

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Rule making related to procurements from targeted small businesses

The Administrative Services Department hereby amends Chapter 117, “Procurement of Goods and Services of General Use,” and Chapter 118, “Purchasing Standards for Service Contracts,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 8A.104 and 8A.311.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 485.

Purpose and Summary

The Department of Administrative Services adopts these rule amendments as a result of 2019 Iowa Acts, House File 485, which addresses state purchasing requirements relating to Targeted Small Business procurement goals. 2019 Iowa Acts, House File 485, gives the Department authority to set a Targeted Small Business spending threshold, by rule, not to exceed \$25,000. The amendments, in part, set the spending threshold at \$25,000. The amendments also detail reporting requirements for state agencies to the Department regarding Targeted Small Business procurement.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 6, 2019, as **ARC 4735C**. A public hearing was held on November 26, 2019, at 10 a.m. in the Procurement Conference Room, A Level, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa.

The Iowa Economic Development Authority spoke in favor of the amendments and outlined how the \$25,000 spending threshold would help Targeted Small Businesses in Iowa by allowing them to capture more business. No other public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on December 11, 2019.

Fiscal Impact

The Iowa Economic Development Authority reports the fiscal impact of these amendments is indeterminable.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

The Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department’s rules concerning waivers.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on February 5, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 117.5(2) as follows:

117.5(2) Targeted small business (TSB) procurement.

a. Justification for TSB procurement. Agencies may purchase from a TSB without competition for a purchase up to ~~\$10,000~~ \$25,000 if the purchase would contribute to the agency complying with the targeted small business procurement goals under Iowa Code sections 73.15 through 73.21.

b. Special procedures for TSB procurements. Agencies must confirm that the vendor is certified as a TSB by the economic development authority. An agency may contact the TSB directly.

c. Reporting requirements for TSB procurement. By December 1 of each year, each agency shall provide the department with an annual report of procurements made in the previous fiscal year pursuant to paragraph 117.5(2) "a." The annual report will be in a format prescribed by the department.

ITEM 2. Amend subrule 117.15(3) as follows:

117.15(3) Preference to targeted small businesses. Agencies shall search the TSB directory on the Iowa economic development authority's website and may purchase a good or service directly from the TSB source if the cost is equal to or less than the spending limit set forth in ~~Iowa Code section 8A.311(10)~~. paragraph 117.5(2) "a." Agencies shall comply with the TSB notification requirements in subrule 117.8(2).

ITEM 3. Amend subrule 117.15(4) as follows:

117.15(4) Misuse of agency authority.

a. Purchasing authority delegated to agencies shall not be used to avoid the use of master agreements. The agency shall not break purchasing into smaller increments for the purpose of avoiding threshold requirements in ~~subrules~~ subrule 117.5(2), 117.15(1) and or 117.15(2).

b. As a remedy, the department may recover administrative fees appropriate to the improper execution of procurement.

c. This rule is not intended to prohibit agencies from aggressively seeking competitive prices. Agencies may purchase outside of master agreements under subrule 117.4(1).

d. The department may rescind delegated authority of an agency that misuses its authority or uses the authority to procure goods or services already available on a master agreement.

e. This rule does not prohibit agencies from dividing procurements into contract award units of economically feasible production runs to facilitate offers or bids from targeted small businesses consistent with subrule 117.5(2) and Iowa Code section 73.17(1).

ITEM 4. Amend rule 11—118.5(8A), introductory paragraph, as follows:

11—118.5(8A) Use of competitive selection. State agencies may procure non-master agreement services from private entities without competition when the estimated value does not exceed \$5,000. Agencies shall use competitive selection to acquire services from private entities when the estimated annual value of the service contract is greater than \$5,000 or when the estimated value of the multiyear service contract in the aggregate, including any renewals, is greater than \$15,000 unless there is adequate justification for a sole source ~~or emergency~~ procurement pursuant to rule 11—118.7(8A) or emergency procurement pursuant to rule 11—118.8(8A) or unless awarded to a targeted small business

pursuant to 11—paragraph 117.5(2) “a” or procured pursuant to another exception to competitive selection under another provision of law.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/1/20.