

CHAPTER 70—S.F.No. 1509

An act relating to Hennepin County; modifying design-build contract provisions; amending Minnesota Statutes 2006, sections 383B.158, subdivisions 1, 3, 4; 383B.1581, subdivisions 2, 3; 383B.1584; repealing Minnesota Statutes 2006, section 383B.1586.

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

Section 1. Minnesota Statutes 2006, section 383B.158, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** (a) In sections 383B.158 to ~~383B.1586~~ 383B.1585, the definitions in this subdivision apply.

(b) "Best value" describes a result intended in acquiring design-build services. Best value determination must include price and must measure a responder's qualifications, experience, prior performance, and responses to technical and qualitative criteria.

(c) "County board" means the Hennepin County Board of Commissioners.

(d) "~~Designer~~ Design-build selection committee panel" means the ~~designer selection committee~~ individuals appointed by the county to advise the county administrator and county board in preparing and conducting the design-build selection process. At least three members of the committee must be individuals who are not county employees, a minimum of two members must be professionally licensed under chapter 326, and at least one must be or must have been a commercial contractor. No committee member shall have personal financial interest in the project or with any of the design-build proposals.

(e) "Design-build contract" means a single contract between the county and a design-builder to furnish the architectural, engineering, and related design services as well as the labor, materials, supplies, equipment, and construction services for a project.

(f) "Design-build firm" means a proprietorship, partnership, limited liability partnership, joint venture, corporation, or any type of limited liability company, professional corporation, or any legal entity.

(g) "Design-builder" means the design-build firm that proposes to design and build a project governed by the procedures of this section.

(h) "Design professional" means a person who holds or employs individuals who hold a license under chapter 326 and who is required to be registered under Minnesota law.

(i) "Primary designer" means the designer who is to have primary design responsibility for a project, and does not include designers who are merely consulted by the county and do not have substantial design responsibility, or designers who will or may be employed or consulted by the primary designer.

~~(j)~~ (j) "Project" means an undertaking for the county to design, construct, erect, or remodel a building or facility, or to design, construct, or reconstruct a county road, bridge, or other infrastructure relating to a county roadway.

~~(j)~~ (k) "Proposal" means an offer by a design-builder to enter into a design-build contract for a project in response to a request for proposals, including a phase-one or phase-two proposal.

~~(k)~~ (l) "Request for proposals" or "RFP" means the document or publication through which the county solicits proposals from prequalified design-builders to design and construct a design-build project.

~~(k)~~ (m) "Request for qualifications" or "RFQ" means a document to prequalify and short-list potential design-builders for a project.

Sec. 2. Minnesota Statutes 2006, section 383B.158, subdivision 3, is amended to read:

Subd. 3. **Restriction.** ~~(a) The authority granted in sections 383B.158 to 383B.1586 shall be to evaluate the effectiveness of the design-build process for a county project. The number of design-build contracts awarded by the county board must not be more than ten percent of its total projects in any fiscal year.~~

(b) The board may not enter into a design-build contract under this section unless the county has as employees at least one of each of the following, each of whom must be licensed and registered under state law: an architect, a mechanical engineer, and a civil engineer. In addition, the county must employ a full-time project manager with at least five years of construction management experience.

Sec. 3. Minnesota Statutes 2006, section 383B.158, subdivision 4, is amended to read:

Subd. 4. **Procedures.** (a) The county board shall, by resolution, adopt implementation procedures consistent with this section for the award of design-build contracts.

(b) The implementation procedures must, at a minimum, govern:

(1) the establishment of a ~~designer~~ design-build selection ~~committee~~ panel appointed by the county to advise the county administrator and the county board in preparing and conducting the design-build selection process, including a recommendation for the selection of a design-build proposal it considers to be of best value to the public;

(2) preparing requests for proposals, including procedures for determining the appropriate content for each request for proposal;

(3) standards to be used to qualify or prequalify design-builders;

(4) preparing and submitting proposals;

(5) establishing procedures for evaluating proposals in as objective a manner as possible;

(6) establishing safeguards during the procurement process to preserve confidential information and proprietary information supplied by those submitting proposals in accordance with chapter 13, including, but not limited to, an offeror's price, technical solutions, innovative or unique technology, and innovative or unique use of commercially available items; and

(7) awarding and executing design-build contracts.

Sec. 4. Minnesota Statutes 2006, section 383B.1581, subdivision 2, is amended to read:

Subd. 2. **Contents.** The county, after considering recommendations from the ~~designer design-build~~ selection ~~committee panel~~, shall prepare or have prepared an RFQ. The RFQ must include the following:

(1) the minimum qualifications of design-builders necessary to meet the requirements for acceptance;

(2) a scope of work statement and schedule;

(3) documents defining the project requirements;

(4) the form of contract to be awarded;

(5) the weighted selection criteria for compiling a short list and the number of firms to be included in the short list, which must be at least ~~two~~ three but not more than five;

(6) a description of the request for proposals (RFP) requirements;

(7) the maximum time allowed for design and construction;

(8) the county board's estimated cost range of design and construction;

(9) requirements for construction experience, design experience, financial, personnel, and equipment resources available from potential design-builders for the project and experience in other design-build projects or similar projects, provided that these requirements may not unduly restrict competition; and

(10) the requirement that the primary designer be designated in the response to the RFQ; and

(11) a statement that "past performance" or "experience" does not include the exercise or assertion of a person's legal rights.

Sec. 5. Minnesota Statutes 2006, section 383B.1581, subdivision 3, is amended to read:

Subd. 3. **Evaluation.** (a) The county shall solicit and evaluate proposals and select a design-builder in two phases.

(b) In phase one, the county board, after considering the recommendations from the ~~designer design-build~~ selection ~~committee panel~~, shall adopt a short list of at least ~~two~~ three but no more than five of the most highly qualified firms in accordance with qualifications criteria described in the RFQ. Prior to adoption of the short list, the designer selection committee or the county board may require clarification from the design-builders to ensure conformance of proposals to the RFQ. The county must not consider cost-related or price-related evaluation factors in phase one.

(c) In phase two, the ~~designer design-build~~ selection ~~committee panel~~ and the county shall use the evaluation criteria in the RFP to determine the design-build proposal to be the most advantageous and the best value to the public. Prior to award of a contract, the ~~designer design-build~~ selection ~~committee panel~~ and, if necessary, the county board may require clarification from the design-builders to ensure conformance of proposals to the RFP.

Sec. 6. Minnesota Statutes 2006, section 383B.1584, is amended to read:

383B.1584 DESIGN-BUILD AWARD.

The county board, after considering the recommendations of the ~~designer~~ design-build selection committee panel, shall award the design-build contract to the proposer with the highest scored proposal based on the evaluation criteria in the RFP. The rationale for the selection of the proposal must be stated at the time of the contract award. The county board may reject any or all proposals, but must not do so to evade the other provisions and policies of this section. If the county board rejects all proposals, it may then solicit new proposals after making appropriate modifications to performance criteria, budget constraints, or qualifications.

Sec. 7. **REPEALER.**

Minnesota Statutes 2006, section 383B.1586, is repealed.

Presented to the governor May 11, 2007

Signed by the governor May 14, 2007, 5:07 p.m.