

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION

S.F. No. 1919

(SENATE AUTHORS: SAXHAUG, Housley, Hayden and Bakk)

DATE	D-PG	OFFICIAL STATUS
02/25/2014	5849	Introduction and first reading Referred to State and Local Government
03/10/2014	6038a	Comm report: To pass as amended and re-refer to Transportation and Public Safety
03/13/2014	6204a	Comm report: To pass as amended and re-refer to Jobs, Agriculture and Rural Development
03/20/2014	6477a	Comm report: To pass as amended
	6494	Second reading
05/01/2014	8543	HF substituted on General Orders HF1984

A bill for an act

relating to state government; providing for enhancement of accountability and transparency in public construction; establishing a requirement for a definition of responsible contractor; proposing coding for new law in Minnesota Statutes, chapter 16C.

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

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

DEFINED.

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

(b) "Construction contract" means a contract or subcontract of any tier for work on a project.

(c) "Contractor" means a vendor that submits a bid or proposal or otherwise responds to a solicitation document of a contracting authority for work on a project. A contractor includes a construction manager but does not include a material supplier.

(d) "Contracting authority" means a state agency, the Minnesota State Colleges and Universities, the University of Minnesota, the Metropolitan Council, the Metropolitan Airports Commission, or a municipality that enters into a construction contract or authorizes or directs entering into a construction contract.

(e) "Municipality" means a county, town, home rule charter or statutory city, school district, housing and redevelopment authority, port authority, economic development authority, sports facilities authority, joint powers board or organization created under section 471.59 or other statute, special district, drainage authority, watershed district, destination medical center corporation, or other municipal corporation or political subdivision of the state authorized by law to enter into contracts.

2.1 (f) "Prime contractor" means a contractor awarded a construction contract by a
2.2 contracting authority for work on a project.

2.3 (g) "Principal" means an owner holding at least a 25 percent ownership interest
2.4 in a business.

2.5 (h) "Project" means building, erection, construction, alteration, remodeling,
2.6 demolition, or repair of buildings, real property, highways, roads, bridges, or other
2.7 construction work performed pursuant to a construction contract.

2.8 (i) "Related entity" means:

2.9 (1) a firm, partnership, corporation, joint venture, or other legal entity substantially
2.10 under the control of a contractor or vendor;

2.11 (2) a predecessor corporation or other legal entity having one or more of the same
2.12 principals as the contractor or vendor;

2.13 (3) a subsidiary of a contractor or vendor;

2.14 (4) one or more principals of a contractor or vendor; and

2.15 (5) a person, firm, partnership, corporation, joint venture, or other legal entity that
2.16 substantially controls a contractor or vendor.

2.17 (j) "Solicitation document" means an invitation to bid, bid specifications, request for
2.18 proposals, request for qualifications, or other solicitation of contractors for purposes of
2.19 a construction contract.

2.20 (k) "Subcontractor" means a vendor that seeks to enter into a subcontract or enters
2.21 into a subcontract for work on a project.

2.22 (l) "Vendor" means a business, including a construction contractor or a natural
2.23 person, and includes both if the natural person is engaged in a business.

2.24 Subd. 2. **Responsible contractor required.** (a) A contractor must meet the
2.25 minimum criteria in subdivision 3 to be eligible to be awarded a construction contract
2.26 as the lowest responsible bidder or the vendor or contractor offering the best value as
2.27 provided in section 16C.28, 103D.811, 103E.505, 116A.13, 123B.52, 160.17, 160.262,
2.28 161.32, 161.3206, 161.3209, 161.38, 162.17, 365.37, 374.13, 375.21, 383C.094, 412.311,
2.29 429.041, 458D.21, 469.015, 469.068, 469.101, 471.345, 473.4057, 473.523, 473.652,
2.30 473.756, 473J.11, or any of their successor provisions.

2.31 (b) This section applies to publicly owned or financed projects where the contracting
2.32 authority's construction contract with the prime contractor is estimated to exceed \$50,000
2.33 and is awarded pursuant to a lowest responsible bidder selection method or a best value
2.34 selection method. A subcontractor must meet the minimum criteria in subdivision 3 to be
2.35 eligible to be awarded a subcontract on a project regardless of the value of the subcontract.

3.1 (c) If only one contractor responds to a solicitation document, a contracting authority
3.2 may award a construction contract to the responding contractor even if the minimum
3.3 criteria in subdivision 3 are not met.

3.4 Subd. 3. **Minimum criteria.** "Responsible contractor" means a contractor or
3.5 subcontractor that conforms to the responsibility requirements in the solicitation document
3.6 for its portion of the work on the project and verifies that it meets the following minimum
3.7 criteria:

3.8 (1) the contractor or subcontractor:

3.9 (i) is in compliance with workers' compensation and unemployment insurance
3.10 requirements;

3.11 (ii) is currently registered with the Department of Revenue and the Department of
3.12 Employment and Economic Development if it has employees;

3.13 (iii) has a valid federal tax identification number or a valid Social Security number if
3.14 an individual; and

3.15 (iv) has filed a certificate of authority to transact business in Minnesota with the
3.16 secretary of state if a foreign corporation or cooperative;

3.17 (2) the contractor, subcontractor, or related entity is in compliance with and, during
3.18 the three-year period before submitting the verification, has not violated section 177.24,
3.19 177.25, 177.41 to 177.44, 181.13, 181.14, or 181.722, and has not violated United States
3.20 Code, title 29, sections 201 to 219, or United States Code, title 40, sections 3141 to
3.21 3148. For purposes of this clause, a violation occurs when a contractor, subcontractor, or
3.22 related entity:

3.23 (i) willfully or repeatedly fails to pay statutorily required wages or penalties of
3.24 \$25,000 or more on one or more separate projects within the three-year period;

3.25 (ii) has been issued an order to comply by the commissioner of labor and industry
3.26 that has become final;

3.27 (iii) has been issued at least two determination letters within the three-year period
3.28 by the Department of Transportation finding an underpayment by the contractor,
3.29 subcontractor, or related entity to its own employees; or

3.30 (iv) has been found liable for underpayment of wages or penalties in an action
3.31 brought in a court having jurisdiction.

3.32 Provided that, if the contractor, subcontractor, or related entity contests a determination
3.33 of underpayment by the Department of Transportation in a contested case proceeding,
3.34 a violation does not occur until the contested case proceeding and any appeals have
3.35 concluded with a determination that the contractor, subcontractor, or related entity
3.36 underpaid wages or penalties;

4.1 (3) the contractor, subcontractor, or related entity is in compliance with and, during
4.2 the three-year period before submitting the verification, has not violated any municipality's
4.3 requirements for payment of wages for construction work performed for that municipality
4.4 as provided in ordinance, resolution, policy, or contractual provision. For purposes of this
4.5 clause, a violation occurs when a municipality determines that a contractor, subcontractor,
4.6 or related entity has willfully or repeatedly failed to pay wages or penalties required by the
4.7 municipality in the amount of \$25,000 or more on one or more separate projects within the
4.8 three-year period. Provided that, if the contractor, subcontractor, or related entity contests
4.9 a municipality's finding of unpaid wages or penalties in a legal proceeding, a violation does
4.10 not occur until the legal proceeding and any appeals have concluded with a determination
4.11 that the contractor, subcontractor, or related entity underpaid wages or penalties;

4.12 (4) the contractor, subcontractor, or related entity is in compliance with and, during
4.13 the three-year period before submitting the verification, has not violated section 181.723
4.14 or chapter 326B. For purposes of this clause, a violation occurs when a contractor,
4.15 subcontractor, or related entity has been issued a final administrative or licensing order;

4.16 (5) the contractor, subcontractor, or related entity has not operated under false names
4.17 or fronts as a small business, a socially or economically disadvantaged small business, or a
4.18 disadvantaged business enterprise;

4.19 (6) the contractor, subcontractor, or related entity has not, within the three-year
4.20 period before submitting the verification, failed to meet applicable government agency
4.21 established disadvantaged business enterprise goals due to lack of good faith effort;

4.22 (7) the contractor, subcontractor, or related entity is not currently debarred by the
4.23 federal government or the state and is currently not ineligible to be awarded a construction
4.24 contract by a contracting authority or perform work under a construction contract by
4.25 this section; and

4.26 (8) all subcontractors that the contractor or subcontractor intends to use to perform
4.27 project work have verified to the contractor or subcontractor through a signed statement
4.28 under oath by an owner or officer that they meet the minimum criteria listed in clauses
4.29 (1) to (7).

4.30 Subd. 4. **Verification of compliance.** A contractor responding to a solicitation
4.31 document of a contracting authority shall submit to the contracting authority a signed
4.32 statement under oath by an owner or officer verifying compliance with each of the
4.33 minimum criteria in subdivision 3 at the time that it responds to the solicitation document.
4.34 A contracting authority may accept a sworn statement as sufficient to demonstrate that a
4.35 contractor is a responsible contractor and shall not be held liable for awarding a contract
4.36 in reasonable reliance on that statement. Failure to verify compliance with any one of the

5.1 minimum criteria shall render a contractor or subcontractor ineligible to be awarded
5.2 a construction contract. A false statement under oath verifying compliance with any of
5.3 the minimum criteria may result in termination of the construction contract awarded to a
5.4 contractor or subcontractor that submits a false statement. If a false statement is made
5.5 under oath in a verification of compliance with knowledge that it is false or with reckless
5.6 disregard for whether it is true or false, that false statement shall render that contractor
5.7 or subcontractor not responsible and therefore ineligible to be awarded a construction
5.8 contract by a contracting authority on projects covered by this section or allowed to
5.9 perform work on projects covered by this section under a construction contract, as defined
5.10 in subdivision 1, for a period of three years. The period of ineligibility due to a false
5.11 statement under oath in a verification of compliance may be reduced by the commissioner
5.12 of administration in the event of an emergency.

5.13 Subd. 5. **Subcontractor verification.** A contractor or subcontractor shall
5.14 include in its verification of compliance under subdivision 4 a list of all of its first-tier
5.15 subcontractors that it intends to retain for work on the project. If the prime contractor or
5.16 any subcontractor retains additional subcontractors on the project after submitting its
5.17 verification of compliance, the prime contractor or subcontractor shall obtain verifications
5.18 of compliance from each additional subcontractor with which it has a direct contractual
5.19 relationship and shall submit a supplemental verification confirming compliance with
5.20 subdivision 3, clause (8). The prime contractor shall submit to the contracting authority
5.21 upon request copies of the signed verifications of compliance from all subcontractors of
5.22 any tier pursuant to subdivision 3, clause (8). The prime contractor and subcontractors
5.23 shall not be responsible for the false statements of any subcontractor with which they do
5.24 not have a direct contractual relationship. The prime contractor and subcontractors shall
5.25 be responsible for false statements by their first-tier subcontractors with which they have
5.26 a direct contractual relationship only if they accept the verification of compliance with
5.27 knowledge that it contains a false statement or with reckless disregard for whether the
5.28 statement is true or false.

5.29 Subd. 6. **Additional criteria.** Nothing in this section shall restrict the discretion of a
5.30 contracting authority to establish additional criteria for defining a responsible contractor.

5.31 Subd. 7. **Implementation.** The definition of responsible contractor, as defined in
5.32 subdivision 3, or a statement that a responsible contractor must comply with section
5.33 16C.285, subdivision 3, shall be included in the solicitation document for all projects
5.34 covered by this section. The solicitation document for any project shall state that any
5.35 contractor or subcontractor that does not meet the minimum criteria in subdivision 3 is not
5.36 a responsible contractor and is not eligible to be awarded a construction contract for the

6.1 project or to perform work on the project. The solicitation document shall provide that a
6.2 false statement under oath verifying compliance with any of the minimum criteria may
6.3 result in termination of the contract awarded to the contractor or subcontractor that submits
6.4 a false statement. The solicitation document shall provide that if a false statement is made
6.5 under oath in a verification of compliance with knowledge that it is false or with reckless
6.6 disregard for whether it is true or false, that false statement shall render that contractor or
6.7 subcontractor not responsible and therefore ineligible to be awarded a construction contract
6.8 by a contracting authority on projects covered by this section or allowed to perform work
6.9 on projects covered by this section under a construction contract, as defined in subdivision
6.10 1, for a period of three years. The solicitation document shall state that the prime contractor
6.11 shall submit to the contracting authority upon request copies of the signed verifications of
6.12 compliance from all subcontractors of any tier pursuant to subdivision 3, clause (8).

6.13 Subd. 8. **Effective date.** This section is effective January 1, 2015, and shall apply
6.14 to all construction contracts entered into based on solicitation documents issued on or
6.15 after that date.