

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 804

(SENATE AUTHORS: WIKLUND)

DATE	D-PG	OFFICIAL STATUS
02/28/2013	436	Introduction and first reading Referred to State and Local Government
03/13/2013		Comm report: To pass as amended and re-refer to Finance

1.1 A bill for an act
 1.2 relating to state government; changing provisions for procurement and solicitation
 1.3 process; amending Minnesota Statutes 2012, sections 13.591, subdivision 3;
 1.4 16C.02, subdivision 13; 16C.06, subdivision 2; 16C.08, subdivision 4; 16C.09;
 1.5 16C.10, subdivision 6; 16C.33, subdivision 3; 16C.34, subdivision 1.

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

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

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

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

2.1 process, the data remain public. If a resolicitation of bids does not occur within one year
 2.2 of the bid opening date, the remaining data become public.

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

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

2.22 Sec. 2. Minnesota Statutes 2012, section 16C.02, subdivision 13, is amended to read:

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

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

2.28 (2) has paid unemployment taxes or income taxes in this state during the 12 calendar
 2.29 months immediately preceding submission of the bid or proposal for which any preference
 2.30 is sought;

2.31 (3) has a business address in the state; and

2.32 (4) has affirmatively claimed that status in the bid or proposal submission.

2.33 Sec. 3. Minnesota Statutes 2012, section 16C.06, subdivision 2, is amended to read:

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

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

3.13 Sec. 4. Minnesota Statutes 2012, section 16C.08, subdivision 4, is amended to read:

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

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

3.21 (1) ~~be sorted by agency and by contractor;~~

3.22 (2) ~~show the aggregate value of contracts issued by each agency and issued to each~~
 3.23 ~~contractor;~~

3.24 (3) ~~distinguish between contracts that are being issued for the first time and contracts~~
 3.25 ~~that are being extended;~~

3.26 (4) ~~state the termination date of each contract;~~

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

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

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

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

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

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

4.7 (4) include a written performance evaluation of the work done under the contract.

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

4.12 **EFFECTIVE DATE.** This section is effective the day following certification
4.13 by the commissioner of management and budget that a new statewide accounting and
4.14 procurement system has been implemented.

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

4.16 **16C.09 PROCEDURE FOR SERVICE CONTRACTS.**

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

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

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

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

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

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

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

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

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

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

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

5.5 (c) This section does not apply to an agency's use of inmates pursuant to sections
5.6 241.20 to 241.23 or to an agency's use of persons required by a court to provide:

5.7 (1) community service; or

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

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

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

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

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

5.17 Sec. 7. Minnesota Statutes 2012, section 16C.33, subdivision 3, is amended to read:

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

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

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

5.32 (2) procedures for submitting qualifications or proposals, the criteria for evaluation
5.33 of qualifications or proposals and the relative weight for each criterion and subcriterion,

6.1 and the procedures for making awards according to the stated criteria and subcriteria,
6.2 including a reference to the requirements of this section;

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

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

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

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

6.9 (7) the requirements for insurance and statutorily required performance and payment
6.10 bonds;

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

6.15 (9) for a design-build design and price-based selection process, the request shall
6.16 also include the design criteria package, including the performance and technical
6.17 requirements for the project, and the functional and operational elements for the delivery
6.18 of the completed project. The request shall also contain a description of the drawings,
6.19 specifications, or other submittals to be included with the proposal, with guidance as to
6.20 the form and level of completeness of the drawings, specifications or submittals that will
6.21 be acceptable, and the stipend to be paid to the design-builders selected to submit the
6.22 above described information; and

6.23 (10) the criteria shall not impose unnecessary conditions beyond reasonable
6.24 requirements to ensure maximum participation of qualified design-builders. The criteria
6.25 shall not consider the collective bargaining status of the design-builder.

6.26 (c) Notice of requests for qualifications or proposals must be advertised in ~~the State~~
6.27 Register a manner designated by the commissioner.

6.28 Sec. 8. Minnesota Statutes 2012, section 16C.34, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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