

A bill for an act

relating to transportation; modifying provisions relating to contract bid preferences for highway construction projects; making clarifying changes; amending Minnesota Statutes 2010, section 161.321.

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

Section 1. Minnesota Statutes 2010, section 161.321, is amended to read:

161.321 SMALL BUSINESS CONTRACTS.

Subdivision 1. **Definitions.** For purposes of this section the following terms have the meanings given them, except where the context clearly indicates a different meaning is intended.

(a) "Award" means the granting of a contract in accordance with all applicable laws and rules governing competitive bidding except as otherwise provided in this section.

(b) "Contract" means an agreement entered into between a business entity and the state of Minnesota for the construction of transportation improvements.

(c) "Subcontractor" means a business entity which enters into a legally binding agreement with another business entity which is a party to a contract as defined in paragraph (b).

(d) "Targeted group business" means a business designated under section 16C.16, subdivision 5.

(e) "Veteran-owned small business" means a business designated under section 16C.16, subdivision 6a.

Subd. 1a. **Legislative findings.** The legislature finds as follows:

(1) at the time of these findings, businesses that are operated and majority-owned by nonminority women, by persons with any substantial physical disability, or by members of a specific minority group are underutilized in Minnesota highway construction contracts;

(2) at the time of these findings, evidence demonstrates that race-neutral measures are ineffective to correct the impact of past discrimination that exists in highway construction and must be supplemented with race- and gender-conscious measures; and

(3) the state has a compelling interest to remedy the effects of past or present discrimination in the Minnesota highway construction industry through the implementation of a targeted group business program that meets state and federal constitutional guidelines.

Subd. 2. **Small business set-asides; procurement and construction contract preferences.** (a) The commissioner may award up to a six percent preference in the amount bid for specified construction work to small targeted group businesses and veteran-owned small businesses.

(b) The commissioner may designate a contract for construction work for award only to small targeted group businesses if the commissioner determines that at least three small targeted group businesses are likely to bid. The commissioner may designate a contract for construction work for award only to veteran-owned small businesses if the commissioner determines that at least three veteran-owned small businesses are likely to bid.

~~(c) The commissioner, as a condition of awarding a construction contract, may set goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses and veteran-owned small businesses. The commissioner must establish a procedure for granting waivers from the subcontracting requirement when qualified small targeted group businesses and veteran-owned small businesses are not reasonably available. The commissioner may establish financial incentives for prime contractors who exceed the goals for use of subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting requirements of this paragraph do not apply to prime contractors who are small targeted group businesses or veteran-owned small businesses.~~

~~(d)~~ The commissioner may award up to a four percent preference in the amount bid on procurement for specified construction work to small businesses located in an economically disadvantaged area as defined in section 16C.16, subdivision 7.

Subd. 2a. **Subcontracting goals.** (a) The commissioner, as a condition of awarding a construction contract, may set goals that require the prime contractor to subcontract portions of the contract to small targeted group businesses and veteran-owned small businesses. Prime contractors must demonstrate good faith efforts to meet the project goals. The commissioner shall establish a procedure for granting waivers from the

subcontracting requirement when either qualified small targeted group businesses or veteran-owned small businesses, or both, are not reasonably available. The commissioner may establish (1) financial incentives for prime contractors who exceed the goals set for the use of subcontractors under this subdivision and (2) sanctions for prime contractors who fail to make good faith efforts to meet the goals set under this subdivision.

(b) The small targeted group business subcontracting requirements of this subdivision do not apply to prime contractors who are small targeted group businesses. The veteran-owned small business subcontracting requirements of this subdivision do not apply to prime contractors who are veteran-owned small businesses.

Subd. 3. **Subcontract awards to small businesses.** At least 75 percent of subcontracts awarded to small targeted group businesses must be performed by the business to which the subcontract is awarded or another small targeted group business. At least 75 percent of subcontracts awarded to veteran-owned small businesses must be performed by the business to which the subcontract is awarded or another veteran-owned small business.

Subd. 4. **Contract awards, limitations.** Contracts awarded pursuant to this section are subject to all limitations contained in rules adopted by the commissioner of administration.

Subd. 4a. **Limited duration and reevaluation.** The commissioner shall cooperate with the commissioner of administration to periodically reevaluate the targeted group businesses to determine that there is a statistical disparity between the percentage of construction contracts awarded to businesses owned by targeted group members and the representation of businesses owned by targeted group members among all businesses in the state in the construction category. The commissioner of administration shall designate targeted groups pursuant to section 16C.16, subdivision 5.

Subd. 5. **Recourse to other businesses.** If the commissioner is unable to award a contract pursuant to the provisions of subdivisions 2 ~~and 3~~ to 4a, the award may be placed pursuant to the normal solicitation and award provisions set forth in this chapter and chapter 16C.

Subd. 6. **Rules.** The rules adopted by the commissioner of administration to define small businesses and to set time and other eligibility requirements for participation in programs under sections 16C.16 to 16C.19 apply to this section. The commissioner may promulgate other rules necessary to carry out this section.

Subd. 7. **Noncompetitive bids.** The commissioner is encouraged to purchase from small targeted group businesses and veteran-owned small businesses designated

4.1 under section 16C.16 when making purchases that are not subject to competitive bidding
4.2 procedures.

4.3 Subd. 8. **Report by commissioner.** The commissioner ~~of transportation~~ shall
4.4 report to the commissioner of administration on compliance with this section. The
4.5 information must be reported at the time and in the manner requested by the commissioner
4.6 of administration.