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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH  
SESSION

HOUSE FILE NO. **77**

January 11, 2007

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The bill was read for the first time and referred to the Committee on Commerce and Labor

A bill for an act

relating to state government; establishing best value as the criteria for construction contracts; amending Minnesota Statutes 2006, sections 16C.03, subdivision 3; 16C.06, subdivisions 2, 7; 16C.10, subdivisions 1, 6; 16C.26; 16C.28, subdivision 3; 16C.32, subdivision 2; 16C.33, subdivisions 5, 7; 161.32, subdivision 1b; 471.345, by adding a subdivision; repealing Minnesota Statutes 2006, sections 16C.27; 16C.28, subdivisions 1, 2, 4, 5.

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

Section 1. Minnesota Statutes 2006, section 16C.03, subdivision 3, is amended to read:

Subd. 3. **Acquisition authority.** The commissioner shall acquire all goods, services, construction, and utilities needed by agencies. The commissioner shall acquire goods, services, construction, and utilities by requests for bids, requests for proposals, reverse auctions as provided in section 16C.10, subdivision 7, or other methods provided by law, unless a section of law requires a particular method of acquisition to be used. The commissioner shall make all decisions regarding acquisition activities. The determination of the acquisition method and all decisions involved in the acquisition process, unless otherwise provided for by law, shall be based on best value which includes an evaluation of price and may include other considerations including, but not limited to, environmental considerations, quality, and vendor performance. A best value determination must be based on the evaluation criteria detailed in the solicitation document. If criteria other than price are used, the solicitation document must state the relative importance of price and other factors. ~~Unless it is determined by the commissioner that an alternative solicitation method provided by law should be used to determine best value, a request for bid must be used to solicit formal responses for all building and construction contracts.~~ Any or all responses may be rejected. When using the request for bid process, the bid must

2.1 be awarded to the lowest responsive and responsible bidder, taking into consideration  
2.2 conformity with the specifications, terms of delivery, the purpose for which the contract  
2.3 or purchase is intended, the status and capability of the vendor, and other considerations  
2.4 imposed in the request for bids. The commissioner may decide which is the lowest  
2.5 responsible bidder for all purchases and may use the principles of life-cycle costing, where  
2.6 appropriate, in determining the lowest overall bid. The duties set forth in this subdivision  
2.7 are subject to delegation pursuant to this section.

2.8 Sec. 2. Minnesota Statutes 2006, section 16C.06, subdivision 2, is amended to read:

2.9 Subd. 2. **Solicitation process.** (a) A formal solicitation must be used to acquire all  
2.10 goods, service contracts, construction, and utilities estimated at or more than \$50,000,  
2.11 or in the case of a Department of Transportation solicitation, at or more than \$100,000,  
2.12 unless otherwise provided for. All formal responses must be sealed when they are received  
2.13 and must be opened in public at the hour stated in the solicitation. Formal responses must  
2.14 be authenticated by the responder in a manner specified by the commissioner.

2.15 (b) An informal solicitation may be used to acquire all goods, service contracts,  
2.16 construction, and utilities that are estimated at less than \$50,000, or in the case of a  
2.17 Department of Transportation solicitation, at or less than \$100,000. The number of  
2.18 vendors required to receive solicitations may be determined by the commissioner.  
2.19 Informal responses must be authenticated by the responder in a manner specified by  
2.20 the commissioner.

2.21 Sec. 3. Minnesota Statutes 2006, section 16C.06, subdivision 7, is amended to read:

2.22 Subd. 7. **Other states with resident preference.** Acquisition of goods ~~and,~~  
2.23 services, and construction must be awarded according to the provisions of this chapter  
2.24 except that a resident vendor shall be allowed a preference over a nonresident vendor from  
2.25 a state that gives or requires a preference to vendors from that state. The preference shall  
2.26 be equal to the preference given or required by the state of the nonresident vendor.

2.27 Sec. 4. Minnesota Statutes 2006, section 16C.10, subdivision 1, is amended to read:

2.28 Subdivision 1. **Single source.** The solicitation process described in this chapter is  
2.29 not required when there is clearly and legitimately only a single source for the goods  
2.30 ~~and,~~ services, and construction, and the commissioner determines that the price has been  
2.31 fairly and reasonably established.

2.32 Sec. 5. Minnesota Statutes 2006, section 16C.10, subdivision 6, is amended to read:

3.1 Subd. 6. **Expenditures under specified amounts.** The solicitation process  
3.2 described in this chapter is not required for:

3.3 (1) acquisition of goods ~~or~~, services, or construction, other than professional or  
3.4 technical services, in an amount of \$2,500 or less; or

3.5 (2) acquisition of professional or technical services in an amount of \$5,000 or less,  
3.6 provided the requirements of section 16C.08, subdivisions 3 to 6, are met.

3.7 Sec. 6. Minnesota Statutes 2006, section 16C.26, is amended to read:

3.8 **16C.26 ~~COMPETITIVE BIDS~~ STANDARD REQUIREMENT PRICE**  
3.9 **CONTRACTS.**

3.10 ~~Subdivision 1. **Application.** Except as otherwise provided by sections 16C.26~~  
3.11 ~~and 16C.27, all contracts for building and construction or repairs must be based on~~  
3.12 ~~competitive bids.~~

3.13 Subd. 2. **Requirement contracts.** Standard requirement price contracts for  
3.14 building and construction ~~must~~ may be established by ~~competitive bids as provided in~~  
3.15 ~~subdivision 1.~~ The standard requirement price contracts may contain escalation clauses  
3.16 and may provide for a negotiated price increase or decrease based upon a demonstrable  
3.17 industrywide or regional increase or decrease in the vendor's costs or for the addition  
3.18 of similar products or replacement items not significant to the total value of existing  
3.19 contracts. The term of these contracts may not exceed five years including all extensions.

3.20 Subd. 3. **Publication of notice; expenditures over \$25,000.** If the amount of  
3.21 an expenditure is estimated to exceed \$25,000, ~~bids solicitations~~ must be ~~solicited~~  
3.22 invited by public notice in a manner designated by the commissioner. To the extent  
3.23 practical, this must include posting on a state Web site. For expenditures over \$50,000,  
3.24 the commissioner shall ~~solicit sealed bids~~ invite responses by providing notices to all  
3.25 prospective ~~bidders~~ responders known to the commissioner by posting notice on a state  
3.26 Web site at least seven days before the final date of submitting ~~bids responses~~. All ~~bids~~  
3.27 responses over \$50,000 must be sealed when they are received and must be opened in  
3.28 public at the hour stated in the notice. All original ~~bids responses~~ and all documents  
3.29 pertaining to the award of a contract must be retained and made a part of a permanent file  
3.30 or record and remain open to public inspection.

3.31 Subd. 4. **Building and construction contracts; \$50,000 or less.** An informal ~~bid~~  
3.32 solicitation may be used for building, construction, and repair contracts that are estimated  
3.33 at less than \$50,000. Informal ~~bids solicitations~~ must be authenticated by the bidder in  
3.34 a manner specified by the commissioner.

4.1 Subd. 5. **Standard specifications, security.** Contracts must be based on the  
4.2 standard specifications prescribed and enforced by the commissioner under this chapter,  
4.3 unless otherwise expressly provided. Each bidder responder for a contract must furnish  
4.4 security approved by the commissioner to ensure the making of the contract being ~~bid for~~  
4.5 responded to.

4.6 ~~Subd. 6. **Noncompetitive bids.** Agencies are encouraged to contract with small~~  
4.7 ~~targeted group businesses designated under section 16C.16 when entering into contracts~~  
4.8 ~~that are not subject to competitive bidding procedures.~~

4.9 Sec. 7. Minnesota Statutes 2006, section 16C.28, subdivision 3, is amended to read:

4.10 Subd. 3. **Special circumstances.** The commissioner may reject the bid response  
4.11 of any bidder responder who has failed to perform a previous contract with the state.  
4.12 In the case of identical low bids responses from two or more bidders responders, the  
4.13 commissioner may use negotiated procurement methods with the tied low bidders  
4.14 responders for that particular transaction so long as the price paid does not exceed the  
4.15 low tied bid price. The commissioner may award contracts to more than one bidder in  
4.16 ~~accordance with subdivision 1, if doing so does not decrease the service level or diminish~~  
4.17 ~~the effect of competition responder under section 16C.06, subdivision 4.~~

4.18 Sec. 8. Minnesota Statutes 2006, section 16C.32, subdivision 2, is amended to read:

4.19 Subd. 2. **Authority.** (a) Subject to limitations in sections 16B.31, subdivision 1;  
4.20 16B.33, subdivision 1; 16C.16; and 16C.32 to 16C.34, and notwithstanding any other  
4.21 law to the contrary, the commissioner may:

4.22 (1) solicit and award a design-build contract on the basis of either a qualifications  
4.23 based or a design and price-based selection process provided in section 16C.33 if the  
4.24 conditions in paragraph (b) are met;

4.25 (2) select a construction manager at risk as provided in section 16C.34, and award a  
4.26 guaranteed maximum price contract for a construction manager at risk if the conditions of  
4.27 paragraph (c) are met; and

4.28 (3) select a contractor by a job order contracting delivery method as provided  
4.29 in section 16C.35.

4.30 (b) The commissioner may not utilize design-build contracts for more than five  
4.31 percent of its total projects let, by number, in each of the fiscal years 2006 and 2007, and  
4.32 ten percent of its total projects let, by number, in each fiscal year thereafter, that are funded  
4.33 in whole or in part with proceeds from the sale of state general obligation bonds; and

5.1 (c) The commissioner may not utilize construction manager at risk contracts for more  
 5.2 than five percent of its total projects let, by number, in each of the fiscal years 2006 and  
 5.3 2007, and ten percent of its total projects let, by number, in each fiscal year thereafter, that  
 5.4 are funded in whole or in part with proceeds from the sale of state general obligation bonds.

5.5 (d) Pursuant to section 16B.31, subdivision 4, if the project is within the Capitol  
 5.6 area, the project shall comply with sections 15B.03, subdivision 3; 15B.08, subdivision 2;  
 5.7 15B.10; and 15B.15, subdivision 4.

5.8 (e) The commissioner shall, for each design-build or construction manager at risk  
 5.9 contract, make a written determination, including specific findings, indicating whether use  
 5.10 of the design-build or construction manager at risk procurement serves the public interest.

5.11 (f) The solicitation of requests for qualifications or proposals does not obligate  
 5.12 the commissioner to enter into a design-build or construction manager at risk contract.  
 5.13 In accordance with the stated criteria and subcriteria for evaluating qualifications or  
 5.14 proposals, the commissioner may accept or reject any or all responses received as a result  
 5.15 of the request. The solicitation for qualifications or proposals may be canceled at any time  
 5.16 in the commissioner's sole discretion if it is considered to be in the public's best interest.  
 5.17 If the commissioner rejects all responses or cancels the solicitation for proposals, the  
 5.18 commissioner may resolicit a request for qualifications or proposals using the same or  
 5.19 different requirements or request selection of a primary designer pursuant to section  
 5.20 16B.33, 16C.08, or 16C.095 and proceed with ~~competitive bidding~~ solicitations pursuant  
 5.21 to sections 16C.06, 16C.10, and 16C.25 to 16C.29.

5.22 Sec. 9. Minnesota Statutes 2006, section 16C.33, subdivision 5, is amended to read:

5.23 Subd. 5. **Design-build qualifications-based selection process.** In a design-build  
 5.24 qualifications-based selection process, the following shall apply:

5.25 (a)(1) the commissioner shall establish procedures for determining the appropriate  
 5.26 content of each request for qualifications, the weighted criteria and subcriteria to be used  
 5.27 to evaluate the design-builders, and the procedures for evaluating qualifications in an  
 5.28 open, competitive, and objective manner; (2) the criteria and subcriteria shall include,  
 5.29 but are not limited to, the proposer's experience as a constructor or primary designer,  
 5.30 including capacity of key personnel, technical competence and capability to perform, the  
 5.31 past performance of the proposer and its employees, its safety record and compliance with  
 5.32 state and federal law, and availability to and familiarity with the project locale; (3) the  
 5.33 commissioner may include in the request for qualifications criteria a requirement that the  
 5.34 proposer include the overhead and fee that the design-builder proposes to charge for its

6.1 construction services; and (4) the commissioner shall issue a request for qualifications  
6.2 that includes the information as described in subdivision 3.

6.3 (b) After obtaining and evaluating qualifications from each design-builder, in  
6.4 accordance with the weighted criteria and subcriteria and procedures set forth in the  
6.5 request for qualifications, the board shall select a short list of at least three and no more  
6.6 than five proposals. The board must receive at least three proposals from design-builders  
6.7 or the commissioner shall either:

6.8 (1) solicit new proposals;

6.9 (2) revise the request for qualifications and thereafter solicit new proposals using  
6.10 the revised request for qualifications; or

6.11 (3) request selection of a primary designer pursuant to section 16B.33, 16C.08, or  
6.12 16C.095 and proceed with ~~competitive bidding~~ solicitations pursuant to sections 16C.06,  
6.13 16C.10, and 16C.25 to 16C.29.

6.14 (c) The board shall conduct formal interviews with the short list of proposers, but  
6.15 shall not disclose any proprietary or confidential information contained in one proposal  
6.16 to another proposer.

6.17 (d) The board shall select the design-builder that scores the highest on the evaluation  
6.18 criteria and subcriteria. The commissioner shall make the award to the design-builder who  
6.19 scores the highest score pursuant to the weighted criteria and subcriteria as determined  
6.20 by the board, unless the commissioner rejects all proposals or proceeds pursuant to  
6.21 paragraphs (f) and (g). In the case of the Minnesota State Colleges and Universities, the  
6.22 board shall narrow the selection to the two design-builders that score the highest on the  
6.23 evaluation criteria and subcriteria for recommendation to the respective commissioner, and  
6.24 the commissioner shall make the final selection and shall notify the board of the selection.

6.25 (e) The commissioner shall conduct fee and contract negotiations with the selected  
6.26 design-builder and shall enter into the contract consistent with subdivision 6.

6.27 (f) If the selected design-builder declines the appointment or is unable to reach  
6.28 agreement with the commissioner on the terms of the contract, the commissioner may,  
6.29 within 60 days after the first selection, request the board to make another selection.

6.30 (g) If the board fails to make a selection and forward its recommendation to the  
6.31 commissioner within 60 days of the request for a second selection, the commissioner may  
6.32 appoint a design-builder without the recommendation of the board.

6.33 (h) If a project for which a design-builder has been selected by the board becomes  
6.34 inactive, lapses, or changes as the result of a project phasing, insufficient appropriations,  
6.35 or other reasons, the commissioner may, if the project is reactivated, retain the same  
6.36 design-builder to complete the project.

7.1 Sec. 10. Minnesota Statutes 2006, section 16C.33, subdivision 7, is amended to read:

7.2 Subd. 7. **Design-build design and price-based proposals.** (a) In a design and  
7.3 price-based selection process the following shall apply:

7.4 (1) selection must be based on best value, which includes an evaluation of price  
7.5 and design, and may include other criteria including, but not limited to, the proposer's  
7.6 experience as a constructor or primary designer;

7.7 (2) the commissioner shall establish procedures for determining the appropriate  
7.8 content of each request for qualifications, and the weighted criteria and subcriteria to  
7.9 be used to evaluate the design-builders including, but not limited to, the proposer's  
7.10 experience as a constructor or primary designer, including capacity of key personnel,  
7.11 technical competence, capability to perform and the past performance of the proposer and  
7.12 its employees, its safety record and compliance with state and federal law, quality and past  
7.13 performance, and the procedures for evaluating qualifications in an open, competitive,  
7.14 and objective manner; and

7.15 (3) the commissioner shall issue a request for qualifications that includes the  
7.16 information as described in subdivision 3.

7.17 (b) After obtaining and evaluating qualifications from each design-builder, in  
7.18 accordance with the weighted criteria and subcriteria and procedures set forth in the  
7.19 request for qualifications, the board shall select a short list of three proposers. The board  
7.20 must receive at least three proposals from design-builders or the commissioner shall either:

7.21 (1) solicit new proposals;

7.22 (2) revise the request for qualifications and thereafter solicit new proposals using  
7.23 the revised request for qualifications; or

7.24 (3) request selection of a primary designer pursuant to section 16B.33, 16C.08, or  
7.25 16C.095 and proceed with ~~competitive bidding~~ solicitations pursuant to sections 16C.06,  
7.26 16C.10, and 16C.25 to 16C.29.

7.27 (c) The commissioner shall issue a request for proposals to the selected  
7.28 design-builders. The submitted proposals shall consist of, at a minimum, the following  
7.29 elements:

7.30 (1) preliminary plans and specifications and other information in sufficient detail to  
7.31 describe the character, quality, and scope of the project;

7.32 (2) a design and construction critical path schedule;

7.33 (3) the price at which the design-builder will complete all design and construction  
7.34 requested in the proposal for the project if selected; and

7.35 (4) other materials the board determines are necessary to fix the design, schedule,  
7.36 and cost of the project.

8.1 (d) Proposals must be sealed and may not be opened until the expiration of the time  
8.2 established for making proposals as set forth in the request for proposals.

8.3 (e) Proposals must identify the primary designer and the primary construction  
8.4 contracting entity that are members of the design-builder's team.

8.5 (f) The amount and type of design services requested by the board shall not be  
8.6 exceeded by those submitting proposals. Proposals exceeding the amount and type of  
8.7 design services requested by the board may be rejected by the board. Unless compensated  
8.8 in excess of the minimum stipend for their effort, design-builders must not be required to  
8.9 submit detailed architectural or engineering design or construction documents as part of  
8.10 the proposal.

8.11 (g) Except as described in paragraph (h), the commissioner shall award to each  
8.12 design-builder that submits a responsive design-build proposal under this subdivision, a  
8.13 stipend in an amount of not less than 0.3 percent of the commissioner's estimated cost of  
8.14 design and construction. If the request for proposals requires extensive design services  
8.15 beyond preliminary plans and specifications as requested as part of the proposal, the  
8.16 stipend shall be adjusted to an amount commensurate with the amount of design services  
8.17 requested for each proposal.

8.18 (h) No stipend shall be awarded to the design-builder selected to complete the  
8.19 project.

8.20 (i) For projects where the design-builder accepts the stipend offered by the board,  
8.21 the commissioner shall be deemed the owner of the design, subject to the rights of the  
8.22 proposer to such design for publication and use in other projects. However, the use of the  
8.23 design in its totality, or near totality, by the commissioner is prohibited.

8.24 (j) The commissioner may require each design-builder to submit with its proposal a  
8.25 cash deposit, letter of credit in a form acceptable to the commissioner, or bid bond not to  
8.26 exceed five percent of the maximum cost of the design-builder's proposal. If the proposal  
8.27 is accepted but the design-builder fails, without good cause to execute the design-build  
8.28 contract, the deposit or bond is forfeited in an amount not to exceed the difference between  
8.29 the proposal in question and the next highest proposal.

8.30 Sec. 11. Minnesota Statutes 2006, section 161.32, subdivision 1b, is amended to read:

8.31 Subd. 1b. **Lowest responsible bidder; electronic bids.** Bidders may submit  
8.32 bids electronically in a form and manner required by the commissioner; however, the  
8.33 commissioner may require that all bids of \$5,000,000 and over for trunk highway  
8.34 contracts must be submitted electronically. Trunk highway construction contracts,  
8.35 including design-build contracts, must be awarded to the lowest responsible bidder,

9.1 ~~taking into consideration conformity with the specifications, the purpose for which the~~  
9.2 ~~contract or purchase is intended, the status and capability of the vendor, and other~~  
9.3 ~~considerations imposed in the call for bids. The commissioner may decide which is the~~  
9.4 ~~lowest responsible bidder for all contracts and may use the principles of life-cycle costing;~~  
9.5 ~~when appropriate, in determining the lowest overall bid~~ based on best value. Best value  
9.6 includes an evaluation of price, and may include other considerations, including but  
9.7 not limited to environmental considerations, quality, and performance. The best value  
9.8 determination must be based on evaluation criteria specified in the document soliciting  
9.9 bids. If criteria other than price are used, the solicitation document must state the relative  
9.10 importance of price and other factors. Any or all bids may be rejected. When competitive  
9.11 bids are required and all bids are rejected, new bids, if solicited, must be called for as in  
9.12 the first instance, unless otherwise provided by law.

9.13 Sec. 12. Minnesota Statutes 2006, section 471.345, is amended by adding a subdivision  
9.14 to read:

9.15 Subd. 2a. **Construction contracts.** A contract for the construction, alteration, repair  
9.16 or maintenance of real or personal property must be based on best value. Best value  
9.17 includes an evaluation of price, and may include other considerations, including but not  
9.18 limited to environmental considerations, quality, and performance. If a municipality  
9.19 must obtain bids or quotations for a contract covered by this subdivision, the best value  
9.20 determination must be based on evaluation criteria specified in the document soliciting  
9.21 bids or quotations. If criteria other than price are used, the solicitation document must  
9.22 state the relative importance of price and other factors.

9.23 Sec. 13. **REPEALER.**

9.24 Minnesota Statutes 2006, sections 16C.27; and 16C.28, subdivisions 1, 2, 4, and  
9.25 5, are repealed.

9.26 Sec. 14. **EFFECTIVE DATE.**

9.27 Sections 1 to 13 are effective July 1, 2007, and apply to contracts for which  
9.28 solicitations or quotations are sought after that date.