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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

EIGHTY-EIGHTH SESSION

**H. F. No. 866**

02/25/2013 Authored by Freiberg

The bill was read for the first time and referred to the Committee on Government Operations

04/02/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Ways and Means

1.1 A bill for an act  
1.2 relating to state government; changing provisions for procurement and  
1.3 solicitation process; changing nonvisual technology access standards provision;  
1.4 providing for contracts with private entity services; amending Minnesota  
1.5 Statutes 2012, sections 13.591, subdivision 3; 16C.02, subdivision 13; 16C.06,  
1.6 subdivision 2; 16C.09; 16C.10, subdivision 6; 16C.145; 16C.33, subdivision 3;  
1.7 16C.34, subdivision 1; 16E.07, subdivision 6, by adding a subdivision; proposing  
1.8 coding for new law in Minnesota Statutes, chapter 16.

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

1.10 Section 1. Minnesota Statutes 2012, section 13.591, subdivision 3, is amended to read:

1.11 Subd. 3. **Business as vendor.** (a) Data submitted by a business to a government  
1.12 entity in response to a request for bids as defined in section 16C.02, subdivision 11, are  
1.13 private or nonpublic until ~~the bids are opened. Once the bids are opened, the time and date~~  
1.14 specified in the solicitation that bids are due, at which time the name of the bidder and the  
1.15 dollar amount specified in the response are read and become public. All other data in a  
1.16 bidder's response to a bid are private or nonpublic data until completion of the selection  
1.17 process. For purposes of this section, "completion of the selection process" means that  
1.18 the government entity has completed its evaluation and has ranked the responses. After a  
1.19 government entity has completed the selection process, all remaining data submitted by  
1.20 all bidders are public with the exception of trade secret data as defined and classified in  
1.21 section 13.37. A statement by a bidder that submitted data are copyrighted or otherwise  
1.22 protected does not prevent public access to the data contained in the bid.

1.23 If all responses to a request for bids are rejected prior to completion of the selection  
1.24 process, all data, other than ~~that made public at the bid opening~~ the name of the bidder  
1.25 and the dollar amount specified in the response, remain private or nonpublic until a  
1.26 resolicitation of bids results in completion of the selection process or a determination is

2.1 made to abandon the purchase. If the rejection occurs after the completion of the selection  
 2.2 process, the data remain public. If a resolicitation of bids does not occur within one year  
 2.3 of the bid opening date, the remaining data become public.

2.4 (b) Data submitted by a business to a government entity in response to a request  
 2.5 for proposal, as defined in section 16C.02, subdivision 12, are private or nonpublic until  
 2.6 ~~the responses are opened. Once the responses are opened,~~ the time and date specified in  
 2.7 the solicitation that proposals are due, at which time the name of the responder is read  
 2.8 ~~and~~ becomes public. All other data in a responder's response to a request for proposal are  
 2.9 private or nonpublic data until completion of the evaluation process. For purposes of this  
 2.10 section, "completion of the evaluation process" means that the government entity has  
 2.11 completed negotiating the contract with the selected vendor. After a government entity  
 2.12 has completed the evaluation process, all remaining data submitted by all responders are  
 2.13 public with the exception of trade secret data as defined and classified in section 13.37. A  
 2.14 statement by a responder that submitted data are copyrighted or otherwise protected does  
 2.15 not prevent public access to the data contained in the response.

2.16 If all responses to a request for proposal are rejected prior to completion of the  
 2.17 evaluation process, all data, other than ~~that made public at the response opening,~~ the  
 2.18 names of the responders, remain private or nonpublic until a resolicitation of the requests  
 2.19 for proposal results in completion of the evaluation process or a determination is made  
 2.20 to abandon the purchase. If the rejection occurs after the completion of the evaluation  
 2.21 process, the data remain public. If a resolicitation of proposals does not occur within one  
 2.22 year of the proposal opening date, the remaining data become public.

2.23 **Sec. 2. [16.0466] STATE AGENCY TECHNOLOGY PROJECTS.**

2.24 Every state agency with an information or telecommunications project must consult  
 2.25 with the Office of Enterprise Technology to determine what the IT cost of the project is, and  
 2.26 transfer the IT cost portion to the Office of Enterprise Technology, unless the commissioner  
 2.27 of the Office of Enterprise Technology determines that a transfer is not required.

2.28 Sec. 3. Minnesota Statutes 2012, section 16C.02, subdivision 13, is amended to read:

2.29 Subd. 13. **Resident vendor.** "Resident vendor" means a person, firm, or corporation  
 2.30 that:

2.31 (1) is authorized to conduct business in the state of Minnesota on the date a  
 2.32 solicitation for a contract is first advertised or announced. It includes a foreign corporation  
 2.33 duly authorized to engage in business in Minnesota;

- 3.1           (2) has paid unemployment taxes or income taxes in this state during the 12 calendar  
3.2 months immediately preceding submission of the bid or proposal for which any preference  
3.3 is sought;  
3.4           (3) has a business address in the state; and  
3.5           (4) has affirmatively claimed that status in the bid or proposal submission.

3.6           Sec. 4. Minnesota Statutes 2012, section 16C.06, subdivision 2, is amended to read:

3.7           Subd. 2. **Solicitation process.** (a) A formal solicitation must be used to acquire all  
3.8 goods, service contracts, and utilities estimated at or more than \$50,000, or in the case of  
3.9 a Department of Transportation solicitation, at or more than \$100,000, unless otherwise  
3.10 provided for. All formal responses must be sealed when they are received and must be  
3.11 ~~opened in public at the hour stated in the solicitation~~ made publicly available as required  
3.12 by section 13.591. Formal responses must be authenticated by the responder in a manner  
3.13 specified by the commissioner.

3.14           (b) An informal solicitation may be used to acquire all goods, service contracts,  
3.15 and utilities that are estimated at less than \$50,000, or in the case of a Department of  
3.16 Transportation solicitation, at or less than \$100,000. The number of vendors required to  
3.17 receive solicitations may be determined by the commissioner. Informal responses must be  
3.18 authenticated by the responder in a manner specified by the commissioner.

3.19           Sec. 5. Minnesota Statutes 2012, section 16C.09, is amended to read:

3.20           **16C.09 PROCEDURE FOR SERVICE CONTRACTS.**

3.21           (a) Before entering into or approving a service contract valued in excess of \$5,000,  
3.22 the commissioner must determine, at least, that:

3.23           (1) no current state employee is able and available to perform the services called  
3.24 for by the contract;

3.25           (2) the work to be performed under the contract is necessary to the agency's  
3.26 achievement of its statutory responsibilities and there is statutory authority to enter into  
3.27 the contract;

3.28           (3) the contract will not establish an employment relationship between the state or  
3.29 the agency and any persons performing under the contract;

3.30           (4) the contractor and agents are not employees of the state;

3.31           (5) the contracting agency has specified a satisfactory method of evaluating and  
3.32 using the results of the work to be performed; and

3.33           (6) the combined contract and amendments will not exceed five years without  
3.34 specific, written approval by the commissioner according to established policy, procedures,

4.1 and standards, or unless otherwise provided for by law. The term of the original contract  
4.2 must not exceed two years, unless the commissioner determines that a longer duration is  
4.3 in the best interest of the state.

4.4 (b) For purposes of paragraph (a), clause (1), employees are available if qualified and:

4.5 (1) are already doing the work in question; or

4.6 (2) are on layoff status in classes that can do the work in question.

4.7 An employee is not available if the employee is doing other work, is retired, or has decided  
4.8 not to do the work in question.

4.9 (c) This section does not apply to an agency's use of inmates pursuant to sections  
4.10 241.20 to 241.23 or to an agency's use of persons required by a court to provide:

4.11 (1) community service; or

4.12 (2) conservation or maintenance services on lands under the jurisdiction and control  
4.13 of the state.

4.14 Sec. 6. Minnesota Statutes 2012, section 16C.10, subdivision 6, is amended to read:

4.15 Subd. 6. **Expenditures under specified amounts.** The solicitation process  
4.16 described in this chapter is not required for:

4.17 (1) acquisition of goods or services, other than professional or technical services,  
4.18 in an amount of ~~\$2,500~~ \$5,000 or less; or

4.19 (2) acquisition of professional or technical services in an amount of \$5,000 or less,  
4.20 provided the requirements of section 16C.08, subdivisions 3 to 6, are met.

4.21 Sec. 7. Minnesota Statutes 2012, section 16C.145, is amended to read:

4.22 **16C.145 NONVISUAL TECHNOLOGY ACCESS STANDARDS.**

4.23 (a) The commissioner shall develop nonvisual technology access standards. The  
4.24 standards must be included in all contracts for the procurement of information technology  
4.25 by, or for the use of, agencies, political subdivisions, and the Minnesota State Colleges and  
4.26 Universities. The University of Minnesota is encouraged to consider similar standards.

4.27 (b) The nonvisual access standards must include the following minimum  
4.28 specifications:

4.29 (1) that effective, interactive control and use of the technology including the  
4.30 operating system, applications programs, prompts, and format of the data presented, are  
4.31 readily achievable by nonvisual means;

4.32 (2) that the nonvisual access technology must be compatible with information  
4.33 technology used by other individuals with whom the blind or visually impaired individual  
4.34 must interact;

5.1 (3) that nonvisual access technology must be integrated into networks used to share  
5.2 communications among employees, program participants, and the public; and

5.3 (4) that the nonvisual access technology must have the capability of providing  
5.4 equivalent access by nonvisual means to telecommunications or other interconnected  
5.5 network services used by persons who are not blind or visually impaired.

5.6 (c) Nothing in this section requires the installation of software or peripheral devices  
5.7 used for nonvisual access when the information technology is being used by individuals  
5.8 who are not blind or visually impaired.

5.9 (d) Executive branch state agencies subject to section 16E.03, subdivision 9, are not  
5.10 required to include nonvisual technology access standards developed under this section in  
5.11 contracts for the procurement of information technology.

5.12 Sec. 8. Minnesota Statutes 2012, section 16C.33, subdivision 3, is amended to read:

5.13 Subd. 3. **Solicitation of qualifications or proposals.** (a) Every user agency, except  
5.14 the Capitol Area Architectural and Planning Board, shall submit a written request for a  
5.15 design-builder for its project to the commissioner who shall forward the request to the  
5.16 board, consistent with section 16B.33, subdivision 3, paragraph (a). The University of  
5.17 Minnesota shall follow the process in subdivision 4 to select design-builders for projects  
5.18 that are subject to section 16B.33. The written request must include a description of the  
5.19 project, the total project cost, a description of any special requirements or unique features  
5.20 of the proposed project, and other information requested by the board which will assist the  
5.21 board in carrying out its duties and responsibilities set forth in this section.

5.22 (b) A request for qualifications or proposals soliciting design-builders shall be  
5.23 prepared for each design-build contract pursuant to subdivision 5 or 7. The request for  
5.24 qualifications or proposals shall contain, at a minimum, the following elements:

5.25 (1) the identity of the agency for which the project will be built and that will award  
5.26 the design-build contract;

5.27 (2) procedures for submitting qualifications or proposals, the criteria for evaluation  
5.28 of qualifications or proposals and the relative weight for each criterion and subcriterion,  
5.29 and the procedures for making awards according to the stated criteria and subcriteria,  
5.30 including a reference to the requirements of this section;

5.31 (3) the proposed terms and conditions for the contract;

5.32 (4) the desired qualifications of the design-builder and the desired or permitted  
5.33 areas of construction to be performed by named members of the design-build team, if  
5.34 applicable. The primary designer shall be a named member of the design-build team;

5.35 (5) the schedule for commencement and completion of the project;

- 6.1 (6) any applicable budget limits for the project;
- 6.2 (7) the requirements for insurance and statutorily required performance and payment  
6.3 bonds;
- 6.4 (8) the identification and location of any other information in the possession or  
6.5 control of the agency that the user agency determines is material, which may include  
6.6 surveys, soils reports, drawings or models of existing structures, environmental studies,  
6.7 photographs, or references to public records;
- 6.8 (9) for a design-build design and price-based selection process, the request shall  
6.9 also include the design criteria package, including the performance and technical  
6.10 requirements for the project, and the functional and operational elements for the delivery  
6.11 of the completed project. The request shall also contain a description of the drawings,  
6.12 specifications, or other submittals to be included with the proposal, with guidance as to  
6.13 the form and level of completeness of the drawings, specifications or submittals that will  
6.14 be acceptable, and the stipend to be paid to the design-builders selected to submit the  
6.15 above described information; and
- 6.16 (10) the criteria shall not impose unnecessary conditions beyond reasonable  
6.17 requirements to ensure maximum participation of qualified design-builders. The criteria  
6.18 shall not consider the collective bargaining status of the design-builder.
- 6.19 (c) Notice of requests for qualifications or proposals must be advertised in ~~the State~~  
6.20 Register a manner designated by the commissioner.

6.21 Sec. 9. Minnesota Statutes 2012, section 16C.34, subdivision 1, is amended to read:

6.22 Subdivision 1. **Solicitation of qualifications.** (a) Every user agency, except  
6.23 the Capitol Area Architectural and Planning Board, shall submit a written request for  
6.24 proposals for a construction manager at risk for its project to the commissioner. The  
6.25 written request for proposals must include a description of the project, the estimated cost  
6.26 of completing the project, a description of any special requirements or unique features of  
6.27 the proposed project, and other information which will assist the commissioner in carrying  
6.28 out its duties and responsibilities set forth in this section.

6.29 (b) The commissioner may include in the request for qualifications criteria a  
6.30 requirement that the proposer include the overhead and fee that the construction manager  
6.31 at risk proposes to charge for its services.

6.32 (c) A request for qualifications shall be prepared for each construction manager at  
6.33 risk contract as provided in this section. The request for qualifications shall contain, at a  
6.34 minimum, the following elements:

7.1 (1) the identity of the agency for which the project will be built and that will award  
7.2 the construction manager at risk contract;

7.3 (2) procedures for submitting qualifications, the criteria and subcriteria for evaluation  
7.4 of qualifications and the relative weight for each criteria and subcriteria, and the procedures  
7.5 for making awards in an open, competitive, and objective manner, and according to the  
7.6 stated criteria and subcriteria, including a reference to the requirements of this section;

7.7 (3) the terms and conditions for the contract;

7.8 (4) the qualifications that the construction manager at risk shall be desired to have;

7.9 (5) a schedule for commencement and completion of the project;

7.10 (6) any applicable budget limits for the project;

7.11 (7) requirements for insurance, statutorily required performance and payment bonds;

7.12 (8) identification and location of any other information in the possession or control  
7.13 of the agency that the user agency determines is material, which may include surveys, soils  
7.14 reports, drawings or models of existing structures, environmental studies, photographs, or  
7.15 references to public records; and

7.16 (9) criteria shall not impose unnecessary conditions beyond reasonable requirements  
7.17 to ensure maximum participation of construction managers at risk. The criteria shall not  
7.18 consider the collective bargaining status of the construction manager at risk.

7.19 (d) Notice of requests for qualifications must be advertised in ~~the State Register~~ a  
7.20 manner designated by the commissioner.

7.21 Sec. 10. Minnesota Statutes 2012, section 16E.07, subdivision 6, is amended to read:

7.22 Subd. 6. **Fees.** The office shall establish fees for technical and transaction services  
7.23 for government units through North Star. Fees must be credited to the North Star account.  
7.24 Except for the convenience fee under subdivision 12, the office may not charge a fee for  
7.25 viewing or inspecting data made available through North Star or linked facilities, unless  
7.26 specifically authorized by law.

7.27 **EFFECTIVE DATE.** This section is effective July 1, 2013.

7.28 Sec. 11. Minnesota Statutes 2012, section 16E.07, is amended by adding a subdivision  
7.29 to read:

7.30 Subd. 12. **Private entity services; fee authority; council established.** (a) The  
7.31 office may enter into a contract with a private entity to manage, maintain, support, and  
7.32 expand North Star and online government information services to citizens and businesses.

7.33 (b) A contract established under paragraph (a) may provide for compensation of the  
7.34 private entity through a fee established under paragraph (c).

8.1 (c) Upon authorization by the E-Government Advisory Council as created in  
8.2 paragraph (e), a private entity that enters into a contract under paragraph (a) or the  
8.3 office may establish a convenience fee for users of North Star and online government  
8.4 information services up to a total of \$2 per transaction. A fee established under this  
8.5 paragraph is in addition to any fees or surcharges authorized under other law.

8.6 (d) Receipts from the convenience fee shall be deposited in the North Star account  
8.7 established in subdivision 7. Notwithstanding section 16A.1285, subdivision 2, receipts  
8.8 credited to the account are appropriated to the office for payment to the contracted private  
8.9 entity under paragraph (a). In lieu of depositing the receipts in the North Star account, the  
8.10 office can directly transfer the receipts to the private entity or allow the private entity to  
8.11 retain the receipts pursuant to a contract established under this subdivision.

8.12 (e) The E-Government Advisory Council is established for the purpose of improving  
8.13 online government information services to citizens and businesses. The council shall  
8.14 recommend to the office the priority of North Star projects and online government  
8.15 information services to be developed and supported by convenience fee receipts. The  
8.16 council shall provide oversight on the convenience fee and its receipts in the North Star  
8.17 account. The council shall by majority quorum vote to approve or disapprove establishing  
8.18 the convenience fee on particular types of transactions, the fee amount, and any changes in  
8.19 the fee amount. If the convenience fee receipts are retained by or transferred to the private  
8.20 entity in lieu of deposit in the North Star account, the council may audit the private entity's  
8.21 convenience fee receipts, expenses paid by the receipts, and associated financial statements.

8.22 (1) The council shall consist of the state chief information officer or the chief  
8.23 information officer's designee, one member appointed by the speaker of the house, one  
8.24 member appointed by the senate majority leader, and six members appointed by the  
8.25 governor representing state executive branch agencies that are actively involved with  
8.26 private businesses, the private business community, or the public.

8.27 (2) Membership terms, removal of a member, and filling of vacancies are as provided  
8.28 in section 15.059. Members do not receive compensation or reimbursement for expenses.

8.29 (3) The council shall select a chair from its members. The office shall provide  
8.30 administrative support to the council.

8.31 (f) The office shall report to the chairs and ranking minority members of the  
8.32 legislative committees with jurisdiction over state government finance by January 15 of  
8.33 each odd-numbered year regarding the convenience fee receipts and the status of North  
8.34 Star projects and online government information services developed and supported by  
8.35 convenience fee receipts.