

A bill for an act

relating to state government; defining best value; changing provisions for acquisition and competitive bidding; amending Minnesota Statutes 2006, sections 16C.02, by adding subdivisions; 16C.03, subdivisions 3, 4, 16, by adding a subdivision; 16C.26, subdivisions 1, 3, 4, 5; 16C.27, subdivision 1; 16C.28, subdivisions 1, 3, 4; 103D.811, subdivision 3; 103E.505, subdivision 5; 116A.13, subdivision 5; 123B.52, subdivision 1, by adding a subdivision; 160.17, by adding a subdivision; 160.262, by adding a subdivision; 161.32, by adding a subdivision; 161.3412, subdivision 1; 161.38, subdivision 4; 365.37, by adding a subdivision; 374.13; 375.21, by adding a subdivision; 383C.094, by adding a subdivision; 412.311; 429.041, by adding a subdivision; 458D.21, by adding a subdivision; 469.015, by adding a subdivision; 469.068, subdivision 1, by adding a subdivision; 471.345, subdivision 5, by adding subdivisions; 473.523, by adding a subdivision; 473.756, subdivision 12.

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

Section 1. Minnesota Statutes 2006, section 16C.02, is amended by adding a subdivision to read:

Subd. 4a. **Best value; construction.** For purposes of construction, building, alteration, improvement, or repair services, "best value" describes the result determined by a procurement method that considers price, the vendor's or contractor's ability to assess and minimize foreseeable and unforeseeable risks, and other performance criteria, which may include, but are not limited to:

(1) the quality of the vendor's or contractor's performance on previous projects;

(2) the timeliness of the vendor's or contractor's performance on previous projects;

(3) the level of customer satisfaction with the vendor's or contractor's performance on previous projects;

(4) the vendor's or contractor's record of performing previous projects on budget and ability to minimize cost overruns;

- 2.1 (5) the vendor's or contractor's ability to minimize change orders;
- 2.2 (6) the vendor's or contractor's ability to prepare appropriate project plans;
- 2.3 (7) the vendor's or contractor's technical capacities; and
- 2.4 (8) the individual qualifications of the contractor's key personnel.
- 2.5 This subdivision does not apply to sections 16C.32, 16C.33, 16C.34, and 16C.35.

2.6 Sec. 2. Minnesota Statutes 2006, section 16C.02, is amended by adding a subdivision
2.7 to read:

2.8 Subd. 20. **Vendor.** "Vendor" means a business, including a construction contractor
2.9 or a natural person, and includes both if the natural person is engaged in a business.

2.10 Sec. 3. Minnesota Statutes 2006, section 16C.03, subdivision 3, is amended to read:

2.11 Subd. 3. **Acquisition authority.** The commissioner shall acquire all goods, services,
2.12 and utilities needed by agencies. The commissioner shall acquire goods, services, and
2.13 utilities by requests for bids, requests for proposals, reverse auctions as provided in section
2.14 16C.10, subdivision 7, or other methods provided by law, unless a section of law requires
2.15 a particular method of acquisition to be used. The commissioner shall make all decisions
2.16 regarding acquisition activities. For all acquisitions other than building and construction
2.17 contracts, the determination of the acquisition method and all decisions involved in the
2.18 acquisition process, unless otherwise provided for by law, shall be based on best value
2.19 which includes an evaluation of price and may include other considerations including,
2.20 but not limited to, environmental considerations, quality, and vendor performance.
2.21 Such a best value determination must be based on the evaluation criteria detailed in the
2.22 solicitation document. If criteria other than price are used, the solicitation document
2.23 must state the relative importance of price and other factors. Unless it is determined by
2.24 the commissioner that an alternative solicitation method provided by law should be used
2.25 to determine best value, a request for bid must be used to solicit formal responses for all
2.26 building and construction contracts. Any or all responses may be rejected. When using the
2.27 request for bid process, the bid must be awarded to the lowest responsive and responsible
2.28 bidder, taking into consideration conformity with the specifications, terms of delivery, the
2.29 purpose for which the contract or purchase is intended, the status and capability of the
2.30 vendor, and other considerations imposed in the request for bids. The commissioner may
2.31 decide which is the lowest responsible bidder for all purchases and may use the principles
2.32 of life-cycle costing, where appropriate, in determining the lowest overall bid. The duties
2.33 set forth in this subdivision are subject to delegation pursuant to this section.

Sec. 4. Minnesota Statutes 2006, section 16C.03, is amended by adding a subdivision to read:

Subd. 3a. **Acquisition authority; construction contracts.** For all building and construction contracts, the commissioner shall award contracts according to section 16C.28, and "best value" shall be defined and applied as set forth in sections 16C.02, subdivision 4a and 16C.28, subdivision 1, paragraph (a), clause (2). The duties set forth in this subdivision are subject to delegation according to this section.

Sec. 5. Minnesota Statutes 2006, section 16C.03, subdivision 4, is amended to read:

Subd. 4. **Contracting authority.** The commissioner shall conduct all contracting by, for, and between agencies and perform all contract management and review functions for contracts, except those functions ~~specifically~~ delegated to be performed by the contracting agency, the attorney general, or otherwise provided for by law.

Sec. 6. Minnesota Statutes 2006, section 16C.03, subdivision 16, is amended to read:

Subd. 16. **Delegation of duties.** The commissioner may delegate duties imposed by this chapter to the head of an agency ~~and~~, to any subordinate of the agency head, or to a technical review committee appointed by the commissioner. Delegated duties shall be exercised in the name of the commissioner and under the commissioner's direct supervision and control. A delegation of duties may include, but is not limited to, allowing individuals within agencies to acquire goods, services, and utilities within dollar limitations and for designated types of acquisitions. Delegation of contract management and review functions must be filed with the secretary of state and may not, except with respect to delegations within the Department of Administration, exceed two years in duration. The commissioner may withdraw any delegation at the commissioner's sole discretion.

Sec. 7. Minnesota Statutes 2006, section 16C.26, subdivision 1, is amended to read:

Subdivision 1. **Application.** Except as otherwise provided by sections 16C.26 and 16C.27, all contracts for building and construction or repairs must be based on competitive bids or proposals. "Competitive proposals" specifically refers to the method of procurement described in section 16C.28, subdivision 1, paragraph (a), clause (2).

Sec. 8. Minnesota Statutes 2006, section 16C.26, subdivision 3, is amended to read:

Subd. 3. **Publication of notice; expenditures over \$25,000.** If the amount of an expenditure is estimated to exceed \$25,000, bids or proposals must be solicited by public notice in a manner designated by the commissioner. To the extent practical, this

H.F. No. 571, 1st Engrossment - 85th Legislative Session (2007-2008)

must include posting on a state Web site. For expenditures over \$50,000, when a call for bids is issued the commissioner shall solicit sealed bids by providing notices to all prospective bidders known to the commissioner by posting notice on a state Web site at least seven days before the final date of submitting bids. All bids over \$50,000 must be sealed when they are received and must be opened in public at the hour stated in the notice. All proposals responsive to a request for proposal according to section 16C.28, subdivision 1, paragraph (a), clause (2), shall be submitted and evaluated in the manner in the request for proposal, regardless of the dollar amount. All original bids and proposals and all documents pertaining to the award of a contract must be retained and made a part of a permanent file or record and remain open to public inspection.

Sec. 9. Minnesota Statutes 2006, section 16C.26, subdivision 4, is amended to read:

Subd. 4. **Building and construction contracts; \$50,000 or less.** An informal bid may be used for building, construction, and repair contracts that are estimated at less than \$50,000. Informal bids must be authenticated by the bidder in a manner specified by the commissioner. Alternatively, a request for proposal may be issued according to section 16C.28, subdivision 1, paragraph (a), clause (2), for such contracts.

Sec. 10. Minnesota Statutes 2006, section 16C.26, subdivision 5, is amended to read:

Subd. 5. **Standard specifications, security.** Contracts must be based on the standard specifications prescribed and enforced by the commissioner under this chapter, unless otherwise expressly provided or as authorized under section 16C.28, subdivision 1, paragraph (a), clause (2). Each ~~bidder for a contract~~ vendor or contractor must furnish security approved by the commissioner to ensure the making of the contract being bid for.

Sec. 11. Minnesota Statutes 2006, section 16C.27, subdivision 1, is amended to read:

Subdivision 1. **Single source of supply.** Competitive bidding ~~is~~ or proposals are not required for contracts clearly and legitimately limited to a single source of supply, and the contract price may be best established by direct negotiation.

Sec. 12. Minnesota Statutes 2006, section 16C.28, subdivision 1, is amended to read:

Subdivision 1. ~~Lowest responsible bidder~~ **Award requirements.** (a) All state building and construction contracts entered into by or under the supervision of the commissioner or an agency for which competitive bids or proposals are required ~~must be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract is intended, the~~

H.F. No. 571, 1st Engrossment - 85th Legislative Session (2007-2008)

~~status and capability of the vendor, and other considerations imposed in the call for bids. The commissioner may decide which is the lowest responsible bidder for all contracts and may use the principles of life cycle costing, where appropriate, in determining the lowest overall bid. The head of the interested agency shall make the decision, subject to the approval of the commissioner. Any or all bids may be rejected. In a case where competitive bids are required and where all bids are rejected, new bids, if solicited, must be called for as in the first instance, unless otherwise provided by law.~~ may be awarded to either of the following:

(1) the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract is intended, the status and capability of the vendor or contractor, other considerations imposed in the call for bids, and, where appropriate, principles of life-cycle costing; or

(2) the vendor or contractor offering the best value, taking into account the specifications of the request for proposal, the purpose for which the contract is intended, the price, the timing of project delivery, the factors in section 16C.02, subdivision 4a, and other considerations in the request for proposal.

(b) The vendor or contractor must secure bonding, commercial general insurance coverage, and workers' compensation insurance coverage under paragraph (a), clause (1) or (2). The head of the interested agency shall determine whether to use the procurement process described in paragraph (a), clause (1), or the procurement process described in paragraph (a), clause (2). If the agency uses the method in paragraph (a), clause (2), the head of the agency shall determine which vendor or contractor offers the best value, subject to the approval of the commissioner. Any or all bids or proposals may be rejected. In a case where competitive bids or proposals are required and where all bids or proposals are rejected, new bids or proposals, if solicited, must be called for as in the first instance, unless otherwise provided by law.

Sec. 13. Minnesota Statutes 2006, section 16C.28, subdivision 3, is amended to read:

Subd. 3. **Special circumstances.** The commissioner may reject the bid or proposal of any ~~bidder~~ vendor or contractor who has failed to perform a previous contract with the state. In the case of identical low bids from two or more bidders, the commissioner may use negotiated procurement methods with the tied low bidders for that particular transaction so long as the price paid does not exceed the low tied bid price. The commissioner may award contracts to more than one ~~bidder~~ vendor or contractor in accordance with subdivision 1, if doing so does not decrease the service level or diminish the effect of competition.

H.F. No. 571, 1st Engrossment - 85th Legislative Session (2007-2008)

Sec. 14. Minnesota Statutes 2006, section 16C.28, subdivision 4, is amended to read:

Subd. 4. **Record.** A record must be kept of all bids or proposals, including names of bidders, amounts of bids or proposals, and each successful bid or proposal. This record is open to public inspection.

Sec. 15. Minnesota Statutes 2006, section 103D.811, subdivision 3, is amended to read:

Subd. 3. **Awarding of contract.** (a) At a time and place specified in the bid notice, the managers may accept or reject any or all bids and may award the contract to the lowest responsible bidder. The bidder to whom the contract is to be awarded must give a bond, with ample security, conditioned by satisfactory completion of the contract.

(b) Bids must not be considered which in the aggregate exceed by more than 30 percent the total estimated cost of construction or implementation.

(c) As an alternative to the procurement method described in paragraph (a), the managers may issue a request for proposal and award the contract to the vendor or contractor offering the best value as described in section 16C.28, subdivision 1, paragraph (a), clause (2).

(d) The contract must be in writing and be accompanied by or refer to the plans and specifications for the work to be done as prepared by the engineer for the watershed district. The plans and specifications shall become a part of the contract.

~~(d)~~ (e) The contract shall be approved by the managers and signed by the president, secretary, and contractor.

Sec. 16. Minnesota Statutes 2006, section 103E.505, subdivision 5, is amended to read:

Subd. 5. **How contract may be awarded.** The contract may be awarded in one job, in sections, or separately for labor and material and ~~must~~ may be let to the lowest responsible bidder. Alternatively, the contract may be awarded to the vendor or contractor offering the best value under a request for proposal as described in section 16C.28, subdivision 1, paragraph (a), clause (2).

Sec. 17. Minnesota Statutes 2006, section 116A.13, subdivision 5, is amended to read:

Subd. 5. **How job may be let.** The job may be let in one job, or in sections, or separately for labor and material, and ~~shall~~ may be let to the lowest responsible bidder or bidders therefor. Alternatively, the contract may be awarded to the vendor or contractor offering the best value under a request for proposal as described in section 16C.28, subdivision 1, paragraph (a), clause (2).

7.1 Sec. 18. Minnesota Statutes 2006, section 123B.52, subdivision 1, is amended to read:

7.2 Subdivision 1. **Contracts.** A contract for work or labor, or for the purchase of
7.3 furniture, fixtures, or other property, except books registered under the copyright laws, or
7.4 for the construction or repair of school houses, the estimated cost or value of which shall
7.5 exceed that specified in section 471.345, subdivision 3, must not be made by the school
7.6 board without first advertising for bids or proposals by two weeks' published notice in the
7.7 official newspaper. This notice must state the time and place of receiving bids and contain
7.8 a brief description of the subject matter.

7.9 Additional publication in the official newspaper or elsewhere may be made as the
7.10 board shall deem necessary.

7.11 After taking into consideration conformity with the specifications, terms of delivery,
7.12 and other conditions imposed in the call for bids, every such contract for which a call for
7.13 bids has been issued must be awarded to the lowest responsible bidder, be duly executed
7.14 in writing, and be otherwise conditioned as required by law. The person to whom the
7.15 contract is awarded shall give a sufficient bond to the board for its faithful performance.
7.16 Notwithstanding section 574.26 or any other law to the contrary, on a contract limited
7.17 to the purchase of a finished tangible product, a board may require, at its discretion, a
7.18 performance bond of a contractor in the amount the board considers necessary. A record
7.19 must be kept of all bids, with names of bidders and amount of bids, and with the successful
7.20 bid indicated thereon. A bid containing an alteration or erasure of any price contained in
7.21 the bid which is used in determining the lowest responsible bid must be rejected unless the
7.22 alteration or erasure is corrected as provided in this section. An alteration or erasure may
7.23 be crossed out and the correction thereof printed in ink or typewritten adjacent thereto and
7.24 initialed in ink by the person signing the bid. In the case of identical low bids from two or
7.25 more bidders, the board may, at its discretion, utilize negotiated procurement methods
7.26 with the tied low bidders for that particular transaction, so long as the price paid does not
7.27 exceed the low tied bid price. In the case where only a single bid is received, the board
7.28 may, at its discretion, negotiate a mutually agreeable contract with the bidder so long as
7.29 the price paid does not exceed the original bid. If no satisfactory bid is received, the
7.30 board may readvertise. Standard requirement price contracts established for supplies or
7.31 services to be purchased by the district must be established by competitive bids. Such
7.32 standard requirement price contracts may contain escalation clauses and may provide for a
7.33 negotiated price increase or decrease based upon a demonstrable industrywide or regional
7.34 increase or decrease in the vendor's costs. Either party to the contract may request that the
7.35 other party demonstrate such increase or decrease. The term of such contracts must not
7.36 exceed two years with an option on the part of the district to renew for an additional two

H.F. No. 571, 1st Engrossment - 85th Legislative Session (2007-2008)

years. Contracts for the purchase of perishable food items, except milk for school lunches and vocational training programs, in any amount may be made by direct negotiation by obtaining two or more written quotations for the purchase or sale, when possible, without advertising for bids or otherwise complying with the requirements of this section or section 471.345, subdivision 3. All quotations obtained shall be kept on file for a period of at least one year after receipt.

Every contract made without compliance with the provisions of this section shall be void. Except in the case of the destruction of buildings or injury thereto, where the public interest would suffer by delay, contracts for repairs may be made without advertising for bids.

Sec. 19. Minnesota Statutes 2006, section 123B.52, is amended by adding a subdivision to read:

Subd. 1b. **Best value alternative.** As an alternative to the procurement method described in subdivision 1, a contract for construction, building, alteration, improvement, or repair may be awarded to the vendor or contractor offering the best value under a request for proposal as described in section 16C.28, subdivision 1, paragraph (a), clause (2).

Sec. 20. Minnesota Statutes 2006, section 160.17, is amended by adding a subdivision to read:

Subd. 2a. **Best value alternative.** As an alternative to the procurement method referenced in subdivision 2, counties or towns may issue a request for proposal and award the contract to the vendor or contractor offering the best value as described in section 16C.28, subdivision 1, paragraph (a), clause (2).

Sec. 21. Minnesota Statutes 2006, section 160.262, is amended by adding a subdivision to read:

Subd. 5. **Best value alternative.** As an alternative to the procurement method described in subdivision 4, the commissioner may allow for the award of design-build contracts for the projects described in subdivision 4 to the vendor or contractor offering the best value under a request for proposal as described in section 16C.28, subdivision 1, paragraph (a), clause (2).

Sec. 22. Minnesota Statutes 2006, section 161.32, is amended by adding a subdivision to read:

9.1 Subd. 1f. **Best value alternative.** As an alternative to the procurement method
9.2 described in subdivisions 1a to 1e, the commissioner may issue a request for proposal and
9.3 award the contract to the vendor or contractor offering the best value as described in
9.4 section 16C.28, subdivision 1, paragraph (a), clause (2).

9.5 Sec. 23. Minnesota Statutes 2006, section 161.3412, subdivision 1, is amended to read:

9.6 Subdivision 1. **Best value selection.** Notwithstanding sections 16C.25, 161.32,
9.7 and 161.321, or any other law to the contrary, the commissioner may solicit and award
9.8 a design-build contract for a project on the basis of a best value selection process as
9.9 defined in section 16C.02, subdivision 4a. Section 16C.08 does not apply to design-build
9.10 contracts to which the commissioner is a party.

9.11 Sec. 24. Minnesota Statutes 2006, section 161.38, subdivision 4, is amended to read:

9.12 Subd. 4. **Effects on other law of public contract with commissioner.** Whenever
9.13 the road authority of any city enters into an agreement with the commissioner pursuant
9.14 to this section, and a portion of the cost is to be assessed against benefited property,
9.15 the letting of a public contract by the commissioner for the work shall be deemed to
9.16 comply with statutory or charter provisions requiring the city (1) to advertise for bids
9.17 before awarding a contract for a public improvement, (2) to let the contract to the lowest
9.18 responsible bidder or to the vendor or contractor offering the best value, and (3) to require
9.19 a performance bond to be filed by the contractor before undertaking the work. The
9.20 contract so let by the commissioner and the performance bond required of the contractor
9.21 by the commissioner shall be considered to be the contract and bond of the city for the
9.22 purposes of complying with the requirements of any applicable law or charter provision,
9.23 and the bond shall inure to the benefit of the city and operate for their protection to the
9.24 same extent as though they were parties thereto.

9.25 Sec. 25. Minnesota Statutes 2006, section 365.37, is amended by adding a subdivision
9.26 to read:

9.27 Subd. 2a. **Best value alternative.** As an alternative to the procurement method
9.28 described in subdivision 2, a contract for construction, building, alteration, improvement,
9.29 or repair may be awarded to the vendor or contractor offering the best value under a request
9.30 for proposal as described in section 16C.28, subdivision 1, paragraph (a), clause (2).

9.31 Sec. 26. Minnesota Statutes 2006, section 374.13, is amended to read:

9.32 **374.13 TO ADVERTISE FOR BIDS.**

Subdivision 1. **Bidding process.** When the plans and specifications are completed and approved by the city council and the county board, the commission shall, after notice appropriate to inform possible bidders, obtain bids or proposals for all or any portion of the work or materials, or both, to be done, performed, or furnished in the construction of the building. All bids or proposals shall be sealed by the bidders or proposers and filed with the commission at or before the time specified for the opening of bids or proposals. At the time and place specified for the opening of bids or proposals, the commission shall meet, open the bids or proposals, tabulate them, and award the contract or contracts to the responsible bidder whose bid or proposal is the most favorable to the city or county, or reject all bids and proposals. If all bids or proposals are rejected, the commission may, after similar notice, obtain more bids or proposals or may modify or change the plans and specifications and submit the modified plans and specifications to the city council and the county board for approval. When the modified or changed plans and specifications are satisfactory to both the city council and the county board, the plans and specifications shall be returned to the commission and the commission shall proceed again, after similar notice, to obtain bids or proposals. Any contract awarded by the commission shall be subject to approval by the city council and the county board.

Subd. 2. **Best value alternative.** As an alternative to the procurement method described in subdivision 1, the commission may issue a request for proposal and award the contract to the vendor or contractor offering the best value as described in section 16C.28, subdivision 1, paragraph (a), clause (2).

Sec. 27. Minnesota Statutes 2006, section 375.21, is amended by adding a subdivision to read:

Subd. 1b. **Best value alternative.** As an alternative to the procurement method described in subdivision 1, a county board may award a contract for construction, building, alteration, improvement, or repair to the vendor or contractor offering the best value under a request for proposal as described in section 16C.28, subdivision 1, paragraph (a), clause (2).

Sec. 28. Minnesota Statutes 2006, section 383C.094, is amended by adding a subdivision to read:

Subd. 1a. **Contracts in excess of \$500; best value alternative.** As an alternative to the procurement method described in subdivision 1, the contract may be awarded to the vendor or contractor offering the best value under a request for proposal as described in section 16C.28, subdivision 1, paragraph (a), clause (2).

Sec. 29. Minnesota Statutes 2006, section 412.311, is amended to read:

412.311 CONTRACTS.

Subdivision 1. **Lowest responsible bidder.** Except as provided in sections 471.87 to 471.89, no member of a council shall be directly or indirectly interested in any contract made by the council. Whenever the amount of a contract for the purchase of merchandise, materials or equipment or for any kind of construction work undertaken by the city is estimated to exceed the amount specified by section 471.345, subdivision 3, the contract shall be let to the lowest responsible bidder, after notice has been published once in the official newspaper at least ten days in advance of the last day for the submission of bids. If the amount of the contract exceeds \$1,000, it shall be entered into only after compliance with section 471.345.

Subd. 2. **Best value alternative.** As an alternative to the procurement method described in subdivision 1, a contract for construction, building, alteration, improvement, or repair may be awarded to the vendor or contractor offering the best value under a request for proposal as described in section 16C.28, subdivision 1, paragraph (a), clause (2).

Sec. 30. Minnesota Statutes 2006, section 429.041, is amended by adding a subdivision to read:

Subd. 2a. **Best value alternative.** As an alternative to the procurement method described in subdivision 2, the council may issue a request for proposal and award the contract to the vendor or contractor offering the best value as described in section 16C.28, subdivision 1, paragraph (a), clause (2).

Sec. 31. Minnesota Statutes 2006, section 458D.21, is amended by adding a subdivision to read:

Subd. 2a. **Contracts in excess of \$5,000; best value alternative.** As an alternative to the procurement method described in subdivision 2, the board may issue a request for proposal and award the contract to the vendor or contractor offering the best value as described in section 16C.28, subdivision 1, paragraph (a), clause (2).

Sec. 32. Minnesota Statutes 2006, section 469.015, is amended by adding a subdivision to read:

Subd. 1a. **Best value alternative.** As an alternative to the procurement method described in subdivision 1, the authority may issue a request for proposal and award the contract to the vendor or contractor offering the best value under a request for proposal as described in section 16C.28, subdivision 1, paragraph (a), clause (2).

H.F. No. 571, 1st Engrossment - 85th Legislative Session (2007-2008)

12.1 Sec. 33. Minnesota Statutes 2006, section 469.068, subdivision 1, is amended to read:

12.2 Subdivision 1. **Contracts; bids; bonds.** All construction work and every purchase
12.3 of equipment, supplies, or materials necessary in carrying out the purposes of sections
12.4 469.048 to 469.068, that involve the expenditure of \$1,000 or more, shall be awarded by
12.5 contract as provided in this subdivision or in subdivision 1a. Before receiving bids under
12.6 sections 469.048 to 469.068, the authority shall publish, once a week for two consecutive
12.7 weeks in the official newspaper of the port's city, a notice that bids will be received for the
12.8 construction work, or purchase of equipment, supplies, or materials. The notice shall state
12.9 the nature of the work, and the terms and conditions upon which the contract is to be let
12.10 and name a time and place where the bids will be received, opened, and read publicly,
12.11 which time shall be not less than seven days after the date of the last publication. After
12.12 the bids have been received, opened, read publicly, and recorded, the commissioners
12.13 shall award the contract to the lowest responsible bidder, reserving the right to reject
12.14 any or all bids. The contract shall be executed in writing and the person to whom the
12.15 contract is awarded shall give sufficient bond to the board for its faithful performance. If
12.16 no satisfactory bid is received, the port authority may readvertise, or, by an affirmative
12.17 vote of two of its commissioners in the case of a three-member commission, or five of
12.18 its members in the case of a seven-member commission, may authorize the authority
12.19 to perform any part or parts of any construction work by day labor under conditions it
12.20 prescribes. The commissioners may establish reasonable qualifications to determine
12.21 the fitness and responsibility of bidders, and require bidders to meet the qualifications
12.22 before bids are accepted. If the commissioners by a two-thirds or five-sevenths vote
12.23 declare that an emergency exists requiring the immediate purchase of any equipment or
12.24 material or supplies at a cost in excess of \$1,000, but not exceeding \$5,000, in amount,
12.25 or making of emergency repairs, it shall not be necessary to advertise for bids, but the
12.26 material, equipment, or supplies may be purchased in the open market at the lowest price
12.27 obtainable, or the emergency repairs may be contracted for or performed without securing
12.28 formal competitive bids. An emergency, for purposes of this section, is unforeseen
12.29 circumstances or conditions which result in the jeopardizing of human life or property.

12.30 In all contracts involving the employment of labor, the commissioners shall stipulate
12.31 conditions they deem reasonable, as to the hours of labor and wages and may stipulate as
12.32 to the residence of employees to be employed by the contractors.

12.33 Bonds shall be required from contractors for any works of construction as provided
12.34 in and subject to all the provisions of sections 574.26 to 574.31.

H.F. No. 571, 1st Engrossment - 85th Legislative Session (2007-2008)

13.1 Sec. 34. Minnesota Statutes 2006, section 469.068, is amended by adding a subdivision
13.2 to read:

13.3 Subd. 1a. **Contracts; best value alternative.** As an alternative to the procurement
13.4 method described in subdivision 1, a contract may be awarded to the vendor or contractor
13.5 offering the best value under a request for proposal as described in section 16C.28,
13.6 subdivision 1, paragraph (a), clause (2).

13.7 Sec. 35. Minnesota Statutes 2006, section 471.345, is amended by adding a subdivision
13.8 to read:

13.9 Subd. 3a. **Contracts over \$50,000; best value alternative.** As an alternative to the
13.10 procurement method described in subdivision 3, municipalities may award a contract for
13.11 construction, alteration, repair, or maintenance work to the vendor or contractor offering
13.12 the best value under a request for proposal as described in section 16C.28, subdivision 1,
13.13 paragraph (a), clause (2).

13.14 Sec. 36. Minnesota Statutes 2006, section 471.345, is amended by adding a subdivision
13.15 to read:

13.16 Subd. 4a. **Contracts from \$10,000 to \$50,000; best value alternative.** As an
13.17 alternative to the procurement method described in subdivision 4, municipalities may
13.18 award a contract for construction, alteration, repair, or maintenance work to the vendor
13.19 or contractor offering the best value under a request for proposal as described in section
13.20 16C.28, subdivision 1, paragraph (a), clause (2).

13.21 Sec. 37. Minnesota Statutes 2006, section 471.345, subdivision 5, is amended to read:

13.22 Subd. 5. **Contracts less than \$10,000.** If the amount of the contract is estimated
13.23 to be \$10,000 or less, the contract may be made either upon quotation or in the open
13.24 market, in the discretion of the governing body. If the contract is made upon quotation
13.25 it shall be based, so far as practicable, on at least two quotations which shall be kept on
13.26 file for a period of at least one year after their receipt. Alternatively, municipalities may
13.27 award a contract for construction, alteration, repair, or maintenance work to the vendor
13.28 or contractor offering the best value under a request for proposal as described in section
13.29 16C.28, subdivision 1, paragraph (a), clause (2).

13.30 Sec. 38. Minnesota Statutes 2006, section 473.523, is amended by adding a subdivision
13.31 to read:

14.1 Subd. 1a. **Contracts over \$50,000; best value alternative.** As an alternative to
14.2 the procurement method described in subdivision 1, the council may issue a request
14.3 for proposal and award the contract to the vendor or contractor offering the best value
14.4 under a request for proposal as described in section 16C.28, subdivision 1, paragraph
14.5 (a), clause (2).

14.6 Sec. 39. Minnesota Statutes 2006, section 473.756, subdivision 12, is amended to read:

14.7 Subd. 12. **Contracts.** The authority may enter into a development agreement with
14.8 the team, the county, or any other entity relating to the construction, financing, and use of
14.9 the ballpark and related facilities and public infrastructure. The authority may contract
14.10 for materials, supplies, and equipment in accordance with sections 471.345 and 473.754,
14.11 except that the authority, with the consent of the county, may employ or contract with
14.12 persons, firms, or corporations to perform one or more or all of the functions of architect,
14.13 engineer, or construction manager with respect to all or any part of the ballpark and
14.14 public infrastructure. Alternatively, at the request of the team and with the consent of the
14.15 county, the authority shall authorize the team to provide for the design and construction
14.16 of the ballpark and related public infrastructure, subject to terms of Laws 2006, chapter
14.17 257. The construction manager may enter into contracts with contractors for labor,
14.18 materials, supplies, and equipment for the construction of the ballpark and related public
14.19 infrastructure through the process of public bidding, except that the construction manager
14.20 may, with the consent of the authority or the team:

14.21 (1) narrow the listing of eligible bidders to those which the construction manager
14.22 determines to possess sufficient expertise to perform the intended functions;

14.23 (2) award contracts to the contractors that the construction manager determines
14.24 provide the best value under a request for proposal as described in section 16C.02,
14.25 subdivision 4a, which are not required to be the lowest responsible bidder; and

14.26 (3) for work the construction manager determines to be critical to the completion
14.27 schedule, award contracts on the basis of competitive proposals or perform work with
14.28 its own forces without soliciting competitive bids if the construction manager provides
14.29 evidence of competitive pricing.

14.30 The authority shall require that the construction manager certify, before the contract is
14.31 signed, a fixed and stipulated construction price and completion date to the authority
14.32 and post a performance bond in an amount at least equal to 100 percent of the certified
14.33 price, to cover any costs which may be incurred in excess of the certified price, including
14.34 but not limited to costs incurred by the authority or loss of revenues resulting from
14.35 incomplete construction on the completion date. The authority may secure surety bonds

H.F. No. 571, 1st Engrossment - 85th Legislative Session (2007-2008)

15.1 as provided in section 574.26, securing payment of just claims in connection with all
15.2 public work undertaken by it. Persons entitled to the protection of the bonds may enforce
15.3 them as provided in sections 574.28 to 574.32, and shall not be entitled to a lien on any
15.4 property of the authority under the provisions of sections 514.01 to 514.16. Contracts for
15.5 construction and operation of the ballpark must include programs, including Youthbuild,
15.6 to provide for participation by small local businesses and businesses owned by people of
15.7 color, and the inclusion of women and people of color in the workforces of contractors
15.8 and ballpark operators. The construction of the ballpark is a "project" as that term is
15.9 defined in section 177.42, subdivision 2, and is subject to the prevailing wage law under
15.10 sections 177.41 to 177.43.