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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. 2065

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The bill was read for the first time and referred to the Committee on Governmental Operations, Reform, Technology and Elections

1.1 A bill for an act
1.2 relating to state government; changing provisions for procurement of goods and
1.3 services; amending Minnesota Statutes 2006, sections 16C.02, subdivisions
1.4 4, 12, 14, by adding subdivisions; 16C.03, subdivisions 2, 4, 8, 16; 16C.05,
1.5 subdivisions 1, 2; 16C.08, subdivisions 2, 4, by adding subdivisions; 16C.10,
1.6 subdivision 7; repealing Minnesota Statutes 2006, sections 16C.055, subdivision
1.7 1; 16C.08, subdivision 4a.

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

1.9 Section 1. Minnesota Statutes 2006, section 16C.02, is amended by adding a
1.10 subdivision to read:

1.11 Subd. 3a. **Best and final offer.** "Best and final offer" means an optional step in
1.12 the solicitation process in which responders are requested to improve their response by
1.13 methods including, but not limited to, the reduction of cost, clarification or modification of
1.14 the response, or the provision of additional information.

1.15 Sec. 2. Minnesota Statutes 2006, section 16C.02, subdivision 4, is amended to read:

1.16 Subd. 4. **Best value.** "Best value" describes a result intended in the acquisition of all
1.17 goods and services. Price must be one of the evaluation criteria when acquiring goods
1.18 and services. Other evaluation criteria may include, but are not limited to, environmental
1.19 considerations, quality, and vendor performance. In achieving "best value" strategic
1.20 sourcing tools, including but not limited to best and final offers, negotiations, contract
1.21 consolidation, product standardization, and mandatory-use enterprise contracts shall be
1.22 used at the commissioner's discretion.

2.1 Sec. 3. Minnesota Statutes 2006, section 16C.02, is amended by adding a subdivision
2.2 to read:

2.3 Subd. 6a. **Enterprise procurement.** "Enterprise procurement" means the process
2.4 undertaken by the commissioner to leverage economies of scale of multiple end users to
2.5 achieve cost savings and other favorable terms in contracts for goods and services.

2.6 Sec. 4. Minnesota Statutes 2006, section 16C.02, subdivision 12, is amended to read:

2.7 Subd. 12. **Request for proposal or RFP.** "Request for proposal" or "RFP" means a
2.8 solicitation in which it is not advantageous to set forth all the actual, detailed requirements
2.9 at the time of solicitation and responses are ~~subject to negotiation~~ negotiated to achieve
2.10 best value for the state.

2.11 Sec. 5. Minnesota Statutes 2006, section 16C.02, subdivision 14, is amended to read:

2.12 Subd. 14. **Response.** "Response" means the offer received from a vendor in
2.13 response to a solicitation. A response includes submissions commonly referred to as
2.14 "offers," "bids," "quotes," ~~or~~ "proposals;," "best and final offers," or "negotiated offers."

2.15 Sec. 6. Minnesota Statutes 2006, section 16C.02, is amended by adding a subdivision
2.16 to read:

2.17 Subd. 20. **Strategic sourcing.** "Strategic sourcing" means methods used to
2.18 analyze and reduce spending on goods and services, including but not limited to
2.19 spend analysis, product standardization, contract consolidation, negotiations, multiple
2.20 jurisdiction purchasing alliances, reverse and forward auctions, life-cycle costing, and
2.21 other techniques.

2.22 Sec. 7. Minnesota Statutes 2006, section 16C.03, subdivision 2, is amended to read:

2.23 Subd. 2. **Rulemaking authority.** Subject to chapter 14, the commissioner may
2.24 adopt rules, consistent with this chapter and chapter 16B, relating to the following topics:

2.25 (1) procurement process including solicitations and responses to solicitations, bid
2.26 security, vendor errors, opening of responses, award of contracts, tied bids, and award
2.27 protest process;

2.28 (2) contract performance and failure to perform;

2.29 (3) authority to debar or suspend vendors, and reinstatement of vendors;

2.30 (4) contract cancellation;

2.31 (5) procurement from rehabilitation facilities; and

2.32 (6) organizational conflicts of interest.

3.1 Sec. 8. Minnesota Statutes 2006, section 16C.03, subdivision 4, is amended to read:

3.2 Subd. 4. **Contracting authority.** The commissioner shall conduct all contracting by,
3.3 for, and between agencies and perform all contract management and review functions for
3.4 contracts, except those functions specifically delegated to be performed by the contracting
3.5 agency, the attorney general, or otherwise provided for by law. The commissioner may
3.6 require that agency staff participate in the development of enterprise procurements
3.7 including the development of product standards, specifications and other requirements.

3.8 Sec. 9. Minnesota Statutes 2006, section 16C.03, subdivision 8, is amended to read:

3.9 Subd. 8. **Policy and procedures.** The commissioner is authorized to issue policies,
3.10 procedures, and standards applicable to all acquisition activities by and for agencies.
3.11 Consistent with the authority specified in this chapter, the commissioner shall develop
3.12 and implement policies, procedures, and standards ensuring the optimal use of strategic
3.13 sourcing techniques.

3.14 Sec. 10. Minnesota Statutes 2006, section 16C.03, subdivision 16, is amended to read:

3.15 Subd. 16. **Delegation of duties.** The commissioner may delegate duties imposed by
3.16 this chapter to the head of an agency and to any subordinate of the agency head. Delegated
3.17 duties shall be exercised in the name of the commissioner and under the commissioner's
3.18 direct supervision and control. A delegation of duties may include, but is not limited to,
3.19 allowing individuals within agencies to acquire goods, services, and utilities within dollar
3.20 limitations and for designated types of acquisitions. Delegation of contract management
3.21 and review functions must be filed with the secretary of state and may not, except with
3.22 respect to delegations within the Department of Administration, exceed two years in
3.23 duration. The commissioner may withdraw any delegation at the commissioner's sole
3.24 discretion. The commissioner may require an agency head or subordinate to accept
3.25 delegated responsibility to procure goods or services intended for the exclusive use of the
3.26 agency receiving the delegation.

3.27 Sec. 11. Minnesota Statutes 2006, section 16C.05, subdivision 1, is amended to read:

3.28 Subdivision 1. **Agency cooperation.** Agencies shall fully cooperate with the
3.29 commissioner in the management and review of state contracts and in the development
3.30 and implementation of strategic sourcing techniques.

3.31 Sec. 12. Minnesota Statutes 2006, section 16C.05, subdivision 2, is amended to read:

4.1 Subd. 2. **Creation and validity of contracts.** (a) A contract is not valid and the state
4.2 is not bound by it and no agency, without the prior written approval of the commissioner
4.3 granted pursuant to subdivision 2a, may authorize work to begin on it unless:

4.4 (1) it has first been executed by the head of the agency or a delegate who is a party
4.5 to the contract;

4.6 (2) it has been approved by the commissioner; and

4.7 (3) the accounting system shows an encumbrance for the amount of the contract
4.8 liability, except as allowed by policy approved by the commissioner and commissioner of
4.9 finance for routine, low-dollar procurements.

4.10 (b) The combined contract and amendments must not exceed five years without
4.11 specific, written approval by the commissioner according to established policy, procedures,
4.12 and standards, or unless otherwise provided for by law. The term of the original contract
4.13 must not exceed two years unless the commissioner determines that a longer duration is
4.14 in the best interest of the state.

4.15 (c) Grants, interagency agreements, purchase orders, work orders, and annual plans
4.16 need not, in the discretion of the commissioner and attorney general, require the signature
4.17 of the commissioner and/or the attorney general. A signature is not required for work
4.18 orders and amendments to work orders related to Department of Transportation contracts.
4.19 Bond purchase agreements by the Minnesota Public Facilities Authority do not require
4.20 the approval of the commissioner.

4.21 (d) Amendments to contracts must entail tasks that are substantially similar to
4.22 those in the original contract or involve tasks that are so closely related to the original
4.23 contract that it would be impracticable for a different contractor to perform the work. The
4.24 commissioner or an agency official to whom the commissioner has delegated contracting
4.25 authority under section 16C.03, subdivision 16, must determine that an amendment would
4.26 serve the interest of the state better than a new contract and would cost no more.

4.27 (e) A fully executed copy of every contract, amendments to the contract, and
4.28 performance evaluations relating to the contract must be kept on file at the contracting
4.29 agency for a time equal to that specified for contract vendors and other parties in
4.30 subdivision 5.

4.31 (f) The attorney general must periodically review and evaluate a sample of state
4.32 agency contracts to ensure compliance with laws.

4.33 Sec. 13. Minnesota Statutes 2006, section 16C.08, is amended by adding a subdivision
4.34 to read:

5.1 Subd. 1a. Notwithstanding section 15.061 or any other law, the commissioner
 5.2 shall, to the fullest extent practicable, conduct enterprise procurements that result in the
 5.3 establishment of professional or technical contracts for use by multiple state agencies. The
 5.4 commissioner is authorized to mandate use of any contract entered into as a result of an
 5.5 enterprise procurement process. Agencies shall fully cooperate in the development and
 5.6 use of contracts entered into under this section.

5.7 Sec. 14. Minnesota Statutes 2006, section 16C.08, subdivision 2, is amended to read:

5.8 **Subd. 2. Duties of contracting agency.** (a) Before an agency may seek approval of
 5.9 a professional or technical services contract valued in excess of \$5,000, it must provide
 5.10 the following:

5.11 (1) a description of how the proposed contract or amendment is necessary and
 5.12 reasonable to advance the statutory mission of the agency;

5.13 (2) a description of the agency's plan to notify firms or individuals who may be
 5.14 available to perform the services called for in the solicitation; ~~and~~

5.15 (3) a description of the performance measures or other tools that will be used to
 5.16 monitor and evaluate contract performance; and

5.17 (4) an explanation detailing, if applicable, why this procurement is being pursued
 5.18 unilaterally by the agency and not as an enterprise procurement.

5.19 (b) In addition to paragraph (a), the agency must certify that:

5.20 (1) no current state employee is able and available to perform the services called
 5.21 for by the contract;

5.22 (2) the normal competitive bidding mechanisms will not provide for adequate
 5.23 performance of the services;

5.24 (3) reasonable efforts will be made to publicize the availability of the contract to
 5.25 the public;

5.26 (4) the agency will develop and implement a written plan providing for the
 5.27 assignment of specific agency personnel to manage the contract, including a monitoring
 5.28 and liaison function, the periodic review of interim reports or other indications of past
 5.29 performance, and the ultimate utilization of the final product of the services;

5.30 (5) the agency will not allow the contractor to begin work before the contract is fully
 5.31 executed unless an exception under section 16C.05, subdivision 2a, has been granted by
 5.32 the commissioner and funds are fully encumbered;

5.33 (6) the contract will not establish an employment relationship between the state or
 5.34 the agency and any persons performing under the contract; and

6.1 (7) in the event the results of the contract work will be carried out or continued by
6.2 state employees upon completion of the contract, the contractor is required to include
6.3 state employees in development and training, to the extent necessary to ensure that after
6.4 completion of the contract, state employees can perform any ongoing work related to
6.5 the same function.

6.6 (c) A contract establishes an employment relationship for purposes of paragraph (b),
6.7 clause (6), if, under federal laws governing the distinction between an employee and an
6.8 independent contractor, a person would be considered an employee.

6.9 Sec. 15. Minnesota Statutes 2006, section 16C.08, subdivision 4, is amended to read:

6.10 Subd. 4. **Reports.** (a) The commissioner shall submit to the governor, the chairs of
6.11 the house Ways and Means and senate Finance Committees, and the Legislative Reference
6.12 Library a yearly listing of all contracts for professional or technical services executed.
6.13 The report must identify the contractor, contract amount, duration, and services to be
6.14 provided. The commissioner shall also issue yearly reports summarizing the contract
6.15 review activities of the department by fiscal year.

6.16 (b) The fiscal year report must be submitted by September 1 of each year and must:

6.17 (1) be sorted by agency and by contractor;

6.18 (2) show the aggregate value of contracts issued by each agency and issued to each
6.19 contractor;

6.20 (3) distinguish between contracts that are being issued for the first time and contracts
6.21 that are being extended;

6.22 (4) state the termination date of each contract;

6.23 (5) identify services by commodity code, including topics such as contracts for
6.24 training, contracts for research and opinions, and contracts for computer systems; and

6.25 (6) identify which contracts were awarded without following the solicitation process
6.26 in this chapter because it was determined that there was only a single source for the
6.27 services.

6.28 (c) Within 30 days of final completion of a contract over \$50,000 covered by this
6.29 subdivision, the head of the agency entering into the contract must submit a one-page
6.30 report to the commissioner who must submit a copy to the Legislative Reference Library.
6.31 The report must:

6.32 (1) summarize the purpose of the contract, including why it was necessary to enter
6.33 into a contract;

6.34 (2) state the amount spent on the contract;

7.1 ~~(3) be accompanied by the performance evaluation prepared according to subdivision~~
 7.2 ~~4a; and~~

7.3 ~~(4) (3) if the contract was awarded without following the solicitation process in this~~
 7.4 ~~chapter because it was determined that there was only a single source for the services,~~
 7.5 ~~explain why the agency determined there was only a single source for the services; and~~

7.6 (4) include a written performance evaluation of the work done under the contract.
 7.7 The evaluation must include an appraisal of the contractor's timeliness, quality, cost, and
 7.8 overall performance in meeting the terms and objectives of the contract. Contractors may
 7.9 request copies of evaluations prepared under this subdivision and may respond in writing.
 7.10 Contractor responses must be maintained with the contract file.

7.11 Sec. 16. Minnesota Statutes 2006, section 16C.08, is amended by adding a subdivision
 7.12 to read:

7.13 Subd. 4b. **Limitations on actions.** No action may be maintained by a contractor
 7.14 against an employee or agency who discloses information about a current or former
 7.15 contractor under subdivision 4, unless the contractor demonstrates by clear and convincing
 7.16 evidence that:

7.17 (1) the information was false and defamatory;

7.18 (2) the employee or agency knew or should have known the information was false
 7.19 and acted with malicious intent to injure the current or former contractor; and

7.20 (3) the information was acted upon in a manner that caused harm to the current or
 7.21 former contractor.

7.22 Sec. 17. Minnesota Statutes 2006, section 16C.10, subdivision 7, is amended to read:

7.23 Subd. 7. **Reverse auction.** (a) For the purpose of this subdivision, "reverse auction"
 7.24 means a purchasing process in which vendors compete to provide goods or computer
 7.25 services at the lowest selling price in an open and interactive environment. Reverse
 7.26 auctions may not be utilized to procure engineering design services or architectural
 7.27 services or to establish building and construction contracts under sections 16C.26 to
 7.28 16C.29.

7.29 (b) The provisions of sections 13.591, subdivision 3, and 16C.06, subdivision 2,
 7.30 do not apply when the commissioner determines that a reverse auction is the appropriate
 7.31 purchasing process.

7.32 Sec. 18. **REPEALER.**

- 8.1 Minnesota Statutes 2006, sections 16C.055, subdivision 1; and 16C.08, subdivision
- 8.2 4a, are repealed.