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Admin
MINNESOTA

Department of Administration

Department of Administration

Rules Report

Pursuant to Minnesota Statutes 14.3691

— Minn. Stat. 14.3691

— 2000 Minn. Laws Chap. 469
Sec. 4 Subd. 1

DEPARTMENT OF ADMINISTRATION
Rules Report per M.S. 14.3691

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The total preparation cost for this report is estimated to be \$1,034.37.

SECTION 1
Rules Governing Data Practices for Government Entities – Chapter 1205
Information Policy Analysis Division

1. Rules Recommended for Repeal

None

2. Rules Recommended to Remain in Effect

- *Chapter 1205, Data Practices.* These rules regulate government entities in relation to data practices. They provide government entities with detailed guidance as to how to comply with the requirements of the Data Practices Act. These rules provide citizens with detailed information as to how government entities are supposed to be complying with the Data Practices Act. In instances of controversy and disagreement, both citizens and government entities find the rules helpful to dispute resolution.

3. Recommended Changes to Rules

None

SECTION 2
Rules Governing 9-1-1 – Chapter 1215
InterTechnologies Group

1. Rules Recommended for Repeal

Three obsolete sections of the 9-1-1 rules in Chapter 1215 are recommended for repeal.

- *Chapter 1215.0400, Submission of Tentative Plans.* The rule requires counties to submit a tentative plan for implementing 9-1-1 by December 15, 1978. Those tentative plans were submitted, approved, and replaced by final plans. Tentative plans are no longer current, useful or needed. Section 1215.0400 can be repealed.
- *Chapter 1215.0700, Resubmission of Plans.* The rule requires a county to resubmit revised final 9-1-1 plans if the final 9-1-1 plan submission required by section 1215.0500 has been rejected by the Commissioner. Final plans have all been accepted and are in use. Section 1215.0700 can be repealed.
- *Chapter 1215.1200, Subpart 3, Copies to Departments.* The rule required counties to send copies of 9-1-1 contracts which had been executed prior to December 15, 1978 to the Department of Administration and the Department of Public Service. These old contracts are no longer current, useful or needed. Subpart 3 of Section 1215.1200 can be repealed.

2. Rules Recommended to Remain in Effect

The following sections of Chapter 1215 should remain in effect in order to ensure proper for the administration of M.S. 403 and for the development of 9-1-1 systems in the state including design standards for 9-1-1 systems and a procedure for determining and evaluating requests for variations from the established design standards.

- *Chapter 1215.0100, Purpose of Chapter.* Establishes the purpose of the chapter.
- *Chapter 1215.0200, Definitions.* Provides definitions to add clarity to subsequent rules.
- *Chapter 1215.0300, Establishment of County 9-1-1 Planning Committee.* County 9-1-1 planning committees are still needed to maintain and improve 9-1-1 emergency telephone service.
- *Chapter 1215.0500, Submission of Final Plans.* The County 9-1-1 plans provide information about local conditions affecting 9-1-1 service issues.
- *Chapter 1215.0600, Certificate of Plan Approval.* The certificate of 9-1-1 plan approval is one of the requirements of M.S. 403.11 for state payment of 9-1-1 costs.
- *Chapter 1215.0800, Design Standards.* Provides part of the design standards required by M.S. 403.07.
- *Chapter 1215.0900, Operational Requirements.* Provides part of the design standards required by M.S. 403.07.

- *Chapter 1215.1000, Variance From Design Standards.* Provides part of the procedures for variation from design standards required by M.S. 403.07.
- *Chapter 1215.1100, Waivers From the Requirements of M.S 403.01 to 403.08.* Provides the waiver process required by M.S. 403.08.
- *Chapter 1215.1200, System Contracts.* Provides for contracts as required by M.S. 403.07.
- *Chapter 1215.1300, Modification to Plan.* Provides for 9-1-1 plan modifications as required by M.S. 403.08.
- *Chapter 1215.1400, Funding Eligibility; Payment of Recurring Costs.* Provides part of the funding standards required by M.S. 403.11.
- *Chapter 1215.1500, Funding Eligibility; Payment of Central Office Modification Costs.* Provides part of the funding standards required by M.S. 403.11.

3. Recommended Changes to Rules

No recommended changes are submitted at this time. Changes to update 9-1-1 rules have been proposed by the Metropolitan 9-1-1 Board, and discussed among system users. Rule changes will be submitted through the Chapter 14 process.

SECTION 3
Rules Governing Information Systems Grant Proposals – Chapter 1220
Office of Technology

1. Rules Recommended for Repeal

- *Chapter 1220, Information Systems Grant Proposals.* These rules regulate the process for govern the application, solicitation, review, analysis, and final disposition of grant proposals received by the Intergovernmental Information Systems Advisory Council for possible funding of projects or programs. The Intergovernmental Information Systems Advisory Council is no longer in existence, and therefore, the rules are unnecessary.

2. Rules Recommended to Remain in Effect

None

3. Recommended Changes to Rules

None

SECTION 4
Rules Governing Parking, Lost Property, and Public Rallies on Capitol Grounds –
Chapters 1225 and 1235
Plant Management Division

1. Rules Recommended for Repeal

The following section is recommended for repeal:

- *Chapter 1225.0200 Lost Property.* This section of rule is unnecessary, as the recovery and disposition of lost or abandoned property found on state land is already addressed in state law, MS 16B.25.

2. Rules Recommended to Remain in Effect

- *Chapter 1225, State Grounds.* This chapter of rule should remain in effect in order to ensure proper administration of the department's parking facilities management duties. The rule governs general parking and provides further clarification of MS 16B.58. However, recommended changes to specific subparts of this rule are provided below, and one section of the rule is recommended for repeal above.
- *Chapter 1235, Public Rallies on Capitol Grounds.* This chapter of rule should remain in effect as is. The rules as written best protect the public interest and safety, while providing adequate flexibility in conducting normal business with public events.

3. Recommended Changes to Rules

Chapter 1225, Subpart 1, Scope.

Current Language:

Pursuant to Minnesota Statutes, section 16B.58, subdivision 2, this part governs the parking of motor vehicles in parking facilities owned or operated by the state of Minnesota and under the control of the commissioner of administration.

Recommended Language:

Pursuant to Minnesota Statutes, section 16B.58, subdivision 2, this part governs the parking of motor vehicles in current and future parking facilities owned or rented by the state of Minnesota and under the control of the commissioner of administration.

Chapter 1225, Subpart 2, Lots and Facilities.

Current Language:

Parking lots or facilities governed by these rules are located within the capitol complex, the city of Saint Paul, and the city of Minneapolis, and including the following:

- A. outdoor lots within the capitol complex; at the Department of Jobs and Training Building, 309 Second Avenue South, Minneapolis, 1246 University Avenue, Saint

Paul; and the State Department of Health Building, 717 Delaware Avenue Southeast, Minneapolis;

- B. indoor parking facilities located in the Department of Transportation Building in the capitol complex; the Department of Jobs and Training Building, 390 North Robert Street; 1246 University Avenue, Saint Paul; and the State Department of Health Building, 717 Delaware Avenue Southeast, Minneapolis;
- C. ramp parking facilities located in the state Administration Building and adjacent to the Centennial Building, both in the capitol complex; and
- D. street parking facilities located on Aurora Street between Cedar Avenue and Park Avenue.

Recommended Language:

The lots and facilities in this part include those associated with buildings described in section 16B.24 subd. 1, or when the commissioner considers it advisable and practicable, any other parking lots or facilities owned or rented by the state for the use of a state agency or state employees.

Chapter 1225, Subpart 3, Prohibited Parking.

Current Language:

All parking of motor vehicles is prohibited across driveway entrances; upon sidewalks; along yellow painted curbing; within 15 feet of fire hydrants; within 20 feet of crosswalks or intersections; in stalls assigned to other persons unless permission is granted by such persons; in driveways; and in restricted zones of lots, ramps or other posted areas.

Recommended Language:

All prohibitions for stopping or parking a motor vehicle or for parking a motor vehicle in or obstructing access to a parking space designed and reserved for the physically disabled as described in Chapters 169.34, 169.345 and 169.346 apply in this part. Parking is also prohibited in restricted zones of lots, ramps or other posted areas.

Chapter 1225, Subpart 4, Application for Parking.

Current Language:

Applications for contract parking shall be made in writing to: Director of Plant Management Division, Room G-9, State Administration Building, Saint Paul, Minnesota 55155.

The application shall bear the written signature of the person applying and contain the following information: employing agency, telephone number at place of work, type of vehicle (compact or regular), motor vehicle license number, and all other relevant information requested by the director. Additional information may be required, including the name of each passenger, if car pooling, the employing agency of each passenger, and

location if other than in the capitol complex. If a desired facility is requested, the facility shall be identified. The applicant shall not submit payment with the application.

Recommended Language:

If space is available in a parking lot or facility under the custodial control of the commissioner of administration, parking contracts are granted to applicants for parking in designated lots and facilities in accordance with the policies and guidelines related to the designated parking lots and facilities. If no space is available, applicants are placed on a waiting list for the designated facility.

Chapter 1225, Subpart 5, Priority for Granting Permits.

Current Language:

Permits shall be granted to applicants in the following priority order:

- A. applicants qualifying for a handicapped parking permit per subpart 9 or demonstrating special needs or circumstances arising from position, nature of work, and/or travel requirements;
- B. applicants with riders with the applicant with the highest number of riders first, the applicant with the second highest number of riders second, etc ; and
- C. all other applicants on a first-come, first-served basis.

Recommended Language:

Parking in the capitol complex shall be granted in accordance with the current Admin Policy and Procedure for parking set by the commissioner of administration.

Chapter 1225, Subpart 6, Stickers.

Current Language:

All authorized parking contract recipients shall be issued a sticker of proper identifying color. Stickers shall be displayed on the reverse side of the rearview mirror.

Recommended Language:

Parking Identification. All authorized parkers shall be issued valid parking identification based on the type of facility, parking device and/or motor vehicle, which should be displayed or used as instructed.

Chapter 1225, Subpart 7, Fees.

Current Language:

Fees for parking shall be set by the commissioner of administration with the approval of the commissioner of finance and shall be based on consideration of, but not limited to, the following factors: administrative overhead and operating cost; surcharge required pursuant to Minnesota Statutes, section 16B.58, subdivision 7; and number of car pool passengers, if any.

Recommended Language:

All fees shall be set by the commissioner of administration with the approval of the commissioner of finance and shall be based upon the approved department of administration rate package for parking.

Chapter 1225, Subpart 8, Exemptions from Parking Surcharge.

Current Language:

Pursuant to Minnesota Statutes, section 16B.58, subdivision 7, the following are exempt from surcharge:

- A. parking contract holders whose work shift is other than the customer daytime work hours, including those individuals employed on rotating shifts; and
- B. parking contract holders whose work activity does not conform to the customary hours or patterns of work so as to preclude the opportunity to participate in a car pool.

Any person wishing to apply for exemption from surcharge shall apply in writing on the forms provided to the Division of Plant Management, Department of Administration. Notice of approval or denial for the exemption of the surcharge shall be sent in writing to the applicant.

Recommended Language:

Repealed with repeal of M.S. 16B.58, subd. 7.

Chapter 1225, Subpart 9, Handicapped.

Current Language:

To receive a handicapped parking permit, a written application shall be submitted to the director of the Plant Management Division at the above-noted address stating the circumstances and extent of the handicap. Certification of handicapped eligibility pursuant to Minnesota Statutes, section 169.345 shall be deemed sufficient showing to authorize vehicles bearing proper identification of such certification to use handicapped designated parking facilities in the capitol complex and other facilities. Upon receipt of an application from a noncertified person, the director shall instruct the applicant to contract the nurse in the Transportation or Centennial Building for verification of the disability. A written recommendation from the nurse is required stating the estimated length of time required to accommodate the disability. Handicapped parking shall be available on a first-come, first-served basis. Regular parking rates shall apply.

Recommended language:

In order to park a motor vehicle in a space designated and reserved for a person with a physical disability as defined in chapter 169.345, the person must display a valid, current permanent or temporary disabled parking identification as described in chapters 168.021, 169.345, and 169.346 issued by the commissioner of public safety, another state, a foreign country, or one of its political subdivisions. Regular established parking fees shall apply. Separate spaces designated and reserved for a person with a physical disability shall be provided for the general public and for contract employees based upon

need and availability. A contract employee with a physical disability must register with the governing entity by providing a copy of their disabled parking identification to them in order to park in the space reserved and designated for this purpose.

Chapter 1225, Subpart 10, Special Temporary Permits.

Current Language:

For department or agencies having individuals or groups visiting the capitol complex for meetings or hearings, temporary reserved hooded meter parking may, if available, be obtained upon request to the director of the Plant Management Division, for which a per day per unit fee shall be paid by the requesting organization. The amount of the fee shall be set by the commissioner of administration and approved by the commissioner of finance.

Recommended Language:

Temporary parking identification shall be issued to departments or agencies, employees, organizations or general public. The fee for temporary parking shall be set by the commissioner of administration with the approval of the commissioner of finance.

Chapter 1225, Subpart 12, Removal and Impounding.

Current Language

Any vehicle parked upon any parking lot or facility owned or operated by the state, not in conformity with the aforementioned rules, state law, or local ordinances, may be declared a public nuisance and removed or impounded as set forth in Minnesota Statutes, section 16B.58, subdivision 3. The cost of such removal or impounding shall be a lien against the motor vehicle until paid.

Recommended Language:

Any vehicle parked in a lot or facility described in subpart 2, not in conformity with the aforementioned rules, state law, or local ordinances, may be declared a public nuisance and removed or impounded as set forth in Minnesota Statutes, section 16B.58, subdivision 3. The cost of such removal or impounding shall be a lien against the motor vehicle until paid.

Chapter 1225, Subpart 13, Legislative Parking Resolutions.

Current Language:

Pursuant to Minnesota Statutes, section 16B.58, subdivision 6, this part shall not affect regulation of parking of certain vehicles as provided by resolution of the legislative bodies during legislative sessions.

Recommended Language:

Add subpart:

Subpart 14. Suspension and cancellation. Parking privileges or contracts may be cancelled for cause for nonconformity with aforementioned rules, state law, local ordinances, parking policies and guidelines, or for failure to pay the fee set by the commissioner of administration with the approval of the commissioner of finance.

SECTION 5
Rules Governing State Contracting – Chapter 1230
Materials Management Division

1. Rules Recommended for Repeal

The following subparts are recommended for repeal:

- *Chapter 1230.0500 Subparts 4 and 5.* These two subparts are obsolete in that they pertain to annual bid and supply bonds, which are no longer accepted by the Division.
- *Chapter 1230.1700, Subpart 4.* Part 1230.1700, subpart 4 is proposed for repeal because the information contained in that subpart is being moved to a more appropriate section.
- *Chapter 1230, Parts 1230.3000 to 1230.4300.* The Division is also considering repealing Parts 1230.3000 to 1230.4300. These sections pertain to debarment and suspension procedures for the Department of Transportation. These rules were in place prior to the adoption of general debarment and suspension rules (applicable to all agencies) and it appears these rules that are applicable to a single department may be redundant and unnecessary. Additional input from the Department of Transportation is necessary before a final determination is made on the propriety of repealing these rules.

2. Rules Recommended to Remain in Effect

Chapter 1230 contains rules relating to state contracting. The existing rules cover such topics as procedures to solicit bids, the opening and awarding of bids, contract performance, debarment and suspension procedures, and the administration of the state's targeted and economically disadvantaged vendor program. With the exception of the above rules recommended for repeal, all of the topics covered by the existing rules are necessary to carry out the functions relating to the acquisition of goods and services for state government. As a result, the Division finds that these rules must necessarily remain in effect. However, certain modifications and updates to these rules are required. The changes proposed are addressed below.

3. Recommended Changes to Rules

A detailed rule-by-rule analysis of suggested changes to Minnesota Rules, chapter 1230 is set forth in the attached Statement of Need and Reasonableness. Many of the proposed amendments are housekeeping in nature and include such items as updating terminology (for example, changing the term "bidder" to "responder"). In addition, during the 2001 legislative special session, new authority was granted to the Department of Administration to promulgate rules on the subject of organizational conflicts of interest. The Division intends to consolidate the previous rulemaking process, which had reached the Request for Comments stage, with the new authority in order to streamline the process and reduce expense.

SECTION 6
Rules Governing Property Acquisition – Chapter 1245
Real Estate Management Division

1. Rules Recommended for Repeal

None

2. Rules Recommended to Remain in Effect

This rule should remain in effect in order to ensure proper administration of the department's property acquisition duties. Specifically:

- *Chapter 1245.0200, Property Acquisition.* Governs the state's acquisition of real property. The rule establishes procedure, consistency and accountability in the acquisition process.
- *Chapter 1245.0300, Issuance of Permits or Easements Across State Land.* Governs the availability to the public of permits or easements to cross state-owned land. The rule establishes procedure, consistency and accountability in the granting of easements and permits.
- *Chapter 1245.0400 through 1245.0800, Permits to Search for Lost Property; Scope and Purpose.* Governs the granting of permits to search upon lands owned by the state for abandoned or lost property and disposition of the property. The rule establishes procedure, consistency and accountability in the granting of permits to search upon state land.
- *Chapter 1245.0900, Property Leasing (Where State is Lessor).* Governs the leasing out of state-owned property which is temporarily not needed by the state. The rule establishes procedure, consistency and accountability in the leasing out of state-owned property.

3. Recommended Changes to Rules

None

SECTION 7
Rules Governing Surplus Property – Chapters 1255 and 1260
Materials Management Division

1. Rules Recommended for Repeal

The following subparts are recommended for repeal:

- *Chapter 1260.0200 Definitions, Subpart 7, Federal Surplus Property Utilization and Sales Coordinator.* This subpart is no longer necessary, and can be eliminated.
- *Chapter 1260.0900, Consultation with Advisory Groups, Public and Private Groups.* This section of Chapter 1260 is no longer necessary, and can be eliminated.

2. Rules Recommended to Remain in Effect

- *Chapter 1255, State Surplus Property.* This chapter relates to the administration of the state surplus property program.
- *Chapter 1260, Federal Surplus Property.* This chapter relates to the administration of the federal surplus property program.

Both Chapter 1255 and 1260 should remain in effect to ensure the proper administration of the state and federal surplus property programs.

3. Recommended Changes to Rules

The following changes are recommended for Chapters 1255 and 1260. These rules chapters are currently under review, and additional recommended changes may be forthcoming upon a more detailed study of these rules.

Chapter 1255

- Throughout the chapter, update citations to reflect M.S. Chapter 16C, rather than 16B.
- *Chapter 1255.0200, Authority and Scope.* Update sales methods to be consistent with 16C.23(subd. 5 and 6). The rules limit sales to public auction, sealed bid, or negotiation. 16C allows sales by public auction, sealed bid, prepriced sale and simply 'sale'.
- *Chapter 1255.0400, Auction Sales.* Update name and address of the division responsible for administering the state surplus property program. Update subpart 2 mailing list / subscription procedures to reflect current practice. Current practice is to add people / entities to the subscription list upon request, and to charge a reasonable fee for those requesting such subscription. Our publication of the auction schedule on MMD's web site has nearly eliminated such requests. Update subpart 3 to require payment in full, rather than a 10% down payment, which reflects current practice.

- *Chapter 1255.0600, Negotiated Sales.* Update to remove the limit on such sales to \$5000 or less.
- *Chapter 1255.0700, Public Employee Purchase of State Surplus Property.* Update to make consistent with requirements and provisions in M.S. Chapter 15.054.

Chapter 1260

- Throughout the chapter, update citations to reflect M.S. Chapter 16C, rather than 16B. Update the title of the chapter to read "Federal Surplus Services."
- *Chapter 1260.0400, Financing and Service Charge.* Amend Subpart 2, Determination of Charges, to incorporate M.S. Chapter 16C and federal regulations relating to methods for establishing service charges. Add the words "..fairness, equitable and sufficient for the Surplus Services activity to recover its costs." Amend Subpart 5, If Program Ends, to require a liquidation plan to be submitted to GSA for their approval as required by federal regulations.
- *Chapter 1260.0500 Terms and Conditions on Donable Property.* Several amendments are required to comply with federal regulations: 1. \$2,000 figure is now \$5,000; 2. Donated federal surplus property must be placed in use within 1 year of receipt by donee. 3. Utilization restriction has changed from 4 years to 18 months.
- *Chapter 1260.0800 Property Sales.* This section is more appropriate in 1255.00, and should be moved to that chapter. This section should be updated to more accurately reflect federal regulations and current practice.

SECTION 8
Rules Governing the State Building Code
Building Codes and Standards Division

1. Rules Recommended for Repeal

- *Chapter 1330, Fallout Shelters.* This chapter establishes official standards for fallout shelters, when they are deemed necessary for a particular location by the Department of Public Safety, Division of Civil Defense and the state architectural engineer. The Division will be repealing this chapter because the state no longer requires fallout shelters.

2. Rules Recommended to Remain in Effect

The following rules should remain in effect in order to ensure the proper administration of the state building code.

- *Chapter 1300, Building Code Administration.* This chapter relates to the administration and enforcement of the State Building Code.
- *Chapter 1301, Building Official Certification.* This chapter establishes procedures for the certification of building officials and the prerequisites for persons applying for certification, required by Minnesota Statutes, section 16B.65, subdivisions 2 and 3.
- *Chapter 1302, Construction Approvals.* This chapter relates to public buildings, state licensed facilities, and municipalities for which the commissioner has undertaken the code administration responsibilities according to Minnesota Statutes, section 16B.62, subdivision 2. Specifically, this chapter establishes fees; procedures for plan review of building plans, specifications, and related documents; and provides for plan review and inspection services for public buildings and state licensed facilities.
- *Chapter 1305, Adoption of the 2000 International Building Code.* This chapter adopts a model building code into the State Building Code.
- *Chapter 1306, Special Fire Protection Systems (Optional).* This chapter provides optional provisions for the installation of on-premises fire suppression systems.
- *Chapter 1307, Elevators and Related Devices.* This chapter establishes minimum requirements related to design, construction, installation, alteration, repair, removal, and operation and maintenance of passenger elevators, freight elevators, hand-powered elevators, dumbwaiters, escalators, moving walks, vertical reciprocating conveyors, stage and orchestra lifts, endless belt lifts, wheelchair lifts, and other related devices.
- *Chapter 1315, Electrical Code.* This chapter adopts a model electrical code into the State Building Code.
- *Chapter 1325, Solar Energy.* This chapter establishes standards for the evaluation of the performance durability, reliability, and maintainability of solar energy systems and requires Solar Rating and Certification Corporation (SRCC) certification. The certification discloses to each potential buyer the extent to which the seller's solar energy system meets or exceeds the SRCC Operating Guidelines and Standards.

- *Chapter 1335, Floodproofing.* This chapter adopts the most current floodproofing regulations into the State Building Code.
- *Chapter 1341, Accessibility for Buildings and Facilities.* This chapter establishes accessibility requirements for all occupancy classifications within the State Building Code. These standards apply to the design, construction, and alteration of buildings and facilities to the extent required by this chapter.
- *Chapter 1346, adoption of a current model mechanical code.* This chapter adopts a current model mechanical code, including implementation standards for process piping.
- *Chapter 1350, Manufactured Homes.* This chapter establishes standards to implement, interpret, and carry out the provisions of Minnesota Statutes, sections 327.31 to 327.36 and 327B.04 relating to manufactured homes.
- *Chapter 1360, Prefabricated Buildings.* This chapter governs the construction of, and provides for the certification of three or less prefabricated buildings for permanent installation in Minnesota in a calendar year.
- *Chapter 1361, Industrialized/Modular Buildings.* This chapter governs the construction of industrialized/modular buildings and building components and provides for their certification and labeling, pursuant to Minnesota Statutes, section 16B.75.
- *Chapter 1370, Storm Shelters.* This chapter provides the minimum design and construction standards for buildings that protect manufactured home park occupants from tornadoes and extreme winds.
- *Chapter 4715, Plumbing Code.* This chapter provides the basic principles of environmental sanitation and safety through properly designed, acceptably installed and adequately maintained plumbing systems.
- *Chapters 7670, 7672, 7674, 7676, and 7678, Energy Code.* These chapters establish minimum energy code requirements necessary in new and existing construction.

3. Recommended Changes to Rules

The Building Codes and Standards Division is currently working to revise most of the rule chapters in the State Building Code. In spring 2000, the Division identified the rule chapters that required modification based on the release of new model codes in the industry. The Division is modifying the necessary chapters in the State Building Code to coincide with updated information contained in recently released model codes. The industry codes are updated every three years. To ensure that the Minnesota State Building Code remains current with the industry, the Division has established a three-year rulemaking cycle that follows the industry's timetable for code publications.

Recommended changes to rules include:

- *Chapter 1300, Building Code Administration.* The Division currently is amending this rule chapter to provide one administrative chapter for the 2000 International Building Code (M.R. chapter 1305), the 2000 International Residential Code (M.R. chapter 1309 - proposed new chapter), and a model mechanical code (M.R. chapter 1346). The Division is currently working with an advisory committee to determine which national model mechanical code will be adopted. The rules will also incorporate recent legislation related to the administration of the State Building Code.
- *Chapter 1301, Building Official Certification.* The Division currently is amending this rule chapter to include some minor housekeeping changes, a more consistent credit process for granting continuing education credit, deletion of obsolete "grandfathering" language, and incorporation of recent legislation related to building official certification.
- *Chapter 1305, Adoption of the 2000 International Building Code.* The Division currently is amending this rule chapter to incorporate by reference the 2000 International Building Code with any necessary amendments. The 2000 International Building Code is part of a set of coordinated model codes.
- *Chapter 1306, Special Fire Protection Systems (Optional).* The Division currently is amending this rule chapter to incorporate changes proposed by the fire service and others, which were further modified by an advisory committee. The changes will provide additional options for requiring the installation of automatic fire sprinkler systems in buildings.
- *Chapter 1307, Elevators and Related Devices.* The Division currently is amending this rule chapter to incorporate by reference the most current versions of the American Society of Mechanical Engineers standards and the American National Standards Institute standards for elevators and escalators with necessary amendments. The rules will also incorporate more current standards regarding related devices.
- *Chapter 1315, Electrical Code.* The Division currently is amending this rule chapter to incorporate by reference the 2002 National Electrical Code with necessary amendments.
- *Chapter 1335, Floodproofing.* The Division currently is amending this rule chapter to incorporate by reference more current floodproofing regulations published by the US Army Corps of Engineers with necessary amendments.
- *Chapter 1346, Current Mechanical Code.* The Division is amending this rule chapter. The rules will incorporate by reference either the 2000 International Mechanical Code and the 2000 International Fuel Gas Code or the 2000 Uniform Mechanical Code with necessary amendments. The Division is still in the process of working with an advisory committee to determine which national model mechanical code will be adopted.
- *Chapter 1360, Prefabricated Buildings.* The Division is amending this rule chapter to clarify the reference to fees charged for inspections and investigations on public buildings and state licensed facilities.
- *Chapter 1370, Storm Shelters.* The Division is amending this rule chapter to update the reference to a federal document that was released in spring, 2001.

- *Chapter 4715, Plumbing Code.* The Division is amending this rule chapter to include any suggested revisions developed by the Department of Health, Plumbing Unit.

4. Additional Information

The Division is adding several new chapters to the State Building Code. The proposed new chapters are as follows:

- *(Proposed) Chapter 1303, Statutory Code Requirements.* The Division is creating this chapter to include statutory code requirements that are not addressed by the model codes. The amendments will include requirements for restrooms, commuter vans, recycling space, automatic garage door opening systems, and exterior wood decks, patios, and balconies. The amendments will also include various issues that apply specifically to Minnesota's climatic conditions. The rules were previously located in Minnesota Rules, chapter 1300. The rules are being relocated into a separate chapter to provide for a cleaner administrative chapter in M.R. 1300.
- *(Proposed) Chapter 1309, Adoption of the 2000 International Residential Code.* The Division is creating this chapter to incorporate by reference the 2000 International Residential Code for one and two family dwellings with necessary amendments. This subject matter was previously located in Minnesota Rules, chapter 1305. The 2000 International Residential Code is part of a set of coordinated model codes.
- *(Proposed) Chapter 1311, Minnesota Building Conservation Code.* The Division is creating this chapter at the direction of the legislature to incorporate by reference the Guidelines for the Rehabilitation of Existing Buildings with necessary amendments. The rules will clarify and elaborate on building code standards for a change of occupancy, alteration, or repair of existing buildings and structures, including structures of historical significance.

SECTION 5 – ATTACHMENT

MINNESOTA DEPARTMENT OF ADMINISTRATION DIVISION OF MATERIALS MANAGEMENT

STATEMENT OF NEED AND REASONABLENESS - DRAFT

PROPOSED RULES GOVERNING STATE CONTRACTS; MINNESOTA RULES CHAPTER 1230.

INTRODUCTION

The Department of Administration, Materials Management Division is proposing to amend its rules relating to state procurement. Last updated in 1991, the rules require amendment for a variety of reasons. The most significant reason is a result of changes to the Department's governing statute, Minnesota Statutes Chapter 16B, amended and recodified, in part, in Minnesota Statutes Chapter 16C, effective July 1, 1998. As a result of the recodification, all references in the rules to 16B are obsolete. In addition, new provisions now set forth in 16C require updating the rules accordingly. Changes have been made to the rules where practice has proven them to be inappropriate or ineffective and where the need has arisen due to emerging technology. Finally, grammatical changes have been made to provide greater clarity and promote ease of reading. A detailed rationale for the proposed changes are fully set forth herein.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille or cassette tape. Requests for this document in an alternative format can be made to Betsy Hayes at the Material Management Division, 112 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155, or by calling 651.296.5942 (TTY users may call 651.282.5799).

STATUTORY AUTHORITY

The Department's statutory authority to adopt rules is set forth in Minnesota Statutes section 16B.04, subd. 1 which, in part, authorizes the commissioner of Administration to "adopt, amend, and rescind rules relating to any purpose, responsibility, or authorization in this chapter." In addition, Minnesota Statutes section 16C.03, subd. 2 states, "Subject to chapter 14, the commissioner may adopt rules, consistent with this chapter and chapter 16B, relating to the following topics: (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; and (5) procurement from rehabilitation facilities. Additional statutory authority to adopt rules relating to the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program is set forth in Minnesota Statutes sections 16C.16, subd. 2, and 16C.19.

REGULATORY ANALYSIS

The classes of persons who will be affected by the proposed rules include all state of Minnesota vendors who participate in the state's solicitation process that is used to acquire goods and services. Other affected persons include the personnel of the Materials Management Division who conduct and administer the state's procurement process, and state agency personnel who have delegated authority to conduct local purchasing. All of the affected persons will benefit from the proposed rules as they provide greater clarity and provide updated information regarding the procurement process. Specific benefits are detailed in the Rule-By-Rule Analysis.

No anticipated costs are associated with the proposed amendments to the implementing agency, other agencies, or to those affected persons who must comply with the proposed rules. There is no anticipated affect on state revenues.

There are no less-costly methods or less- intrusive methods for achieving the purpose of the proposed rules. A significant portion of the amendments are provided to remove obsolete language as a result of the statutory changes. In those instances, no mechanism or method exists to correct the language other than amending the existing language. The main purpose in the Department's decision to propose amended rules is to correct obsolete and

unclear language as well as to update the rules in accordance with current procurement terminology and new statutory authority. Given that the purpose is to update the rules, no alternative methods of achieving the purpose of the proposed rules were considered as there is no other method to fulfil that purpose.

There are some differences between the proposed rules and existing federal regulations as they pertain to the definition of "Native Americans" and the definition of a "substantial physical disability." Both definitions are in rule for the purpose of administering the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program. A detailed discussion of the changes to these definitions is set forth in the Rule-By-Rule Analysis.

As noted, the majority of the changes to the rules were made to conform to statute and to provide greater clarity to those to whom the rules apply. The increased clarity and the removal of references to repealed sections of law increase the comprehensiveness and effectiveness of the rules. The increased clarity and accuracy of the proposed rules work to meet the Department's regulatory objectives in a manner that provides flexibility and reduces as many burdens as possible for both state agencies and affected vendors.

COMMISSIONER OF FINANCE REVIEW OF CHARGES

Minnesota Statutes, section 16A.1285, does not apply because the rules do not set or adjust fees or charges.

ADDITIONAL NOTICE

Notice of the Requests for Comments was published in the *State Register* in accordance with the notice requirements of Minnesota Statutes 14.101, subd. 1. Additional efforts to reach affected persons were conducted by posting the Request for Comments on the Materials Management Division's web site and by conducting targeted mailings to interested groups including the Minnesota State Bar Association Construction Law Section, the American Institute of Architects, Associated Builders and Contractors and a private attorney actively involved in the procurement reform legislative process.

The Notice of Intent to Adopt Rules will be published in the *State Register* in accordance with Minnesota Statutes section 14.14, subd. 1a. In addition, the Notice of Intent to Adopt Rules and the full text of the proposed rules will be posted on the Materials Management Web site. An appropriate notice will be posted in the Division's reception area where customers of the Division may pick up a card identifying the web site where the rules can be found. A copy of the Notice and full text of the rules will be sent to those who have requested to be on the mailing list. For a period of two weeks, beginning the Friday prior to the posting of the Notice in the *State Register*, all requests for bids and requests for proposals mailed from the Materials Management Division will include a notice to the vendors indicating the Division's intent to adopt rules and informing the vendors where the proposed rules can be reviewed on the Division's web site. The Division will also mail a notice to all Minnesota vendors on the registered vendor list indicating where the rules may be viewed on the Division's web site. This list includes approximately 5,000 registered vendors.

LIST OF WITNESSES

If these rules go to a public hearing, the Department anticipates having the following witnesses testify in support of the need and reasonableness of the rules:

1. Brenda Thielen Willard, Manager, or appropriate Acquisition Management Specialist from the Materials Management Division will testify about the need and reasonableness of the rules as they relate to the acquisition process.
1. Dorothy Lovejoy, Manager, or appropriate Vendor Management Specialist from the Materials Management Division, will testify about the need and reasonableness of the rules as they relate to the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program.

1. Kent Allin, Director, Paul Stembler, Assistant Director and/or Betsy Hayes, Division Analyst, will testify about the need and reasonableness of the rules as they relate generally to Division operations.

1. The Department expects that it will also be represented by its appointed counsel from the Attorney General's Office.

RULE-BY-RULE ANALYSIS

Throughout the proposed rules, the words "bid" or "bidder" and the phrases "request for bids" or "invitations for bids" have been replaced with "response," "responder" and "solicitation." In some circumstances, the term "vendor" was utilized in place of "bidder" when the provision applied to all vendors as opposed to persons who had submitted a response to a solicitation or when the use of the term "responder" did not read well. This change was needed as the Division utilizes techniques other than the request for bids to acquire goods and services, including requests for proposals and making sole source and emergency acquisitions. The groups of people responding to these types of solicitations are not "bidders," hence the use of the term was inaccurate. It is reasonable to correct the terms in order to ensure accuracy and provide clarity. This rationale is intended to apply to all such changes and will not be repeated rule by rule.

Another change throughout the rules was to replace obsolete references to repealed sections of 16B and insert the new authorizing statutory cite located within 16C. This change is needed as a direct result of 1998 legislation repealing much of 16B and enacting the same subject matter in 16C. It is reasonable to make these changes as readers of the rules need to be directed to the proper statutory authority.

Finally, technical amendments recommended by the Office of the Revisor of Statutes have been made throughout the text of the rules. These include changing the use of the word "will" to "shall" or "must" and some corrections with existing punctuation.

1230.0150 DEFINITIONS

Subp. 2a. Best value. It is needed and reasonable to add this definition to the rules as the phrase is utilized in sections 1230.0800, 1230.1810 B (4) and 1230.1830 E. A discussion on the rationale for the use of this phrase is contained within the sections of this document dedicated to the above-referenced sections.

Subp. 2b. Bid. It is needed and reasonable to add this definition to the rules as it is referred to in sections 1230.0500 Security, 1230.0700 Opening of Bids and Proposals and 1230.0900 Tied Bids. A discussion regarding the use of the word is contained within this document dedicated to discussion on the above-referenced sections.

Subp. 3. Broker. The definition of the word "broker" was changed to preclude abuses of the acquisition process. The amended definition contains elements consistent with the definition of "broker" utilized by the federal Small Business Administration. The intent is to define brokers so that they will not be considered "responsible bidders" and to preclude brokers from participating in the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program. The previous definition, in part, indicated that a broker is a business "that carries no inventory." This definition allowed for abuses as a business could hold some nominal inventory to avoid being classified as a broker. The proposed definition better sets forth the components of what was intended and allows the programs administered by the Department to assist those for whom the program is intended to assist.

Subd. 4a. Competitive Bidding. It is needed and reasonable to add this definition as the phrase is utilized in 1230.1810 B (4) and 1230.1810 E. In these sections, the phrase "competitive bidding" is distinguished from other solicitation methods, including a request for proposals. Given the distinction made, a definition is helpful to the readers in understanding the rules.

Subp. 5. Contractor. The word "consultant" was removed from this definition as the definition of professional or technical services in statute incorporates consultation services as part of the definition. Therefore, to state both "consultant" and "professional, or technical services" is redundant.

Subd. 11. Joint venture. The phrase "procurement bid award" was replaced with the term "contract." This change was made to add clarity and to more succinctly express the rule. The change from stating "for awards" to "for contracts awarded" is, again, a change to add clarity and does not change the substance of the previous meaning.

Subd. 15. Material variance or material deviation. Material deviation was added to this definition as it is the phrase utilized in the solicitation documents provided to state vendors. Material deviation is synonymous with material variance, so no substantive effect occurs with this change. The change was made to create consistency between the rules and documents utilized in procurement process. The definition was also expanded to include the same language utilized in the solicitation documents provided to state vendors, namely that a material variance or material deviation gives the state something significantly different from what the state requested in the solicitation document. This change will assist the vendors by making more clear what will constitute a material variance or material deviation and help to protect vendors from submitting nonresponsive offers.

Subd. 17. Person. This definition was clarified so that when a "person" is referred to in the rules, it is intended to apply to the natural person as well as to his or her business.

Subp. 18a. Proposal. This definition was added as the term is included throughout the rules, including sections 1230.0700, 1230.1810 B (4) and 1230.1830 E. In these sections, the term "proposal" is distinguished from other types of responses. Given the distinction made, a definition is helpful to readers in understanding the rules.

Subp. 19. Reinstatement. This definition was rewritten to provide clarification. As the definition was previously written, it did not actually define "reinstatement," but rather discussed the rules relating to reinstatement which is repeated in the text of the rules.

Subp. 19a. Responder. This definition was added as it is utilized extensively throughout the text of the rules. It is needed and reasonable, therefore, to provide a definition for reference by those reading and interpreting the rules.

Subp. 20. Responsible Bidder. The term bidder was changed to "vendor" to expand the applicability of the term to persons submitting responses to solicitations other than requests for bids. Also, in item C of this section, the word "delinquent" was added prior to "tax liability." As the definition previously read, any person with a tax liability would be found not to be a responsible vendor. Technically, every taxpayer has tax liabilities which become due for payment on April 1 of each year. The intent was to label those with delinquent tax liabilities as not a responsible vendor for purposes of doing business with the state. The change to the rule is needed and reasonable to be consistent with the intent.

Subp. 21. SIC or Standard Industrial Classification. The change to this definition was needed and reasonable as SIC Codes are being phased out and replaced by NAICS or North American Industry Classification System codes. At this time, certain organizations are still using SIC Codes, so it was necessary to include both types of systems in the definition.

Subp. 21a. Solicitation. This definition was added as it is utilized extensively throughout the text of the rules. It is needed and reasonable, therefore, to provide a definition for reference by those reading and interpreting the rules.

Subp. 22. Suspension. The definition was changed to fully reflect the consequences of suspension. The change in the definition is intended to clarify the actual practice and provides more specific notice to vendors about the consequences of suspension.

Subp. 23. Targeted group business. The words "substantial physical" were added to precede "disability" in this definition. This change is needed and reasonable as it conforms to the statutory language set forth in Minnesota Statutes 16C.16, Subd. 5 which reads, in part, "The commissioner of administration shall periodically designate businesses that are majority owned and operated by women, persons with a substantial physical disability, or specific minorities as targeted group businesses..." (emphasis added). It was needed and reasonable to change the definition in rule as the rule set forth a broader definition than did the statute.

Subp. 24. Terms governing socially disadvantaged persons. The definitions in section A, namely the definitions of "racial minority," "Black American," "Hispanic American," "Asian-Pacific American," and "Subcontinent Asian American" were changed to conform to the federal definitions set forth in *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*, 64 Fed. Reg. 5,128 (1999) (to be codified at 49 C.F.R. §26.5). The definition of "Native American" was, in part, taken from the same regulations and modified to require either enrollment in an Indian tribe or the maintenance of cultural identification through tribal or community affiliation. The rules, as previously written, required tribal enrollment for Indian Americans. No other ethnic group is required to show membership of any organization to prove eligibility. As a result, it is inequitable to require this of Indian Americans. However, there is a competing interest in limiting eligibility in this category to those who in fact have affiliation with the ethnic group. As a result, the rule was modified to require that an individual maintain cultural identification through *either* tribal enrollment or community affiliation. The change was needed and reasonable to be consistent with federal regulations and to ensure that the Socially Disadvantaged and Economically Disadvantaged Area Small Business Program assists the groups of people it is intended to benefit.

In section C, "disabled" was replaced with "substantial physical disability." This change was necessary to conform with current statutory language set forth in Minnesota Statute Section 16C.16, Subd. 5. (See discussion in Subp. 23 above). Because the words being defined changed, it follows that a change to the definition is necessary. The definition of "substantial physical disability" was taken from the text of the rules in effect prior to 1990 when the same term was utilized in statute.

Subp. 27. Vendor. This definition was added as it is utilized extensively throughout the text of the rules. It is needed and reasonable, therefore, to provide a definition for reference by those reading and interpreting the rules.

1230.0300 SOLICITING BIDS

Subpart 1. The phrase "unless otherwise provided for by law" was added to conform to the language of the authorizing statute, 16C.06, subd. 2, which states, "A formal solicitation must be used to acquire all goods, service contracts, and utilities estimated at or more than \$25,000 unless otherwise provided for." (Emphasis added.) Likewise, the phrase "by way of a formal solicitation process" was added to conform to the statute and, like the statutory change, clarifies the publication requirements for all methods of solicitations as opposed to bids only.

Subpart 2. The changes in this section were made to conform to the new statutory language in 16C.06.

Subpart 3. The changes to this subpart were made to clarify the fact that the vendor list kept by the Materials Management Division contains more than those responding to requests for bids. The list includes those who have communicated a desire to receive solicitations of all types and also contains vendors who may not have submitted a response to a solicitation, thus, making the reference to them as "bidders" inappropriate.

The section previously mandated that the name of a vendor who failed to respond to three consecutive bid invitations be removed from the list. This was changed to "may be removed" for a number of reasons. First, in order to promote as much competition as possible, it is desirable to maintain as large a vendor list as possible. Second, it is desirable to maintain vendors on the list who wish to receive invitations to respond to solicitations, even if they don't respond to every solicitation. Third, in specific circumstances, it may be in the best interest of the state to invite a solicitation from a vendor who does not regularly respond. Finally, the tracking of the frequency with which a vendor responds is administratively burdensome, and in some instances, impossible to track. As a result, it was determined that the requirement to delete the names of vendors from the list was not a beneficial rule. However, a vendor list that becomes unmanageable due to it being too full of vendors who are not interested in responding to state solicitations is equally undesirable. Therefore, allowing the deletion of names, but not requiring it, works to further both desired outcomes.

1230.0400 ADVERTISED BIDS

Subpart 2. Throughout this section, as opposed to referring to "bid conditions," the wording was changed to "terms

and conditions.” This change was needed and reasonable as it more accurately describes the contents of the actual solicitation documents that are used in the purchasing process.

1230.0500 BID SECURITY

This section needed general reorganization and clarification.

Subpart 1. The previous rule did not specify the different types of security acceptable by the state. As a result, it was necessary to inform the vendors that they could supply a bid bond, certified checks, cashier’s checks or money orders. Language in subpart 2 was appropriately moved to subpart 1 which indicates that bid bonds or security can be used as supply security for the delivery of merchandise or the satisfactory completion of a contract. This language did not belong in subpart 2 as subpart 2, by its title, relates to forfeit. The final change to subpart 1 was to add that a successful responder may substitute a supply bond or an irrevocable letter of credit from a bank for a security check.

Subpart 2. The changes in this section are needed to distinguish the types of security provided for protection of the state. In the event the vendor does not enter into a contract with the state, the bid bond or security checks provide coverage. The supply security is provided to ensure a vendor makes satisfactory delivery of merchandise or satisfactorily completes a contract.

Subpart 3. Changes were necessary to this section to clarify when security checks will be returned. The section previously provided a specific time line (within five working days) for when security would be returned to unsuccessful responders. However, the section was vague as to when security must be returned to successful vendors indicating only that it be returned “as soon as” delivery is complete and acceptance is made. To clarify, and provide more detailed notice to the vendors as to when the security checks will be returned, the “within five working days” provision was added. This also serves to allow the division the processing time necessary to confirm delivery and acceptance and return the security.

Section 1230.0500 subparts 4 and 5 relate to annual bid and supply bonds. Both these subparts were deleted as obsolete. The annual bid and supply bonds were used at a time when bid and supply bonds were regularly required. Since that time, the division requires bid and supply bonds on a substantially limited basis. Thus, the benefit to the vendors of having an annual bond is greatly reduced. The administrative burden to the vendor to obtain an annual bond is no greater than the effort involved in obtaining a project-specific bond. However, the tasks conducted by the agency to track and handle annual bonds is more burdensome than the work involved in accepting project-specific bonds. As a result, it is reasonable and necessary to discontinue acceptance of annual bid and supply bonds.

1230.0600 BIDDER ERRORS

The section previously allowed a person to withdraw a response prior to the “opening” of sealed responses. This was changed to “prior to the due date and time” because the previous language could be read to allow a vendor to withdraw a response after other responses were opened, but before the withdrawing vendor’s particular response was opened. The same change was made in the second paragraph for consistency.

The term “telegraphic writing” was replaced with “an electronic writing.” This change is necessary and reasonable as a result of technological advances, including e-mail, which allow for broader and more diversified methods of communication.

1230.0700 OPENING OF BIDS

Subpart 1. The words “and proposals” were added several times to this subpart. This change was necessary as the subject matter of this subpart pertains to proposals as well as bids. Generally, the term “responses” is used throughout the text of the rules rather than specifying both bids and proposals. In this instance, however, it is necessary to distinguish bids from proposals as Minnesota Statutes 16C.06, subd. 3 requires different treatment of bids and proposals as far as what information is read at the time of opening.

The text indicating that late bids will be returned unopened to the vendor has been deleted and replaced with the

provision that late responses will be returned upon the vendor's request and at the vendor's expense if the request is made within 10 working days of the opening. This change is necessary as it saves administrative time and expense as the state will not be required to return unopened responses to vendors who do not wish to receive them. It is reasonable as it still allows for the return of the unopened responses if the vendor desires it, but in many cases, the vendors have their own copy of their bid or proposal and do not desire to have the original returned. It is also reasonable to expect the requesting vendor to pay the often costly expenses involved in returning an unopened response because it is unfair to place the burden on state taxpayers when the only benefit derived goes to the requesting vendor.

The remaining changes to subpart 1 pertain to what information is read at the openings for bids and proposals. These additions were made to the rules in order to conform with statute, namely, Minnesota Statutes 16C.06, subdivision 3.

Subpart 3. This section discusses the ability of the state to reject responses to solicitations. The previous wording required the rejection to be "for good and sufficient cause" and gave examples of instances when proposals could be rejected. This language was changed to allow for the rejection of responses to solicitations when determined by the director or delegate to be in the "best interest of the state." This change was necessary to allow broader discretion given the variety of circumstances that may arise requiring the rejection of all responses. The change does not significantly vary from the previous wording because if a reason to reject were "in the best interest of the state," it would also meet the threshold of "good and sufficient cause." The examples of instances where the director may reject all responses remain within the text of the subpart with the addition of a "correction of a process error." This was added to provide vendors with notice of another reason why all responses may be rejected. It is necessary and reasonable to add this other example as it is a situation that occurs on occasion.

Subpart 4. The words "or delegate" were added to allow purchasing professionals, other than the director of the Materials Management Division or a Materials Management Division manager, the ability to make a determination as to waive minor deficiencies or informalities in solicitation responses. This change was necessary as the rule as previously written creates excessive administrative burden. It is reasonable to make the change as the purchasing professionals have the training and knowledge required to make such a determination.

1230.0800 AWARD OF CONTRACTS

The reference to 16B.09 was deleted as this section no longer governs the acquisition of commodities and services, but does apply to building and construction contracts. As opposed to referencing a specific statute, the wording was changed to read that the award of contracts shall be made in conformity with "applicable" statutes. This change is necessary and reasonable to conform with statutory changes. The paragraph also sets forth that awards for commodities and services are based on best value, which again, is reasonable and necessary to clarify given the changes in statute.

1230.0900 TIED BIDS

The mechanism of "drawing lots" for tied low bids was replaced with a "coin toss" as it is a more modern and recognized term that produces equivalent results. In addition, the dollar amount of tied bids that is allowed to be resolved by a coin toss was changed from \$500 to \$2,500. The previous limit of \$500 matched the "one bid limit" (the level under which an agency may acquire goods and services by contacting a single vendor). The new statutory "one bid limit" is \$2,500 which was established pursuant to Minnesota Statutes 16C.10, subd. 6 (1). The change is necessary to make the dollar value consistent with the current "one bid limit." In addition, because current law requires that only one bid be obtained up to \$2,500, there are very limited occasions where a State purchaser would encounter tied low bids under \$2,500. As a result, a less formal method of resolving the tie is reasonable.

The changes made pertaining to tied low bids above \$2,500 added the alternative method of requesting second pricing. This change identifies a method of resolution where the previous language did not specify any mechanisms other than the ability of the director to enter into negotiations with the tied low bidders when the director deemed it to be in the best interest of the state. The added language is necessary and reasonable as it provides examples of specific mechanisms to be used and provides notice to vendors as to how tied low bids above \$2,500 will be resolved.

1230.1000 CONTRACT PERFORMANCE

Subpart 1. State "departments" was changed to state "agencies" as the word "departments" is erroneously narrow. The section pertains to the authority of agents in all executive branch agencies with delegated authority to place orders with successful responders. Minnesota, Statutes 16C.03, subd. 16 authorizes the delegation of duties to the "head of an agency" and to any "subordinate of the agency head" (emphasis added). The definition of "agency" as set forth in Minnesota, Statutes 16C.02, subd. 2 includes several entities other than "departments," such as state officers, boards, and commissions. Another change to this section was to change the term "purchase order" to "contract documents." This change was made because orders can be made on documents other than purchase orders. Similarly, the words, "invitation to bid" were replaced with "ordering document" as delivery instructions can be set forth on a document other than an "invitation to bid."

Subparts 2-8. These sections interchanged the terms "goods," "commodities," "items," "merchandise," "supplies" and "products." It is necessary and reasonable to change all these references to "goods" for consistency and ease of reading.

In subpart 2, the language previously required that all deliveries conform to the specifications of the bid. This language was changed to require that deliveries conform to the "terms, conditions and specifications" of the bid. This change was needed and reasonable as most delivery terms are set forth in the terms and conditions of the solicitation document as opposed to the specifications.

Subpart 7 previously allowed the director, with the acquiescence of the vendor, to adjust the price of nonconforming goods and keep the order when it was required to sustain continued operation. This was changed to allow the same authority of the director (to adjust the price and keep the nonconforming goods), but in instances where it is determined by the director to be in the best interest of the state as opposed to requiring that it be necessary to sustain continued operation. This change is necessary and reasonable as there are conceivably many instances where it would be beneficial to the state to keep the nonconforming goods, if they are needed and usable, even if continued operation is not at stake. The changes provide increased flexibility to make a purchasing decision that best serves the interests of the state.

Subpart 8 previously was silent as to the payment of costs involved in conducting laboratory tests and analysis. The changes made provide notice to the vendors and agencies regarding the payment of these costs and make subpart 8 consistent with subpart 2 which does set forth provisions regarding costs.

1230.1100 FAILURE TO PERFORM

Subpart 1. The provision requiring the deposit of bid security with the state treasurer was deleted because in the event security is retained, it is deposited back to the appropriating account. In addition, pursuant to 1998 Minnesota Laws, Ch. 387, article 1, section 2, the office of the State Treasurer will be abolished effective January 1, 2003. In subpart 1, language was added indicating that, in addition to a determination that the vendor is not a responsible bidder, the vendor may be subject to suspension or debarment for failing to perform in accordance with contract terms and conditions. This added language provides clarity to the vendors, describing the full realm of consequences of failure to perform. The added provision regarding suspension or debarment is not a new consequence as such consequences are specified in part 1230.1150.

Subpart 3. The language previously indicated that a vendor shall be held in default for failure to conform to "bid specifications." This language was broadened to include "contract requirements, solicitation terms, conditions and specifications." The change was needed and reasonable as it clarifies the intent, which is to place vendors in default for failing to conform to any aspect of the contract, not simply the specifications.

1230.1150 AUTHORITY TO DEBAR OR SUSPEND VENDORS

Subpart 1. The previous language indicated that a person who is suspended will not be given "consideration for awards." Language was added to indicate that suspended vendors will not receive solicitations. This change is necessary as it is not logical to send solicitations to suspended vendors who are not eligible to receive an award.

The requirement that a suspension not exceed six months is not a new requirement. It was initially set forth in the definitions section of 1230.0150. It was determined that it would be more appropriate to have this provision in the body of the rules as it is not part of the definition of suspension. In addition, the six-month limitation was modified to allow for a longer period of time when a vendor is proposed for debarment by the federal government. This change was necessary because under 1230.1150 subp. 2, B (1), debarment of a vendor by the federal government is recognized by the state. As a result, it is necessary to expand the time a vendor may be suspended in the event a determination regarding debarment by the federal government exceeds six months.

Subpart 2. A.(1). The words "vendor" and "person" are interchangeable. However, it was decided to change "vendor" to "person" in this subpart to provide as much clarity as possible to agencies and vendors who need to be aware that debarment follows the person and does not apply only to the business that person owns and operates. For instance, a person who becomes debarred while running XYZ Company, cannot resume doing business with the state by starting a new company.

Subpart 2 A.(2). Previously, the section set forth that a vendor shall be debarred for conviction under state or federal statutes of embezzlement, theft, etc., or "other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affect responsibility as a state contractor." (Emphasis added.) The underlined adverbs were deleted because of the subjective nature of the words.

Subpart 2 A. (4) (a). The requirement to perform according to the terms or conditions of a contract was added to the previous wording that required performance in accordance with the specifications or within the time limit provided in the contract. This change is needed and reasonable as the state needs vendors to comply with all terms and conditions and not limited parts of contracts. It is a reasonable addition as vendors are aware that they will and should be held to the terms of the agreement.

Subpart 2 A. (4) (b). The phrase, "or as measured by standard commercial practices" was added to elaborate on the meaning of failure to perform or unsatisfactory performance. The previous wording linked the phrases "failure to perform" and "unsatisfactory performance" to the terms of the contract. It is necessary to measure performance by more than express terms in any particular contract. It is reasonable to measure performance by standard commercial practices.

Subpart 2 A. (5). This paragraph was rewritten, in part, to correct redundancies within the section. Specifically, the words "as to affect responsibility as a state contractor" were deleted as the paragraph later states "and all acts that would disqualify the person as a responsible vendor." Also, examples of unacceptable acts by vendors were previously set forth and included collusion and providing false information. Acting in a threatening, abusive or intimidating manner were other examples added to this section necessitated by actual occurrences experienced during the acquisition process. These additions are reasonable as acting in this manner is not acceptable by any standards. Another example added that would result in debarment was if a vendor violated the terms of a suspension. This addition is reasonable as it demonstrates a vendor's disregard for established policies. Adding the various examples are necessary as it provides notice to vendors of specific violations that will result in debarment.

Subpart 2 B.(1), (2) These subsections were restructured and reworded to add clarity. The changes do not affect the substance of the section as previously written.

Subpart 3. Changes were necessary to this subpart as it previously indicated that the written notice would be "notice to debar or suspend," which is inaccurate as it implies that the action has not yet been taken. It is appropriately changed to "notice of debarment or suspension" because this section pertains to the requirements that occur after the decision is rendered as opposed to the notice required when suspension is being considered which is addressed in 1230.1150 subpart 1. The words "or suspended" were added to subitem B as a clarification given that the notice is required for both suspensions and debarments.

Subpart 4. This section sets forth time limits pertaining to suspension and debarment appeals. Previously, time limits were provided without an indication of whether the days would be counted as calendar days or working days. It was necessary and reasonable to make this clarification to assure that vendors are on notice of the precise time limits relating to appeals.

Subpart 5. This section pertains to the length of time a vendor may be debarred. A clarification was necessary to this section to be consistent with 1230.1150, subp. 2 B. (1) which provides that debarment by other governmental agencies, including the federal government, is recognized and in effect for vendors doing business with the state.

Subpart 6. The heading of this section was changed to be consistent with the text of the subpart. The words, "in which the applicant seeks to bid" were deleted from subitem (C) to resolve the inaccuracy involved in the use of the word "bid." The change resolves the inaccuracy without altering the meaning.

1230.1175 REINSTATEMENT AND PROBATION

Subpart 4. The word "petitioner" was changed to "applicant" to provide consistency throughout the section.

Subpart 5. This subpart pertains to the probationary period after reinstatement from previously debarred vendors. One of the requirements contained within the current rules is that a vendor must respond to all solicitations received from the division. As clarification, a provision was added indicating that an intent not to respond is considered a response. The change was necessary and reasonable to inform vendors that they need not submit a bid or proposal on every solicitation, but simply need to respond, even if the response consists of an indication of intent not to submit a bid or proposal.

1230.1200 CONTRACT CANCELLATION

The phrase "entered into under competitive bidding" was deleted because not all purchases or contracts are entered into as a result of bidding. The phrase needed to be removed to broaden the application of the section to agreements entered into as a result of other procurement methods, such as utilizing requests for proposals. Item C and a portion of D were deleted as the language proposed encompasses the substance of the items. The added language in the new item C adds the failure to conform to contract requirements or standard commercial practices as justifications for contract cancellation. The changes are necessary to put agencies and vendors on notice of instances justifying contract cancellation. Subitem D was added indicating another justification for contract cancellation, namely non-appropriation of funds. It is necessary and reasonable to add this provision as agencies would not have the ability to keep an agreement in place without the necessary funding.

1230.1300 REHABILITATION FACILITY

The change to this section was necessary and reasonable as the Minnesota Association of Rehabilitation Facilities's name has changed to Minnesota Association of Community Rehabilitation Organizations.

1230.1400 PURPOSE

This section previously indicated that the referenced rules are adopted for the purpose of governing procedures relating to the programs for targeted group or economically disadvantaged area small businesses. The category of small businesses was added to accurately describe the full contents of Minnesota Statutes, sections 16C.16 to 16C.21.

1230.1450 SCOPE

The phrase "relating specifically to the small business procurement program" was deleted because the program is inaccurately labeled and because the deletion of the phrase does not alter the meaning or application of the section. The word "preference" was previously utilized as an adjective describing the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program. This was deleted as it does not accurately encompass all aspects of the program and because its deletion does not change the meaning or application of the section.

1230.1600 ELIGIBILITY FOR SOCIALLY DISADVANTAGED OR ECONOMICALLY DISADVANTAGED AREA SMALL BUSINESS PROGRAM

Subpart 3. The changes made to the title and text of this subpart were made to accurately identify the name of the program that the subpart addresses.

Subpart 3 A. The acronym "NAICS" was added to this subitem as SIC codes are in the process of being replaced by NAICS codes. See Rule-By-Rule Analysis of 1230.0150, subp. 21. As above, the name of the program referenced in this subitem was altered as it is inaccurately titled.

Subpart 3 B. The acronym "SIC" was deleted. See discussion on Subp. 3 A above.

Subpart 3 B (5). This subitem contained obsolete language establishing a process of examining groups for appropriate limitations and redefinition for purposes of eligibility in the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program. The language was amended to delete the obsolete language. The substance of the rule remains unchanged.

1230.1700 CERTIFICATION OF ELIGIBILITY

Subpart 1. The reference to the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program being "established" was changed to "authorized" as Minnesota Statutes 16C.16 is not the legislation that established the program, but rather, authorizes its continuation. Also in this subpart, a clarification was made to inform vendors of the subitems that identify information required to be submitted by vendors seeking admission to the program versus information that must be submitted only when applicable.

Subpart 1 B. (3) (a), (b), (d). These sections were deleted as the language is set forth in statute and the statutory cite is provided as a reference within the rule.

Subpart 1 D. (1). This item pertains to the submission of financial statements by a vendor making application to the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program. Language was added allowing for the return of the financial statements upon request by the applicant. This change was necessary as the rules did not previously specify whether the financial statements needed to remain on file. The change is reasonable because once the financial statements are reviewed and eligibility is determined, maintaining the financial statements serves no useful purpose. In addition, many companies, particularly privately owned companies, object to their financial statements remaining on file and available for inspection as public data.

Subpart 1. F. This subitem was changed to clarify that it pertains only to contractors seeking certification as an individual business that is not a targeted group business, but is owned by a socially disadvantaged person who is encountering the effects of discrimination.

Subpart 5a B. This provision was modified to add that one of the criteria used to determine eligibility for the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program is that the majority owner of the firm must be employed at least half time by the firm during normal business hours for that industry. This change is necessary to prevent the advantages of admission in the program to persons who do not operate the business on a day-to-day basis. The requirement of half-time employment is reasonable to demonstrate day-to-day operation.

Subpart 5a C. This section is a continuation of the criteria that will be used to determine whether a firm is owned and operated on a day-to-day basis by one or more socially or economically disadvantaged persons. The requirement was added that "the majority owner of the business must be the chief executive officer or president." This was added to clarify the requirement in the existing rules that the "business owner must possess the power and expertise to direct the management and policies of the firm and to make day-to-day as well as major decisions on matters of management, policy, and operation." In practice, to implement this rule, the division has required that the owner be either the chief executive officer or president. As a result, the change does not have a substantive effect.

Subpart 5a G (3). This section discusses circumstances given special consideration in determining eligibility for the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program. One of the circumstances that is noted to be carefully reviewed occurs when a business (that is not socially or economically disadvantaged) has an interest in a business that is seeking certification as a socially or economically disadvantaged business. Language was added to clarify that the interest of the non-socially or economically disadvantaged business is not limited to financial interests. This change was needed and reasonable due to the close scrutiny that must be given to this type of situation to determine if any type of interest conflicts with the ownership and day-to-day operating control requirements.

Subpart 6. This subpart previously required the commissioner of Administration to make a final decision in writing regarding an appeal of a rejection of an application for admittance in the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program within 45 calendar days. This time limit was changed to 60 days. The change was necessary because an appeal is generally heard by the Small Business Procurement Advisory Council. The Council meets the third Thursday of each month and requires that items be placed on the agenda ten days prior to hearing the matter. In the event an item is placed on the agenda nine days before a Council meeting, the matter will not be heard until the next meeting which could be as long as 44 days later. This does not provide the Commissioner adequate time to receive the recommendation from the Council, render a final decision and prepare a written decision. As a result, it is reasonable and necessary to change the time limit to 60 days.

1230.1005 PROCUREMENTS FROM SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL

BUSINESSES

This section was divided into two parts to provide a location for subpart 2 pertaining to manufacturers representatives. The provision was added to this section that manufacturers representatives have written agreements with manufacturers to sell the products of the manufacturer in place and approved at the time responses are due. This change was necessary to ensure that the agreements (which are required pursuant to existing rule) are in place in order to avoid a delay in the award. The change is reasonable as vendors are on notice, both by this section and in section 1230.0150, subp. 14 that an agreement is required and simply clarifies time parameters.

1230.1810 PROPORTIONAL UTILIZATION OF SOCIALLY DISADVANTAGED BUSINESSES

The words "representation in the market" were changed to "representation in the state's market area." This change was made to be consistent with the terminology utilized in disparity studies where a state's market area is defined and an analysis is conducted in that market area to determine if utilization is proportionate to availability. The change clarifies, but does not substantively alter the meaning of the section. In addition, the words, "awarding requisitions" was changed to "making awards." Again, this is a clarification as the state does not award requisitions. The meaning remains unchanged.

B. A change to this section was necessary and reasonable to clarify that a certified targeted group vendor will not receive a 6 percent preference over another vendor who is given a different preference, namely, an economically disadvantaged construction vendor who currently receives a 4 percent preference.

B. (2), (3), and (4). The changes made to items (2) and (3) and the creation of (4) are reasonable and necessary to conform to the statutory authority that allows solicitation methods other than competitive bidding. Items (2) and (3) require an award be made to the "lowest acceptable response" which pertains only to competitive bids where price is the only factor considered. It was necessary to add item (4) to provide the methodology utilized in applying the preference percentage in situations where price is not the only factor considered in making the award.

1230.1820 REQUIRED SUBCONTRACTING FOR CONSTRUCTION, CONSULTING OR PROFESSIONAL OR TECHNICAL SERVICES

The word "consulting" was removed from the title of this section. The definition of professional or technical services in statute incorporates consultation services as part of the definition. Therefore, to state both "consultant" and "professional, or technical services" is redundant.

Subpart 1 A. This subpart pertains to subcontractor goals set to require the use of targeted group small businesses by prime contractors. This section indicates that the goal will depend on the type of work involved and the availability of certified, willing and able targeted group small businesses open to subcontracts. The location of the project and the size of the project were added as factors to consider when determining subcontractor goals. This change is needed and reasonable as the location and size of the project are relevant considerations in determining the goal. For instance, a goal may be higher if the project is located in an area where there are many certified targeted group subcontractors available to work on the project and lower in instances where there are fewer available.

Subpart 3 A. This subitem was deleted. It allowed for the invitation to bid or request for proposal to contain a condition waiving subcontracting requirements. This subitem is not necessary because subcontractor goals will not be set in the first place if they are not required. As a result, there is no need to have a provision in the solicitation document providing for a waiver as the goals would never have been set.

Subpart 4 C. The formula to be used when applying a penalty to prime contractors who fail to meet project goals was added in response to court order in the matter of C.S. McCrossan Construction, Inc. v. State of Minnesota, et al., Court File No. C5-92-8614 (July 31, 1992). The precise formula adopted by the court was placed in the rule to provide specific notice to prime contractors as to how the penalty will be applied.

1230.1830 PREFERENCE PROCUREMENTS FROM ECONOMICALLY DISADVANTAGED SMALL BUSINESSES

This section pertains to the amount of preference to be given economically disadvantaged small businesses. The rule previously read that "up to a four percent preference" may be given in all industries. The legislature changed this requirement in the 1999 Legislative Session and the changes in rule have been made accordingly. The new legislation provides for an "up to six percent preference" for commodities and services and up to a "four percent preference" for construction projects.

B, C, D and E. The changes made to items B, C, and D and the creation of (E) are reasonable and necessary to conform to statutory authority which allows for solicitation methods other than competitive bidding. Items B, C and D require an award be made to the "lowest acceptable response" which pertains only to competitive bids where price is the only factor considered. It was necessary to add item E to provide notice of the methodology utilized in applying the preference percentage in situations where price is not the only factor considered in making the award.

1230.1850 REMOVAL FROM ELIGIBILITY LISTS OR DIRECTORY OF CERTIFIED BUSINESSES

The title of this section was changed to clarify that the removal discussed in the section is from the entire Socially Disadvantaged or Economically Disadvantaged Area Small Business Program and not simply eligibility lists. While titles do not have legal effect, the clarification is necessary and reasonable for ease in reading and understanding the section. The titles "Informal Review" and "Formal Review" were added to this section to provide ease in reading.

Subpart 1. The subpart previously mandated the removal of a socially disadvantaged or economically disadvantaged area small business in the event it failed to satisfactorily fulfill the terms and conditions of a contract. This change was necessary and reasonable in order to be consistent with the reasons a vendor (who is not socially or economically disadvantaged) can be determined not to be a responsible vendor. Pursuant to existing language in 1230.1100, a vendor who fails to perform may be determined not to be a responsible bidder. The change provides consistency and equity. Also in this subpart, the phrase "bid eligibility lists" was changed to the "certified directory and vendor list." The change provides clarification and correctly identifies the lists as they are actually named.

Subpart 3. The name "Socially Disadvantaged or Economically Disadvantaged Area Small Business Program" was added to the title and text of this subpart to correctly identify the Program from which a vendor is being removed pursuant to the provisions in the subpart.

Subpart 4. The name "Socially Disadvantaged or Economically Disadvantaged Area Small Business Program" was added to the text of this subpart for the reasons stated above in subpart 3. In addition, a provision was added requiring a business proposed for removal from the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program to choose either an informal or formal review process within 15 days of the receipt of the notice of removal or the right to appeal will lapse. Adding the time line and consequences for failing to respond is necessary because the rule, as it currently stands, allows for indefinite delay. The time parameter is reasonable as it is consistent with the other time provisions allowed in the subpart.

A. This subitem previously required the Small Business Advisory Council to make a recommendation to the commissioner of Administration regarding the removal of a business from the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program within 45 calendar days of the Council's receipt of a request for review. This time limit was changed to 60 days. The change was necessary because the Council meets the third Thursday of every month and requires that items are placed on the agenda ten days prior to hearing the matter. If a review is placed on the agenda nine days before a Council meeting, the matter will not be heard until the next meeting which could be as long as 44 days later. This does not provide the Council adequate time to make recommendations to the commissioner. As a result, it is reasonable and necessary to change the time limit to 60 days.

B. The word "calendar" was added to clarify whether the 45-day limit for the Small Business Advisory Council to make a recommendation regarding the removal of a business from the program is to be counted by business or calendar days. The change is needed and reasonable to provide accurate notice of time parameters.

1230.18600 LIMITS TO PROGRAM PARTICIPATION.

References to the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program were

added throughout the section to correctly identify the program.

1230.1900 GENERAL TERMS AND CONDITIONS

Subpart 1. The words "for reasons beyond its control" were deleted. The type of assistance provided by the Department of Trade and Economic Development contemplated by this rule's authorizing statute include difficulties that the business can control. The statute authorizes the Department of Trade and Economic Development to use "management and financial assistance programs" to help business that cannot perform in accordance with the terms and conditions of a contract. As a result, it is not logical to provide this type of assistance if the difficulties are beyond the control of the business. Therefore, it is reasonable and necessary to remove the language.

Subp. 7. This section pertains to the provision of information from businesses participating in the Socially Disadvantaged or Economically Disadvantaged Area Small Business Program. The word "annual" was removed from the title to allow the Division the ability to verify eligibility and obtain information whenever needed. The change is reasonable and necessary as the Division needs to ensure that those participating in the program meet the eligibility requirements so the program assists those it is intended to serve.

1230.1905 NOTICE OF CHANGES

This provision is not new, but rather was moved into its own section for greater visibility. The section was also reworded to provide increased clarity, however, the rewording does not alter the original meaning.

1230.1910 CONSULTANT, PROFESSIONAL, AND TECHNICAL PROCUREMENTS

The word "consultant" was removed from the title and text of this section as the definition of professional or technical services in statute incorporates consultation services as part of the definition. Therefore, to state both "consultant" and "professional, or technical services" is redundant.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.