

Presented to the governor May 20, 2005

Signed by the governor May 24, 2005, 1:55 p.m.

CHAPTER 78—S.F.No. 1335

An act relating to state government; regulating state construction contracts; amending Minnesota Statutes 2004, sections 16B.31, subdivision 1; 16B.33, subdivision 1; 16C.26, subdivisions 3, 4; 16C.28, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 16C.

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

Section 1. Minnesota Statutes 2004, section 16B.31, subdivision 1, is amended to read:

Subdivision 1. **CONSTRUCTION PLANS AND SPECIFICATIONS; DESIGN-BUILD, CONSTRUCTION MANAGER AT RISK, OR JOB ORDER CONTRACTING.** (a) The commissioner shall (1) have plans and specifications prepared for the construction, alteration, or enlargement of all state buildings, structures, and other improvements except highways and bridges, and except for buildings and structures under the control of the Board of Regents of the University of Minnesota or of the Board of Trustees of the Minnesota State Colleges and Universities; (2) approve those plans and specifications; (3) advertise for bids and award all contracts in connection with the improvements; (4) supervise and inspect all work relating to the improvements; (5) approve all lawful changes in plans and specifications after the contract for an improvement is let; and (6) approve estimates for payment. This subdivision does not apply to the construction of the Zoological Gardens.

(b) MS 2002 (Expired)

(c) MS 2002 (Expired)

(b) Notwithstanding any other law to the contrary, the commissioner may:

(1) use a design-build method of project delivery and award a design-build contract as provided in sections 16C.32 and 16C.33;

(2) use a construction manager at risk method of project delivery and award a construction manager at risk contract on the basis of the selection criteria described in section 16C.34; or

(3) use a job order contracting contractor selection as described in section 16C.35.

(c) The commissioner may require a primary designer and a construction manager at risk, by contract, to cooperate in the design, planning and scheduling, and construction process. The contract must not make the primary designer or construction

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manager at risk a subcontractor or joint venture partner to the other or limit the primary designer's or construction manager at risk's independent obligations to the commissioner.

(d) For projects undertaken by the Minnesota State Colleges and Universities system, the powers and duties granted in paragraphs (b) and (c) may be exercised by its board of trustees.

(e) The commissioner, the board, the Board of Regents of the University of Minnesota, and the Board of Trustees of the Minnesota State Colleges and Universities shall create a panel of representatives, including representatives of the construction industry and the architecture and engineering professions, to evaluate the use of design-build and the procedures for design-builder selection under section 16C.31, and shall report to the legislature on or before January 1, 2004, as to the success of design-build as a method of construction and the need and desirability for any changes in the selection procedure.

Sec. 2. Minnesota Statutes 2004, section 16B.33, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** As used in this section, the following terms have the meanings given them:

(a) "Agency" has the meaning given in section 16B.01.

(b) "Architect" means an architect or landscape architect registered to practice under sections 326.02 to 326.15.

(c) "Board" means the state Designer Selection Board.

(d) "Design-build" means the process of entering into and managing a single contract between the commissioner and the design-builder in which the design-builder agrees to both design and construct a project as specified in the contract at a guaranteed maximum or a fixed price.

(e) "Design-builder" means a person who proposes to design and construct a project in accordance with the requirements of section 16C.33.

(f) "Designer" means an architect or engineer, or a partnership, association, or corporation comprised primarily of architects or engineers or of both architects and engineers.

(g) "Engineer" means an engineer registered to practice under sections 326.02 to 326.15.

(h) "Person" includes an individual, corporation, partnership, association, or any other legal entity.

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

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(h) (j) "Project" means an undertaking to construct, erect, or remodel a building by or for the state or an agency.

(i) (k) "User agency" means the agency undertaking a specific project. For projects undertaken by the state of Minnesota, "user agency" means the Department of Administration or a state agency with an appropriate delegation to act on behalf of the Department of Administration.

Sec. 3. Minnesota Statutes 2004, section 16C.26, subdivision 3, is amended to read:

Subd. 3. **PUBLICATION OF NOTICE; EXPENDITURES OVER \$15,000 \$25,000.** If the amount of an expenditure is estimated to exceed ~~\$15,000~~ \$25,000, sealed bids must be solicited by public notice inserted at least once in a newspaper or trade journal not less than seven days before the final date of submitting bids in a manner designated by the commissioner. The commissioner shall designate the newspaper or trade journal for that publication and may designate different newspapers or journals according to the nature of the purchase or contract. To the extent practical, this must include posting on a state Web site. For expenditures over \$50,000, the commissioner shall also solicit sealed bids by sending providing notices by mail to all prospective bidders known to the commissioner and by posting notice on a public bulletin board in the commissioner's office a state Web site at least five seven days before the final date of submitting bids. All bids over \$50,000 must be sealed when they are received and must be opened in public at the hour stated in the notice. All original bids and all documents pertaining to the award of a contract must be retained and made a part of a permanent file or record and remain open to public inspection.

Sec. 4. Minnesota Statutes 2004, section 16C.26, subdivision 4, is amended to read:

Subd. 4. **BUILDING AND CONSTRUCTION CONTRACTS; \$15,000 \$50,000 OR LESS.** All contracts, the amount of which is estimated to be ~~\$15,000 or less~~, may be made either upon competitive bids or in the open market, in the discretion of the commissioner. So far as practicable, however, they must be based on at least three competitive bids which must be permanently recorded. An informal bid may be used for building, construction, and repair contracts that are estimated at less than \$50,000. Informal bids must be authenticated by the bidder in a manner specified by the commissioner.

Sec. 5. Minnesota Statutes 2004, section 16C.28, subdivision 2, is amended to read:

Subd. 2. **ALTERATIONS AND ERASURES.** A bid containing an alteration or erasure of any price contained in the bid which is used in determining the lowest responsible bid must be rejected unless the alteration or erasure is corrected under this subdivision in a manner that is clear and authenticated by an authorized representative of the responder. An alteration or erasure may be crossed out and the correction printed in ink or typewritten adjacent to it and initialed in ink by the person signing the bid by an authorized representative of the responder.

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Sec. 6. [16C.32] DESIGN-BUILD, CONSTRUCTION MANAGER AT RISK, AND JOB ORDER CONTRACTING CONTRACTS.

Subdivision 1. **DEFINITIONS.** As used in sections 16C.32 to 16C.35, the following terms have the meanings given them, unless the context clearly indicates otherwise:

(1) “acceptance” means a formal resolution of the commissioner authorizing the execution of a design-build, construction manager at risk, or job order contracting contract;

(2) “agency” means any state officer, employee, board, commission, authority, department, or other agency of the executive branch of state government. Unless specifically indicated otherwise, as used in sections 16C.32 to 16C.35, agency also includes the Minnesota State Colleges and Universities;

(3) “architect” means an architect or landscape architect registered to practice under sections 326.02 to 326.15;

(4) “board” means the state Designer Selection Board, unless the estimated cost of the project is less than \$2,000,000, in which case the commissioner may act as the board;

(5) “Capitol Area Architectural and Planning Board” means the board established to govern the capitol area under chapter 15B;

(6) “commissioner” means the commissioner of administration or the Board of Trustees of the Minnesota State Colleges and Universities, whichever controls a project;

(7) “construction manager at risk” means a person who is selected by the commissioner to act as a construction manager to manage the construction process, which includes, but is not limited to, responsibility for the price, schedule, and workmanship of the construction performed in accordance with the procedures of section 16C.34;

(8) “construction manager at risk contract” means a contract for construction of a project between a construction manager at risk and the commissioner, which contract shall include a guaranteed maximum price, construction schedule, and workmanship of the construction performed;

(9) “design-build contract” means a contract between the commissioner and a design-builder to furnish the architectural, engineering, and related design services as well as the labor, materials, supplies, equipment, and construction services for a project;

(10) “design and price-based proposal” means the proposal to be submitted by a design-builder in the design and price-based selection process, as described in section 16C.33, which proposal meets the requirements of section 16C.33, subdivision 7, paragraph (c), in such detail as required in the request for proposals;

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(11) “design and price-based selection” means the selection of a design-builder as described in section 16C.33, subdivision 8;

(12) “design criteria package” means performance criteria prepared by a design criteria professional who shall be either an employee of the commissioner or shall be selected in compliance with section 16B.33, 16C.08, or 16C.095;

(13) “design criteria professional” means a person licensed under chapter 326, or a person who employs an individual or individuals licensed under chapter 326, required to design a project, and who is employed by or under contract to the commissioner to provide professional, architectural, or engineering services in connection with the preparation of the design criteria package;

(14) “guaranteed maximum price” means the maximum amount that a design-builder, construction manager at risk, or subcontractor will be paid pursuant to a contract to perform a defined scope of work;

(15) “guaranteed maximum price contract” means a contract under which a design-builder, construction manager, or subcontractor is paid on the basis of their actual cost to perform the work specified in the contract plus an amount for overhead and profit, the sum of which must not exceed the guaranteed maximum price set forth in the contract;

(16) “job order contracting” means a project delivery method that requests a limited number of bids from a list of qualified contractors, selected from a registry of qualified contractors who have been prescreened and who have entered into master contracts with the commissioner, as provided in section 16C.35;

(17) “past performance” or “experience” does not include the exercise or assertion of a person’s legal rights;

(18) “person” includes an individual, corporation, partnership, association, or any other legal entity;

(19) “project” means an undertaking to construct, alter, or enlarge a building, structure, or other improvements, except highways and bridges, by or for the state or an agency;

(20) “qualifications-based selection” means the selection of a design-builder as provided in section 16C.33;

(21) “request for qualifications” means the document or publication soliciting qualifications for a design-build, construction manager at risk, or job order contracting contract as provided in sections 16C.33 to 16C.35;

(22) “request for proposals” means the document or publication soliciting proposals for a design-build or construction manager at risk contract as provided in sections 16C.33 and 16C.34; and

(23) “trade contract work” means the furnishing of labor, materials, or equipment by contractors or vendors that are incorporated into the completed project or are major components of the means of construction. Work performed by trade contractors

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involves specific portions of the project, but not the entire project.

Subd. 2. AUTHORITY. (a) Subject to limitations in sections 16B.31, subdivision 1; 16B.33, subdivision 1; 16C.16; and 16C.32 to 16C.34, and notwithstanding any other law to the contrary, the commissioner may:

(1) solicit and award a design-build contract on the basis of either a qualifications based or a design and price-based selection process provided in section 16C.33 if the conditions in clause (4) are met;

(2) select a construction manager at risk as provided in section 16C.34, and award a guaranteed maximum price contract for a construction manager at risk if the conditions of clause (5) are met;

(3) select a contractor by a job order contracting delivery method as provided in section 16C.35;

(4) the commissioner may not utilize design-build contracts for more than five percent of its total projects let, by number, in each of the fiscal years 2006 and 2007, and ten percent of its total projects let, by number, in each fiscal year thereafter, that are funded in whole or in part with proceeds from the sale of state general obligation bonds; and

(5) the commissioner may not utilize construction manager at risk contracts for more than five percent of its total projects let, by number, in each of the fiscal years 2006 and 2007, and ten percent of its total projects let, by number, in each fiscal year thereafter, that are funded in whole or in part with proceeds from the sale of state general obligation bonds.

(b) Pursuant to section 16B.31, subdivision 4, if the project is within the Capitol area, the project shall comply with sections 15B.03, subdivision 3; 15B.08, subdivision 2; 15B.10; and 15B.15, subdivision 4.

(c) The commissioner shall, for each design-build or construction manager at risk contract, make a written determination, including specific findings, indicating whether use of the design-build or construction manager at risk procurement serves the public interest.

(d) The solicitation of requests for qualifications or proposals does not obligate the commissioner to enter into a design-build or construction manager at risk contract. In accordance with the stated criteria and subcriteria for evaluating qualifications or proposals, the commissioner may accept or reject any or all responses received as a result of the request. The solicitation for qualifications or proposals may be canceled at any time in the commissioner's sole discretion if it is considered to be in the public's best interest. If the commissioner rejects all responses or cancels the solicitation for proposals, the commissioner may resolicit a request for qualifications or proposals using the same or different requirements or request selection of a primary designer pursuant to section 16B.33, 16C.08, or 16C.095 and proceed with competitive bidding pursuant to sections 16C.25 to 16C.29.

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Subd. 3. REPORT TO THE LEGISLATURE. The commissioner shall report to the legislature by January 15, 2010, the number of projects and the total cost of those projects that were delivered under contracts authorized under subdivision 2 of this section.

Sec. 7. [16C.33] DESIGN-BUILD.

Subdivision 1. CONFLICT OF INTEREST. A board member may not participate in the review, discussion, or selection of a primary designer, a design-builder, or a firm in which the member has a financial interest.

Subd. 2. DESIGN BUILDER LICENSING REQUIREMENTS. (a) Each design-builder must be, employ, or have as a partner, member, coventurer, or subcontractor, persons or a firm with persons who are duly licensed and registered to provide the services required to complete the project and do business in this state.

(b) A design-builder may contract with the commissioner to provide professional or construction services for which the design-builder is not itself licensed, registered, or qualified to perform, so long as the design-builder provides such services through subcontracts with duly licensed, registered, or otherwise qualified persons in accordance with this section.

(c) Nothing in this section or section 16C.32 is intended to limit or eliminate the responsibility or liability owed by an architect or engineer on a design-build project to the commissioner and third parties under existing law. The design service portion of a design-build contract is considered a service and not a product.

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 3a. 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;

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(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.

Subd. 4. UNIVERSITY OF MINNESOTA PROJECTS. (a) The University of Minnesota may elect to use the design-build method of project delivery for projects involving construction or major remodeling, as defined in section 16B.335, subdivision 1, with an estimated cost greater than \$2,000,000, in which case the University of Minnesota shall submit a written request for a design-builder to the commissioner of administration, who shall forward the request to the board, as provided in subdivision 3. For design-build projects undertaken by the University of Minnesota under this subdivision, the Board of Regents shall exercise the powers and duties of the commissioner granted in subdivisions 5, 6, 7, and 8.

(b) When the University of Minnesota undertakes any other project involving construction, renovation, repair, replacement, or rehabilitation, the Board of Regents may, in addition to any other method of project delivery available to the University of Minnesota, submit a written request for a design-builder to the commissioner of administration, who shall forward the request to the board, as provided in subdivision 3.

(c) For projects for which the University of Minnesota requests a design-builder, the University of Minnesota may use either the design-build qualification-based

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selection process under subdivision 5 or the design-build design and price-based selection process under subdivision 7. The board shall score proposals in accordance with subdivision 5 or 7, as applicable, and narrow the selection to the two highest scoring proposers for recommendation to the Board of Regents. The Board of Regents shall make the final selection and shall notify the board of the selection. Meeting records or written evaluations that document the final selection are public records.

(d) The University of Minnesota may not utilize design-build contracts for more than five percent of its total projects let, by number, in each of the fiscal years 2006 and 2007, and ten percent of its total projects let, by number, in each fiscal year thereafter, that are funded in whole or in part with proceeds from the sale of state general obligation bonds.

Subd. 5. DESIGN-BUILD QUALIFICATION-BASED SELECTION PROCESS. In a design-build qualification-based selection process, the following shall apply:

(a)(1) the commissioner shall establish procedures for determining the appropriate content of each request for qualifications, the weighted criteria and subcriteria to be used to evaluate the design-builders, and the procedures for evaluating qualifications in an open, competitive, and objective manner; (2) the criteria and subcriteria shall include, but are not limited to, the proposer's experience as a constructor or primary designer, including capacity of key personnel, technical competence and capability to perform, the past performance of the proposer and its employees, its safety record and compliance with state and federal law, and availability to and familiarity with the project locale; (3) the commissioner may include in the request for qualifications criteria a requirement that the proposer include the overhead and fee that the design-builder proposes to charge for its construction services; and (4) the commissioner shall issue a request for qualifications that includes the information as described in subdivision 3.

(b) After obtaining and evaluating qualifications from each design-builder, in accordance with the weighted criteria and subcriteria and procedures set forth in the request for qualifications, the board shall select a short list of at least three and no more than five proposals. The board must receive at least three proposals from design-builders or the commissioner shall either:

(1) solicit new proposals;

(2) revise the request for qualifications and thereafter solicit new proposals using the revised request for qualifications; or

(3) request selection of a primary designer pursuant to section 16B.33, 16C.08, or 16C.095 and proceed with competitive bidding pursuant to sections 16C.25 to 16C.29.

(c) The board shall conduct formal interviews with the short list of proposers, but shall not disclose any proprietary or confidential information contained in one proposal to another proposer.

(d) The board shall select the design-builder that scores the highest on the evaluation criteria and subcriteria. The commissioner shall make the award to the

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design-builder who scores the highest score pursuant to the weighted criteria and subcriteria as determined by the board, unless the commissioner rejects all proposals or proceeds pursuant to paragraphs (f) and (g). In the case of the Minnesota State Colleges and Universities, the board shall narrow the selection to the two design-builders that score the highest on the evaluation criteria and subcriteria for recommendation to the respective commissioner, and the commissioner shall make the final selection and shall notify the board of the selection.

(e) The commissioner shall conduct fee and contract negotiations with the selected design-builder and shall enter into the contract consistent with subdivision 6.

(f) If the selected design-builder declines the appointment or is unable to reach agreement with the commissioner on the terms of the contract, the commissioner may, within 60 days after the first selection, request the board to make another selection.

(g) If the board fails to make a selection and forward its recommendation to the commissioner within 60 days of the request for a second selection, the commissioner may appoint a design-builder without the recommendation of the board.

(h) If a project for which a design-builder has been selected by the board becomes inactive, lapses, or changes as the result of a project phasing, insufficient appropriations, or other reasons, the commissioner may, if the project is reactivated, retain the same design-builder to complete the project.

Subd. 6. DESIGN-BUILD QUALIFICATIONS-BASED ACCEPTANCE BY COMMISSIONER. The contract between the commissioner and the design-builder selected under subdivision 5 shall require the following:

(a) The design-builder shall develop design documents of the project for review and approval by the commissioner prior to project bidding.

(b) The design-builder shall competitively bid all trade contract work for the project from a list of qualified firms, subject to availability of such qualified firms for the specific work. The list of qualified firms shall be based upon an open, competitive, and objective prequalification process in which the selection criteria includes, in addition to the proposed price, the firm's experience as a constructor or primary designer, including capacity of key personnel, technical competence, capability to perform, the past performance of the firm and its employees, including its safety record and compliance with state and federal law, availability to and familiarity with the project locale, and other considerations as defined by the design-builder and the commissioner. The design-builder and the commissioner shall jointly determine the composition of the list of qualified firms. The criteria shall not impose unnecessary conditions beyond reasonable requirements to ensure maximum participation of qualified contractors.

(c) With the approval of the commissioner, the design-builder may name either or both a mechanical and electrical subcontractor or subcontractors as a named member of the design-builder's team, and if either or both a mechanical and electrical subcontractor or subcontractors is so named, the design-builder is not required to competitively bid the mechanical or electrical trade contract work. A named mechani-

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cal or electrical subcontractor member of a design-builder's team shall competitively bid all subcontracted portions of the mechanical or electrical subcontractor's work from a list of qualified firms. Such qualified firms shall be determined as described in paragraph (b). The commissioner and the design-builder shall agree to a list of labor, materials, and equipment that shall be competitively bid.

(d) With the commissioner's approval or request, team members of the design-builder, including the design-builder, may also submit bids for trade contract work.

(e) Either or both the mechanical or electrical subcontractor or subcontractors who are named subcontractor members of the design-builder's team shall enter into guaranteed maximum price contracts with the design-builder.

(f) The design-builder and the commissioner shall enter into a guaranteed maximum price contract.

Subd. 7. DESIGN-BUILD DESIGN AND PRICE-BASED PROPOSALS. (a)
In a design and price-based selection process the following shall apply:

(1) selection must be based on best value, which includes an evaluation of price and design, and may include other criteria including, but not limited to, the proposer's experience as a constructor or primary designer;

(2) the commissioner shall establish procedures for determining the appropriate content of each request for qualifications, and the weighted criteria and subcriteria to be used to evaluate the design-builders including, but not limited to, the proposer's experience as a constructor or primary designer, including capacity of key personnel, technical competence, capability to perform and the past performance of the proposer and its employees, its safety record and compliance with state and federal law, quality and past performance, and the procedures for evaluating qualifications in an open, competitive, and objective manner; and

(3) the commissioner shall issue a request for qualifications that includes the information as described in subdivision 3.

(b) After obtaining and evaluating qualifications from each design-builder, in accordance with the weighted criteria and subcriteria and procedures set forth in the request for qualifications, the board shall select a short list of three proposers. The board must receive at least three proposals from design-builders or the commissioner shall either:

(1) solicit new proposals;

(2) revise the request for qualifications and thereafter solicit new proposals using the revised request for qualifications; or

(3) request selection of a primary designer pursuant to section 16B.33, 16C.08, or 16C.095 and proceed with competitive bidding pursuant to sections 16C.25 to 16C.29.

(c) The commissioner shall issue a request for proposals to the selected design-builders. The submitted proposals shall consist of, at a minimum, the following elements:

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(1) preliminary plans and specifications and other information in sufficient detail to describe the character, quality, and scope of the project;

(2) a design and construction critical path schedule;

(3) the price at which the design-builder will complete all design and construction requested in the proposal for the project if selected; and

(4) other materials the board determines are necessary to fix the design, schedule, and cost of the project.

(d) Proposals must be sealed and may not be opened until the expiration of the time established for making proposals as set forth in the request for proposals.

(e) Proposals must identify the primary designer and the primary construction contracting entity that are members of the design-builders team.

(f) The amount and type of design services requested by the board shall not be exceeded by those submitting proposals. Proposals exceeding the amount and type of design services requested by the board may be rejected by the board. Unless compensated in excess of the minimum stipend for their effort, design-builders must not be required to submit detailed architectural or engineering design or construction documents as part of the proposal.

(g) Except as described in paragraph (h), the commissioner shall award to each design-builder that submits a responsive design-build proposal under this subdivision, a stipend in an amount of not less than 0.3 percent of the commissioner's estimated cost of design and construction. If the request for proposals requires extensive design services beyond preliminary plans and specifications as requested as part of the proposal, the stipend shall be adjusted to an amount commensurate with the amount of design services requested for each proposal.

(h) No stipend shall be awarded to the design-builder selected to complete the project.

(i) For projects where the design-builder accepts the stipend offered by the board, the commissioner shall be deemed the owner of the design, subject to the rights of the proposer to such design for publication and use in other projects. However, the use of the design in its totality, or near totality, by the commissioner is prohibited.

(j) The commissioner may require each design-builder to submit with its proposal a cash deposit, letter of credit in a form acceptable to the commissioner, or bid bond not to exceed five percent of the maximum cost of the design-builder's proposal. If the proposal is accepted but the design-builder fails, without good cause to execute the design-build contract, the deposit or bond is forfeited in an amount not to exceed the difference between the proposal in question and the next highest proposal.

Subd. 8. DESIGN-BUILD DESIGN AND PRICE-BASED SELECTION PROCESS. (a) The board shall review submissions as described in subdivision 7; conduct formal interviews with all three proposers but not allow the disclosure of any price, proprietary, or confidential information contained in one proposal to another

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proposer; and select the proposal that scores the highest based on the weighted evaluation criteria and subcriteria, except for projects under the control of Minnesota State Colleges and Universities. The commissioner shall make the award to the design-builder who scores the highest score pursuant to the weighted criteria and subcriteria as determined by the board, unless the commissioner rejects all proposals or proceeds pursuant to paragraph (c) or (d). For Minnesota State Colleges and Universities projects, the board shall narrow the selection to the two highest scoring proposers for recommendation to the commissioner, and the commissioner shall review the submissions as described in subdivision 7; conduct formal interviews with both proposers recommended by the board, but not allow the disclosure of any price, proprietary, or confidential information contained in one proposal to another proposer; and select the proposal that scores the highest based on the commissioner's application of the weighted evaluation criteria and subcriteria; and shall notify the board of the selection.

(b) After a proposal is accepted, the commissioner is deemed the owner of the design, subject to the rights of the proposer to such design for publication and use in other projects.

(c) After a proposal is accepted, the commissioner and the design-builder shall enter into a fixed-price contract.

(d) If the design-builder selected for a project declines the appointment or is unable to reach agreement with the commissioner concerning the terms of the contract, the commissioner may, within 60 days after the first selection, request the board to make another selection.

(e) If the design-builder selected for a project, prior to executing a design-build contract, replaces either the primary designer or the primary construction contracting entity, the commissioner shall notify the board of the replacement and request the board to either approve the new design-builder or to select another design-builder.

(f) If the board fails to make a second selection as described in paragraph (d) or (e) and forward its recommendation to the commissioner within 60 days of the commissioner's request for a second selection, the commissioner may appoint a design-builder to the project without the recommendation of the board.

Sec. 8. [16C.34] CONSTRUCTION MANAGER AT RISK.

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

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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.

Subd. 2. CONSTRUCTION MANAGER AT RISK SELECTION PROCESS.

In a construction manager at risk selection process, the following shall apply:

(a)(i) Upon receipt of a written request from a user agency for a construction manager at risk for its project, the commissioner shall create a selection committee composed of a minimum of three persons, at least one of whom has construction industry expertise; (ii) the selection committee shall establish procedures for determining the appropriate content of each request for qualifications, the weighted criteria and subcriteria to be used to score the proposals of the construction managers at risk, and shall establish procedures for evaluating qualifications in an open, competitive, and objective manner; and (iii) the commissioner shall issue a request for qualifications that includes the information as described in subdivision 1.

(b) In accordance with the criteria and procedures set forth in the request for qualifications, the selection committee shall evaluate the construction manager at risk's

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experience as a constructor, including, but not limited to, capacity of key personnel, technical competence, capability to perform, the past performance of the construction manager at risk and its employees, its safety record and compliance with state and federal law, availability to and familiarity with the project locale, and other appropriate facts submitted by the construction manager at risk in response to the request for qualifications. The commissioner must receive at least three proposals from construction managers or the commissioner may either (i) solicit new proposals; (ii) request the selection committee to revise the request for qualifications and thereafter solicit new proposals using the revised request for qualifications; (iii) select another allowed procurement method; or (iv) reject all proposals.

(c)(i) The selection committee shall review the proposers' qualifications and create a short list of three to five proposals of construction managers at risk; (ii) the commissioner shall issue a request for proposal requiring fee and expense proposals and other information as desired from the short-listed construction managers at risk; (iii) the selection committee shall conduct formal interviews with the short-listed construction managers at risk but shall not disclose any proprietary or confidential information contained in one proposal to another proposer; (iv) the selection committee shall recommend the construction manager at risk achieving the highest score on the evaluation criteria as described in subdivision 1, paragraph (b).

(d) The board shall select the primary designer as described in section 16B.33 or in the case of the commissioner, section 16C.08 or 16C.095.

Subd. 3. CONSTRUCTION MANAGER AT RISK CONTRACT. (a) The commissioner shall conduct contract negotiations with the recommended construction manager at risk.

(b) If the construction manager at risk selected for the project declines the appointment or is unable to reach agreement with the commissioner concerning the fee or terms of the contract, the commissioner shall, within 60 days after the first selection, request the selection committee to make another recommendation.

(c) If the selection committee fails to make a second recommendation and forward it to the commissioner within 60 days of the commissioner's request for a second recommendation, the commissioner may select a construction manager at risk without the recommendation of the selection committee.

(d) The primary designer selected by the board shall develop various design documents for review and approval by the commissioner.

(e) The construction manager at risk shall competitively bid all trade contract work for the project from a list of qualified firms, subject to availability of such qualified firms for the specific work. The list of qualified firms shall be based upon an open, competitive, and objective prequalification process in which the selection criteria includes the firm's experience as a constructor, including capacity of key personnel, technical competence, capability to perform, the past performance of the firm and its employees, including its safety record and compliance with state and federal law, availability to and familiarity with the project locale, and other considerations as

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defined by the construction manager at risk and the commissioner. The construction manager at risk and the commissioner shall jointly determine the composition of the list of qualified firms. The criteria shall not impose unnecessary conditions beyond reasonable requirements to ensure maximum participation of qualified contractors. With the commissioner's approval or request, the construction manager at risk may also submit bids for trade contract work.

(f) The construction manager at risk and the commissioner shall enter into a guaranteed maximum price contract for the project.

Sec. 9. **[16C.35] JOB ORDER CONTRACTING.**

Subdivision 1. **AUTHORITY.** The commissioner may undertake construction utilizing job order contracting for projects that do not exceed a construction cost of \$250,000.

Subd. 2. **JOB ORDER CONTRACTING REQUEST FOR QUALIFICATIONS.** (a) The commissioner is authorized to issue a request for qualifications that includes the criteria that will be used for the projects, provided that these criteria do not unduly restrict competition, nor impose conditions beyond reasonable requirements to ensure maximum participation of all qualified contractors, and does not relate to the collective bargaining status of the contractor.

(b) The request for qualifications must be publicized in a manner designated by the commissioner that ensures open and unrestricted access for any potential responder. To the extent practical, this must include posting on a state Web site. To the extent practical, the commissioner must give notice to representatives of targeted group businesses designated under section 16C.16.

Subd. 3. **QUALIFIED CONTRACTORS.** (a) The commissioner shall review the responses to the request for qualifications and determine responder's ability to enter into the master contract that will be utilized for the projects. The commissioner shall establish a list of qualified contractors based on the proposers' ability to enter into a master contract as described in the request for qualifications.

(b) The commissioner shall enter into master contracts with all qualified contractors.

(c) The commissioner shall establish procedures to allow firms to submit qualifications at least annually to allow placement on the list of contractors qualified to enter into a master contract.

Subd. 4. **CONSTRUCTION SERVICES BIDDING.** The commissioner shall request bids for construction services for any project using job order contracting from qualified contractors as follows:

(1) for construction projects up to a maximum cost of \$50,000, the commissioner shall request a minimum of two bids;

(2) for construction projects with a cost greater than \$50,000 but less than or equal to \$100,000 the commissioner shall request a minimum of three bids;

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(3) for construction projects with a cost greater than \$100,000 but less than or equal to \$250,000, the commissioner shall request a minimum of four bids.

Subd. 5. QUALIFIED CONTRACTOR SELECTION. The commissioner shall select the contractor who submits the lowest price bid for the construction services proposed.

Subd. 6. REASONABLE DISTRIBUTION OF BID REQUESTS AMONG QUALIFIED CONTRACTORS. The commissioner in requesting bidding for projects using job order contracting as described in this section shall develop a system to ensure a reasonable opportunity for all qualified contractors to bid on construction services on a periodic basis.

Sec. 10. EFFECTIVE DATE.

Sections 1 to 9 are effective the day following final enactment.

Presented to the governor May 20, 2005

Signed by the governor May 24, 2005, 1:17 p.m.

CHAPTER 79—S.F.No. 1509

An act relating to housing; providing certain manufactured home park exclusions; amending Minnesota Statutes 2004, section 327.23, by adding a subdivision.

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

Section 1. Minnesota Statutes 2004, section 327.23, is amended by adding a subdivision to read:

Subd. 2a. SEASONAL AGRICULTURAL OPERATIONS. The term "manufactured home park" shall not be construed to include up to four manufactured homes maintained by an individual or a company on premises associated with a seasonal agricultural operation, in an area zoned agricultural, and used exclusively to house individuals or families performing labor as defined in section 3121(g) of the Internal Revenue Code if:

(1) the manufactured homes are equipped with indoor plumbing facilities and meet the standards for water and sanitation established in Minnesota Rules, parts 4630.0600, subpart 1; 4630.0700; 4630.1200; 4630.3500; and 4715.0310;

(2) each manufactured home provides at least 80 square feet of indoor living space for each of its inhabitants;

(3) the manufactured homes and their installation comply with section 327.34, subdivision 1, and Minnesota Rules, chapter 1350;

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