

A bill for an act
relating to highways; authorizing use by the county of Anoka of a design-build
process to award contract for construction of intersection of U.S. Highway 10
and County State-Aid Highway 83.

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

Section 1. **COUNTY OF ANOKA; HIGHWAY CONSTRUCTION CONTRACT.**

Subdivision 1. Definitions. (a) The definitions in this subdivision apply in sections
1 to 5.

(b) "Best value" describes a result intended in acquiring design-build services. Best
value determination must include price and must measure a responder's qualifications,
experience, prior performance, and responses to technical and qualitative criteria.

(c) "County board" means the Anoka County Board of Commissioners.

(d) "Design-build selection panel" means the individuals appointed by the county
board to advise the county administrator and county board in preparing and conducting
the design-build selection process. At least three members of the panel must not be
county employees, at least two members must be professionally licensed under Minnesota
Statutes, chapter 326, and at least one member must be or must have been a commercial
contractor. A panel member must not have a personal financial interest in the project
or with any of the design-build proposals.

(e) "Design-build contract" means a single contract between the county and a
design-builder to furnish the architectural, engineering, and related design services as well
as the labor, materials, supplies, equipment, and construction services for the project.

(f) "Design-build firm" means a proprietorship, partnership, limited liability partnership, joint venture, corporation, limited liability company, professional corporation, or any other type of legal entity.

(g) "Design-builder" means a design-build firm that proposes to design and build the project governed by the procedures of this section.

(h) "Design professional" means a person who holds, or employs an individual who holds, a license under Minnesota Statutes, chapter 326, and who is required to be registered under Minnesota law.

(i) "Primary designer" means the designer who is to have primary design responsibility for the project, and does not include designers who are merely consulted by the county and do not have substantial design responsibility, or designers who will or may be employed or consulted by the primary designer.

(j) "Project" means the reconstruction of the intersection of U.S. Highway 10 and County State-Aid Highway 83.

(k) "Proposal" means an offer by a design-builder to enter into a design-build contract for the project in response to a request for proposals, including a phase-one or phase-two proposal.

(l) "Request for proposals" or "RFP" means the document or publication through which the county solicits proposals from prequalified design-builders to design and construct the project.

(m) "Request for qualifications" or "RFQ" means a document to prequalify and short-list potential design-builders for the project.

Subd. 2. Authority. Notwithstanding Minnesota Statutes, section 471.345, or any other law to the contrary, the county board may solicit and award a design-build contract for the project on the basis of a best value selection process as provided in this section.

Subd. 3. Restriction. The county board may not enter into a design-build contract under this section unless the county employs at least one licensed and registered individual in each of the following categories: (1) architect; (2) mechanical engineer; and (3) civil engineer. In addition, the county shall employ a full-time project manager with at least five years of construction management experience.

Subd. 4. Procedures. (a) The county board shall, by resolution, adopt implementation procedures consistent with this section for the award of the design-build contract.

(b) The implementation procedures must, at a minimum, govern:

(1) the establishment of a design-build selection panel to advise the county board and county administrator in preparing and conducting the design-build selection process,

including a recommendation for the selection of a design-build proposal it considers to be of best value to the public;

(2) preparation of a request for proposals, including procedures for determining the appropriate content for the request for proposals;

(3) standards to be used to qualify or prequalify design-builders;

(4) preparation and submission of proposals;

(5) establishment of procedures for evaluating proposals in as objective a manner as possible;

(6) safeguards during the procurement process to preserve confidential information and proprietary information supplied by those submitting proposals in accordance with Minnesota Statutes, chapter 13, including, but not limited to, an offeror's price, technical solutions, innovative or unique technology, and innovative or unique use of commercially available items; and

(7) award and execution of the design-build contract.

Subd. 5. **Licensing requirements.** (a) A design-builder must be licensed and registered to provide the services required to complete the project and do business in this state.

(b) A design-builder may enter into a contract with the county to provide professional or construction services that the design-builder is not licensed, registered, or qualified to perform, so long as the design-builder provides the services through subcontracts with licensed, registered, or otherwise qualified persons in accordance with this section.

(c) This section does not limit or eliminate the responsibility or liability owed by a professional on the design-build project to the county or other parties under other law.

Sec. 2. COUNTY OF ANOKA; DESIGN-BUILD PROCESS.

Subdivision 1. **Two-phase procedure.** The county board shall establish a two-phase procedure for awarding the design-build contract.

Subd. 2. **Contents.** The county board, after considering recommendations from the design-build panel, shall prepare or have prepared an RFQ. The RFQ must include the following:

(1) the minimum qualifications of design-builders necessary to meet the requirements for acceptance;

(2) a scope of work statement and schedule;

(3) documents defining the project requirements;

(4) the form of contract to be awarded;

(5) the weighted selection criteria for compiling a short list and the number of firms to be included in the short list, which must be at least three but not more than five;

(6) a description of the RFP requirements;

(7) the maximum time allowed for design and construction;

(8) the county's estimated cost range of design and construction;

(9) requirements for:

(i) construction experience, design experience, and financial, personnel, and equipment resources available from potential design-builders for the project; and

(ii) experience in other design-build projects or similar projects, provided that the requirements in item (i) and this item may not unduly restrict competition;

(10) the requirement that the primary designer be designated in the response to the RFQ; and

(11) a statement that "past performance" or "experience" does not include the exercise or assertion of a person's legal rights.

Subd. 3. **Evaluation.** (a) The county shall solicit and evaluate proposals and select a design-builder in two phases.

(b) In phase one, the county board, after considering recommendations from the design-build panel, shall adopt a short list of at least three but no more than five of the most highly qualified firms in accordance with qualifications criteria described in the RFQ. Before adopting the short list, the design-build selection panel or county board may require clarification from the design-builders to ensure conformance of proposals to the RFQ. The county must not consider cost-related or price-related evaluation factors in phase one.

(c) In phase two, the design-build selection panel and the county shall use the evaluation criteria in the RFP to select the design-build proposal that is the most advantageous and best value to the public. Before awarding a contract, the design-build selection panel and, if necessary, the county board may require clarification from the design-builders to ensure conformance of proposals to the RFP.

Sec. 3. COUNTY OF ANOKA; RFP FOR DESIGN-BUILD.

During phase two, the county shall issue an RFP to the design-builders on the short list. The request must include:

(1) the scope of work, including (i) performance and technical requirements, (ii) conceptual design, (iii) minimum specifications, and (iv) functional and operational elements for the delivery of the completed project, which must be prepared by a design professional qualified to prepare the necessary documents;

(2) a description of the qualifications required of the design-builder;

- 5.1 (3) a description of the selection criteria, including the weighting of each criterion;
5.2 (4) copies of the contract documents that the successful proposer will be expected to
5.3 sign;
5.4 (5) the maximum time allowable for design and construction;
5.5 (6) the county's estimated range of cost for design and construction;
5.6 (7) the requirement that a submitted proposal be segmented into two parts: a
5.7 technical proposal and a price proposal;
5.8 (8) the requirement that each proposal be in a separately sealed, clearly identified
5.9 package and include the date and time of the submittal deadline;
5.10 (9) the requirement that the technical proposal include a critical path method,
5.11 bar schedule of the work to be performed, or similar schematic; design plans and
5.12 specifications; technical reports; calculations; permit requirements; applicable
5.13 development fees; and other data requested in the RFP;
5.14 (10) the requirement that the price proposal contain all design, construction,
5.15 engineering, inspection, and construction-related costs, and all other costs of any kind
5.16 of the proposed project;
5.17 (11) the date, time, and location of the public opening of the sealed price proposals;
5.18 (12) a statement that "past performance" or "experience" does not include the
5.19 exercise or assertion of a person's legal rights; and
5.20 (13) other information relevant to the project.

5.21 **Sec. 4. COUNTY OF ANOKA; REPLACING TEAM MEMBERS.**

5.22 An individual or a design-build firm identified in a response to an RFQ or RFP may
5.23 not be replaced without the written approval of the county board. The county board may
5.24 revoke an awarded contract if an individual or a design-build firm identified in a response
5.25 to an RFQ or RFP is replaced without the county board's written approval. To qualify for
5.26 the approval, the written request must document that the proposed replacement individual
5.27 or design-build firm will be equal to or better than that described in the response to the
5.28 RFQ or RFP. The county board shall use the criteria specified in the RFQ or RFP to
5.29 evaluate the request.

5.30 **Sec. 5. COUNTY OF ANOKA; DESIGN-BUILD AWARD.**

5.31 The county board, after considering the recommendations of the design-build
5.32 selection panel, shall award the design-build contract to the proposer with the highest
5.33 scored proposal based on the evaluation criteria in the RFP. The rationale for the selection
5.34 of the proposal must be stated at the time of the contract award. The county board may

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6.1 reject any or all proposals, but must not do so to evade the other provisions and policies
6.2 of this act. If the county board rejects all proposals, it may then solicit new proposals
6.3 after making appropriate modifications to performance criteria, budget constraints, or
6.4 qualifications.