

Section 1 takes effect the day after compliance with Minnesota Statutes, section 645.021, subdivision 3, by the governing body of the city of Bloomington.

Approved June 4, 1985

## CHAPTER 296 — H.F.No. 1109

*An act relating to state government; concerning the state procurement of goods and services from small businesses; modifying geographical distribution requirements and preference program limitations; providing for a warranty for certain purchases; amending Minnesota Statutes 1984, sections 16B.06, by adding a subdivision; 16B.19, subdivisions 5, 6, 9, and by adding a subdivision; 16B.21, subdivision 1; 16B.22; and 645.445, subdivision 5.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1984, section 16B.06, is amended by adding a subdivision to read:

Subd. 3a. WARRANTIES. A contract for the purchase of a product covered by a manufacturer's warranty must provide for servicing of the product under the warranty by the vendor or a designated agent of the vendor.

Sec. 2. Minnesota Statutes 1984, section 16B.19, subdivision 5, is amended to read:

**Subd. 5. CERTAIN SMALL BUSINESS PREFERENCES AND SET-ASIDES.** At least six nine percent of the value of all procurements shall be set aside awarded, if possible, for award to businesses owned and operated by socially or economically disadvantaged persons as defined in section 645.445 with their principal place of business in Minnesota. In addition, three percent of the value of all procurements shall be designated for award under the preference program provided for below. The commissioner shall designate set-aside procurements in a manner that will encourage proportional distribution of set-aside awards among the geographical regions of the state. To promote the geographical distribution of set-aside awards, the commissioner may designate a portion of the set-aside for small businesses owned and operated by socially or economically disadvantaged persons for award to bidders from a specified congressional district or other geographical region specified by the commissioner. The commissioner may allow small businesses owned and operated by socially or economically disadvantaged persons a five percent preference in the bid amount on selected state procurements. The commissioner may promulgate rules relative to the set-aside and preference programs provided for in this subdivision To reach a goal of nine percent, the commissioner must set aside at least three percent of all procurements for bidding only by small businesses owned and operated by socially or economically disadvantaged persons, may award a five percent preference in the

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amount bid on selected state procurements to small businesses owned and operated by socially or economically disadvantaged persons, or may utilize any other bidding process authorized by this chapter. In the event small businesses owned and operated by socially or economically disadvantaged persons are unable to perform at least 24 nine percent of the set-aside awards value of all procurements, the commissioner shall award the balance of the set-aside contracts remainder to other small businesses. At least 50 percent of the value of the procurements awarded to businesses owned and operated by socially or economically disadvantaged persons shall actually be performed by the business to which the award is made or another business owned and operated by a socially or economically disadvantaged person or persons. The commissioner may not designate more than 20 percent of any commodity class for set-aside or preference awards to businesses owned and operated by socially or economically disadvantaged persons. A business owned and operated by socially or economically disadvantaged persons that has been awarded more than three-tenths of one percent of the value of the total anticipated procurements for a fiscal year under this subdivision is disqualified from receiving further set-aside or preference advantages for that fiscal year.

Sec. 3. Minnesota Statutes 1984, section 16B.19, subdivision 6, is amended to read:

**Subd. 6. CONTRACTS IN EXCESS OF \$200,000; SET-ASIDE.** The commissioner as a condition of awarding state procurements for construction contracts or approving contracts for consultant, professional, or technical services pursuant to section 16B.17 in excess of \$200,000 shall require that at least ten percent of the contract award to a prime contractor be subcontracted to a business owned and operated by a socially or economically disadvantaged person or persons or that at least ten percent of the contract award be expended in purchasing materials or supplies from said person or persons. If there is no socially or economically disadvantaged person or persons or other small businesses able to perform the subcontract or to provide the supplies or materials, the construction contract or contract for consultant, professional, or technical services may be awarded notwithstanding the ten percent requirement provided that the ten percent requirement is made up in other such contracts awarded or to be awarded by the same agency. Any subcontracting or purchasing of supplies and materials pursuant to this subdivision may not be included in determining the total amount of awards required by subdivisions 1, 2, and 5. In the event small businesses owned and operated by socially and economically disadvantaged persons are unable to perform ten percent of the prime contract award, the commissioner shall require that other small businesses perform at least ten percent of the prime contract award. The commissioner may determine that small businesses owned and operated by socially and economically disadvantaged persons are unable to perform at least ten percent of the prime contract award prior to the advertising for bids. Each construction contractor bidding on a project over \$200,000 shall submit with the bid a list of the businesses owned and

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operated by socially or economically disadvantaged persons that are proposed to be utilized on the project with a statement indicating the portion of the total bid to be performed by each business. The commissioner shall reject any bid to which this subdivision applies that does not contain this information. Prime contractors receiving construction contract awards in excess of \$200,000 shall furnish to the commissioner the name of each business owned and operated by a socially or economically disadvantaged person or persons or other small business that is performing work or supplying supplies and materials on the prime contract and the dollar amount of the work performed or to be performed or the supplies and materials to be supplied.

This subdivision does not apply to prime contractors that are themselves small businesses owned and operated by socially or economically disadvantaged persons, as duly certified pursuant to section 16B.22.

Sec. 4. Minnesota Statutes 1984, section 16B.19, subdivision 9, is amended to read:

Subd. 9. **PROCUREMENT PROCEDURES.** All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply equally to procurements designated for small businesses. In the event of conflict with other rules, section 16B.18 and rules adopted under it govern if section 16B.18 applies. If it does not apply, sections 16B.19 to 16B.22 and rules adopted under those sections govern.

Sec. 5. Minnesota Statutes 1984, section 16B.19, is amended by adding a subdivision to read:

Subd. 10. APPLICABILITY. This section does not apply to construction contracts or contracts for consultant, professional, or technical services pursuant to section 16B.17 which are financed in whole or in part with federal funds and which are subject to federal disadvantaged business enterprise regulations.

Sec. 6. Minnesota Statutes 1984, section 16B.21, subdivision 1, is amended to read:

Subdivision 1. **COMMISSIONER OF ADMINISTRATION.** The commissioner shall submit an annual report pursuant to section 3.195 to the governor and the legislature with a copy to the commissioner of energy and economic development indicating the progress being made toward the objectives and goals of sections 16B.19 to 16B.22 during the preceding fiscal year. The commissioner shall also submit a quarterly report to the small business procurement advisory council. These reports shall include the following information:

(1) the total dollar value and number of potential set-aside awards identified during this period and the percentage of total state procurement this figure reflects;

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(2) the number of small businesses identified by and responding to the set-aside program, the total dollar value and number of set-aside contracts actually awarded to small businesses with appropriate designation as to the total number and value of set-aside contracts awarded to each small business, and the total number of small businesses that were awarded set-aside contracts;

(3) the total dollar value and number of ~~set-aside~~ contracts awarded to small businesses owned and operated by economically or socially disadvantaged persons with appropriate designation as to pursuant to each bidding process authorized by section 16B.19, subdivision 5; the total number and value of set-aside these contracts awarded to each small business and to each category of economically or socially disadvantaged persons as defined by section 645.445 and agency rules, and the percentages of the total state procurements the figures of total dollar value and the number of ~~set-asides~~ reflect contracts awarded by each bidding process; and

(4) the number of contracts which were designated and set aside pursuant to section 16B.19 but which were not awarded to a small business, the estimated total dollar value of these awards, the lowest offer or bid on each of these awards made by the small business, and the price at which these contracts were awarded pursuant to the normal procurement procedures.

The information required by paragraphs (1) and (2) must be presented on a statewide basis and also broken down by geographic regions within the state.

Sec. 7. Minnesota Statutes 1984, section 16B.22, is amended to read:

#### 16B.22 RULES.

The commissioner shall adopt by rule standards and procedures for certifying that small businesses and small businesses owned and operated by socially or economically disadvantaged persons are eligible to participate under the requirements of sections 16B.19 to 16B.22. The rules shall provide that, except for sheltered workshops and work activity programs, certification as a small business owned and operated by socially or economically disadvantaged persons will be for a maximum of five years from the date of receipt of the first set-aside award, and that after the expiration of the certification period the business may not again be certified for a five-year period. The commissioner shall adopt by rule standards and procedures for hearing appeals and grievances and other rules necessary to carry out the duties set forth in sections 16B.19 to 16B.22.

The commissioner may make rules which exclude or limit the participation of nonmanufacturing business, including third-party lessors, jobbers, manufacturers' representatives, and others from eligibility under sections 16B.19 to 16B.22.

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The commissioner may adopt rules to establish a preference program whereby businesses owned and operated by socially and economically disadvantaged persons would be allowed a five percent preference in the bid amount on selected state procurements or a preference program whereby businesses owned and operated by socially and economically disadvantaged persons would be awarded any state procurement if the business could meet the low bid amount for that procurement. Each of the preference programs is applicable to no more than 1.5 percent of the value of anticipated total state procurements of goods and services, including construction. Each preference program established by the commissioner expires on June 30, 1986, and the commissioner shall report to the legislature on the progress of the program by January 1, 1986.

Sec. 8. Minnesota Statutes 1984, section 645.445, subdivision 5, is amended to read:

Subd. 5. "Socially or economically disadvantaged person" means a person who has been deprived of the opportunity to develop and maintain a competitive position in the economy because of social or economic conditions. This disadvantage may arise from cultural, social or economic circumstances, or background, physical location if the person resides or is employed in an area designated a labor surplus area by the United States department of labor, or other similar cause. It includes racial minorities, women, or persons who have suffered a substantial physical disability. For purposes of sections 16B.19 to 16B.22, the definition of "socially or economically disadvantaged person" includes sheltered workshops and work activity programs.

#### Sec. 9. PREFERENCE PROGRAM STUDY.

The commissioner shall prepare a report that examines the short-term and long-term effects of the preference bidding process on each category of businesses owned and operated by economically or socially disadvantaged persons. This report shall be submitted to the governor and the legislature by February 15, 1986.

Approved June 4, 1985

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### CHAPTER 297 — H.F.No. 1227

*An act relating to crimes; providing that a psychotherapist who engages in sexual contact or penetration with a patient under certain circumstances is guilty of criminal sexual conduct; limiting admissibility of a patient's personal or medical history; amending Minnesota Statutes 1984, sections 609.341, by adding subdivisions; 609.344; 609.345; and 609.347, by adding a subdivision.*

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