

Presented to the governor March 20, 2002

Signed by the governor March 22, 2002, 2:03 p.m.

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### CHAPTER 254—S.F.No. 2971

*An act relating to state government; state procurement; codifying references relating to competitive bidding for building and construction contracts; amending Minnesota Statutes 2000, section 16C.25; proposing coding for new law in Minnesota Statutes, chapter 16C.*

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

Section 1. Minnesota Statutes 2000, section 16C.25, is amended to read:

#### 16C.25 BUILDING AND CONSTRUCTION CONTRACTS.

Notwithstanding any contrary law, the provisions of Minnesota Statutes 1996, section 16B.07, 16B.08, 16B.09, and all other laws applicable to competitive bidding for building and construction contracts on June 30, 1998, sections 16C.06 and 16C.10, sections 16C.26 to 16C.29, and other provisions of law not inconsistent with the provisions of sections 16C.26 to 16C.29 apply to building and construction contracts entered into on or after July August 1, 1998 2002.

#### Sec. 2. [16C.26] COMPETITIVE BIDS.

Subdivision 1. **APPLICATION.** Except as otherwise provided by sections 16C.26 and 16C.27, all contracts for building and construction or repairs must be based on competitive bids.

Subd. 2. **REQUIREMENT CONTRACTS.** Standard requirement price contracts for building and construction must be established by competitive bids as provided in subdivision 1. The standard requirement price contracts may contain escalation clauses and may provide for a negotiated price increase or decrease based upon a demonstrable industrywide or regional increase or decrease in the vendor's costs or for the addition of similar products or replacement items not significant to the total value of existing contracts. The term of these contracts may not exceed five years including all extensions.

Subd. 3. **PUBLICATION OF NOTICE; EXPENDITURES OVER \$15,000.** If the amount of an expenditure is estimated to exceed \$15,000, sealed bids must be solicited by public notice inserted at least once in a newspaper or trade journal not less than seven days before the final date of submitting bids. The commissioner shall designate the newspaper or trade journal for that publication and may designate different newspapers or journals according to the nature of the purchase or contract. The commissioner shall also solicit sealed bids by sending notices by mail to all prospective bidders known to the commissioner and by posting notice on a public

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bulletin board in the commissioner's office at least five days before the final date of submitting bids. All bids must be sealed when they are received and must be opened in public at the hour stated in the notice. All original bids and all documents pertaining to the award of a contract must be retained and made a part of a permanent file or record and remain open to public inspection.

**Subd. 4. BUILDING AND CONSTRUCTION CONTRACTS; \$15,000 OR LESS.** All contracts, the amount of which is estimated to be \$15,000 or less, may be made either upon competitive bids or in the open market, in the discretion of the commissioner. So far as practicable, however, they must be based on at least three competitive bids which must be permanently recorded.

**Subd. 5. STANDARD SPECIFICATIONS, SECURITY.** Contracts must be based on the standard specifications prescribed and enforced by the commissioner under this chapter, unless otherwise expressly provided. Each bidder for a contract must furnish security approved by the commissioner to ensure the making of the contract being bid for.

**Subd. 6. NONCOMPETITIVE BIDS.** Agencies are encouraged to contract with small targeted group businesses designated under section 16C.16 when entering into contracts that are not subject to competitive bidding procedures.

### **Sec. 3. [16C.27] BIDS NOT REQUIRED.**

**Subdivision 1. SINGLE SOURCE OF SUPPLY.** Competitive bidding is not required for contracts clearly and legitimately limited to a single source of supply, and the contract price may be best established by direct negotiation.

**Subd. 2. NEGOTIATED CONTRACTS.** In lieu of any of the other requirements of sections 16C.26 to 16C.28, the commissioner may negotiate a contract for public work to be performed at a state-owned institution or installation if the cost does not exceed \$15,000 and if the head of the affected state agency requests the commissioner to do so. The commissioner shall have prepared whatever plans and specifications for the public work deemed necessary by the commissioner to protect the public interest. Contractor's bonds or security pursuant to chapter 574 are not required for contracts entered into under this subdivision.

**Subd. 3. EMERGENCY PURCHASES.** In emergencies, the commissioner may, without calling for bids, contract directly for the repair, rehabilitation, and improvement of a state-owned structure or may authorize an agency to do so. An emergency for the purposes of this subdivision is an unforeseen occurrence or combination of circumstances which calls for immediate action in the public interest.

### **Sec. 4. [16C.28] CONTRACTS; AWARD.**

**Subdivision 1. LOWEST RESPONSIBLE BIDDER.** All state building and construction contracts entered into by or under the supervision of the commissioner or an agency for which competitive bids are required must be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract is intended, the status and capability of

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the vendor, and other considerations imposed in the call for bids. The commissioner may decide which is the lowest responsible bidder for all contracts and may use the principles of life cycle costing, where appropriate, in determining the lowest overall bid. The head of the interested agency shall make the decision, subject to the approval of the commissioner. Any or all bids may be rejected. In a case where competitive bids are required and where all bids are rejected, new bids, if solicited, must be called for as in the first instance, unless otherwise provided by law.

Subd. 2. ALTERATIONS AND ERASURES. A bid containing an alteration or erasure of any price contained in the bid which is used in determining the lowest responsible bid must be rejected unless the alteration or erasure is corrected under this subdivision. An alteration or erasure may be crossed out and the correction printed in ink or typewritten adjacent to it and initialed in ink by the person signing the bid.

Subd. 3. SPECIAL CIRCUMSTANCES. The commissioner may reject the bid of any bidder who has failed to perform a previous contract with the state. In the case of identical low bids from two or more bidders, the commissioner may use negotiated procurement methods with the tied low bidders for that particular transaction so long as the price paid does not exceed the low tied bid price. The commissioner may award contracts to more than one bidder in accordance with subdivision 1, if doing so does not decrease the service level or diminish the effect of competition.

Subd. 4. RECORD. A record must be kept of all bids, including names of bidders, amounts of bids, and each successful bid. This record is open to public inspection.

Subd. 5. PREFERENCES NOT CUMULATIVE. The preferences under sections 16B.121, 16C.06, subdivision 7, and 16C.16 apply, but are not cumulative. The total percentage of preference granted on a contract may not exceed the highest percentage of preference allowed for that contract under any one of those sections.

#### **Sec. 5. [16C.29] CONTRACT MANAGEMENT AND REVIEW.**

The commissioner must develop procedures to audit agency personnel to whom the commissioner has delegated contracting authority, in order to ensure compliance with laws and guidelines governing issuance of contracts, including laws and guidelines governing conflicts of interest.

#### **Sec. 6. EFFECTIVE DATE.**

This act is effective August 1, 2002.

Presented to the governor March 20, 2002

Signed by the governor March 22, 2002, 2:01 p.m.

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### **CHAPTER 255—S.F.No. 1072**

*An act relating to state government; designating the photograph "Grace" as the state photograph; proposing coding for new law in Minnesota Statutes, chapter 1.*

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