

A bill for an act
relating to transportation; providing for construction manager/general contractor
contracts; amending Minnesota Statutes 2010, section 13.72, subdivision 1,
by adding a subdivision; proposing coding for new law in Minnesota Statutes,
chapter 161.

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

Section 1. Minnesota Statutes 2010, section 13.72, subdivision 1, is amended to read:

Subdivision 1. **Estimates for construction projects.** An estimate of the cost
of a construction project of the Minnesota Department of Transportation prepared by
department employees is nonpublic data and is not available to the public from the time
of final design until the project is awarded, except that the department may share a cost
estimate with a construction manager/general contractor with whom the department is
negotiating a contract under sections 161.3207 to 161.3209.

Sec. 2. Minnesota Statutes 2010, section 13.72, is amended by adding a subdivision to
read:

Subd. 17. **Construction manager/general contractor data.** (a) When the
commissioner of transportation undertakes a transportation project pursuant to a
construction manager/general contractor contract, as defined in section 161.3207,
subdivision 5, and:

(1) solicits a request for qualifications (RFQ), as defined in section 161.3207,
subdivision 11, then:

(i) the statement of qualifications scoring methodology, identifying information
concerning members of the technical review committee, and statement of qualifications
evaluations are classified as protected nonpublic data; and

(ii) the statement of qualifications submitted by a potential construction manager/general contractor, as defined by section 161.3207, subdivision 4, are nonpublic data;

(2) announces the short list of qualified construction managers/general contractors, then the statement of qualifications scoring methodology and the statement of qualifications evaluations become public;

(3) solicits a request for proposals (RFP), as defined in section 161.3207, subdivision 10, then:

(i) the proposals submitted by a potential construction manager/general contractor are nonpublic data; and

(ii) the proposal scoring methodology, identifying information concerning members of the technical review committee, and proposal evaluations are protected nonpublic data; and

(4) ranks the proposals, as required by section 161.3209, subdivision 2, paragraph (b), clause (3), then:

(i) the proposal evaluation score, or rank, becomes public;

(ii) the proposal evaluations, other than the score, or rank, that is made public in item (i); the proposal scoring methodology; and identifying information concerning members of the technical review committee remain protected nonpublic data until completion of the evaluation process; and

(iii) the statement of qualifications and proposals submitted by a potential construction manager/general contractor remains nonpublic data until completion of the evaluation process.

(b) If all responses to a request for proposals are rejected before completing the evaluation process, all data, other than that data made public under this subdivision, retains its classification until a resolicitation of the request for proposals results in completion of the evaluation process or a determination is made to abandon the project. If a resolicitation of proposals does not occur within one year of the announcement of the request for proposals, the remaining data become public.

(c) For purposes of this subdivision, "completion of the evaluation process" means that the commissioner of transportation has completed negotiating the preconstruction services contract with the selected construction manager/general contractor.

Sec. 3. [161.3207] CONSTRUCTION MANAGER/GENERAL CONTRACTOR CONTRACTS; DEFINITIONS.

3.1 Subdivision 1. **Scope.** The terms used in sections 161.3207 to 161.3209 have the
3.2 meanings given them in this section.

3.3 Subd. 2. **Acceptance.** "Acceptance" means an action of the commissioner
3.4 authorizing the execution of a construction manager/general contractor contract.

3.5 Subd. 3. **Commissioner.** "Commissioner" means the commissioner of
3.6 transportation.

3.7 Subd. 4. **Construction manager/general contractor.** "Construction
3.8 manager/general contractor" means a proprietorship, partnership, limited liability
3.9 partnership, joint venture, corporation, any type of limited liability company, professional
3.10 corporation, or any legal entity selected by the commissioner to act as a construction
3.11 manager to manage the construction process, which includes, but is not limited to,
3.12 responsibility for the price, schedule, and workmanship of preconstruction services or the
3.13 construction performed according to section 161.3209, or both.

3.14 Subd. 5. **Construction manager/general contractor contract.** "Construction
3.15 manager/general contractor contract" means a contract for construction of a project
3.16 between a construction manager/general contractor and the commissioner, which
3.17 must include terms providing for a price, construction schedule, and workmanship of
3.18 the construction performed. The construction manager/general contractor contract
3.19 may include provisions for incremental price contracts for specific work packages,
3.20 additional work performed, contingencies, or other contract provisions that will allow the
3.21 commissioner to negotiate time and cost changes to the contract.

3.22 Subd. 6. **Past performance; experience.** "Past performance" or "experience" does
3.23 not include the exercise or assertion of a person's legal rights.

3.24 Subd. 7. **Preconstruction services.** "Preconstruction services" means all
3.25 non-construction-related services that a construction manager/general contractor is
3.26 allowed to perform before execution of a construction manager/general contractor contract
3.27 or work package.

3.28 Subd. 8. **Preconstruction services contract.** "Preconstruction services contract"
3.29 means a contract under which a construction manager/general contractor is paid on the
3.30 basis of the actual cost to perform the work specified in the contract plus an amount for
3.31 overhead and profit for all preconstruction services.

3.32 Subd. 9. **Project.** "Project" means any project selected by the commissioner as a
3.33 construction manager/general contractor project under section 161.3208.

3.34 Subd. 10. **Request for proposals; RFP.** "Request for proposals" or "RFP" means
3.35 the document or publication soliciting proposals for a construction manager/general
3.36 contractor contract.

4.1 Subd. 11. **Request for qualifications; RFQ.** "Request for qualifications" or "RFQ"
4.2 means a document or publication used to prequalify and short-list potential construction
4.3 managers/general contractors.

4.4 Subd. 12. **Work package.** "Work package" means the scope of work for a defined
4.5 portion of a project. A defined portion includes construction services on any project
4.6 aspect, including procuring materials or services.

4.7 **Sec. 4. [161.3208] CONSTRUCTION MANAGER/GENERAL CONTRACTOR**
4.8 **AUTHORITY.**

4.9 Subdivision 1. **Selection authority; limitation.** Notwithstanding sections 16C.25,
4.10 161.32, and 161.321, or any other law to the contrary, the commissioner may select a
4.11 construction manager/general contractor as provided in section 161.3209, and award a
4.12 construction manager/general contractor contract. The commissioner may not award more
4.13 than two construction manager/general contractor projects during any fiscal year.

4.14 Subd. 2. **Determination.** Final determination to use a construction manager/general
4.15 contractor contracting procedure may be made only by the commissioner.

4.16 Subd. 3. **Cancellation.** The solicitation of construction manager/general contractor
4.17 requests for qualifications or proposals does not obligate the commissioner to enter into a
4.18 construction manager/general contractor contract. In accordance with the stated criteria
4.19 and subcriteria for evaluating qualifications or proposals, the commissioner may accept
4.20 or reject any or all responses received as a result of the request. The solicitation of
4.21 proposals may be canceled at any time at the commissioner's sole discretion if cancellation
4.22 is considered to be in the public's best interest. If the commissioner rejects all responses
4.23 or cancels the solicitation for proposals, the commissioner may resolicit a request for
4.24 proposals using the same or different requirements.

4.25 Subd. 4. **Reporting.** The commissioner shall notify the chairs of the senate
4.26 and house of representatives committees with jurisdiction over transportation policy
4.27 and transportation finance each time the commissioner decides to use the construction
4.28 manager/general contractor method of procurement and explain why that method was
4.29 chosen.

4.30 **Sec. 5. [161.3209] CONSTRUCTION MANAGER/GENERAL CONTRACTOR;**
4.31 **PROCEDURES.**

4.32 Subdivision 1. **Solicitation of proposals.** If the commissioner determines that
4.33 a construction manager/general contractor method of procurement is appropriate for

a project, the commissioner shall establish a two-phase procedure for awarding the construction manager/general contractor contract, as described in subdivisions 2 and 3.

Subd. 2. **Phase 1 - request for proposals.** (a) The commissioner shall prepare or have prepared an RFP for each construction manager/general contractor contract as provided in this section. The RFP must contain, at a minimum, the following elements:

(1) the minimum qualifications of the construction manager/general contractor;

(2) the procedures for submitting proposals and the criteria for evaluation of qualifications and the relative weight for each criteria;

(3) the form of the contract to be awarded;

(4) the scope of intended construction work;

(5) a listing of the types of preconstruction services that will be required;

(6) an anticipated schedule for commencing and completing the project;

(7) any applicable budget limits for the project;

(8) the requirements for insurance, statutorily required performance, and payment bonds;

(9) the requirements that the construction manager/general contractor provide a letter from a surety or insurance company stating that the construction manager/general contractor is capable of obtaining a performance bond and payment bond covering the estimated contract cost;

(10) the method for how construction manager/general contractor fees for the preconstruction services contract will be negotiated;

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

(12) any other information desired by the commissioner.

(b) Before receiving any responses to the RFP:

(1) The commissioner shall appoint a technical review committee of at least five individuals, of which one is a Department of Transportation manager who is also a licensed professional engineer in Minnesota.

(2) The technical review committee shall evaluate the construction manager/general contractor proposals according to criteria and subcriteria published in the RFP and procedures established by the commissioner. If the commissioner does not receive at least two proposals from construction managers, the commissioner may:

(i) solicit new proposals;

(ii) revise the RFP and thereafter solicit new proposals using the revised RFP;

(iii) select another allowed procurement method; or

(iv) reject all proposals.

6.1 (3) The technical review committee shall evaluate the responses to the request
6.2 for proposals and rank the construction manager/general contractor using the elements
6.3 described in paragraph (a).

6.4 (c) Unless all proposals are rejected, the commissioner shall conduct contract
6.5 negotiations for a preconstruction services contract with the construction manager/general
6.6 contractor with the highest ranking. If the construction manager/general contractor with
6.7 the highest ranking declines or is unable to reach an agreement, the commissioner may
6.8 begin contract negotiations with the next highest ranked construction manager/general
6.9 contractor.

6.10 (d) Before issuing the RFP, the commissioner may elect to issue a request for
6.11 qualifications (RFQ) and short-list the most highly qualified construction managers/general
6.12 contractors. The RFQ must include the procedures for submitting statements of
6.13 qualification, the criteria for evaluation of qualifications, and the relative weight for each
6.14 criterion. The statements of qualifications must be evaluated by the technical review
6.15 committee.

6.16 Subd. 3. **Phase 2 - construction manager/general contractor contract.** (a) Before
6.17 conducting any construction-related services, the commissioner shall:

6.18 (1) conduct an independent cost estimate for the project or each work package; and
6.19 (2) conduct contract negotiations with the construction manager/general contractor
6.20 to develop a construction manager/general contractor contract.

6.21 (b) If the construction manager/general contractor and the commissioner are unable
6.22 to negotiate a contract, the commissioner may use other contract procurement processes or
6.23 may readvertise the construction manager/general contractor contract. The construction
6.24 manager/general contractor may not (1) bid on the project if advertised under section
6.25 161.32 or (2) join a design-build team if advertised under sections 161.3410 to 161.3428.