particular RFP page to which it refers. Copies of all questions and their answers will be provided to all prospective applicants who have requested application materials. Only responses in writing by staff of the Minnesota Department of Health will be considered official. The closing date for the receipt of questions will be Friday, October 17, 2014.

State Grants & Loans

Technical assistance in completing the application forms is available from the Aging Services of Minnesota, at (651) 645-4545, or Care Providers of Minnesota at (952) 854-2844.

Procedures for Submitting Proposals

No proposals submitted by facsimile machine will be accepted. **Six (6) written copies of the completed proposal must be received no later than 4:00 p.m. on Wednesday, December 10, 2014 by:**

Darcy Miner
U.S. Mail Service:
Minnesota Department of Health
Division of Compliance Monitoring
P.O. Box 64900

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

Minnesota Department of Human Services (DHS) Economic Assistance and Employment Supports Division Addendum to Request for Proposals to Develop and Implement Subsidized Employment Strategies and Address Racial and Ethnic Disparities in Employment Outcomes for Families Served by the Minnesota Family Investment Program (MFIP)

NOTICE IS HEREBY GIVEN that the Minnesota Department of Human Services through its Economic Assistance and Employment Supports Division has published an Addendum to its Request for Proposals to Develop and Implement Subsidized Employment Strategies and Address Racial and Ethnic Disparities in Employment Outcomes for Families Served by the Minnesota Family Investment Program (MFIP) that was published in the June 16, 2014 *State Register*. In the Addendum, DHS has extended the Request for Proposals (RFP) due date to Friday, August 1, 2014. The official response to this RFP must be submitted and physically received no later than **4:00 p.m. Central Time on Friday, August 1, 2014.**

To request a full text of the RFP Addendum please contact:

Erika Nicholson
Department of Human Services
Economic Assistance and Employment Supports Division
P.O. Box 64951
444 Lafayette Road North
St. Paul, MN 551550951
Phone: (651) 431-3992
Fax: (651) 431-7526

This is the only person designated to answer questions by potential responders regarding this RFP.

The text of the RFP Addendum can also be viewed by visiting the Minnesota Department of Human Services RFP web site:

http://www.dhs.state.mn.us/main/id_000102.

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.

State Contracts

In addition to the following listing of state contracts, readers are advised to check the Statewide Integrated Financial Tools (SWIFT) Supplier Portal at: <http://supplier.swift.state.mn.us> as well as the Office of Grants Management (OGM) at: <http://www.grants.state.mn.us/public/>

Informal Solicitations: Informal solicitations for professional/technical (consultant) contracts valued at over \$5,000 through \$50,000, may either be advertised in the Supplier Portal (see link above) or posted on the Department of Administration, Materials Management Division's (MMD) Web site at: <http://www.mmd.admin.state.mn.us/solicitations.htm>.

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 advertised in the SWIFT Supplier Portal or alternatively, in the *Minnesota State Register* if the procurement is not being conducted in the SWFT system.

Minnesota State Colleges and Universities (MnSCU) / Minnesota State Department of Administration (Admin) State Designer Selection Board Project No. 14-07 Notice of Availability of Request for Proposal (RFP) for Designer Selection for: Winona State University Education Village, Phase I Renovation

The State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of Central Lakes College, through the State Designer Selection Board, 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 Department of Administration's website at:
<http://mn.gov/admin/government/construction-projects/sdsb/sdsb-projects.jsp> (click 14-07).

A **MANDATORY** informational meeting is scheduled for **Wednesday, July 30, 2014 at 10:00 AM** Central Time at Wabasha Hall, room 215, 101 E Wabasha Street, Winona, MN 55987

Any questions should be directed by email only, to Patricia Bremer at pbremer@winona.edu. Project questions will be taken by this individual only. Questions regarding this RFP must be received by **Monday, August 4, 2014** no later than **12:00 PM** Central Time.

Proposals must be delivered to Talia Landucci Owen, Executive Secretary, State Designer Selection Board, Real Estate and Construction Services, Room 309, Administration Building, 50 Sherburne Ave., St. Paul, MN 55155, **phone:** (651) 201-2372 no later than **12:00 noon on Monday, August 11, 2014**. 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) Anoka Ramsey Community College/Anoka Technical College Notice of Availability of Request for Proposals (RFP) for Facilities Master Planning Services

The State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of Anoka Ramsey Community College and Anoka Technical College is soliciting proposals for a vendor to provide comprehensive facilities master planning services. The selected vendor will provide services in accordance with the requirements and conditions listed in the RFP.

Proposals for this project will be received by:
Roger Freeman
Chief Facilities Officer

State Contracts

Anoka Ramsey Community College/Anoka Technical College
11200 Mississippi Blvd NW
Coon Rapids, MN 55433

Proposals must be submitted in a sealed envelope no later than 1:00 pm (central time) on August 4, 2014.

The RFP will be posted at <http://finance.mnscu.edu/facilities/design-construction/announcements/>

Minnesota State Colleges and Universities (MnSCU) Bemidji State University Notice of Request for Proposals for Website Development, Rebranding and Promotional Materials

NOTICE IS HEREBY GIVEN that Bemidji State University will receive sealed proposals for Website Development, Rebranding & Promotional Materials. Specifications will be available July 21, 2014, at the following website:

http://www.bemidjistate.edu/offices/procurement_logistics/rfps_bids/

Instructions for delivering proposals, as well as all other requirements and contact information, will be contained in the RFP to be posted at the above website.

Sealed proposals must be received by Rebecca Wilkinson, Procurement and Contracts Officer, Bemidji State University & Northwest Technical College, Deputy 204, Box 8, 1500 Birchmont Drive NE, Bemidji, MN 56601, by 2:00 PM, Wednesday, August 13, 2014. Late proposals will not be considered.

Bemidji State University reserves the right to reject any or all proposals and to waive any irregularities or informalities in proposals received. This Request for Proposal does not obligate the University to complete a proposed contract, and the University reserves the right to cancel the solicitation if it is considered to be in its best interest.

Minnesota State Colleges and Universities (MnSCU) Central Lakes College Request for Proposal for Costa Rica Travel Study Program

Central Lakes College is requesting proposals from qualified individuals or organizations to offer travel arrangements for the Costa Rica Travel Study Program at Central Lakes College. A copy of the request for proposal may be obtained by calling Debbie Sterriker at Central Lakes College, 1830 Airport Road, Staples MN 56479, (218) 894-5103 or 1-800-247-6836.

Proposals must be submitted no later than 1 p.m. on Monday, August 4, 2014. All proposals must be sealed and marked "RFP for Costa Rica Travel Study Program". Submit proposals to:

Central Lakes College
Attn: Debbie Sterriker
1830 Airport Road
Staples, MN 56479

The college reserves the right to reject any or all proposals, to waive any information or irregularities in the bidding and to make the award serving the best interest of the college.

Central Lakes College is an affirmative action/equal opportunity employer and educator. These materials are available in alternative

formats to individuals with disabilities upon request. If you use a TTY, call the Minnesota Relay Service at 800-627-3529 and request to contact Central Lakes College.

Minnesota State Colleges and Universities (MnSCU) **Pine Technical and Community College** **Notice of Request for Bids for Interested Software Providers**

NOTICES IS HEREBY GIVEN that Pine Technical and Community College, in support of the U.S. Department of Labor Employment and Training Administration funded Rural Information Technology Alliance (RITA) Consortium, is seeking bids for a cloud based software that facilitates real-time participant and program tracking that conforms to the reporting and data privacy standards set for Trade Adjustment Assistance Community College and Career Training (TAACCCT) Grant Program Round #3 grantees. The software requirement are as follows:

- Support service delivery among the consortium partners (Pine Technical and Community College, Pine City, MN; Central Lakes College, Brainerd, MN; North Central Texas College, Gainesville, TX; and Ridgewater Community College, Hutchinson and Willmar, MN)
- Facilitate referral and information sharing among partners and the third-part evaluator while still providing for segregation of data by college and restricting data access by user role.
- Conform to data privacy laws and best practices
- Allows for secure self-registering of participants
- Support case-management of participants and employers, including a comprehensive notification system
- Allows for the ongoing ability to modify the software system to meet the evolving needs of the consortium
- Support evidence-based approaches and measuring individual, as well as aggregate progress
- Allows for standard and adhoc reporting
- Facilitates linking and sharing of data through a flexible API
- Employment Scorecard Capabilities

The software will be used by up to forty users located at four colleges and the third-party evaluator. The bid must include the annual license fee and the cost of implementation. Contracts and service level agreements must also be included. Estimated license renewal costs are also required.

Questions can be addressed to Michael Olesen, RITA Consortium Director, at **e-mail: olesenm@pinetech.edu** or (320) 629-5191.

Sealed bids must be submitted to: Michael Olesen, RITA Consortium Director, Pine Technical and Community College, 900 4th Street SE, Room 85, Pine City, MN 55063 by 3:00 pm CST August 4, 2014.

Pine Technical and Community College reserves the right to reject any or all bids or portion thereof, to waive technicalities in bids, and to delay final award for a period of 15 days. This request for bids does not obligate the State to complete the work or license 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.

State Contracts

Minnesota State Colleges and Universities (MnSCU)

St. Cloud Technical & Community College

Formal Request for Proposal for Curriculum Development and Instruction: Precision Machining, Finishing, Welding, and Machine Programming and Operation

Response Due Date and Time: Monday, August 4, 2014 at 3:30 p.m. Central Time.

The complete Request for Proposal will be available on Monday, July 21, 2014 on the website <http://www.sctcc.edu/rfp>.

Title of Project: Curriculum Development and Instruction: Precision Machining, Finishing, Welding, and Machine Programming and Operation.

Geographic Location Requirements: St. Cloud Technical & Community College, 1540 Northway Drive, St. Cloud, MN 56303

Responses must be received at the location listed below:

St. Cloud Technical & Community College
1540 Northway Drive
St. Cloud, MN 56303
Susan Meyer, Purchasing Agent, Room 1-401
Phone: (320) 308-5973
Fax: (320) 308-5027
E-mail: smeyer@sctcc.edu

Contact for questions: Susan Meyer, **Phone:** (320) 308-5973, **e-mail:** smeyer@sctcc.edu

Your response to this Request for Proposal (RFP) must be returned sealed. Sealed responses must be received no later than the due date and time specified above. Late responses cannot be considered and the responses will be rejected.

The laws of Minnesota and MnSCU Board of Trustees policies and procedures apply to this RFP.

All attached General RFP Terms and Conditions, Specifications and Special Terms and Conditions are part of the RFP and will be incorporated into any contract(s) entered into as a result of this RFP.

All responses to this RFP must be prepared as stated herein and properly signed. **Address all correspondence and inquiries regarding this RFP to the Contact person above. This is a request for responses to an RFP and is NOT a purchase order.**

Minnesota Historical Society (MHS)

Request for Bids for Visitor Center Roof Replacement at the Charles A. Lindbergh Historic Site, Little Falls, Minnesota

The Minnesota Historical Society (the Society) is seeking bids from qualified firms to provide all labor, materials, equipment, and supplies for re-roofing the visitor center at the Charles A. Lindbergh Historic Site. Work will be accomplished in accordance with the Technical Specifications, Instructions to Bidders, and Contract Documents (i.e., Supplementary Conditions, General Conditions, Contract Terms), as well as this Request for Bids.

Request for Bids are available by emailing Mary Green Toussaint, Acting Contracting Officer at mary.green-toussaint@mnhs.org

There will be a **MANDATORY** pre-bid meeting for all interested parties on **Wednesday, July 30, 2014, at 11:00 a.m. Local Time** at

the Site, 1620 Lindbergh Drive South, Little Falls, MN 56345.

All bids must be received by Mary Green Toussaint, Acting Contracting Officer, Minnesota Historical Society, 345 Kellogg Boulevard West, St. Paul, Minnesota 55102, or her authorized agent no later than **2:00 p.m. Local Time Thursday, August 14, 2014**. “Authorized agent” means the receptionist at the 1st Floor Information Desk. **Late bids will not be considered.**

Dated: July 21, 2014

Minnesota Historical Society (MHS) Request for Proposals for Development and Implementation of a Communications Strategy to Educate Minnesotans on MNHS’ Leadership in Historic Preservation

The Minnesota Historical Society (MNHS) seeks a qualified consultant to develop and implement an education and communications strategy for MNHS’ historic preservation endeavors. The ultimate objective is to position MNHS as a leader in historic preservation and to heighten awareness and advocacy about historic preservation, while incorporating historic preservation into the MNHS brand. The strategy must provide direction in communicating about MNHS’ many preservation offerings in a proactive, unified, engaging and consistent manner using media relations, social and digital media and marketing tactics.

The RFP is available by e-mailing mary.green-toussaint@mnhs.org.

All proposals must be received by Mary Green Toussaint, Acting Contracting Officer, Minnesota Historical Society, 345 Kellogg Boulevard West, St. Paul, Minnesota 55102, or her authorized agent no later than **2:00 p.m. Local Time Thursday, August 7, 2014**, in a sealed envelope marked “Communications Strategy”. “Authorized agent” means the receptionist at the 1st Floor Information Desk. **Late bids will not be considered.**

Minnesota 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 Kelly Arneson at (651) 366-4774; 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 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 expenses are 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>.

State Contracts

Send completed application material to:

Kelly Arneson
Consultant Services
Office of Technical Support
Minnesota Department of Transportation
395 John Ireland Blvd. - Mail Stop 680
St. Paul, MN 55155

Minnesota Department of Transportation (Mn/DOT) Engineering Services Division Notice Concerning Professional/Technical Contract Opportunities and Taxpayers' Transportation Accountability Act Notices

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. Mn/DOT is also posting notices as required by the Taxpayers' Transportation Accountability Act on the above referenced website.

Non-State Public 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.

Besides the following listing, readers are advised to check: <http://www.mmd.admin.state.mn.us/solicitations.htm> as well as the Office of Grants Management (OGM) at: <http://www.grants.state.mn.us/public/>.

Metropolitan Airports Commission (MAC) Minneapolis-Saint Paul International Airport Notice of Call for Bids for Checkpoint 7 Expansion

MAC Contract No.: 106-2-719
Bids Close At: 2:00 p.m. August 12, 2014

Notice to Contractors: Sealed Bid Proposals for the project listed above, will be received by the Metropolitan Airports Commission (MAC), a public corporation, at the office thereof located at 6040-28th Avenue South, Minneapolis, Minnesota 55450, until the date and hour indicated. The work consists of limited building demolition, along with gypsum board partition assemblies, aluminum partition systems, acoustical ceilings, temporary walls, signs, interior finishes, equipment relocation and installation, security systems, CCTV systems, paging systems, plumbing, heating, ventilation, and electrical work for expansion and remodeling for the Checkpoint 7 Expansion within the existing terminal building.

Targeted Group Businesses (TGB): The goal of the MAC for the utilization of TGB on this project is 5%.

Bid Security: Each bid shall be accompanied by a "Bid Security" in the form of a certified check made payable to the MAC in the amount of not less than five percent (5%) of the total bid, or a surety bond in the same amount, running to the MAC, with the surety company thereon duly authorized to do business in the State of Minnesota.

Availability of Bidding Documents: Bidding documents are on file for inspection at the office of Architectural Alliance, at the Minnesota Builders Exchange; McGraw-Hill Construction; and NAMC-UM Plan Room. Bidders desiring bidding documents may secure a complete set from: Franz Reprographics; 2781 Freeway Boulevard, Suite 100; Brooklyn Center, MN 55430; **phone:** (763) 503-3401; **fax:** (763) 503-3409. Make checks payable to: Architectural Alliance. Deposit per set (refundable): \$150. Requests for mailing sets will be invoiced for mailing charges. Deposit will be refunded upon return of bidding documents in good condition within 10 days of opening of bids.

MAC Internet Access of Additional Information: A comprehensive Notice of Call for Bids for this project will be available on July 21, 2014, at MAC's web address of <http://www.metroairports.org/Airport-Authority/Business-Opportunities/Solicitations.aspx> (construction bids).

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- ♦ **Phone** (credit cards): 8 a.m. - 5 p.m. Monday - Friday, 651.297.3000 (Twin Cities) or 1.800.657.3757 (nationwide toll-free)
- ♦ **On-line orders:** www.minnesotasbookstore.com
- ♦ **Minnesota Relay Service:** 8 a.m. - 5 p.m. Monday - Friday, 1.800.627.3529 (nationwide toll-free)
- ♦ **Fax** (credit cards): 651.215.5733 (fax line available 24 hours/day)
- ♦ **Mail orders:** Orders can be sent to Minnesota's Bookstore, 660 Olive Street, St. Paul, MN 55155

PREPAYMENT REQUIRED. Prices and availability subject to change.

Fax and phone orders: Credit card purchases **ONLY** (American Express/Discover/MasterCard/VISA). Please allow 1-2 weeks for delivery. **Mail orders:** Complete order blank and send to address above. Enclose check or include credit card information. Please allow 4-6 weeks for delivery. Please make checks payable to "Minnesota's Bookstore." A \$20.00 fee will be charged for returned checks.

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City () State Zip

Daytime phone (In case we have a question about your order) _____

Credit card number: _____

Expiration date: _____ Signature: _____

Shipping Charges

<i>If Product</i>	<i>Please</i>
<i>Subtotal is:</i>	<i>Add:</i>
Up to \$15.00	\$ 5.00
\$15.01-\$25.00	\$ 6.00
\$25.01-\$50.00	\$ 9.00
\$50.01-\$100.00	\$ 14.00
\$100.01-\$1,000	\$ 17.00*
<small>*\$17 to an address in MN, WI, SD, ND, IA. If delivered to an address in other states, Canada or internationally, we will contact you if there are additional charges.</small>	
More than \$1,000	Call

Product Subtotal _____

Shipping _____

Subtotal _____

Sales tax _____

(6.875% sales tax if shipped to MN address, 7.625% if shipped to St. Paul address. 7.125% MN transit tax or other local sales tax if applicable)

TOTAL _____

If tax exempt, please provide ES number or completed exemption form.
ES# _____