

# Small Business Notes

Minnesota Department of Employment and  
Economic Development (DEED)

## Minnesota Department of Commerce Publishes Adopted Permanent Rules Regulating MNvest Crowdfunding Securities Offerings

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On June 13<sup>th</sup> the Minnesota Department of Commerce published the final adopted rules regulating offerings under the MNvest program created by 2015 Minnesota legislation. [40 State Register 1617].

That legislation and the new rules provide for an exemption from state securities offering registration for offerings made up to \$2 million to only Minnesota residents and via a general solicitation using an online “portal” which – unlike the portal authorized for federal crowdfunding – can be set up by the offering business itself. The intent of the legislation is to ease capital formation for small businesses by allowing easy investment by small, unaccredited investors – who may invest up to \$10 thousand – while still allowing for unlimited investments by accredited investors.

Investments in so-called “shell” corporations that have no defined business operations, no stated investment goal, or which plans to engage in a merger or acquisition with an unspecified business entity are prohibited. The offeror must disclose, and the purchaser acknowledge, understanding, that no market exists for the crowdfunding securities, that no market may develop, and that the securities cannot be resold unless registered or qualified for an exemption under federal and state law.

Around August 1st DEED and the law firm of Fox Rothschild will release the new edition of *Raising Capital: Securities Law and Business Considerations* which contains sections on the operation of both federal equity crowdfunding regulations and MNvest. Hard copies and CD versions will be available from DEED (call 651-259-7476) and a downloadable version will be on the DEED website at <http://mn.gov/deed>.

The Supreme Court will hear arguments in its October 2016 term.

## **Small Business Prevails in Government Procurement Case Before U.S. Supreme Court**

On June 16<sup>th</sup> the U. S. Supreme Court handed down its decision in *Kingdomware Technologies, Inc. v. United States* (No. 14-916). (For the earlier Court of Appeals decision see *Small Business Notes* for February 2016.)

The federal Department of Veterans Affairs is required to set annual goals for contracting with service-disabled and other veteran owned small businesses. To aid in reaching those goals a set-aside provision known as the “Rule of Two” provides that a contracting officer shall award contracts by restricting competition to veteran owned small businesses if the officer “reasonably expects” that at least two veteran owned businesses will submit offers and that the award can be made “at a fair and reasonable price that offers best value to the United States.

In 2012 the Department acquired an emergency notification system for four of its medical centers using not a Rule of Two solicitation but rather a purchase through the Federal Supply Schedule—an expedited procurement system that allows for acquisitions under pre-negotiated terms. Kingdomware Technologies, Inc. – which is a service-disabled veteran owned small business – filed a bid protest with the Government Accountability Office which determined that the Department had unlawfully bypassed the Rule of Two in favor of the Federal Supply Schedule procurement. The Department refused to follow the Government Accountability Office decision –arguing that the Rule of Two need be applied only if needed to meet the Department’s annual procurement goals, a situation which did not apply in this case. Kingdomware sued and the Court of Federal Claims gave summary judgment to the Department, and the Court of Appeals for the federal Circuit affirmed.

In a decision that stressed the meaning of the word “ shall,” the Supreme Court reversed.

“On the merits, we hold that (the section requiring Rule of Two procurement...ed.) is mandatory not discretionary. Its text requires the department to apply the Rule of Two to all contracting determinations and to award contracts to veteran-owned small businesses. The Act does not allow the Department to evade the Rule of Two on the ground that it has already met its contracting goals or on the ground that the Department has placed an order through the Federal Supply Schedule.”

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