

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 3733

(SENATE AUTHORS: CARLSON)

DATE	D-PG	OFFICIAL STATUS
03/07/2022	5224	Introduction and first reading Referred to State Government Finance and Policy and Elections

1.1A bill for an act

1.2relating to state government; modifying state procurement and contract provisions;

1.3amending Minnesota Statutes 2020, sections 16C.16, subdivisions 1, 4, 5, 6, 6a,

1.47, 7a; 16C.19; 16C.251; 16C.36.

1.5BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6Section 1. Minnesota Statutes 2020, section 16C.16, subdivision 1, is amended to read:

1.7Subdivision 1. **Small business procurements.** (a) The commissioner shall for each

1.8fiscal year ensure that small businesses receive at least 25 percent of the value of anticipated

1.9total state procurement of goods and services, including ~~printing and~~ construction. The

1.10commissioner shall divide the procurements so designated into contract award units of

1.11economically feasible production runs in order to facilitate offers or bids from small

1.12businesses.

1.13(b) The commissioner must solicit and encourage Minnesota small businesses to submit

1.14responses or bids when the commissioner is entering into master contracts. If cost-effective,

1.15when entering into a master contract, the commissioner must attempt to negotiate contract

1.16terms that allow agencies the option of purchasing from small businesses, particularly small

1.17businesses that are geographically proximate to the entity making the purchase.

1.18(c) In making the annual designation of such procurements the commissioner shall

1.19attempt (1) to vary the included procurements so that a variety of goods and services,

1.20including construction, produced by different small businesses are obtained each year, and

1.21(2) to designate small business procurements in a manner that will encourage proportional

1.22distribution of such awards among the geographical regions of the state. To promote the

1.23geographical distribution of awards, the commissioner may designate a portion of the small

business procurement for award to bidders from a specified congressional district or other geographical region specified by the commissioner. The failure of the commissioner to designate particular procurements shall not be deemed to prohibit or discourage small businesses from seeking the procurement award through the normal process.

Sec. 2. Minnesota Statutes 2020, section 16C.16, subdivision 4, is amended to read:

Subd. 4. **Targeted group purchasing.** The commissioner shall establish a program for purchasing goods and services, including construction, from targeted group businesses, as designated in subdivision 5. The purpose of the program is to remedy the effects of past discrimination against members of targeted groups. In furtherance of this purpose, the commissioner shall attempt to ensure that purchases from targeted group businesses reflect a fair and equitable representation of all the state's purchasing.

Sec. 3. Minnesota Statutes 2020, section 16C.16, subdivision 5, is amended to read:

Subd. 5. **Designation of targeted groups.** (a) The commissioner of administration shall periodically designate businesses that are majority owned and operated by women, persons with a substantial physical disability, or specific minorities as targeted group businesses within purchasing categories as determined by the commissioner. A group may be targeted within a purchasing category if the commissioner determines there is a statistical disparity between the percentage of purchasing from businesses owned by group members and the representation of businesses owned by group members among all businesses in the state in the purchasing category.

(b) In addition to designations under paragraph (a), an individual business may be included as a targeted group business if the commissioner determines that inclusion is necessary to remedy discrimination against the owner based on race, gender, or disability in attempting to operate a business that would provide goods or services, including construction, to public agencies.

(c) The designations of purchasing categories and businesses under paragraphs (a) and (b) are not rules for purposes of chapter 14, and are not subject to rulemaking procedures of that chapter.

Sec. 4. Minnesota Statutes 2020, section 16C.16, subdivision 6, is amended to read:

Subd. 6. **Purchasing methods.** (a) The commissioner may award up to a ~~six~~ 12 percent preference for specified goods or services, including construction, to small targeted group businesses.

(b) The commissioner may award a contract for goods, or services, ~~or~~ including construction, directly to a small business or small targeted group business without going through a competitive solicitation process up to a total contract award value, including extension options, of ~~\$25,000~~ \$100,000.

(c) The commissioner may designate a purchase of goods or services, including construction, for award only to small businesses or small targeted group businesses if the commissioner determines that at least three small businesses or small targeted group businesses are likely to respond to a solicitation.

(d) The commissioner, as a condition of awarding a construction contract or approving a contract for professional or technical services, may set goals that require the prime contractor to subcontract a portion of the contract to small businesses or small targeted group businesses. The commissioner must establish a procedure for granting waivers from the subcontracting requirement when qualified small businesses or small targeted group businesses are not reasonably available. The commissioner may establish financial incentives for prime contractors who exceed the goals for use of small business or small targeted group business 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 businesses or small targeted group businesses.~~

Sec. 5. Minnesota Statutes 2020, section 16C.16, subdivision 6a, is amended to read:

Subd. 6a. **Veteran-owned small businesses.** (a) Except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a ~~six~~ 12 percent preference, but no less than the percentage awarded to any other group under this section, on state procurement to certified small businesses that are majority-owned and operated by veterans.

(b) The commissioner may award a contract for goods, or services, ~~or~~ including construction, directly to a veteran-owned small business without going through a competitive solicitation process up to a total contract award value, including extension options, of ~~\$25,000~~ \$100,000.

(c) The commissioner may designate a purchase of goods or services, including construction, for award only to a veteran-owned small business if the commissioner determines that at least three veteran-owned small businesses are likely to respond to a solicitation.

(d) The commissioner, as a condition of awarding a construction contract or approving a contract for professional or technical services, may set goals that require the prime contractor to subcontract a portion of the contract to a veteran-owned small business. The commissioner must establish a procedure for granting waivers from the subcontracting requirement when qualified veteran-owned small businesses are not reasonably available. The commissioner may establish financial incentives for prime contractors who exceed the goals for use of veteran-owned small business 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 veteran-owned small businesses.~~

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

(f) Before the commissioner certifies that a small business is majority-owned and operated by a veteran, the commissioner of veterans affairs must verify that the owner of the small business is a veteran, as defined in section 197.447.

Sec. 6. Minnesota Statutes 2020, section 16C.16, subdivision 7, is amended to read:

Subd. 7. **Economically disadvantaged areas.** (a) The commissioner may award up to a ~~six~~ 12 percent preference on state procurement to small businesses located in an economically disadvantaged area.

(b) The commissioner may award a contract for goods, or services, ~~or~~ including construction, directly to a small business located in an economically disadvantaged area without going through a competitive solicitation process up to a total contract award value, including extension options, of ~~\$25,000~~ \$100,000.

(c) The commissioner may designate a purchase of goods or services, including construction, for award only to a small business located in an economically disadvantaged area if the commissioner determines that at least three small businesses located in an economically disadvantaged area are likely to respond to a solicitation.

(d) The commissioner, as a condition of awarding a construction contract or approving a contract for professional or technical services, may set goals that require the prime contractor to subcontract a portion of the contract to a small business located in an economically disadvantaged area. The commissioner must establish a procedure for granting

waivers from the subcontracting requirement when qualified small businesses located in an economically disadvantaged area are not reasonably available. The commissioner may establish financial incentives for prime contractors who exceed the goals for use of subcontractors that are small businesses located in an economically disadvantaged area 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 businesses located in an economically disadvantaged area.~~

(e) A business is located in an economically disadvantaged area if:

(1) the owner resides in or the business is located in a county in which the median income for married couples is less than 70 percent of the state median income for married couples;

(2) the owner resides in or the business is located in an area designated a labor surplus area by the United States Department of Labor; or

(3) the business is a certified rehabilitation facility or extended employment provider as described in chapter 268A.

(f) The commissioner may designate one or more areas designated as targeted neighborhoods under section 469.202 or as border city enterprise zones under section 469.166 as economically disadvantaged areas for purposes of this subdivision if the commissioner determines that this designation would further the purposes of this section. If the owner of a small business resides or is employed in a designated area, the small business is eligible for any preference provided under this subdivision.

(g) The Department of Revenue shall gather data necessary to make the determinations required by paragraph (e), clause (1), and shall annually certify counties that qualify under paragraph (e), clause (1). An area designated a labor surplus area retains that status for 120 days after certified small businesses in the area are notified of the termination of the designation by the United States Department of Labor.

Sec. 7. Minnesota Statutes 2020, section 16C.16, subdivision 7a, is amended to read:

Subd. 7a. **Designated purchases and subcontractor goals.** (a) When designating purchases directly to a business in accordance with this section, the commissioner may also designate a purchase of goods or services, including construction, directly to any combination of small businesses, small targeted group businesses, veteran-owned small businesses or small businesses located in an economically disadvantaged area if the commissioner determines that at least three businesses in two or more of the disadvantaged business categories are likely to respond.

(b) When establishing subcontractor goals under this section, the commissioner may set goals that require the prime contractor to subcontract a portion of the contract to any combination of a small business, small targeted group business, veteran-owned small business, or small business located in an economically disadvantaged area.

Sec. 8. Minnesota Statutes 2020, 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 or, if authorized by the commissioner, by a nationally recognized certifying organization. The commissioner may choose to authorize a nationally recognized certifying organization if the certification requirements are substantially the same as those adopted under the rules authorized in this section and the business meets the requirements in section 16C.16, subdivision 2.

(b) The commissioner shall adopt by rule standards and procedures for certifying that small targeted group businesses, small businesses located in economically disadvantaged areas, and veteran-owned small businesses 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)~~ (c) 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)~~ (d) 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)~~ (e) Notwithstanding paragraph (a), for purposes of sections 16C.16 to 16C.21, a veteran-owned small business, the principal place of business of which is in Minnesota, is certified if:

(1) it has been verified by the United States Department of Veterans Affairs as being either a veteran-owned small business or a service-disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74; or

(2) the veteran-owned small business supplies the commissioner with proof that the small business is majority-owned and operated by:

(i) a veteran as defined in section 197.447; or

(ii) a veteran with a service-connected disability, as determined at any time by the United States Department of Veterans Affairs.

~~(e)~~ (f) Until rules are adopted pursuant to paragraph (a) for the purpose of certifying veteran-owned small businesses, the provisions of Minnesota Rules, part 1230.1700, may be read to include veteran-owned small businesses. In addition to the documentation required in Minnesota Rules, part 1230.1700, the veteran owner must have been discharged under honorable conditions from active service, as indicated by the veteran owner's most current United States Department of Defense form DD-214.

~~(f)~~ (g) Notwithstanding paragraph (a), for purposes of sections 16C.16 to 16C.21, a minority- or woman-owned small business, the principal place of business of which is in Minnesota, is certified if it has been certified by the Minnesota unified certification program under the provisions of Code of Federal Regulations, title 49, part 26.

~~(g)~~ (h) The commissioner may adopt rules to implement the programs under section 16C.16, subdivisions 4 to 7, using the expedited rulemaking process in section 14.389.

Sec. 9. Minnesota Statutes 2020, section 16C.251, is amended to read:

16C.251 BEST AND FINAL OFFER.

A "best and final offer" solicitation process may not be used for building and construction contracts awarded based on competitive bids.

Sec. 10. Minnesota Statutes 2020, section 16C.36, is amended to read:

16C.36 REORGANIZATION SERVICES UNDER MASTER CONTRACT.

The commissioner of administration must make available under a master contract program a list of eligible contractors who can assist state agencies in using data analytics to:

(1) accomplish agency reorganization along service rather than functional lines in order to provide more efficient and effective service; and

(2) bring about internal reorganization of management functions in order to flatten the organizational structure by requiring that decisions are made closer to the service needed, eliminating redundancies, and optimizing the span of control ratios to public and private sector industry benchmarks.

~~The commissioner of administration must report to the legislature by January 15, 2013, and January 15, 2014, on state agency use of eligible contractors under this section, and on~~

- 8.1 ~~improvements in efficiency and effectiveness, including the contract oversight process, of~~
- 8.2 ~~state services as a result of services provided by contractors.~~