

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	862a	Comm report: To pass as amended and re-refer to Finance See SF1589, Art. 3, Sec. 14, 16-25

1.1

A bill for an act

1.2

relating to state government; changing provisions for procurement and

1.3

solicitation process; changing provisions relating to the Office of Enterprise

1.4

Technology; establishing an E-Government Council; amending Minnesota

1.5

Statutes 2012, sections 13.591, subdivision 3; 16C.02, subdivision 13; 16C.06,

1.6

subdivision 2; 16C.08, subdivision 4; 16C.09; 16C.10, subdivision 6; 16C.145;

1.7

16C.33, subdivision 3; 16C.34, subdivision 1; 16E.07, subdivision 6, by adding

1.8

a subdivision; proposing coding for new law in Minnesota Statutes, chapters

1.9

16; 16E.

1.10

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

1.11

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

1.12

Subd. 3. **Business as vendor.** (a) Data submitted by a business to a government

1.13

entity in response to a request for bids as defined in section 16C.02, subdivision 11, are

1.14

private or nonpublic until ~~the bids are opened. Once the bids are opened, the time and date~~

1.15

specified in the solicitation that bids are due, at which time the name of the bidder and the

1.16

dollar amount specified in the response ~~are read and~~ become public. All other data in a

1.17

bidder's response to a bid are private or nonpublic data until completion of the selection

1.18

process. For purposes of this section, "completion of the selection process" means that

1.19

the government entity has completed its evaluation and has ranked the responses. After a

1.20

government entity has completed the selection process, all remaining data submitted by

1.21

all bidders are public with the exception of trade secret data as defined and classified in

1.22

section 13.37. A statement by a bidder that submitted data are copyrighted or otherwise

1.23

protected does not prevent public access to the data contained in the bid.

1.24

If all responses to a request for bids are rejected prior to completion of the selection

1.25

process, all data, other than ~~that made public at the bid opening~~ the name of the bidder

1.26

and the dollar amount specified in the response, remain private or nonpublic until a

resolicitation of bids results in completion of the selection process or a determination is made to abandon the purchase. If the rejection occurs after the completion of the selection process, the data remain public. If a resolicitation of bids does not occur within one year of the bid opening date, the remaining data become public.

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

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

Sec. 2. [16.0466] STATE AGENCY TECHNOLOGY PROJECTS.

Every state agency with an information or telecommunications project must consult with the Office of Enterprise Technology to determine what the IT cost of the project is, and transfer the IT cost portion to the Office of Enterprise Technology, unless the commissioner of the Office of Enterprise Technology determines that a transfer is not required.

Sec. 3. Minnesota Statutes 2012, section 16C.02, subdivision 13, is amended to read:

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

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

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

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

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

Sec. 4. Minnesota Statutes 2012, section 16C.06, subdivision 2, is amended to read:

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

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

Sec. 5. Minnesota Statutes 2012, section 16C.08, subdivision 4, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

4.13 (4) include a written performance evaluation of the work done under the contract.
4.14 The evaluation must include an appraisal of the contractor's timeliness, quality, cost, and
4.15 overall performance in meeting the terms and objectives of the contract. Contractors may
4.16 request copies of evaluations prepared under this subdivision and may respond in writing.
4.17 Contractor responses must be maintained with the contract file.

4.18 **EFFECTIVE DATE.** This section is effective the day following certification by the
4.19 commissioner of management and budget that the information required to be reported by
4.20 Minnesota Statutes 2012, section 16C.08, subdivision 4, is available to the public in the
4.21 statewide accounting and procurement system.

4.22 Sec. 6. Minnesota Statutes 2012, section 16C.09, is amended to read:

4.23 **16C.09 PROCEDURE FOR SERVICE CONTRACTS.**

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

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

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

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

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

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

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

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

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

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

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

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

(1) community service; or

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

Sec. 7. Minnesota Statutes 2012, section 16C.10, subdivision 6, is amended to read:

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

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

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

Sec. 8. Minnesota Statutes 2012, section 16C.145, is amended to read:

16C.145 NONVISUAL TECHNOLOGY ACCESS STANDARDS.

(a) The commissioner shall develop nonvisual technology access standards. The standards must be included in all contracts for the procurement of information technology by, or for the use of, agencies, political subdivisions, and the Minnesota State Colleges and Universities. The University of Minnesota is encouraged to consider similar standards.

(b) The nonvisual access standards must include the following minimum specifications:

(1) that effective, interactive control and use of the technology including the operating system, applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;

(2) that the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;

(3) that nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and

(4) that the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

(c) Nothing in this section requires the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

(d) Executive branch state agencies subject to section 16E.03, subdivision 9, are not required to include nonvisual technology access standards developed under this section in contracts for the procurement of information technology.

Sec. 9. Minnesota Statutes 2012, section 16C.33, subdivision 3, is amended to read:

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

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

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

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

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

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

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

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

(6) any applicable budget limits for the project;

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

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

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

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

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

Sec. 10. Minnesota Statutes 2012, section 16C.34, subdivision 1, is amended to read:

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

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

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

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

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

(3) the terms and conditions for the contract;

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

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

(6) any applicable budget limits for the project;

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

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

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

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

Sec. 11. Minnesota Statutes 2012, section 16E.07, subdivision 6, is amended to read:

Subd. 6. **Fees.** The office shall establish fees for technical and transaction services for government units through North Star. Fees must be credited to the North Star account. Except for the convenience fee under subdivision 12, the office may not charge a fee for viewing or inspecting data made available through North Star or linked facilities, unless specifically authorized by law.

EFFECTIVE DATE. This section is effective July 1, 2013.

9.1 Sec. 12. Minnesota Statutes 2012, section 16E.07, is amended by adding a subdivision
9.2 to read:

9.3 Subd. 12. **Private entity services; fee authority.** (a) The office may enter into a
9.4 contract with a private entity to manage, maintain, support, and expand North Star and
9.5 online government information services to citizens and businesses.

9.6 (b) A contract established under paragraph (a) may provide for compensation of the
9.7 private entity through a fee established under paragraph (c).

9.8 (c) The office may charge and may authorize a private entity that enters into a
9.9 contract under paragraph (a) to charge a convenience fee for users of North Star and
9.10 online government information services up to a total of \$2 per transaction. The office
9.11 shall consider the recommendation of the E-Government Advisory Council under section
9.12 16E.071 in setting the convenience fee. A fee established under this paragraph is in
9.13 addition to any fees or surcharges authorized under other law.

9.14 (d) Receipts from the convenience fee shall be deposited in the North Star account
9.15 established in subdivision 7. Notwithstanding section 16A.1285, subdivision 2, receipts
9.16 credited to the account are appropriated to the office for payment to the contracted private
9.17 entity under paragraph (a). In lieu of depositing the receipts in the North Star account, the
9.18 office can directly transfer the receipts to the private entity or allow the private entity to
9.19 retain the receipts pursuant to a contract established under this subdivision.

9.20 (e) The office shall report to the chairs and ranking minority members of the house
9.21 of representatives and senate committees with jurisdiction over state government finance
9.22 by January 15 of each odd-numbered year regarding the convenience fee receipts and
9.23 the status of North Star projects and online government information services developed
9.24 and supported by convenience fee receipts.

9.25 Sec. 13. **[16E.071] E-GOVERNMENT ADVISORY COUNCIL.**

9.26 Subdivision 1. **E-Government Advisory Council established.** The E-Government
9.27 Advisory Council is established for the purpose of improving online government
9.28 information services to citizens and businesses.

9.29 Subd. 2. **Membership.** The council shall consist of nine members as follows:

9.30 (1) the state chief information officer or the chief information officer's designee;

9.31 (2) one member appointed by the speaker of the house;

9.32 (3) one member appointed by the senate Subcommittee on Committees of the Rules
9.33 and Administration Committee; and

10.1 (4) six members appointed by the governor representing state executive branch
10.2 agencies that are actively involved with private businesses, the private business
10.3 community, or the public.

10.4 Subd. 3. **Initial appointments and first meeting.** Appointing authorities shall
10.5 make the first appointments to the council by September 1, 2013. The governor shall
10.6 designate three initial appointees to serve until the first Monday in January 2015. The term
10.7 of the other three appointees of the governor shall be until the first Monday in January
10.8 2017. The chief information officer or the chief information officer's designee shall
10.9 convene the council's first meeting by November 1, 2013, and shall act as chair until the
10.10 council elects a chair at its first meeting.

10.11 Subd. 4. **Terms; removal; vacancies; compensation.** Membership terms, removal
10.12 of member, and filling of vacancies are as provided in section 15.059, except that members
10.13 shall not receive compensation or be reimbursed for expenses and except for terms of
10.14 initial appointees as provided in subdivision 3.

10.15 Subd. 5. **Chair.** The council shall annually elect a chair from its members.

10.16 Subd. 6. **Duties.** The council shall recommend to the office the priority of North
10.17 Star projects and online government information services to be developed and supported
10.18 by convenience fee receipts. The council shall provide oversight on the convenience fee
10.19 and its receipts in the North Star account. The council shall by majority quorum vote to
10.20 recommend to approve or disapprove establishing the convenience fee on particular types
10.21 of transactions, the fee amount, and any changes in the fee amount. If the convenience fee
10.22 receipts are retained by or transferred to the private entity in lieu of deposit in the North
10.23 Star account, the council may audit the private entity's convenience fee receipts, expenses
10.24 paid by the receipts, and associated financial statements.

10.25 Subd. 7. **Staff.** The office shall provide administrative support to the council.

10.26 Subd. 8. **Sunset.** The council shall expire January 1, 2016.

10.27 Subd. 9. **Reports.** By June 1, 2014, and every year thereafter, the council shall
10.28 report to the office with its recommendations regarding establishing the convenience fee,
10.29 the fee amount, and changes to the fee amount.