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HOUSE FILE NO. 715

SECOND COMMITTEE ENGROSSMENT

February 12, 2009

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The bill was read for the first time and referred to the Committee on Agriculture, Rural Economies and Veterans Affairs

March 9, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Finance

Referred by Chair to State Government Finance Division.

April 6, 2009

Returned to the Committee on Finance as Amended.

1.1 A bill for an act
1.2 relating to state government; authorizing preferences in state procurement and
1.3 awarding of contracts for service-disabled veteran-owned small businesses;
1.4 amending Minnesota Statutes 2008, sections 16C.16, by adding a subdivision;
1.5 16C.19; 16C.20; 161.321; 473.142.

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

1.7 Section 1. Minnesota Statutes 2008, section 16C.16, is amended by adding a
1.8 subdivision to read:

1.9 Subd. 6a. **Service-disabled veteran-owned small businesses.** (a) The
1.10 commissioner shall award up to a six percent preference in the amount bid on state
1.11 procurement to certified small businesses that are majority-owned and operated by
1.12 veterans having service-connected disabilities, as determined by the United States
1.13 Department of Veterans Affairs.

1.14 (b) The purpose of this designation is to facilitate the transition of service-disabled
1.15 veterans from military to civilian life, and to help compensate them for their sacrifices,
1.16 including but not limited to their sacrifice of health and time, for the state and nation during
1.17 their military service, as well as to enhance economic development within Minnesota.

1.18 (c) For purposes of this section and section 16C.19, the following terms have the
1.19 meanings given them:

1.20 (1) "veteran" has the meaning given in section 197.447; and

1.21 (2) "service-connected disability" has the meaning given in United States Code, title
1.22 38, section 101(16), as determined by the United States Department of Veterans Affairs.

1.23 **EFFECTIVE DATE.** This section is effective July 1, 2009, and applies to
1.24 procurement contract bid solicitations issued on and after that date.

Sec. 2. Minnesota Statutes 2008, section 16C.19, is amended to read:

16C.19 ELIGIBILITY; RULES.

(a) A small business wishing to participate in the programs under section 16C.16, subdivisions 4 to 7, must be certified by the commissioner. The commissioner shall adopt by rule standards and procedures for certifying that small businesses, small targeted group businesses, and small businesses located in economically disadvantaged areas are eligible to participate under the requirements of sections 16C.16 to 16C.21. 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 16C.16 to 16C.21.

(b) The commissioner may make rules which exclude or limit the participation of nonmanufacturing business, including third-party lessors, brokers, franchises, jobbers, manufacturers' representatives, and others from eligibility under sections 16C.16 to 16C.21.

(c) The commissioner may make rules that set time limits and other eligibility limits on business participation in programs under sections 16C.16 to 16C.21.

(d) Notwithstanding paragraph (c), for purposes of sections 16C.16 to 16C.21, a service-disabled veteran-owned small business, the principal place of business of which is in Minnesota, is certified if it has been verified by the United States Department of Veterans Affairs as being a service-disabled veteran-owned small business in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

EFFECTIVE DATE. This section is effective July 1, 2009, and applies to procurement contract bid solicitations issued on and after that date.

Sec. 3. Minnesota Statutes 2008, section 16C.20, is amended to read:

16C.20 CERTIFICATION.

A business that is certified by the commissioner of administration as a small business, small targeted group business ~~or~~, a small business located in an economically disadvantaged area, or a service-disabled veteran-owned small business is eligible to participate under the requirements of sections 137.31 and 161.321 and, if certified as a small business ~~or~~, small targeted group business, or service-disabled veteran-owned small business, under section 473.142 without further certification by the contracting agency.

EFFECTIVE DATE. This section is effective July 1, 2009, and applies to procurement contract bid solicitations issued on and after that date.

Sec. 4. Minnesota Statutes 2008, section 161.321, is amended to read:

161.321 SMALL BUSINESS CONTRACTS.

Subdivision 1. **Definitions.** For purposes of this section the following terms have the meanings given them, except where the context clearly indicates a different meaning is intended.

(a) "Award" means the granting of a contract in accordance with all applicable laws and rules governing competitive bidding except as otherwise provided in this section.

(b) "Contract" means an agreement entered into between a business entity and the state of Minnesota for the construction of transportation improvements.

(c) "Subcontractor" means a business entity which enters into a legally binding agreement with another business entity which is a party to a contract as defined in paragraph (b).

(d) "Targeted group business" means a business designated under section 16C.16, subdivision 5.

(e) "Service-disabled veteran-owned small business" means a business designated under section 16C.16, subdivision 6a.

Subd. 2. **Small business set-asides.** (a) The commissioner may award up to a six percent preference in the amount bid for specified construction work to small targeted group businesses and service-disabled veteran-owned small businesses.

(b) The commissioner may designate a contract for construction work for award only to small targeted group businesses if the commissioner determines that at least three small targeted group businesses are likely to bid. The commissioner may designate a contract for construction work for award only to service-disabled veteran-owned small businesses if the commissioner determines that at least three service-disabled veteran-owned small businesses are likely to bid.

(c) The commissioner, as a condition of awarding a construction contract, may set goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses and service-disabled veteran-owned small businesses. The commissioner must establish a procedure for granting waivers from the subcontracting requirement when qualified small targeted group businesses and service-disabled veteran-owned small businesses are not reasonably available. The commissioner may establish financial incentives for prime contractors who exceed the goals for use of subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting requirements of this paragraph do not apply to prime contractors who are small targeted group businesses or service-disabled veteran-owned small businesses.

(d) The commissioner may award up to a four percent preference in the amount bid on procurement to small businesses located in an economically disadvantaged area as defined in section 16C.16, subdivision 7.

Subd. 3. **Awards to small businesses.** At least 75 percent of subcontracts awarded to small targeted group businesses must be performed by the business to which the subcontract is awarded or another small targeted group business. At least 75 percent of subcontracts awarded to service-disabled veteran-owned small businesses must be performed by the business to which the subcontract is awarded or another service-disabled veteran-owned small business.

Subd. 4. **Awards, limitations.** Contracts awarded pursuant to this section are subject to all limitations contained in rules adopted by the commissioner of administration.

Subd. 5. **Recourse to other businesses.** If the commissioner is unable to award a contract pursuant to the provisions of subdivisions 2 and 3, the award may be placed pursuant to the normal solicitation and award provisions set forth in this chapter and chapter 16C.

Subd. 6. **Rules.** The rules adopted by the commissioner of administration to define small businesses and to set time and other eligibility requirements for participation in programs under sections 16C.16 to 16C.19 apply to this section. The commissioner may promulgate other rules necessary to carry out this section.

Subd. 7. **Noncompetitive bids.** The commissioner is encouraged to purchase from small targeted group businesses and service-disabled veteran-owned small businesses designated under section 16C.16 when making purchases that are not subject to competitive bidding procedures.

Subd. 8. **Report by commissioner.** The commissioner of transportation shall report to the commissioner of administration on compliance with this section. The information must be reported at the time and in the manner requested by the commissioner.

EFFECTIVE DATE. This section is effective July 1, 2009, and applies to procurement contract bid solicitations issued on and after that date.

Sec. 5. Minnesota Statutes 2008, section 473.142, is amended to read:

473.142 SMALL BUSINESSES.

(a) The Metropolitan Council and agencies specified in section 473.143, subdivision 1, may award up to a six percent preference in the amount bid for specified goods or services to small targeted group businesses and service-disabled veteran-owned small businesses designated under section 16C.16.

(b) The council and each agency specified in section 473.143, subdivision 1, may designate a purchase of goods or services for award only to small targeted group businesses designated under section 16C.16 if the council or agency determines that at least three small targeted group businesses are likely to bid. The council and each agency specified in section 473.143, subdivision 1, may designate a purchase of goods or services for award only to service-disabled veteran-owned small businesses designated under section 16C.16 if the council or agency determines that at least three service-disabled veteran-owned small businesses are likely to bid.

(c) The council and each agency specified in section 473.143, subdivision 1, as a condition of awarding a construction contract or approving a contract for consultant, professional, or technical services, may set goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses and service-disabled veteran-owned small businesses designated under section 16C.16. The council or agency must establish a procedure for granting waivers from the subcontracting requirement when qualified small targeted group businesses and service-disabled veteran-owned small businesses are not reasonably available. The council or agency may establish financial incentives for prime contractors who exceed the goals for use of subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting requirements of this paragraph do not apply to prime contractors who are small targeted group businesses and service-disabled veteran-owned small businesses. At least 75 percent of the value of the subcontracts awarded to small targeted group businesses under this paragraph must be performed by the business to which the subcontract is awarded or by another small targeted group business. At least 75 percent of the value of the subcontracts awarded to service-disabled veteran-owned small businesses under this paragraph must be performed by the business to which the subcontract is awarded or another service-disabled veteran-owned small business.

(d) The council and each agency listed in section 473.143, subdivision 1, are encouraged to purchase from small targeted group businesses and service-disabled veteran-owned small businesses designated under section 16C.16 when making purchases that are not subject to competitive bidding procedures.

(e) The council and each agency may adopt rules to implement this section.

(f) Each council or agency contract must require the prime contractor to pay any subcontractor within ten days of the prime contractor's receipt of payment from the council or agency for undisputed services provided by the subcontractor. The contract must require the prime contractor to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the

6.1 subcontractor. The minimum monthly interest penalty payment for an unpaid balance of
6.2 \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall
6.3 pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil
6.4 action to collect interest penalties from a prime contractor must be awarded its costs and
6.5 disbursements, including attorney fees, incurred in bringing the action.

6.6 (g) This section does not apply to procurement financed in whole or in part
6.7 with federal funds if the procurement is subject to federal disadvantaged, minority, or
6.8 women business enterprise regulations. The council and each agency shall report to the
6.9 commissioner of administration on compliance with this section. The information must be
6.10 reported at the time and in the manner requested by the commissioner.

6.11 **EFFECTIVE DATE.** This section is effective July 1, 2009, and applies to
6.12 procurement contract bid solicitations issued on and after that date.