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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 1106

02/19/2015 Authored by Davids, Newton, Dettmer, Persell and Pugh
The bill was read for the first time and referred to the Veterans Affairs Division

1.1 A bill for an act
1.2 relating to state government; requiring the commissioner of administration to
1.3 ensure that service-disabled, veteran-owned businesses receive a percentage of
1.4 state procurement; providing bid preferences; proposing coding for new law
1.5 in Minnesota Statutes, chapter 16C.

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

1.7 Section 1. [16C.165] DESIGNATION OF PROCUREMENTS FROM
1.8 SERVICE-DISABLED, VETERAN-OWNED BUSINESS.

1.9 Subdivision 1. Definitions. (a) For purposes of this section, the following terms
1.10 have the meanings given them, unless the context clearly indicates otherwise.

1.11 (b) "Service-disabled, veteran-owned business" means any entity, including a
1.12 sole proprietorship, partnership, limited liability partnership, limited liability company,
1.13 or corporation, including a not-for-profit corporation that has been certified by the
1.14 commissioner as an entity, that:

1.15 (1) is a resident vendor;

1.16 (2) does not exercise a controlling influence on an industry in its field of operation;

1.17 (3) is at least 51 percent owned by one or more service-disabled veterans and such
1.18 ownership is not limited by conditions precedent, conditions subsequent, executory
1.19 agreements, voting trusts, restriction on or assignments of voting rights or other
1.20 arrangements of voting rights, or other arrangements causing or potentially causing
1.21 ownership benefits to go to another entity; and

1.22 (4) has and exercises the authority to control the day-to-day business decisions of the
1.23 entity, and such control means that service-disabled, veteran-owned business enterprises or
1.24 their managers have expertise specifically in the business's field of operation in controlling
1.25 the overall destiny and in controlling the day-to-day operations of the business enterprise.

2.1 (c) "Service-disabled veteran" means a veteran as defined in section 197.447, who
2.2 has received a compensation rating of ten percent or greater from the United States
2.3 Department of Veterans Affairs or from the United States Department of Defense because
2.4 of a service-connected disability incurred in the line of duty.

2.5 Subd. 2. **Service-disabled, veteran-owned business certification.** The
2.6 commissioner shall certify a business as a service-disabled, veteran-owned business if
2.7 the business meets the qualifications in subdivision 1, paragraph (b), upon request of the
2.8 business. After certification, the business must report any change in ownership structure
2.9 or control that would impact the eligibility of the business under this section. If the
2.10 commissioner finds the business is no longer eligible, it shall be uncertified.

2.11 Subd. 3. **Service-disabled, veteran-owned business procurements.** (a) The
2.12 commissioner shall, for each fiscal year, ensure that service-disabled, veteran-owned
2.13 businesses receive at least six percent of the value of anticipated total state procurement
2.14 of goods and services, including printing, construction, and investment banking, as a
2.15 prime contractor or subcontractor. The commissioner shall divide the procurements so
2.16 designated into contract award units of economically feasible production runs in order to
2.17 facilitate offers or bids from service-disabled, veteran-owned businesses.

2.18 (b) The commissioner must solicit and encourage service-disabled, veteran-owned
2.19 businesses to submit responses or bids when the commissioner is entering into master
2.20 contracts. If cost-effective, when entering into a master contract, the commissioner must
2.21 attempt to negotiate contract terms that allow agencies the option of purchasing from
2.22 service-disabled, veteran-owned businesses, particularly service-disabled, veteran-owned
2.23 businesses that are geographically proximate to the entity making the purchase.

2.24 Subd. 4. **Professional or technical procurements.** Every state agency must for
2.25 each fiscal year designate for awarding to service-disabled, veteran-owned businesses at
2.26 least six percent of the value of anticipated procurements of that agency for professional
2.27 or technical services. The set-aside under this subdivision is in addition to that provided
2.28 by section 16C.16, but must otherwise comply with section 16C.08.

2.29 Subd. 5. **Purchasing methods.** (a) The commissioner shall award up to a six
2.30 percent preference in the amount bid for specified goods or services to service-disabled,
2.31 veteran-owned businesses.

2.32 (b) The commissioner may grant a partial or total waiver, but shall not grant any
2.33 automatic waivers, from the preference requirement for the purchase of goods or services
2.34 for award in consideration of the following factors:

2.35 (1) the number and types of certified service-disabled, veteran-owned business
2.36 enterprises available to perform any work under the contract;

- 3.1 (2) the total dollar value of the state contract;
 3.2 (3) the contract scope of work to be performed;
 3.3 (4) the project size;
 3.4 (5) the project term;
 3.5 (6) the availability of other business enterprises qualified to do the work to be
 3.6 performed; and
 3.7 (7) the extent to which the contractor's own actions, including but not limited to
 3.8 any failure by the contractor to discharge the contractor's duties pursuant to this section,
 3.9 contributed to contractor's inability to meet the maximum feasible portion of the contract
 3.10 goals.

3.11 (c) The commissioner, as a condition of awarding a construction contract or
 3.12 approving a contract for professional or technical services, may set goals that require the
 3.13 prime contractor to subcontract a portion of the contract to service-disabled, veteran-owned
 3.14 businesses. The commissioner must establish a procedure for granting waivers from the
 3.15 subcontracting requirement when qualified service-disabled, veteran-owned businesses are
 3.16 not reasonably available. The commissioner may establish financial incentives for prime
 3.17 contractors who exceed the goals for use of service-disabled, veteran-owned business
 3.18 subcontractors and financial penalties for prime contractors who fail to meet the goals
 3.19 under this paragraph. The subcontracting requirements of this paragraph do not apply to
 3.20 prime contractors who are service-disabled, veteran-owned businesses.

3.21 Subd. 6. **Service-disabled, veteran-owned businesses.** The purpose of this
 3.22 designation is to facilitate the transition of service-disabled veterans from military to
 3.23 civilian life and to help compensate veterans for their sacrifices, including but not limited
 3.24 to their sacrifice of health and time, to the state and nation during their military service, as
 3.25 well as to enhance economic development within Minnesota.

3.26 Subd. 7. **Surety bonds.** Surety bonds guaranteed by the federal Small Business
 3.27 Administration and second party bonds are acceptable security for a construction award
 3.28 under this section. "Second party bond" means a bond that designates as principal or
 3.29 guarantor, or both, a person or persons in addition to the person to whom the contract is
 3.30 proposed for award.

3.31 Subd. 8. **Limits.** At least 75 percent of the value of the subcontracts awarded
 3.32 to service-disabled, veteran-owned businesses under this section must be performed
 3.33 by the business to which the subcontract is awarded or by another service-disabled,
 3.34 veteran-owned business.

3.35 Subd. 9. **Procurement procedures.** All laws and rules pertaining to solicitations,
 3.36 bid evaluations, contract awards, and other procurement matters apply equally to

4.1 procurements designated for service-disabled, veteran-owned businesses. In the event of
4.2 conflict with other law, this section shall govern.

4.3 Subd. 10. **Applicability.** This section does not apply to construction contracts or
4.4 contracts for professional or technical services under section 16C.08, that are financed in
4.5 whole or in part with federal funds and that are subject to federal disadvantaged business
4.6 enterprise regulations.