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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. 13

January 12, 2009

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

1.1 A bill for an act
1.2 relating to state government; abolishing the state designer selection board;
1.3 amending Minnesota Statutes 2008, sections 16C.095, subdivision 1; 16C.32,
1.4 subdivisions 1, 2; 16C.34, subdivision 2; repealing Minnesota Statutes 2008,
1.5 section 16B.33.

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

1.7 Section 1. Minnesota Statutes 2008, section 16C.095, subdivision 1, is amended to read:

1.8 Subdivision 1. **Professional services covered.** This section applies to an agency
1.9 contract for professional services of persons regulated by the Board of Architecture,
1.10 Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design
1.11 for which the agency, with the approval of the commissioner, decides to use procedures
1.12 under this section. If the agency, with the approval of the commissioner, decides to use
1.13 procedures under this section, it must comply with subdivisions 2, 3, and 4. ~~This section~~
1.14 ~~does not apply to an agency contract that is subject to section 16B.33.~~

1.15 Sec. 2. Minnesota Statutes 2008, section 16C.32, subdivision 1, is amended to read:

1.16 Subdivision 1. **Definitions.** As used in sections 16C.32 to 16C.35, the following
1.17 terms have the meanings given them, unless the context clearly indicates otherwise:

1.18 (1) "acceptance" means a formal resolution of the commissioner authorizing the
1.19 execution of a design-build, construction manager at risk, or job order contracting contract;

1.20 (2) "agency" means any state officer, employee, board, commission, authority,
1.21 department, or other agency of the executive branch of state government. Unless
1.22 specifically indicated otherwise, as used in sections 16C.32 to 16C.35, agency also
1.23 includes the Minnesota State Colleges and Universities;

2.1 (3) "architect" means an architect or landscape architect registered to practice under
2.2 sections 326.02 to 326.15;

2.3 (4) "board" means the state Designer Selection Board, unless the estimated cost of
2.4 the project is less than \$2,000,000, in which case the commissioner may act as the board;

2.5 (5) "Capitol Area Architectural and Planning Board" means the board established to
2.6 govern the Capitol area under chapter 15B;

2.7 (6) "commissioner" means the commissioner of administration or the Board of
2.8 Trustees of the Minnesota State Colleges and Universities, whichever controls a project;

2.9 (7) "construction manager at risk" means a person who is selected by the
2.10 commissioner to act as a construction manager to manage the construction process, which
2.11 includes, but is not limited to, responsibility for the price, schedule, and workmanship of
2.12 the construction performed in accordance with the procedures of section 16C.34;

2.13 (8) "construction manager at risk contract" means a contract for construction of a
2.14 project between a construction manager at risk and the commissioner, which contract shall
2.15 include a guaranteed maximum price, construction schedule, and workmanship of the
2.16 construction performed;

2.17 (9) "design-build contract" means a contract between the commissioner and a
2.18 design-builder to furnish the architectural, engineering, and related design services as well
2.19 as the labor, materials, supplies, equipment, and construction services for a project;

2.20 (10) "design and price-based proposal" means the proposal to be submitted by a
2.21 design-builder in the design and price-based selection process, as described in section
2.22 16C.33, which proposal meets the requirements of section 16C.33, subdivision 7,
2.23 paragraph (c), in such detail as required in the request for proposals;

2.24 (11) "design and price-based selection" means the selection of a design-builder as
2.25 described in section 16C.33, subdivision 8;

2.26 (12) "design criteria package" means performance criteria prepared by a design
2.27 criteria professional who shall be either an employee of the commissioner or shall be
2.28 selected in compliance with section ~~16B.33~~, 16C.08; or 16C.095;

2.29 (13) "design criteria professional" means a person licensed under chapter 326, or a
2.30 person who employs an individual or individuals licensed under chapter 326, required
2.31 to design a project, and who is employed by or under contract to the commissioner
2.32 to provide professional, architectural, or engineering services in connection with the
2.33 preparation of the design criteria package;

2.34 (14) "guaranteed maximum price" means the maximum amount that a design-builder,
2.35 construction manager at risk, or subcontractor will be paid pursuant to a contract to
2.36 perform a defined scope of work;

3.1 (15) "guaranteed maximum price contract" means a contract under which a
 3.2 design-builder, construction manager, or subcontractor is paid on the basis of their actual
 3.3 cost to perform the work specified in the contract plus an amount for overhead and profit,
 3.4 the sum of which must not exceed the guaranteed maximum price set forth in the contract;

3.5 (16) "job order contracting" means a project delivery method that requests a limited
 3.6 number of bids from a list of qualified contractors, selected from a registry of qualified
 3.7 contractors who have been prescreened and who have entered into master contracts with
 3.8 the commissioner, as provided in section 16C.35;

3.9 (17) "past performance" or "experience" does not include the exercise or assertion
 3.10 of a person's legal rights;

3.11 (18) "person" includes an individual, corporation, partnership, association, or any
 3.12 other legal entity;

3.13 (19) "project" means an undertaking to construct, alter, or enlarge a building,
 3.14 structure, or other improvements, except highways and bridges, by or for the state or
 3.15 an agency;

3.16 (20) "qualifications-based selection" means the selection of a design-builder as
 3.17 provided in section 16C.33;

3.18 (21) "request for qualifications" means the document or publication soliciting
 3.19 qualifications for a design-build, construction manager at risk, or job order contracting
 3.20 contract as provided in sections 16C.33 to 16C.35;

3.21 (22) "request for proposals" means the document or publication soliciting proposals
 3.22 for a design-build or construction manager at risk contract as provided in sections 16C.33
 3.23 and 16C.34; and

3.24 (23) "trade contract work" means the furnishing of labor, materials, or equipment
 3.25 by contractors or vendors that are incorporated into the completed project or are major
 3.26 components of the means of construction. Work performed by trade contractors involves
 3.27 specific portions of the project, but not the entire project.

3.28 Sec. 3. Minnesota Statutes 2008, section 16C.32, subdivision 2, is amended to read:

3.29 Subd. 2. **Authority; design-build contract; construction manager at risk.**

3.30 (a) Subject to limitations in sections 16B.31, subdivision 1; ~~16B.33, subdivision 1;~~
 3.31 16C.16; and 16C.32 to 16C.34, and notwithstanding any other law to the contrary, the
 3.32 commissioner may:

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

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

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

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

4.10 (c) The commissioner may not utilize construction manager at risk contracts for more
4.11 than five percent of its total projects let, by number, in each of the fiscal years 2006 and
4.12 2007, and ten percent of its total projects let, by number, in each fiscal year thereafter, that
4.13 are funded in whole or in part with proceeds from the sale of state general obligation bonds.

4.14 (d) Pursuant to section 16B.31, subdivision 4, if the project is within the Capitol
4.15 area, the project shall comply with sections 15B.03, subdivision 3; 15B.08, subdivision 2;
4.16 15B.10; and 15B.15, subdivision 4.

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

4.20 (f) The solicitation of requests for qualifications or proposals does not obligate
4.21 the commissioner to enter into a design-build or construction manager at risk contract.
4.22 In accordance with the stated criteria and subcriteria for evaluating qualifications or
4.23 proposals, the commissioner may accept or reject any or all responses received as a result
4.24 of the request. The solicitation for qualifications or proposals may be canceled at any time
4.25 in the commissioner's sole discretion if it is considered to be in the public's best interest.
4.26 If the commissioner rejects all responses or cancels the solicitation for proposals, the
4.27 commissioner may resolicit a request for qualifications or proposals using the same or
4.28 different requirements or request selection of a primary designer pursuant to section
4.29 ~~16B.33~~, 16C.08; or 16C.095 and proceed with competitive bidding pursuant to sections
4.30 16C.25 to 16C.29.

4.31 Sec. 4. Minnesota Statutes 2008, section 16C.34, subdivision 2, is amended to read:

4.32 Subd. 2. **Construction manager at risk selection process.** In a construction
4.33 manager at risk selection process, the following shall apply:

4.34 (a)(1) Upon receipt of a written request from a user agency for a construction
4.35 manager at risk for its project, the commissioner shall create a selection committee

5.1 composed of a minimum of three persons, at least one of whom has construction industry
5.2 expertise; (2) the selection committee shall establish procedures for determining the
5.3 appropriate content of each request for qualifications, the weighted criteria and subcriteria
5.4 to be used to score the proposals of the construction managers at risk, and shall establish
5.5 procedures for evaluating qualifications in an open, competitive, and objective manner;
5.6 and (3) the commissioner shall issue a request for qualifications that includes the
5.7 information as described in subdivision 1.

5.8 (b) In accordance with the criteria and procedures set forth in the request for
5.9 qualifications, the selection committee shall evaluate the construction manager at risk's
5.10 experience as a constructor, including, but not limited to, capacity of key personnel,
5.11 technical competence, capability to perform, the past performance of the construction
5.12 manager at risk and its employees, its safety record and compliance with state and federal
5.13 law, availability to and familiarity with the project locale, and other appropriate facts
5.14 submitted by the construction manager at risk in response to the request for qualifications.
5.15 The commissioner must receive at least three proposals from construction managers or the
5.16 commissioner may either (1) solicit new proposals; (2) request the selection committee to
5.17 revise the request for qualifications and thereafter solicit new proposals using the revised
5.18 request for qualifications; (3) select another allowed procurement method; or (4) reject
5.19 all proposals.

5.20 (c)(1) The selection committee shall review the proposers' qualifications and create a
5.21 short list of three to five proposals of construction managers at risk; (2) the commissioner
5.22 shall issue a request for proposal requiring fee and expense proposals and other
5.23 information as desired from the short-listed construction managers at risk; (3) the selection
5.24 committee shall conduct formal interviews with the short-listed construction managers
5.25 at risk but shall not disclose any proprietary or confidential information contained in
5.26 one proposal to another proposer; and (4) the selection committee shall recommend the
5.27 construction manager at risk achieving the highest score on the evaluation criteria as
5.28 described in subdivision 1, paragraph (b).

5.29 (d) The ~~board~~ commissioner shall select the primary designer as described in ~~section~~
5.30 ~~16B.33~~ or in the case of the commissioner, section 16C.08 or 16C.095.

5.31 **Sec. 5. REPEALER.**

5.32 Minnesota Statutes 2008, section 16B.33, is repealed.

5.33 **Sec. 6. EFFECTIVE DATE.**

5.34 Sections 1 to 5 are effective July 1, 2009.