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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. **1333**

03/30/2011 Authored by Nelson

The bill was read for the first time and referred to the Committee on Transportation Policy and Finance

03/13/2012 Adoption of Report: Pass as Amended and re-referred to the Committee on Civil Law

1.1 A bill for an act
1.2 relating to transportation; contracts; providing for construction manager
1.3 contracting authority and related regulations; requiring a legislative report on
1.4 contracting; amending Minnesota Statutes 2010, section 13.72, by adding a
1.5 subdivision; proposing coding for new law in Minnesota Statutes, chapter 161.

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

1.7 Section 1. Minnesota Statutes 2010, section 13.72, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 17. **Construction manager/general contractor data.** (a) When the
1.10 Department of Transportation undertakes a construction manager/general contractor
1.11 contract, as defined and authorized in sections 161.3207 to 161.3209, the provisions
1.12 of this subdivision apply.

1.13 (b) When the commissioner of transportation solicits a request for qualifications:

1.14 (1) the following data are classified as protected nonpublic data:

1.15 (i) the statement of qualifications scoring evaluation manual; and

1.16 (ii) the statement of qualifications evaluations;

1.17 (2) the following data are classified as nonpublic data: the statement of qualifications
1.18 submitted by a potential construction manager/general contractor; and

1.19 (3) the following data are classified as private data on individuals: identifying
1.20 information concerning the members of the technical review committee.

1.21 (c) When the commissioner of transportation announces the short list of qualified
1.22 construction managers/general contractors, the following data become public:

1.23 (1) the statement of qualifications scoring evaluation manual; and

1.24 (2) the statement of qualifications evaluations.

1.25 (d) When the commissioner of transportation solicits a request for proposals:

2.1 (1) the following data are classified as protected nonpublic data: the proposal
2.2 scoring manual; and

2.3 (2) the following data are classified as nonpublic data:

2.4 (i) the proposals submitted by a potential construction manager/general contractor;
2.5 and

2.6 (ii) the proposal evaluations.

2.7 (e) When the commissioner of transportation has completed the ranking of proposals
2.8 and announces the selected construction manager/general contractor, the proposal
2.9 evaluation score or rank and proposal evaluations become public.

2.10 (f) When the commissioner of transportation conducts contract negotiations
2.11 with a construction manager/general contractor, government data created, collected,
2.12 stored, and maintained during those negotiations are nonpublic data until a construction
2.13 manager/general contractor contract is fully executed.

2.14 (g) When the construction manager/general contractor contract is fully executed or
2.15 when the commissioner of transportation decides to use another contract procurement
2.16 process other than construction manager/general contractor authority authorized under
2.17 section 161.3209, subdivision 3, paragraph (b), all remaining data not already made public
2.18 under this subdivision become public.

2.19 (h) If the commissioner of transportation rejects all responses to a request for
2.20 proposals before a construction manager/general contractor contract is fully executed,
2.21 all data other than that data made public under this subdivision retains its classification
2.22 until a resolicitation of the request for proposals results in a fully executed construction
2.23 manager/general contractor contract, or a determination is made to abandon the project. If
2.24 a resolicitation of proposals does not occur within one year of the announcement of the
2.25 request for proposals, the remaining data become public.

2.26 **EFFECTIVE DATE.** This section is effective the day following final enactment and
2.27 expires following the acceptance of ten construction manager/general contractor contracts.

2.28 **Sec. 2. [161.3207] CONSTRUCTION MANAGER/GENERAL CONTRACTOR;**
2.29 **DEFINITIONS.**

2.30 Subdivision 1. **Scope.** The terms used in sections 161.3207 to 161.3209 have the
2.31 meanings given them in this section.

2.32 Subd. 2. **Acceptance.** "Acceptance" means an action of the commissioner
2.33 authorizing the execution of a construction manager/general contractor contract.

2.34 Subd. 3. **Commissioner.** "Commissioner" means the commissioner of
2.35 transportation.

3.1 **Subd. 4. Construction manager/general contractor.** "Construction
3.2 manager/general contractor" means a proprietorship, partnership, limited liability
3.3 partnership, joint venture, corporation, any type of limited liability company, professional
3.4 corporation, or any legal entity selected by the commissioner to act as a construction
3.5 manager to manage the construction process, which includes, but is not limited to,
3.6 responsibility for the price, schedule, and execution of preconstruction services or the
3.7 workmanship of construction performed according to section 161.3209, or both.

3.8 **Subd. 5. Construction manager/general contractor contract.** "Construction
3.9 manager/general contractor contract" means a contract for construction of a project
3.10 between a construction manager/general contractor and the commissioner, which
3.11 must include terms providing for a price, construction schedule, and workmanship of
3.12 the construction performed. The construction manager/general contractor contract
3.13 may include provisions for incremental price contracts for specific work packages,
3.14 additional work performed, contingencies, or other contract provisions that will allow the
3.15 commissioner to negotiate time and cost changes to the contract.

3.16 **Subd. 6. Past performance; experience.** "Past performance" or "experience" does
3.17 not include the exercise or assertion of a person's legal rights.

3.18 **Subd. 7. Preconstruction services.** "Preconstruction services" means all
3.19 non-construction-related services that a construction manager/general contractor is
3.20 allowed to perform before execution of a construction manager/general contractor contract
3.21 or work package.

3.22 **Subd. 8. Preconstruction services contract.** "Preconstruction services contract"
3.23 means a contract under which a construction manager/general contractor is paid on the
3.24 basis of the actual cost to perform the work specified in the contract plus an amount for
3.25 overhead and profit for all preconstruction services.

3.26 **Subd. 9. Project.** "Project" means any project selected by the commissioner as a
3.27 construction manager/general contractor project under section 161.3208.

3.28 **Subd. 10. Request for proposals; RFP.** "Request for proposals" or "RFP" means
3.29 the document or publication soliciting proposals for a construction manager/general
3.30 contractor contract.

3.31 **Subd. 11. Request for qualifications; RFQ.** "Request for qualifications" or "RFQ"
3.32 means a document or publication used to prequalify and short-list potential construction
3.33 managers/general contractors.

3.34 **Subd. 12. Work package.** "Work package" means the scope of work for a defined
3.35 portion of a project. A defined portion includes construction services on any project
3.36 aspect, including procuring materials or services.

4.1 **EFFECTIVE DATE.** This section is effective the day following final enactment and
4.2 expires following the acceptance of ten construction manager/general contractor contracts.

4.3 **Sec. 3. [161.3208] CONSTRUCTION MANAGER/GENERAL CONTRACTOR;**
4.4 **AUTHORITY.**

4.5 Subdivision 1. **Selection authority; limitation.** Notwithstanding sections 16C.25,
4.6 161.32, and 161.321, or any other law to the contrary, the commissioner may select a
4.7 construction manager/general contractor as provided in section 161.3209, and award a
4.8 construction manager/general contractor contract. The number of awarded contracts
4.9 shall not exceed four in any calendar year.

4.10 Subd. 2. **Determination.** Final determination to use a construction manager/general
4.11 contractor contracting procedure may be made only by the commissioner.

4.12 Subd. 3. **Cancellation.** The solicitation of construction manager/general contractor
4.13 requests for qualifications or proposals does not obligate the commissioner to enter into a
4.14 construction manager/general contractor contract. The commissioner may accept or reject
4.15 any or all responses received as a result of the request. The solicitation of proposals may
4.16 be canceled at any time at the commissioner's sole discretion if cancellation is considered
4.17 to be in the state's best interest. If the commissioner rejects all responses or cancels the
4.18 solicitation for proposals, the commissioner may resolicit a request for proposals using the
4.19 same or different requirements.

4.20 Subd. 4. **Reporting.** The commissioner shall notify the chairs and ranking minority
4.21 members of the legislative committees with jurisdiction over transportation policy
4.22 and transportation finance each time the commissioner decides to use the construction
4.23 manager/general contractor method of procurement and explain why that method was
4.24 chosen.

4.25 **EFFECTIVE DATE.** This section is effective the day following final enactment and
4.26 expires following the acceptance of ten construction manager/general contractor contracts.

4.27 **Sec. 4. [161.3209] CONSTRUCTION MANAGER/GENERAL CONTRACTOR;**
4.28 **PROCEDURES.**

4.29 Subdivision 1. **Solicitation of proposals.** If the commissioner determines that
4.30 a construction manager/general contractor method of procurement is appropriate for
4.31 a project, the commissioner shall establish a two-phase procedure for awarding the
4.32 construction manager/general contractor contract, as described in subdivisions 2 and 3.

5.1 Subd. 2. Phase 1 - request for proposals. (a) The commissioner shall prepare
5.2 or have prepared an RFP for each construction manager/general contractor contract as
5.3 provided in this section. The RFP must contain, at a minimum, the following elements:

5.4 (1) the minimum qualifications of the construction manager/general contractor;

5.5 (2) the procedures for submitting proposals and the criteria for evaluation of
5.6 qualifications and the relative weight for each criteria;

5.7 (3) the form of the contract to be awarded;

5.8 (4) the scope of intended construction work;

5.9 (5) a listing of the types of preconstruction services that will be required;

5.10 (6) an anticipated schedule for commencing and completing the project;

5.11 (7) any applicable budget limits for the project;

5.12 (8) the requirements for insurance, statutorily required performance, and payment
5.13 bonds;

5.14 (9) the requirements that the construction manager/general contractor provide a
5.15 letter from a surety or insurance company stating that the construction manager/general
5.16 contractor is capable of obtaining a performance bond and payment bond covering the
5.17 estimated contract cost;

5.18 (10) the method for how construction manager/general contractor fees for the
5.19 preconstruction services contract will be negotiated;

5.20 (11) a statement that past performance or experience does not include the exercise
5.21 or assertion of a person's legal rights; and

5.22 (12) any other information desired by the commissioner.

5.23 (b) Before receiving any responses to the RFP:

5.24 (1) the commissioner shall appoint a technical review committee of at least five
5.25 individuals, of which one is a Department of Transportation manager who is also a
5.26 licensed professional engineer in Minnesota;

5.27 (2) the technical review committee shall evaluate the construction manager/general
5.28 contractor proposals according to criteria and subcriteria published in the RFP and
5.29 procedures established by the commissioner. The commissioner shall, as designated in
5.30 the RFP, evaluate construction manager/general contractor proposals on the basis of best
5.31 value as defined in section 16C.05, or using the qualifications-based selection process set
5.32 forth in section 16C.095, except that section 16C.095, subdivision 1, shall not apply. If
5.33 the commissioner does not receive at least two proposals from construction managers,
5.34 the commissioner may:

5.35 (i) solicit new proposals;

5.36 (ii) revise the RFP and thereafter solicit new proposals using the revised RFP;

6.1 (iii) select another allowed procurement method; or

6.2 (iv) reject the proposals; and

6.3 (3) the technical review committee shall evaluate the responses to the request for
6.4 proposals and rank the construction manager/general contractor based on the predefined
6.5 criteria set forth in the RFP in accordance with paragraph (a), clause (2).

6.6 (c) Unless all proposals are rejected, the commissioner shall conduct contract
6.7 negotiations for a preconstruction services contract with the construction manager/general
6.8 contractor with the highest ranking. If the construction manager/general contractor with
6.9 the highest ranking declines or is unable to reach an agreement, the commissioner may
6.10 begin contract negotiations with the next highest ranked construction manager/general
6.11 contractor.

6.12 (d) Before issuing the RFP, the commissioner may elect to issue a request for
6.13 qualifications (RFQ) and short-list the most highly qualified construction managers/general
6.14 contractors. The RFQ must include the procedures for submitting statements of
6.15 qualification, the criteria for evaluation of qualifications, and the relative weight for each
6.16 criterion. The statements of qualifications must be evaluated by the technical review
6.17 committee.

6.18 Subd. 3. Phase 2 - construction manager/general contractor contract. (a) Before
6.19 conducting any construction-related services, the commissioner shall:

6.20 (1) conduct an independent cost estimate for the project or each work package; and

6.21 (2) conduct contract negotiations with the construction manager/general contractor
6.22 to develop a construction manager/general contractor contract. This contract must include
6.23 a minimum construction manager/general contractor self-performing requirement of 30
6.24 percent of the negotiated cost. Items designated in the construction manager/general
6.25 contractor contract as specialty items may be subcontracted and the cost of any specialty
6.26 item performed under the subcontract will be deducted from the cost before computing the
6.27 amount of work required to be performed by the contractor.

6.28 (b) If the construction manager/general contractor and the commissioner are unable
6.29 to negotiate a contract, the commissioner may use other contract procurement processes or
6.30 may readvertise the construction manager/general contractor contract. The construction
6.31 manager/general contractor may bid or propose on the project if advertised under section
6.32 161.32 or 161.3206, or join a design-build team if advertised under sections 161.3410 to
6.33 161.3428.

6.34 (c) The commissioner shall provide to all bidders or design-build teams all data
6.35 shared between the commissioner and the construction manager/general contractor during
6.36 the contract negotiations under this subdivision.

7.1 **EFFECTIVE DATE.** This section is effective the day following final enactment and
7.2 expires following the acceptance of ten construction manager/general contractor contracts.

7.3 **Sec. 5. LEGISLATIVE REPORTS ON CONTRACTING.**

7.4 Subdivision 1. **Submission of reports.** The commissioner shall report on experience
7.5 with and evaluation of the construction manager/general contractor method of contracting
7.6 authorized in Minnesota Statutes, sections 161.3207 to 161.3209. The reports must be
7.7 submitted to the chairs and ranking minority members of the legislative committees with
7.8 jurisdiction over transportation policy or transportation finance and in compliance with
7.9 Minnesota Statutes, sections 3.195 and 3.197. An interim report must be submitted
7.10 no later than 12 months following the commissioner's acceptance of five construction
7.11 manager/general contractor contracts. A final report must be submitted no later than 12
7.12 months following the commissioner's acceptance of ten construction manager/general
7.13 contractor contracts.

7.14 Subd. 2. **Content of reports.** The reports must include: (1) a description of
7.15 circumstances of any projects as to which construction manager/general contractor
7.16 requests for qualifications or requests for proposals were solicited, followed by a
7.17 cancellation of the solicitation; (2) a description of projects as to which construction
7.18 manager/general contractor method was utilized; (3) a comparison of project cost
7.19 estimates with final project costs, if available; and (4) evaluation of the construction
7.20 manager/general contractor method of procurement with respect to implications for
7.21 project cost, use of innovative techniques, completion time, and obtaining maximum
7.22 value. The final report must also include recommendations as to continued use of the
7.23 program and desired modifications to the program, and recommended legislation to
7.24 continue, discontinue, or modify the program.

7.25 **EFFECTIVE DATE.** This section is effective the day following final enactment and
7.26 expires following the acceptance of ten construction manager/general contractor contracts.