

This Document can be made available in alternative formats upon request

State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1984

- 02/25/2014 Authored by Sundin; Winkler; Johnson, S.; Metsa; Anzele and others
The bill was read for the first time and referred to the Committee on Government Operations
- 03/06/2014 Adoption of Report: Amended and re-referred to the Committee on Commerce and Consumer Protection Finance and Policy
- 03/17/2014 Adoption of Report: Re-referred to the Committee on Jobs and Economic Development Finance and Policy

1.1 A bill for an act
 1.2 relating to state government; providing for enhancement of accountability and
 1.3 transparency in public construction; establishing a requirement for a definition
 1.4 of responsible contractor; proposing coding for new law in Minnesota Statutes,
 1.5 chapter 16C.

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

1.7 Section 1. **[16C.285] RESPONSIBLE CONTRACTOR REQUIREMENT**
 1.8 **DEFINED.**

1.9 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms
 1.10 have the meanings given them.

1.11 (b) "Construction contract" means a contract for building, erection, construction,
 1.12 alteration, remodeling, demolition, or repair of public buildings, real property, highways,
 1.13 roads, bridges, or other public construction work entered into by or at the direction of a
 1.14 state agency, the Minnesota State Colleges and Universities, the University of Minnesota,
 1.15 the Metropolitan Council, the Metropolitan Airports Commission, or a municipality.

1.16 (c) "Contractor" means a vendor that performs building, erection, construction,
 1.17 alteration, remodeling, demolition, or repair of public buildings, real property, highways,
 1.18 roads, bridges, or other public construction work and who submits a bid or proposal or
 1.19 otherwise responds to a solicitation document of a contracting authority.

1.20 (d) "Contracting authority" means a state agency, the Minnesota State Colleges and
 1.21 Universities, the University of Minnesota, the Metropolitan Council, the Metropolitan
 1.22 Airports Commission, or a municipality that enters into a construction contract or
 1.23 authorizes or directs entering into a construction contract.

1.24 (e) "Municipality" means a county, town, city, school district, housing and
 1.25 redevelopment authority, port authority, economic development authority, sports facilities

2.1 authority, joint powers board or organization created under section 471.59 or other statute,
2.2 drainage authority, watershed district, destination medical center corporation, or other
2.3 municipal corporation or political subdivision of the state authorized by law to enter
2.4 into contracts.

2.5 (f) "Project" means building, erection, construction, alteration, remodeling,
2.6 demolition, or repair of public buildings, real property, highways, roads, bridges, or other
2.7 public construction work performed pursuant to a construction contract.

2.8 (g) "Related entity" means:

2.9 (1) a firm, partnership, corporation, joint venture, or other legal entity substantially
2.10 under the control of a contractor or vendor;

2.11 (2) a predecessor corporation or other legal entity having one or more of the same
2.12 principals as the contractor or vendor;

2.13 (3) a subsidiary of a contractor or vendor;

2.14 (4) one or more principals of a contractor or vendor; and

2.15 (5) a person, firm, partnership, corporation, joint venture, or other legal entity that
2.16 substantially controls a contractor or vendor.

2.17 (h) "Solicitation document" means an invitation to bid, bid specifications, request
2.18 for proposals, request for qualifications, or other solicitation of contractors or vendors for
2.19 purposes of a construction contract.

2.20 (i) "Vendor" means a business, including a construction contractor or a natural
2.21 person, and includes both if the natural person is engaged in a business.

2.22 Subd. 2. **Responsible contractor required.** (a) A contractor or vendor must meet
2.23 the minimum criteria in subdivision 3 to be eligible to be awarded a construction contract
2.24 as the lowest responsible bidder or the vendor or contractor offering the best value as
2.25 provided in sections 16C.28, 103D.811, 103E.505, 116A.13, 123B.52, 160.17, 160.262,
2.26 161.32, 161.3206, 161.3209, 161.38, 162.17, 365.37, 374.13, 375.21, 383C.094, 412.311,
2.27 429.041, 458D.21, 469.015, 469.068, 469.101, 471.345, 473.4057, 473.523, 473.652,
2.28 473.756, 473J.11, or any successor provisions.

2.29 (b) This section applies where the amount of a construction contract is estimated
2.30 to exceed \$50,000 and where a construction contract is awarded pursuant to a lowest
2.31 responsible bidder requirement or a best value selection method.

2.32 Subd. 3. **Minimum criteria.** "Responsible contractor" means a contractor or vendor
2.33 that conforms to the requirements in the solicitation document and certifies that it meets
2.34 the following minimum criteria at the time that it responds to the solicitation document:

2.35 (1) the contractor or vendor is in compliance with workers' compensation and
2.36 unemployment insurance requirements, is currently registered with the Department

3.1 of Revenue and the Department of Employment and Economic Development if it has
3.2 employees; and has a valid federal tax identification number or a valid Social Security
3.3 number if an individual;

3.4 (2) the contractor, vendor, or related entity is in compliance with and, during the
3.5 three-year period before responding to the solicitation document, has not violated section
3.6 177.24, 177.25, 177.41 to 177.44, 181.13, 181.14, or 181.722, and has not violated United
3.7 States Code, title 29, sections 201 to 219, or United States Code, title 40, sections 3141
3.8 to 3148. For purposes of this clause, a violation occurs when a contractor, vendor, or
3.9 related entity fails to pay statutorily required wages or penalties of \$10,000 or more, has
3.10 been issued an order to comply by the commissioner of labor and industry or authorized
3.11 designee or representative, has been issued a determination letter by the Department of
3.12 Transportation finding a violation, or has been found liable in an action brought in a
3.13 court having jurisdiction;

3.14 (3) the contractor, vendor, or related entity is in compliance with and, during the
3.15 three-year period before responding to the solicitation document, has not violated any
3.16 municipality's requirements for payment of wages for construction work performed for
3.17 that municipality as provided in ordinance, resolution, policy, or contractual provision.
3.18 For purposes of this clause, a violation occurs when a municipality determines that
3.19 a contractor, vendor, or related entity fails to pay wages or penalties required by the
3.20 municipality in the amount of \$10,000 or more;

3.21 (4) the contractor, vendor, or related entity is in compliance with and, during the
3.22 three-year period before responding to the solicitation document, has not violated section
3.23 181.723 or chapter 326B. For purposes of this clause, a violation occurs when a contractor,
3.24 vendor, or related entity has been issued a final administrative or licensing order;

3.25 (5) the contractor, vendor, or related entity has no current tax liens or tax
3.26 delinquencies;

3.27 (6) the contractor, vendor, or related entity has not operated under false names or
3.28 fronts as a small business, a socially or economically disadvantaged small business, or a
3.29 disadvantaged business enterprise;

3.30 (7) the contractor, vendor, or related entity is not currently debarred by the federal
3.31 government, the state, or a municipality and is currently not ineligible to be awarded a
3.32 contract by a contracting authority or perform work under a construction contract under
3.33 subdivision 4; and

3.34 (8) all subcontractors or vendors of whatever tier the contractor intends to use to
3.35 perform project work have verified to the contractor or vendor through a signed statement

4.1 under oath by an owner or officer that they meet the minimum criteria listed in clauses
4.2 (1) to (7).

4.3 Subd. 4. **Verification of compliance.** The contractor or vendor must submit a
4.4 signed statement under oath by an owner or officer verifying compliance with each of the
4.5 minimum criteria in subdivision 3. A contracting authority may accept a sworn statement
4.6 as sufficient to demonstrate that a contractor or vendor is a responsible contractor and
4.7 shall not be held liable for awarding a contract in reasonable reliance on such a statement.
4.8 Failure to verify compliance with any one of the minimum criteria will render the
4.9 contractor or vendor ineligible to be awarded a contract. A false statement under oath
4.10 verifying compliance with any of the minimum criteria may result in termination of the
4.11 contract awarded to the contractor, subcontractor, or vendor that submits a false statement,
4.12 and will render that contractor, subcontractor, or vendor ineligible to be awarded a contract
4.13 by a contracting authority or allowed to perform work under a construction contract, as
4.14 defined in subdivision 1, for a period of three years. The period of ineligibility may be
4.15 reduced by the commissioner of administration in the event of an emergency.

4.16 Subd. 5. **Subcontractor verifications.** The contractor or vendor's verification of
4.17 compliance under subdivision 4 must include an accurate list of all subcontractors and
4.18 vendors to be used on the project. The contractor or vendor must submit to the contracting
4.19 authority upon request copies of the signed verifications of compliance obtained from all
4.20 subcontractors and vendors pursuant to subdivision 3, clause (8).

4.21 Subd. 6. **Additional criteria.** Nothing in this section shall restrict the discretion of a
4.22 contracting authority to establish additional criteria for defining a responsible contractor.

4.23 Subd. 7. **Implementation.** The definition of responsible contractor, as defined in
4.24 subdivision 3, must be included in the solicitation document for all construction projects
4.25 covered by this section. The solicitation document for any project must state that any
4.26 contractor or vendor that does not meet the minimum criteria in subdivision 3 is not
4.27 a responsible contractor and is not eligible to be awarded the construction contract for
4.28 the project. The solicitation document must provide that a false statement under oath
4.29 verifying compliance with any of the minimum criteria may result in termination of the
4.30 contract awarded to the contractor, subcontractor, or vendor that submits a false statement,
4.31 and will render that contractor, subcontractor, or vendor ineligible to be awarded a contract
4.32 by a contracting authority or allowed to perform work under a construction contract, as
4.33 defined in subdivision 1, for a period of three years. The solicitation document must state
4.34 that the contractor or vendor must submit to the contracting authority upon request copies
4.35 of the signed verifications of compliance obtained from all subcontractors and vendors
4.36 pursuant to subdivision 3, clause (8).

5.1 Subd. 8. **Severability.** If any provision of this section is declared legally invalid
5.2 or unenforceable, or if any part of this section is suspended or restrained by a court of
5.3 competent jurisdiction, the remaining provisions shall remain in full force and effect.

5.4 **EFFECTIVE DATE.** This section is effective January 1, 2015, and shall apply to
5.5 all contracts entered into on or after that date.