

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-SEVENTH LEGISLATURE**      **S.F. No. 2090**

(SENATE AUTHORS: THOMPSON)

DATE	D-PG	OFFICIAL STATUS
02/27/2012	3957	Introduction and first reading Referred to State Government Innovation and Veterans
03/22/2012	4779	Comm report: To pass and re-referred to Finance
04/18/2012	5930	Comm report: To pass
	5937	Second reading
04/20/2012	5994	Special Order
	5994	Third reading Failed to pass

A bill for an act

1.1  
1.2 relating to state government; removing restrictions relating to outside contracts;  
1.3 amending Minnesota Statutes 2010, sections 16C.08, subdivision 2; 16C.09;  
1.4 136F.77, subdivision 3; repealing Minnesota Statutes 2010, sections 16C.085;  
1.5 43A.047; 179A.23.

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

1.7 Section 1. Minnesota Statutes 2010, section 16C.08, subdivision 2, is amended to read:

1.8 Subd. 2. **Duties of contracting agency.** (a) Before an agency may seek approval of  
1.9 a professional or technical services contract valued in excess of \$5,000, it must provide  
1.10 the following:

1.11 (1) a description of how the proposed contract or amendment is necessary and  
1.12 reasonable to advance the statutory mission of the agency;

1.13 (2) a description of the agency's plan to notify firms or individuals who may be  
1.14 available to perform the services called for in the solicitation;

1.15 (3) a description of the performance measures or other tools, including accessibility  
1.16 measures if applicable, that will be used to monitor and evaluate contract performance; and

1.17 (4) an explanation detailing, if applicable, why this procurement is being pursued  
1.18 unilaterally by the agency and not as an enterprise procurement.

1.19 (b) In addition to paragraph (a), the agency must certify that:

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

1.22 ~~(2)~~ (1) the normal competitive bidding mechanisms will not provide for adequate  
1.23 performance of the services;

1.24 ~~(3)~~ (2) reasonable efforts will be made to publicize the availability of the contract  
1.25 to the public;

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2.1 ~~(4)~~ (3) the agency will develop and implement a written plan providing for the  
2.2 assignment of specific agency personnel to manage the contract, including a monitoring  
2.3 and liaison function, the periodic review of interim reports or other indications of past  
2.4 performance, and the ultimate utilization of the final product of the services;

2.5 ~~(5)~~ (4) the agency will not allow the contractor to begin work before the contract is  
2.6 fully executed unless an exception under section 16C.05, subdivision 2a, has been granted  
2.7 by the commissioner and funds are fully encumbered; and

2.8 ~~(6)~~ (5) the contract will not establish an employment relationship between the state  
2.9 or the agency and any persons performing under the contract; and

2.10 ~~(7) in the event the results of the contract work will be carried out or continued by~~  
2.11 ~~state employees upon completion of the contract, the contractor is required to include~~  
2.12 ~~state employees in development and training, to the extent necessary to ensure that after~~  
2.13 ~~completion of the contract, state employees can perform any ongoing work related to the~~  
2.14 ~~same function; and~~

2.15 ~~(8) the agency will not contract out its previously eliminated jobs for four years~~  
2.16 ~~without first considering the same former employees who are on the seniority unit layoff~~  
2.17 ~~list who meet the minimum qualifications determined by the agency.~~

2.18 (c) A contract establishes an employment relationship for purposes of paragraph (b),  
2.19 clause ~~(6)~~ (5), if, under federal laws governing the distinction between an employee and  
2.20 an independent contractor, a person would be considered an employee.

2.21 Sec. 2. Minnesota Statutes 2010, section 16C.09, is amended to read:

2.22 **16C.09 PROCEDURE FOR SERVICE CONTRACTS.**

2.23 (a) Before entering into or approving a service contract, the commissioner must  
2.24 determine, at least, that:

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

2.27 ~~(2)~~ (1) the work to be performed under the contract is necessary to the agency's  
2.28 achievement of its statutory responsibilities and there is statutory authority to enter into  
2.29 the contract;

2.30 ~~(3)~~ (2) the contract will not establish an employment relationship between the state  
2.31 or the agency and any persons performing under the contract;

2.32 ~~(4)~~ (3) the contractor and agents are not employees of the state;

2.33 ~~(5)~~ (4) the contracting agency has specified a satisfactory method of evaluating and  
2.34 using the results of the work to be performed; and

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3.1 ~~(6)~~ (5) the combined contract and amendments will not exceed five years without  
3.2 specific, written approval by the commissioner according to established policy, procedures,  
3.3 and standards, or unless otherwise provided for by law. The term of the original contract  
3.4 must not exceed two years, unless the commissioner determines that a longer duration is  
3.5 in the best interest of the state.

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

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

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

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

3.12 ~~(e)~~ (b) This section does not apply to an agency's use of inmates pursuant to sections  
3.13 241.20 to 241.23 or to an agency's use of persons required by a court to provide:

3.14 (1) community service; or

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

3.17 Sec. 3. Minnesota Statutes 2010, section 136F.77, subdivision 3, is amended to read:

3.18 Subd. 3. **No abrogation.** Nothing in this section shall abrogate the ~~provisions of~~  
3.19 ~~sections 43A.047 and requirements of section~~ 136F.581.

3.20 Sec. 4. **REPEALER.**

3.21 Minnesota Statutes 2010, sections 16C.085; 43A.047; and 179A.23, are repealed.