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## State of Minnesota

## HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1943

02/25/2014 Authored by Mullery and Hornstein

The bill was read for the first time and referred to the Committee on Government Operations

03/10/2014 Adoption of Report: Amended and re-referred to the Committee on Commerce and Consumer Protection Finance and Policy

1.1 A bill for an act  
1.2 relating to state government; changing a provision for state procurement;  
1.3 amending Minnesota Statutes 2012, sections 16C.03, subdivision 3; 16C.28,  
1.4 subdivision 1.  
1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2012, section 16C.03, subdivision 3, is amended to read:

1.7 Subd. 3. **Acquisition authority.** The commissioner shall acquire all goods, services,  
1.8 and utilities needed by agencies. The commissioner shall acquire goods, services, and  
1.9 utilities by requests for bids, requests for proposals, reverse auctions as provided in  
1.10 section 16C.10, subdivision 7, or other methods provided by law, unless a section of law  
1.11 requires a particular method of acquisition to be used. The commissioner shall make all  
1.12 decisions regarding acquisition activities. The determination of the acquisition method  
1.13 and all decisions involved in the acquisition process, unless otherwise provided for by  
1.14 law, shall be based on best value which includes an evaluation of price and may include  
1.15 other considerations including, but not limited to, environmental considerations, quality,  
1.16 and vendor performance. A best value determination must be based on the evaluation  
1.17 criteria detailed in the solicitation document. If criteria other than price are used, the  
1.18 solicitation document must state the relative importance of price and other factors. Any  
1.19 or all responses may be rejected. When using the request for bid process, the bid must  
1.20 be awarded to the lowest responsive and responsible bidder, taking into consideration  
1.21 conformity with the specifications, terms of delivery, the purpose for which the contract  
1.22 or purchase is intended, the status and capability of the vendor, and other considerations  
1.23 imposed in the request for bids. When determining whether the lowest bidder is responsive  
1.24 and responsible, the commissioner must consider the quality and timeliness of the bidder's

past work and whether the bidder has not always complied with all laws, rules, and goals of the state, including but not limited to failure to pay employees all they are due and on time, including benefits, payroll tax, unemployment compensation, workers' compensation, payroll records, OSHA violations, taxes, prevailing wages, targeted group businesses and disadvantaged business enterprises, hiring of minority persons, women, and qualified disabled individuals, apprenticeship programs, causing work stoppages or causing delays or disturbances by failure to pay subcontractors on time, and laws relating to independent contractors. The commissioner shall keep records for five years showing the considerations made regarding the determination of whether the bidder is responsive and responsible, including why a bidder is awarded the bid if they have violations. The commissioner may decide which is the lowest responsible bidder for all purchases and may use the principles of life-cycle costing, where appropriate, in determining the lowest overall bid. The duties set forth in this subdivision are subject to delegation pursuant to this section.

Sec. 2. Minnesota Statutes 2012, section 16C.28, subdivision 1, is amended to read:

Subdivision 1. **Award requirements.** (a) All state building and construction contracts entered into by or under the supervision of the commissioner or an agency for which competitive bids or proposals are required may be awarded to either of the following:

(1) 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 the vendor or contractor, other considerations imposed in the call for bids, and, where appropriate, principles of life-cycle costing; or

(2) the vendor or contractor offering the best value, taking into account the specifications of the request for proposals, the price and performance criteria as set forth in section 16C.02, subdivision 4a, and described in the solicitation document.

(b) The vendor or contractor must secure bonding, commercial general insurance coverage, and workers' compensation insurance coverage under paragraph (a), clause (1) or (2). The commissioner shall determine whether to use the procurement process described in paragraph (a), clause (1), or the procurement process described in paragraph (a), clause (2), and paragraph (c). If the commissioner uses the method in paragraph (a), clause (2), and paragraph (c), the head of the agency shall determine which vendor or contractor offers the best value, subject to the approval of the commissioner. Any or all bids or proposals may be rejected.

(c) When using the procurement process described in subdivision 1, paragraph (a), clause (2), the solicitation document must state the relative weight of price and other selection criteria. The award must be made to the vendor or contractor offering the

best value applying the weighted selection criteria. If an interview of the vendor's or contractor's personnel is one of the selection criteria, the relative weight of the interview shall be stated in the solicitation document and applied accordingly.

(d) This paragraph applies when the commissioner is awarding a building and construction contract to the lowest responsible bidder or based on best value. When determining whether the lowest bidder is responsive and responsible, or when determining if a contractor or vendor offers the best value, the commissioner must consider: (1) the quality and timeliness of the bidder's past work; and (2) whether the bidder has not always complied with all laws, rules, and goals of the state, including but not limited to: (i) failure to pay employees all they are due and on time, including benefits, payroll tax, unemployment compensation, and workers' compensation; (ii) failure to comply with laws governing payroll records; OSHA violations; taxes; prevailing wages; targeted group businesses and disadvantaged business enterprises; employment of minority persons, women, and qualified disabled individuals; apprenticeship programs; and independent contractors; and (iii) causing work stoppages or causing delays or disturbances by failure to pay subcontractors on time. The commissioner shall keep records for five years showing the considerations made regarding the determination of whether the bidder is responsive and responsible, or what is the best value, including why a bidder is awarded the bid if they have violations.