

**SENATE**  
**STATE OF MINNESOTA**  
**EIGHTY-EIGHTH LEGISLATURE**

**S.F. No. 1351**

(SENATE AUTHORS: EATON)

DATE	D-PG	OFFICIAL STATUS
03/13/2013	971	Introduction and first reading Referred to State and Local Government
03/21/2013		Comm report: To pass as amended Second reading

1.1 A bill for an act  
 1.2 relating to Hennepin County; updating and making technical corrections to  
 1.3 county contract provisions; amending Minnesota Statutes 2012, sections  
 1.4 383B.158, subdivisions 1, 5; 383B.1581, subdivisions 2, 3; 383B.1582;  
 1.5 383B.1584; repealing Minnesota Statutes 2012, section 383B.1585.

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

1.7 Section 1. Minnesota Statutes 2012, section 383B.158, subdivision 1, is amended to  
 1.8 read:

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

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

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

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

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

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

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

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

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

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

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

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

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

2.24 Sec. 2. Minnesota Statutes 2012, section 383B.158, subdivision 5, is amended to read:

2.25 Subd. 5. **Licensing requirements.** (a) A design-builder ~~must be~~ shall employ, or  
2.26 have as a partner, member, officer, coventurer, or subcontractor, a person duly licensed  
2.27 and registered to provide the design services required to complete the project and do  
2.28 business in this state.

2.29 (b) A design-builder may enter into a contract with the county to provide professional  
2.30 or construction services that the design-builder is not licensed, registered, or qualified to  
2.31 perform, so long as the design-builder provides the services through subcontracts with  
2.32 licensed, registered, or otherwise qualified persons in accordance with this section.

2.33 (c) This section does not intend to limit or eliminate the responsibility or liability  
2.34 owed by a professional on a design-build project to the county or other parties under  
2.35 other law.

3.1 Sec. 3. Minnesota Statutes 2012, section 383B.1581, subdivision 2, is amended to read:

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

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

3.7 (2) a scope of work statement and schedule;

3.8 (3) documents defining the project requirements;

3.9 (4) the form of contract to be awarded;

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

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

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

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

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

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

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

3.23 Sec. 4. Minnesota Statutes 2012, section 383B.1581, subdivision 3, is amended to read:

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

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

3.33 (c) In phase two, the design-build selection panel ~~and the county~~ shall use  
3.34 the evaluation criteria in the RFP to determine the design-build proposal to be the  
3.35 most advantageous and the best value to the public. Prior to award of a contract, the

4.1 design-build selection panel ~~and, if necessary, the county board~~ may require clarification  
 4.2 from the design-builders to ensure conformance of proposals to the RFP.

4.3 Sec. 5. Minnesota Statutes 2012, section 383B.1582, is amended to read:

4.4 **383B.1582 RFP FOR DESIGN-BUILD.**

4.5 During phase two, the county shall issue an RFP to the design-builders on the short  
 4.6 list. The ~~request~~ RFP must include:

4.7 (1) the scope of work, including (i) performance and technical requirements, (ii)  
 4.8 conceptual design, (iii) minimum specifications, and (iv) functional and operational  
 4.9 elements for the delivery of the completed project, which must be prepared by a design  
 4.10 professional qualified to prepare the necessary documents;

4.11 (2) a description of the qualifications required of the design-builder;

4.12 (3) a description of the selection criteria, including the ~~weighting~~ weight or relative  
 4.13 order, or both, of each criterion;

4.14 (4) copies of the contract documents that the successful proposer will be expected to  
 4.15 sign;

4.16 (5) the maximum time allowable for design and construction;

4.17 (6) the county's estimated ~~range~~ of cost for design and construction;

4.18 (7) the requirement that a submitted proposal be segmented into two parts, a  
 4.19 technical proposal and a price proposal;

4.20 (8) the requirement that each proposal be in a separately sealed, clearly identified  
 4.21 package and include the date and time of the submittal deadline;

4.22 (9) the requirement that the technical proposal include a critical path method;<sub>2</sub>  
 4.23 bar schedule of the work to be performed, or similar schematic; design plans and  
 4.24 specifications; technical reports; calculations; permit requirements; applicable  
 4.25 development fees; and other data requested in the RFP;

4.26 (10) the requirement that the price proposal contain all design, construction,  
 4.27 engineering, inspection, and construction-related costs, and all other costs of any kind  
 4.28 of the proposed project;

4.29 (11) the date, time, and location of the public opening of the sealed price proposals;

4.30 (12) a statement that "past performance" or "experience" does not include the  
 4.31 exercise or assertion of a person's legal rights; and

4.32 (13) other information relevant to the project.

4.33 Sec. 6. Minnesota Statutes 2012, section 383B.1584, is amended to read:

4.34 **383B.1584 DESIGN-BUILD AWARD.**

5.1 Subdivision 1. Award; computation; announcement. ~~The county board, after~~  
5.2 ~~considering the recommendations of the design-build selection panel, shall award the~~  
5.3 ~~design-build contract to the proposer with the highest scored proposal based on the~~  
5.4 ~~evaluation criteria in the RFP. The rationale for the selection of the proposal must be stated~~  
5.5 ~~at the time of the contract award. The county board may reject any or all proposals, but~~  
5.6 ~~must not do so to evade the other provisions and policies of this section. If the county~~  
5.7 ~~board rejects all proposals, it may then solicit new proposals after making appropriate~~  
5.8 ~~modifications to performance criteria, budget constraints, or qualifications. Except as~~  
5.9 ~~provided in subdivision 2, a design-build contract shall be awarded as follows:~~

5.10 (a) The design-build selection panel shall score the technical proposals using the  
5.11 selection criteria in the request for proposals (RFP). The panel shall then submit a  
5.12 technical proposal score for each design-builder to the county board or its designee. The  
5.13 panel shall reject any proposal it deems nonresponsive.

5.14 (b) The county board or its designee shall announce the technical proposal score for  
5.15 each design-builder and shall publicly open the sealed price proposals and shall divide  
5.16 each design-builder's price by the technical score that the panel has given to it to obtain  
5.17 an adjusted score.

5.18 (c) If a time factor is included with the selection criteria in the RFP package, the  
5.19 county board or its designee may also adjust the bids using a value of the time factor  
5.20 established by the panel. The value of the time factor must be expressed as a value per  
5.21 day. The adjustment must be based on the total time value. The total time value is the  
5.22 design-builder's total number of days to complete the project multiplied by the factor. The  
5.23 time-adjusted price is the total time value plus the bid amount. This adjustment must be  
5.24 used for selection purposes only, and must not affect the county's liquidated damages  
5.25 schedule or incentive or disincentive program. An adjusted score must then be obtained  
5.26 by dividing each design-builder's time-adjusted price by the score given by the technical  
5.27 review team.

5.28 (d) Unless all proposals are rejected, the county board shall award the contract to  
5.29 the responsive and responsible design-builder with the lowest adjusted score. The county  
5.30 board shall reserve the right to reject all proposals.

5.31 Subd. 2. Alternative process for certain contracts. The county board may elect to  
5.32 use the process under this subdivision for a design-build contract for a project with an  
5.33 estimated project cost of less than \$5,000,000. The county board shall give the lowest  
5.34 cost proposal the full number of price points defined in the request for proposals (RFP).  
5.35 The county board shall award each of the other proposals a percentage of the price points  
5.36 based on a ratio of the lowest price divided by the responder's price. The county board

6.1 shall add the technical score and price score and award the contract to the responder  
6.2 with the highest total score.

6.3 Subd. 3. **Stipulated fee.** The county board shall award a stipulated fee of not less  
6.4 than two-tenths of one percent of the county's estimated cost of design and construction  
6.5 to each short-listed, responsible proposer who provides a responsive but unsuccessful  
6.6 proposal. When the request for proposals specifies a maximum price, the stipend shall  
6.7 be awarded if the proposal is responsive in all other aspects but comes in above the  
6.8 maximum price. If the county board does not award a contract, all short-listed proposers  
6.9 must receive the stipulated fee. If the county board cancels the contract before reviewing  
6.10 the technical proposals, the county board shall award each design-builder on the short list  
6.11 a stipulated fee of not less than two-tenths of one percent of the county's estimated cost of  
6.12 design and construction. The county board shall pay the stipulated fee to each proposer  
6.13 within 90 days after the award of the contract or the decision not to award a contract. In  
6.14 consideration for paying the stipulated fee, the county may use any ideas or information  
6.15 contained in the proposals in connection with any contract awarded for the project or in  
6.16 connection with a subsequent procurement, without any obligation to pay any additional  
6.17 compensation to the unsuccessful proposers. Notwithstanding the other provisions of this  
6.18 subdivision, an unsuccessful short-list proposer may elect to waive the stipulated fee. If  
6.19 an unsuccessful short-list proposer elects to waive the stipulated fee, the county may not  
6.20 use ideas and information contained in that proposer's proposal. Upon the request of  
6.21 the county, a proposer who waived a stipulated fee may withdraw the waiver, in which  
6.22 case the county shall pay the stipulated fee to the proposer and thereafter may use ideas  
6.23 and information in the proposer's proposal.

6.24 Subd. 4. **Low-bid design-build process.** (a) The county board may also use  
6.25 low-bid, design-build procedures to award a design-build contract where the scope of  
6.26 the work can be clearly defined.

6.27 (b) Low-bid design-build projects may require a request for qualifications (RFQ)  
6.28 and short-listing, and must require a request for proposals (RFP).

6.29 (c) Submitted proposals under this subdivision must include separately a technical  
6.30 proposal and a price proposal. The low-bid, design-build procedures must follow a  
6.31 two-step process for review of the responses to the RFP as follows:

6.32 (1) The first step is the review of the technical proposal by the design-build selection  
6.33 panel. The panel must open the technical proposal first and must determine if it complies  
6.34 with the requirements of the RFP and is responsive. The panel may not perform any  
6.35 ranking or scoring of the technical proposals.

7.1 (2) The second step is the determination of the low bidder based on the price  
7.2 proposal. The county board or its designee may not open the price proposal until the  
7.3 review of the technical proposal is complete.

7.4 (d) The contract award under low-bid, design-build procedures must be made to the  
7.5 proposer whose sealed bid is responsive to the technical requirements as determined by  
7.6 the panel and that is also the lowest bid.

7.7 (e) A stipulated fee may be paid for unsuccessful bids on low-bid, design-build  
7.8 projects only when the county board has required an RFQ and short-listed the most highly  
7.9 qualified responsive bidders.

7.10 Subd. 5. **Rejection of bids.** The county board may reject all bids under this section.

7.11 Subd. 6. **Reissue of request for proposals.** If the county board rejects all bids or does  
7.12 not execute the contract, the county board may reissue the request for proposals and allow  
7.13 only short-listed teams to resubmit proposals. The county board shall then pay a reasonable  
7.14 stipulated fee to each short-listed, responsible proposer who provides a responsive but  
7.15 unsuccessful proposal in response to the reissued request for proposals. When the reissued  
7.16 request for proposals specifies a maximum price, the stipend shall be awarded if the  
7.17 proposal is responsive in all other aspects but comes in above the maximum price.

7.18 Sec. 7. **REPEALER.**

7.19 Minnesota Statutes 2012, section 383B.1585, is repealed.

**383B.1585 STIPULATED FEE.**

The county board, depending on the project's complexity and scope and at the board's discretion for each project, may determine that a stipulated fee be paid to each short-listed responsible proposer who provides a responsive but unsuccessful proposal. If a stipulated fee is to be paid, it must be clearly identified in the RFQ or RFP. If the county board does not award a contract, all short-listed proposers must receive the stipulated fee. If the county board cancels the contract before reviewing the technical proposals, the county board shall award each design-builder on the short list a stipulated minimum fee as set out in the RFP. The county board shall pay the stipulated fee to each proposer within 90 days after the award of the contract or the decision not to award a contract. In consideration for paying the stipulated fee, the county board may use any ideas or information contained in the proposals in connection with any contract awarded for the project or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful proposers. Notwithstanding the other provisions of this subdivision, an unsuccessful short-list proposer may elect to waive the stipulated fee. If an unsuccessful short-list proposer elects to waive the stipulated fee, the county may not use ideas and information contained in that proposer's proposal. Upon the request of the county, a proposer who waived a stipulated fee may withdraw the waiver, in which case the county board shall pay the stipulated fee to the proposer and thereafter may use ideas and information in the proposer's proposal.