

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 1975

- 01/26/2012 Authored by Drazkowski
The bill was read for the first time and referred to the Committee on Government Operations and Elections
- 02/20/2012 Adoption of Report: Pass and re-referred to State Government Finance
- 02/29/2012 Adoption of Report: Pass as Amended and re-referred to the Committee on Ways and Means
- 03/29/2012 Adoption of Report: Pass and Read Second Time

1.1 A bill for an act
 1.2 relating to state government; removing restrictions relating to outside contracts;
 1.3 requiring disclosure on where contract work takes place; amending Minnesota
 1.4 Statutes 2010, sections 16C.08, subdivisions 2, 4; 16C.09; 136F.77, subdivision
 1.5 3; proposing coding for new law in Minnesota Statutes, chapter 16C; repealing
 1.6 Minnesota Statutes 2010, sections 16C.085; 43A.047; 179A.23.

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

1.8 Section 1. Minnesota Statutes 2010, section 16C.08, subdivision 2, is amended to read:

1.9 Subd. 2. **Duties of contracting agency.** (a) Before an agency may seek approval of
 1.10 a professional or technical services contract valued in excess of \$5,000, it must provide
 1.11 the following:

1.12 (1) a description of how the proposed contract or amendment is necessary and
 1.13 reasonable to advance the statutory mission of the agency;

1.14 (2) a description of the agency's plan to notify firms or individuals who may be
 1.15 available to perform the services called for in the solicitation;

1.16 (3) a description of the performance measures or other tools, including accessibility
 1.17 measures if applicable, that will be used to monitor and evaluate contract performance; and

1.18 (4) an explanation detailing, if applicable, why this procurement is being pursued
 1.19 unilaterally by the agency and not as an enterprise procurement.

1.20 (b) In addition to paragraph (a), the agency must certify that:

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

1.23 ~~(2)~~ (1) the normal competitive bidding mechanisms will not provide for adequate
 1.24 performance of the services;

2.1 ~~(3)~~ (2) reasonable efforts will be made to publicize the availability of the contract
 2.2 to the public;

2.3 ~~(4)~~ (3) the agency will develop and implement a written plan providing for the
 2.4 assignment of specific agency personnel to manage the contract, including a monitoring
 2.5 and liaison function, the periodic review of interim reports or other indications of past
 2.6 performance, and the ultimate utilization of the final product of the services;

2.7 ~~(5)~~ (4) the agency will not allow the contractor to begin work before the contract is
 2.8 fully executed unless an exception under section 16C.05, subdivision 2a, has been granted
 2.9 by the commissioner and funds are fully encumbered; and

2.10 ~~(6)~~ (5) the contract will not establish an employment relationship between the state
 2.11 or the agency and any persons performing under the contract; ;

2.12 ~~(7) in the event the results of the contract work will be carried out or continued by~~
 2.13 ~~state employees upon completion of the contract, the contractor is required to include~~
 2.14 ~~state employees in development and training, to the extent necessary to ensure that after~~
 2.15 ~~completion of the contract, state employees can perform any ongoing work related to the~~
 2.16 ~~same function; and~~

2.17 ~~(8) the agency will not contract out its previously eliminated jobs for four years~~
 2.18 ~~without first considering the same former employees who are on the seniority unit layoff~~
 2.19 ~~list who meet the minimum qualifications determined by the agency.~~

2.20 (c) A contract establishes an employment relationship for purposes of paragraph (b),
 2.21 clause ~~(6)~~ (5), if, under federal laws governing the distinction between an employee and
 2.22 an independent contractor, a person would be considered an employee.

2.23 Sec. 2. Minnesota Statutes 2010, section 16C.08, subdivision 4, is amended to read:

2.24 Subd. 4. **Reports.** (a) The commissioner shall submit to the governor, the chairs and
 2.25 ranking minority members of the house of representatives Ways and Means and senate
 2.26 Finance Committees, and the Legislative Reference Library a yearly listing of all contracts
 2.27 for professional or technical services executed. The report must identify the contractor,
 2.28 contract amount, duration, and services to be provided. The commissioner shall also issue
 2.29 yearly reports summarizing the contract review activities of the department by fiscal year.

2.30 (b) The fiscal year report must be submitted by September 1 of each year and must:

2.31 (1) be sorted by agency and by contractor;

2.32 (2) show the aggregate value of contracts issued by each agency and issued to each
 2.33 contractor;

2.34 (3) distinguish between contracts that are being issued for the first time and contracts
 2.35 that are being extended;

3.1 (4) state the termination date of each contract;

3.2 (5) identify services by commodity code, including topics such as contracts for
3.3 training, contracts for research and opinions, and contracts for computer systems; and

3.4 (6) identify which contracts were awarded without following the solicitation process
3.5 in this chapter because it was determined that there was only a single source for the
3.6 services.

3.7 (c) Within 30 days of final completion of a contract over \$25,000 covered by this
3.8 subdivision, the head of the agency entering into the contract must submit a report to the
3.9 commissioner who must make the report publicly available online and submit a copy to
3.10 the Legislative Reference Library. The report must:

3.11 (1) summarize the purpose of the contract, including why it was necessary to enter
3.12 into a contract;

3.13 (2) state the amount spent on the contract;

3.14 (3) if the contract was awarded without following the solicitation process in this
3.15 chapter because it was determined that there was only a single source for the services,
3.16 explain why the agency determined there was only a single source for the services; ~~and~~

3.17 (4) specify the extent to which work under the contract was performed in Minnesota,
3.18 was performed in the United States but outside Minnesota, or was performed outside the
3.19 United States; and

3.20 (5) include a written performance evaluation of the work done under the contract.

3.21 The evaluation must include an appraisal of the contractor's timeliness, quality, cost, and
3.22 overall performance in meeting the terms and objectives of the contract. Contractors may
3.23 request copies of evaluations prepared under this subdivision and may respond in writing.
3.24 Contractor responses must be maintained with the contract file.

3.25 Sec. 3. Minnesota Statutes 2010, section 16C.09, is amended to read:

3.26 **16C.09 PROCEDURE FOR SERVICE CONTRACTS.**

3.27 (a) Before entering into or approving a service contract, the commissioner must
3.28 determine, at least, that:

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

3.31 ~~(2)~~ (1) the work to be performed under the contract is necessary to the agency's
3.32 achievement of its statutory responsibilities and there is statutory authority to enter into
3.33 the contract;

3.34 ~~(3)~~ (2) the contract will not establish an employment relationship between the state
3.35 or the agency and any persons performing under the contract;

4.1 ~~(4)~~ (3) the contractor and agents are not employees of the state;

4.2 ~~(5)~~ (4) the contracting agency has specified a satisfactory method of evaluating and
4.3 using the results of the work to be performed; and

4.4 ~~(6)~~ (5) the combined contract and amendments will not exceed five years without
4.5 specific, written approval by the commissioner according to established policy, procedures,
4.6 and standards, or unless otherwise provided for by law. The term of the original contract
4.7 must not exceed two years, unless the commissioner determines that a longer duration is
4.8 in the best interest of the state.

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

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

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

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

4.15 ~~(e)~~ (b) This section does not apply to an agency's use of inmates pursuant to sections
4.16 241.20 to 241.23 or to an agency's use of persons required by a court to provide:

4.17 (1) community service; or

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

4.20 Sec. 4. **[16C.175] RESPONSE TO DISCLOSE WHERE WORK WILL BE**
4.21 **PERFORMED.**

4.22 A response from a vendor in regard to a solicitation for a contract for professional or
4.23 technical services or nonprofessional or nontechnical services must disclose the extent to
4.24 which the vendor anticipates that work under the contract will be performed in Minnesota,
4.25 in the United States but outside Minnesota, or outside the United States.

4.26 Sec. 5. Minnesota Statutes 2010, section 136F.77, subdivision 3, is amended to read:

4.27 Subd. 3. **No abrogation.** Nothing in this section shall abrogate the ~~provisions of~~
4.28 ~~sections 43A.047 and requirements of section~~ 136F.581.

4.29 Sec. 6. **REPEALER.**

4.30 Minnesota Statutes 2010, sections 16C.085; 43A.047; and 179A.23, are repealed.

16C.085 WAIVER.

Notwithstanding sections 16C.08, 16C.09, 43A.047, or other law to the contrary, the commissioner of administration may enter into or approve a service contract for printing services or services provided by the DocuComm Division without determining that no current state employee is able and available to perform the services called for by the contract.

43A.047 CONTRACTED SERVICES.

(a) Executive agencies, including the Minnesota State Colleges and Universities system, must demonstrate that they cannot use available staff before hiring outside consultants or services. If use of consultants is necessary, agencies are encouraged to negotiate contracts that will involve permanent staff, so as to upgrade and maximize training of state employees.

(b) If agencies reduce operating budgets, agencies must give priority to reducing spending on professional and technical service contracts before laying off permanent employees.

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

- (1) community service; or
- (2) conservation or maintenance services on lands under the jurisdiction and control of the state.

179A.23 LIMITATION ON CONTRACTING-OUT OF SERVICES PROVIDED BY MEMBERS OF A STATE OF MINNESOTA OR UNIVERSITY OF MINNESOTA BARGAINING UNIT.

Any contract entered into after March 23, 1982, by the state of Minnesota or the University of Minnesota involving services, any part of which, in the absence of the contract, would be performed by members of a unit provided in sections 179A.10 and 179A.11, shall be subject to section 16C.06 and shall provide for the preferential employment by a party of members of that unit whose employment with the state of Minnesota or the University of Minnesota is terminated as a result of that contract.

Contracts entered into by the state of Minnesota for the purpose of providing court reporter services or transcription of the record of a hearing which was recorded by means of an audio magnetic recording device shall be subject to section 16C.08 and the preferential employment provisions enumerated in this section. Any court reporter seeking a contract pursuant to the preferential employment provisions of this section shall be given preference when the services are needed only if that court reporter's charges for the services requested are no greater than the average of the charges made for the identical services by other court reporters in the same locality who are also under contract with the state for those services.