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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1257

02/25/2015 Authored by Zerwas and Sundin

The bill was read for the first time and referred to the Committee on Government Operations and Elections Policy

1.1 A bill for an act
1.2 relating to government contracting; clarifying the responsible contractor law;
1.3 amending Minnesota Statutes 2014, section 16C.285, subdivisions 1, 2, 3, 4, 6.

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

1.5 Section 1. Minnesota Statutes 2014, section 16C.285, subdivision 1, is amended to read:

1.6 Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this
1.7 subdivision have the meanings given them.

1.8 (b) "Construction contract" means a contract or subcontract of any tier for work on
1.9 a project.

1.10 (c) "Contractor" means a prime contractor or subcontractor, ~~and~~ Contractor does
1.11 not include a material supplier including when delivering supplies and when providing
1.12 other ancillary services related to supplying materials.

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

1.17 (e) "Municipality" means a county, town, home rule charter or statutory city, school
1.18 district, housing and redevelopment authority, port authority, economic development
1.19 authority, sports facilities authority, joint powers board or organization created under
1.20 section 471.59 or other statute, special district, instrumentality, drainage authority,
1.21 watershed district, destination medical center corporation, or other municipal corporation
1.22 or political subdivision of the state authorized by law to enter into contracts.

1.23 (f) "Prime contractor" means a vendor that submits a bid or proposal or otherwise
1.24 responds to a solicitation document of a contracting authority for work on a project or is

2.1 awarded a construction contract by a contracting authority for work on a project. A prime
2.2 contractor includes a construction manager for purposes of this section.

2.3 (g) "Principal" means an owner holding at least a 25 percent ownership interest
2.4 in a business.

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

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

2.20 (k) "Subcontractor" means a vendor that seeks to enter into a subcontract or enters
2.21 into a subcontract for work on a project.

2.22 (l) "Vendor" means a business, including a construction contractor or a natural
2.23 person, and includes both if the natural person is engaged in a business.

2.24 Sec. 2. Minnesota Statutes 2014, section 16C.285, subdivision 2, is amended to read:

2.25 Subd. 2. **Responsible contractor required.** (a) A contractor must meet the
2.26 minimum criteria in subdivision 3 to be eligible to be awarded a construction contract
2.27 as the lowest responsible bidder or the vendor or contractor offering the best value as
2.28 provided in section 16C.28, 103D.811, 103E.505, 116A.13, 123B.52, 160.17, 160.262,
2.29 161.32, 161.3206, 161.3209, 161.38, 162.17, 365.37, 374.13, 375.21, 383C.094, 412.311,
2.30 429.041, 458D.21, 469.015, 469.068, 469.101, 471.345, 473.4057, 473.523, 473.652,
2.31 473.756, 473J.11, or any of their successor provisions.

2.32 (b) This section applies to publicly owned or financed projects where the contracting
2.33 authority's construction contract with the prime contractor is estimated to exceed \$50,000
2.34 and is awarded pursuant to a lowest responsible bidder selection method or a best value
2.35 selection method. In determining whether a contract exceeds \$50,000, the value of tax

3.1 increment financing and other contracting authority contributions to a project that are not
 3.2 payment for specific services of a contractor by a contracting authority must be excluded.

3.3 A subcontractor must meet the minimum criteria in subdivision 3 to be eligible to be
 3.4 awarded a subcontract on a project regardless of the value of the subcontract.

3.5 (c) If only one prime contractor responds to a solicitation document, a contracting
 3.6 authority may award a construction contract to the responding prime contractor even if the
 3.7 minimum criteria in subdivision 3 are not met.

3.8 Sec. 3. Minnesota Statutes 2014, section 16C.285, subdivision 3, is amended to read:

3.9 Subd. 3. **Minimum criteria.** "Responsible contractor" means a contractor that
 3.10 conforms to the responsibility requirements in the solicitation document for its portion of
 3.11 the work on the project and verifies that it meets the following minimum criteria:

3.12 (1) the contractor:

3.13 (i) is in compliance with workers' compensation and unemployment insurance
 3.14 requirements;

3.15 (ii) is currently registered with the Department of Revenue and the Department of
 3.16 Employment and Economic Development if it has employees;

3.17 (iii) has a valid federal tax identification number or a valid Social Security number if
 3.18 an individual; and

3.19 (iv) has filed a certificate of authority to transact business in Minnesota with the
 3.20 secretary of state if a foreign corporation or cooperative;

3.21 (2) the contractor or related entity is in compliance with and, during the three-year
 3.22 period before submitting the verification, has not violated section 177.24, 177.25, 177.41
 3.23 to 177.44, 181.13, 181.14, or 181.722, and has not violated United States Code, title 29,
 3.24 sections 201 to 219, or United States Code, title 40, sections 3141 to 3148. For purposes
 3.25 of this clause, a violation occurs when a contractor or related entity:

3.26 (i) repeatedly fails to pay statutorily required wages or penalties on one or more
 3.27 separate projects for a total underpayment of \$25,000 or more within the three-year period;

3.28 (ii) has been issued an order to comply by the commissioner of labor and industry
 3.29 that has become final;

3.30 (iii) has been issued at least two determination letters within the three-year period by
 3.31 the Department of Transportation finding an underpayment by the contractor or related
 3.32 entity to its own employees;

3.33 (iv) has been found by the commissioner of labor and industry to have repeatedly
 3.34 ~~or~~ and willfully violated any of the sections referenced in this clause pursuant to section
 3.35 177.27;

4.1 (v) has been issued a ruling or findings of underpayment by the administrator of the
4.2 Wage and Hour Division of the United States Department of Labor that have become final
4.3 or have been upheld by an administrative law judge or the Administrative Review Board; or

4.4 (vi) has been found liable for underpayment of wages or penalties or misrepresenting
4.5 a construction worker as an independent contractor in an action brought in a court having
4.6 jurisdiction.

4.7 Provided that, if the contractor or related entity contests a determination of underpayment
4.8 by the Department of Transportation in a contested case proceeding, a violation does not
4.9 occur until the contested case proceeding has concluded with a determination that the
4.10 contractor or related entity underpaid wages or penalties;

4.11 (3) the contractor or related entity is in compliance with and, during the three-year
4.12 period before submitting the verification, has not violated section 181.723 or chapter
4.13 326B. For purposes of this clause, a violation occurs when a contractor or related entity
4.14 has been issued a final administrative or licensing order;

4.15 (4) the contractor or related entity has not, more than twice during the three-year
4.16 period before submitting the verification, had a certificate of compliance under section
4.17 363A.36 revoked or suspended based on the provisions of section 363A.36, with
4.18 the revocation or suspension becoming final because it was upheld by the Office of
4.19 Administrative Hearings or was not appealed to the office;

4.20 (5) the contractor or related entity has not received a final determination assessing a
4.21 monetary sanction from the Department of Administration or Transportation for failure
4.22 to meet targeted group business, disadvantaged business enterprise, or veteran-owned
4.23 business goals, due to a lack of good faith effort, more than once during the three-year
4.24 period before submitting the verification;

4.25 (6) the contractor or related entity is not currently suspended or debarred by the
4.26 federal government or the state of Minnesota or any of its departments, commissions,
4.27 agencies, or political subdivisions; and

4.28 (7) all subcontractors that the contractor intends to use to perform project work have
4.29 verified to the contractor through a signed statement under oath by an owner or officer that
4.30 they meet the minimum criteria listed in clauses (1) to (6).

4.31 Any violations, suspensions, revocations, or sanctions, as defined in clauses (2) to
4.32 (5), occurring prior to July 1, 2014, shall not be considered in determining whether a
4.33 contractor or related entity meets the minimum criteria.

4.34 Sec. 4. Minnesota Statutes 2014, section 16C.285, subdivision 4, is amended to read:

5.1 Subd. 4. **Verification of compliance.** A contractor responding to a solicitation
5.2 document of a contracting authority shall submit to the contracting authority a signed
5.3 statement ~~under oath~~ by an owner or officer verifying compliance with each of the
5.4 minimum criteria in subdivision 3 at the time that it responds to the solicitation document.
5.5 A contracting authority may accept a ~~sworn~~ statement as sufficient to demonstrate that a
5.6 contractor is a responsible contractor and shall not be held liable for awarding a contract
5.7 in reasonable reliance on that statement. Failure to verify compliance with ~~any one of the~~
5.8 minimum criteria or a false statement under oath in a verification of compliance shall
5.9 render the prime contractor or subcontractor that makes the false statement ineligible to be
5.10 awarded a construction contract on the project for which the verification was submitted.
5.11 A false statement ~~under oath~~ verifying compliance with ~~any of the~~ minimum criteria
5.12 may result in termination of a construction contract that has already been awarded to a
5.13 prime contractor or subcontractor that submits a false statement. A contracting authority
5.14 shall not be liable for declining to award a contract or terminating a contract based on a
5.15 reasonable determination that the contractor failed to verify compliance with the minimum
5.16 criteria or falsely stated that it meets the minimum criteria.

5.17 Sec. 5. Minnesota Statutes 2014, section 16C.285, subdivision 6, is amended to read:

5.18 Subd. 6. **Additional criteria.** Nothing in this section shall restrict the discretion of a
5.19 contracting authority to ~~establish additional criteria for defining a responsible contractor~~
5.20 impose additional obligations on a project contractor that are authorized by other law, rule,
5.21 or authority. This subdivision is not an independent grant of authority to a contracting
5.22 authority to establish additional obligations.