

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 3701

(SENATE AUTHORS: OSMEK)

DATE
02/27/2020

D-PG
5029

Introduction and first reading
Referred to Local Government

OFFICIAL STATUS

1.1 A bill for an act
 1.2 relating to Hennepin County; modifying contracting procedures; authorizing the
 1.3 use of construction manager at risk; amending Minnesota Statutes 2018, section
 1.4 383B.145, subdivision 5; proposing coding for new law in Minnesota Statutes,
 1.5 chapter 383B; repealing Minnesota Statutes 2018, section 383B.143, subdivisions
 1.6 2, 3.

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

1.8 Section 1. Minnesota Statutes 2018, section 383B.145, subdivision 5, is amended to read:

1.9 Subd. 5. **Set-aside contracts.** (a) Notwithstanding any other law to the contrary, the
 1.10 board may set aside an amount, for each fiscal year, for awarding contracts to businesses
 1.11 and social services organizations ~~which have a majority of employees~~ that employ persons
 1.12 who would be eligible for public assistance or who would require rehabilitative services in
 1.13 the absence of their employment. The set-aside amount may not exceed two percent of the
 1.14 amount appropriated by the board in the budget for the preceding fiscal year. Failure by the
 1.15 board to designate particular procurements for the set-aside program shall not prevent
 1.16 vendors from seeking the procurement award through the normal solicitation and bidding
 1.17 processes pursuant to the provisions of the Uniform Municipal Contracting Act, section
 1.18 471.345.

1.19 (b) The board may elect to use a negotiated price or bid contract procedure in the awarding
 1.20 of a procurement contract under the set-aside program. The amount of the award shall not
 1.21 exceed by more than five percent the estimated price for the goods or services, if they were
 1.22 to be purchased on the open market and not under the set-aside program.

1.23 (c) Before contracting with a business or social service organization under the set-aside
 1.24 program, the board or authorized person shall conduct an investigation of the business or

2.1 social service organization with whom it seeks to contract and shall make findings, to be
2.2 contained in the provisions of the contract, that:

2.3 (1) the vendor has in its employ at least 50 percent of its employees who would be
2.4 eligible to receive some form of public assistance or other rehabilitative services in the
2.5 absence of the award of a contract to the vendor; or the vendor, if a business delivering
2.6 construction services, will seek to employ persons who would be eligible to receive some
2.7 form of public assistance or other rehabilitative services in the absence of the award of a
2.8 contract to the vendor for not less than 20 percent of the total labor hours performed by all
2.9 persons under the contract;

2.10 (2) the vendor has elected to apply to the board for a contract under the set-aside
2.11 provisions; and

2.12 (3) the vendor is able to perform the set-aside contract.

2.13 (d) The board shall publicize the provisions of the set-aside program, attempt to locate
2.14 vendors able to perform set-aside procurement contracts and otherwise encourage
2.15 participation therein.

2.16 Sec. 2. **[383B.1587] CONSTRUCTION MANAGER AT RISK.**

2.17 Subdivision 1. Definitions. (a) For purposes of this section, the definitions in this
2.18 subdivision have the meanings given them.

2.19 (b) "Construction manager at risk" means a person who is selected by the county to act
2.20 as a construction manager to manage the construction process, including but not limited to
2.21 responsibility for the price, schedule, and workmanship of the construction performed
2.22 according to the procedures in this section.

2.23 (c) "Construction manager at risk contract" means a contract for construction of a project
2.24 between a construction manager at risk and the county, which shall include a guaranteed
2.25 maximum price, construction schedule, and workmanship of the construction performed.

2.26 (d) "Guaranteed maximum price" means the maximum amount that a construction
2.27 manager at risk will be paid pursuant to a contract to perform a defined scope of work.

2.28 (e) "Guaranteed maximum price contract" means a contract under which a construction
2.29 manager or subcontractor is paid on the basis of the actual cost to perform the work specified
2.30 in the contract plus an amount for overhead and profit, the sum of which must not exceed
2.31 the guaranteed maximum price in the contract.

3.1 (f) "Past performance" or "experience" does not include the exercise or assertion of a
3.2 person's legal rights.

3.3 (g) "Person" means an individual, corporation, partnership, association, or other legal
3.4 entity.

3.5 (h) "Project" means an undertaking to construct, alter, or enlarge a building, structure,
3.6 or other improvements, except highways and bridges, by or for the county.

3.7 (i) "Request for qualifications" means the document or publication soliciting qualifications
3.8 for a construction manager at risk contract as provided in this section.

3.9 (j) "Request for proposals" means the document or publication soliciting proposals for
3.10 a construction manager at risk contract as provided in this section.

3.11 (k) "Trade contract work" means labor, materials, or equipment furnished by contractors
3.12 or vendors that are incorporated into the completed project or are major components of the
3.13 means of construction. Work performed by trade contractors involves specific portions of
3.14 the project, but not the entire project.

3.15 Subd. 2. **Authority.** Notwithstanding any other law to the contrary, for a project estimated
3.16 to exceed \$20,000,000, the county may use a construction manager at risk method of project
3.17 delivery and award a construction manager at risk contract on the basis of the selection
3.18 criteria described in this section.

3.19 Subd. 3. **Solicitation of qualifications.** (a) A request for qualifications shall be prepared
3.20 for each construction manager at risk contract as provided in this section. The request for
3.21 qualifications shall contain, at a minimum, the following elements:

3.22 (1) procedures for submitting qualifications, the criteria and subcriteria for evaluating
3.23 the qualifications and the relative weight for each criteria and subcriteria, and the procedures
3.24 for making awards in an open, competitive, and objective manner, applying a scoring or
3.25 trade-off evaluation method, including a reference to the requirements of this section;

3.26 (2) the proposed terms and conditions for the contract;

3.27 (3) the desired qualifications of the construction manager at risk;

3.28 (4) the schedule for commencement and completion of the project;

3.29 (5) any applicable budget limits for the project;

3.30 (6) the requirements for insurance and statutorily required performance and payment
3.31 bonds; and

4.1 (7) the identification and location of any other information in the possession or control
4.2 of the county that the county determines is material, which may include surveys, soils
4.3 reports, drawings or models of existing structures, environmental studies, photographs, or
4.4 references to public records.

4.5 (b) The request for qualifications criteria shall not impose unnecessary conditions beyond
4.6 reasonable requirements to ensure maximum participation of construction managers at risk.
4.7 The criteria shall not consider the collective bargaining status of the construction manager
4.8 at risk.

4.9 (c) The request for qualifications criteria may include a requirement that the proposer
4.10 include the cost for its services.

4.11 (d) Notice of requests for qualifications must be advertised in a manner designated by
4.12 the county.

4.13 **Subd. 4. Construction manager at risk selection process.** (a) In a construction manager
4.14 at risk selection process, the following shall apply:

4.15 (1) upon determining to use a construction manager at risk method of project delivery,
4.16 the county shall create a selection committee composed of a minimum of three persons, at
4.17 least one of whom has construction industry expertise; and

4.18 (2) the county shall establish procedures for determining the appropriate content of a
4.19 request for qualifications, as provided in subdivision 3.

4.20 (b) In accordance with the criteria and procedures set forth in the request for
4.21 qualifications, the selection committee shall evaluate the proposer's experience as a
4.22 construction manager at risk, including but not limited to capacity of key personnel, technical
4.23 competence, capability to perform, past performance of the firm and its employees, safety
4.24 record and compliance with state and federal law, availability to and familiarity with the
4.25 project locale, and other appropriate facts submitted by the proposer in response to the
4.26 request for qualifications.

4.27 (c) If the county receives fewer than three proposals from construction managers, it may:

4.28 (1) proceed as described in paragraph (d);

4.29 (2) solicit new proposals;

4.30 (3) revise the request for qualifications and thereafter solicit new proposals using the
4.31 revised request for qualifications;

4.32 (4) select another allowed procurement method;

5.1 (5) proceed with a sole proposer if it determines the construction manager at risk
5.2 marketplace is limited and the benefit of issuing a new solicitation is not practicable; or

5.3 (6) reject all proposals.

5.4 (d) The selection committee shall review the qualifications of each proposer. If there is
5.5 more than one proposer, the selection committee shall create a short list of two to five
5.6 proposers.

5.7 (e) The county shall issue a request for proposals requiring cost and other information
5.8 as desired from the short-listed proposers.

5.9 (f) The selection committee shall conduct formal interviews with the short-listed proposers
5.10 but shall not disclose any proprietary or confidential information contained in one proposal
5.11 to another proposer, and shall rank the proposers by applying a scoring or trade-off evaluation
5.12 method. The scoring or trade-off evaluation method must be described in the request for
5.13 proposals.

5.14 Subd. 5. **Construction manager at risk contract.** (a) The county shall conduct contract
5.15 negotiations with the highest ranked proposer to reach agreement on the cost and terms of
5.16 the contract. If an agreement cannot be reached with the highest ranked proposer, the county
5.17 may begin negotiations with the next highest ranked proposer. The negotiation process will
5.18 continue until an agreement is reached with a proposer or the county rejects all proposals.

5.19 (b) The construction manager at risk shall competitively bid all trade contract work for
5.20 the project from a list of qualified firms. The list of qualified firms may be limited for one
5.21 or more types of trade contract work to qualified Small Business Enterprise and/or
5.22 Disadvantaged Business Enterprise (SBE/DBE) firms, subject to availability of qualified
5.23 SBE/DBE firms for the specific work. The list of qualified firms shall be based on an open,
5.24 competitive, and objective prequalification process in which the selection criteria, approved
5.25 by the county, may include but is not limited to the firm's experience as a constructor,
5.26 including capacity of key personnel, technical competence, capability to perform, past
5.27 performance of the firm and its employees, safety record and compliance with state and
5.28 federal law, availability to and familiarity with the project locale, SBE/DBE certification,
5.29 and other considerations as defined by the construction manager at risk and the county. The
5.30 construction manager at risk and the county shall jointly determine the composition of the
5.31 list of qualified firms. With the county's approval, upon request, the construction manager
5.32 at risk may also submit bids for trade contract work if the construction manager at risk does
5.33 not participate in the county's review of the bids or selection decision.

6.1 (c) The construction manager at risk and the county shall enter into a guaranteed
6.2 maximum price contract for the project.

6.3 Sec. 3. **REPEALER.**

6.4 Minnesota Statutes 2018, section 383B.143, subdivisions 2 and 3, are repealed.

383B.143 CONTRACTS FOR PURCHASES.

Subd. 2. **Installment purchases.** The board may enter into agreements for installment purchases or lease purchases of equipment for periods not to exceed seven years. Authority therefor shall not be delegated. When the agreements have been entered into, the board shall make annual appropriations sufficient to pay the annual amount due under the agreements.

Subd. 3. **Agreement duration.** Agreements, other than installment purchase agreements or lease purchases, may be entered into by the board for a duration not to exceed seven years where performance thereunder so requires.