

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION

S.F. No. 1919

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DATE	D-PG	OFFICIAL STATUS
02/25/2014	5849	Introduction and first reading Referred to State and Local Government
03/10/2014		Comm report: To pass as amended and re-refer to Transportation and Public Safety

1.1 A bill for an act
 1.2 relating to state government; providing for enhancement of accountability
 1.3 and transparency in public construction; establishing a requirement for and a
 1.4 definition of responsible contractor; proposing coding for new law in Minnesota
 1.5 Statutes, chapter 16C.

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

1.7 Section 1. **[16C.285] RESPONSIBLE CONTRACTOR REQUIREMENT**
 1.8 **DEFINED.**

1.9 Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this
 1.10 subdivision have the meanings given them.

1.11 (b) "Construction contract" means a contract for building, erection, construction,
 1.12 alteration, remodeling, or repair work entered into by or at the direction of a state agency,
 1.13 the Minnesota State Colleges and Universities, or a municipality where the amount of the
 1.14 contract is estimated to exceed \$25,000.

1.15 (c) "Contractor" means a vendor that performs building, erection, construction,
 1.16 alteration, remodeling, or repair work and who submits a bid or proposal or otherwise
 1.17 responds to a solicitation document of a contracting authority.

1.18 (d) "Contracting authority" means a state agency, the Minnesota State Colleges and
 1.19 Universities, or a municipality that enters into a construction contract or authorizes or
 1.20 directs entering into a construction contract.

1.21 (e) "Municipality" means a county, town, city, school district, or other municipal
 1.22 corporation or political subdivision of the state authorized by law to enter into contracts.

1.23 (f) "Project" means building, erection, construction, alteration, remodeling, or repair
 1.24 work performed pursuant to a construction contract.

2.1 (g) "Related entity" means a firm, partnership, corporation, joint venture, or other
2.2 legal entity substantially under the control of a contractor or vendor; a predecessor
2.3 corporation or other legal entity having one or more of the same owners or principals as a
2.4 contractor or vendor; a subsidiary of a contractor or vendor; one or more principals of a
2.5 contractor or vendor; and a person, firm, partnership, corporation, joint venture, or other
2.6 legal entity that substantially controls a contractor or vendor.

2.7 (h) "Solicitation document" means an invitation to bid, bid specifications, request
2.8 for proposals, request for qualifications, or other solicitation of contractors or vendors for
2.9 purposes of a construction contract.

2.10 (i) "Vendor" means a business, including a construction contractor or a natural
2.11 person, and includes both if the natural person is engaged in a business.

2.12 Subd. 2. **Responsible contractor required.** A contractor or vendor must meet the
2.13 minimum criteria in subdivision 3 to be eligible to be awarded a construction contract
2.14 as the lowest responsible bidder or the vendor or contractor offering the best value as
2.15 provided in section 16C.28, 123B.52, or 471.345.

2.16 Subd. 3. **Minimum criteria.** "Responsible contractor" means a contractor or vendor
2.17 that conforms to the requirements in the solicitation document and certifies that it meets
2.18 the following minimum criteria:

2.19 (1) the contractor or vendor is in compliance with all applicable licensing
2.20 requirements, bonding requirements, and insurance requirements, including workers'
2.21 compensation and unemployment insurance; is currently registered with the Department
2.22 of Revenue and the Department of Employment and Economic Development if it has
2.23 employees; has a valid federal tax identification number or a valid Social Security number
2.24 if an individual; and has complied with the applicable laws prerequisite to doing business
2.25 in Minnesota;

2.26 (2) the contractor, vendor, or related entity is in compliance with and, during the
2.27 five-year period before responding to the solicitation document, has not violated section
2.28 177.24, 177.25, 177.30, 177.41 to 177.44, 181.13, 181.14, or 181.722, and has not violated
2.29 United States Code, title 29, sections 201 to 209, or United States Code, title 40, sections
2.30 3141 to 3148. For purposes of this subdivision, a violation occurs when a contractor,
2.31 vendor, or related entity fails to pay statutorily required wages or penalties of \$10,000 or
2.32 more, has been issued an order to comply, failed to maintain required records, or has been
2.33 found liable in an action brought in a court having jurisdiction;

2.34 (3) the contractor, vendor, or related entity is in compliance with and, during
2.35 the five-year period before responding to the solicitation document, has not violated
2.36 any municipality's ordinance, resolution, policy, or contractual provision establishing

3.1 requirements for payment of wages for construction work performed for that municipality.
3.2 For purposes of this subdivision, a violation occurs when a contractor, vendor, or related
3.3 entity fails to pay legally required wages or penalties of \$10,000 or more. A final
3.4 adjudication is not necessary for a violation to occur, but the contracting municipality
3.5 must have determined that the contractor did not comply with its wage requirements;

3.6 (4) the contractor, vendor, or related entity is in compliance with and, during the
3.7 five-year period before responding to the solicitation document, has not violated section
3.8 181.723 or chapter 326B. For purposes of this subdivision, a violation occurs when a
3.9 contractor, vendor, or related entity has been issued a final administrative or licensing order;

3.10 (5) the contractor, vendor, or related entity has no current tax liens or tax
3.11 delinquencies;

3.12 (6) the contractor, vendor, or related entity has not operated under false names or
3.13 fronts as a small business, a socially or economically disadvantaged small business, or a
3.14 disadvantaged business enterprise;

3.15 (7) the contractor, vendor, or related entity is not currently debarred by the federal
3.16 government, the state, or a municipality; and

3.17 (8) all subcontractors or vendors of whatever tier the contractor intends to use to
3.18 perform project work have verified through written confirmation to the contractor that
3.19 they meet the minimum criteria listed in clauses (1) to (7).

3.20 Subd. 4. **Verification of compliance.** The contractor or vendor must submit a
3.21 signed statement under oath by an owner or officer verifying compliance with each of the
3.22 minimum criteria in subdivision 3. A contracting authority may accept a sworn statement
3.23 as sufficient to demonstrate that a contractor or vendor is a responsible contractor. Failure
3.24 to verify compliance with any one of the minimum criteria will render the contractor
3.25 or vendor ineligible to be awarded a contract. A false statement under oath verifying
3.26 compliance with any of the minimum criteria may result in termination of the contract
3.27 awarded to the contractor, subcontractor, or vendor that submits a false statement, and
3.28 will render that contractor, subcontractor, or vendor ineligible to be awarded a contract
3.29 by a contracting authority or allowed to perform work under a construction contract, as
3.30 defined in subdivision 1, for a period of three years. The contractor or vendor responding
3.31 to the solicitation document shall be responsible for ensuring that all subcontractors or
3.32 vendors performing project work meet the minimum criteria. Nothing in this section
3.33 shall restrict the discretion of a contracting authority to establish additional criteria for
3.34 defining a responsible contractor.

3.35 Subd. 5. **Implementation.** The definition of responsible contractor, as defined in
3.36 subdivision 3, must be included in the solicitation document for all construction projects

4.1 covered by this section. The solicitation document for any project must state that any
4.2 contractor or vendor that does not meet the minimum criteria in subdivision 3 is not
4.3 a responsible contractor and is not eligible to be awarded the construction contract for
4.4 the project. The solicitation document must provide that a false statement under oath
4.5 verifying compliance with any of the minimum criteria may result in termination of the
4.6 contract awarded to the contractor, subcontractor, or vendor that submits a false statement,
4.7 and will render that contractor, subcontractor, or vendor ineligible to be awarded a contract
4.8 by a contracting authority or allowed to perform work under a construction contract, as
4.9 defined in subdivision 1, for a period of three years.

4.10 Subd. 6. **Severability.** If any provision of this section is declared legally invalid
4.11 or unenforceable, or if any part of this section is suspended or restrained by a court of
4.12 competent jurisdiction, the remaining provisions shall remain in full force and effect.