

CHAPTER 254—S.F.No. 1597

An act relating to veterans; modifying certain Department of Transportation contracting requirements; authorizing counties to provide a bid preference for awarding contracts to veteran-owned small businesses; amending Minnesota Statutes 2010, section 161.321; proposing coding for new law in Minnesota Statutes, chapter 375.

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

ARTICLE 1

DEPARTMENT OF TRANSPORTATION CONTRACTING

Section 1. Minnesota Statutes 2010, section 161.321, is amended to read:

161.321 SMALL BUSINESS CONTRACTS.

Subdivision 1. **Definitions.** For purposes of this section the following terms have the meanings given them, except where the context clearly indicates a different meaning is intended.

(a) "Award" means the granting of a contract in accordance with all applicable laws and rules governing competitive bidding except as otherwise provided in this section.

(b) "Contract" means an agreement entered into between a business entity and the state of Minnesota for the construction of transportation improvements.

(c) "Subcontractor" means a business entity which enters into a legally binding agreement with another business entity which is a party to a contract as defined in paragraph (b).

(d) "Targeted group business" means a business designated under section 16C.16, subdivision 5.

(e) "Veteran-owned small business" means a business designated under section 16C.16, subdivision 6a.

Subd. 2. **Small targeted group business, small business ~~set-asides~~; contract preferences.** (a) The commissioner may award up to a six percent preference in the amount bid for specified construction work to small targeted group businesses ~~and~~ ~~veteran-owned small businesses.~~

(b) The commissioner may designate a contract for construction work for award only to small targeted group businesses if the commissioner determines that at least three small targeted group businesses are likely to bid. ~~The commissioner may designate a contract for construction work for award only to veteran-owned small businesses if the commissioner determines that at least three veteran-owned small businesses are likely to bid.~~

~~(c) The commissioner, as a condition of awarding a construction contract, may set goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses and veteran-owned small businesses. The commissioner must establish a procedure for granting waivers from the subcontracting requirement when qualified small targeted group businesses and veteran-owned small businesses are not reasonably available. The commissioner may establish financial incentives for prime contractors who exceed the goals for use of subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting requirements of this paragraph do not apply to prime contractors who are small targeted group businesses or veteran-owned small businesses.~~

~~(d)~~ (c) The commissioner may award up to a four percent preference in the amount bid on procurement for specified construction work to small businesses located in an economically disadvantaged area as defined in section 16C.16, subdivision 7.

Subd. 2a. **Small targeted group business; subcontracting goals.** (a) The commissioner, as a condition of awarding a construction contract, may set goals that require the prime contractor to subcontract portions of the contract to small targeted group businesses. Prime contractors must demonstrate good faith efforts to meet the project goals. The commissioner shall establish a procedure for granting waivers from the subcontracting requirement when qualified small targeted group businesses are not reasonably available. The commissioner may establish (1) financial incentives for prime contractors who exceed the goals set for the use of subcontractors under this subdivision; and (2) sanctions for prime contractors who fail to make good faith efforts to meet the goals set under this subdivision.

(b) The small targeted group business subcontracting requirements of this subdivision do not apply to prime contractors who are small targeted group businesses.

Subd. 2b. **Veteran-owned small business; contract preferences.** (a) The commissioner may award up to a six percent preference in the amount bid for specified construction work to veteran-owned small businesses, except when prohibited by the federal government as a condition of receiving federal funds. When a bid preference is provided under this section, the percentage of preference in bid amount under this subdivision may not be less than the percentage of bid preference provided to any small targeted group business under subdivision 2.

(b) When a bid preference is provided under this subdivision, the commissioner must be as inclusive as possible in specifying contracts for construction work, as well as for construction-related professional and technical services, available under this bid preference program for veteran-owned small businesses. The term "construction" must be given broad meaning for purposes of specifying and letting contracts for veteran-owned small businesses and must include, but is not limited to, preplanning, planning, and all other construction-related professional and technical services.

(c) When a bid preference is provided under this subdivision, the commissioner must strive to ensure that contracts will be awarded on a proportional basis with contracts awarded under subdivision 2.

(d) The commissioner may designate a contract for construction work for award only to veteran-owned small businesses, if the commissioner determines that at least three veteran-owned small businesses are likely to bid.

Subd. 2c. **Veteran-owned small business; subcontracting goals.** (a) The commissioner, as a condition of awarding a construction contract, may set goals that require the prime contractor to subcontract portions of the contract to veteran-owned small businesses, except when prohibited by federal law or rule as a condition of receiving federal funds. Prime contractors must demonstrate good faith efforts to meet the project goals. The commissioner shall establish a procedure for granting waivers from the subcontracting requirement when qualified veteran-owned small businesses are not reasonably available. The commissioner may establish (1) financial incentives for prime contractors who exceed the goals set for the use of subcontractors under this subdivision; and (2) sanctions for prime contractors who have not been granted a waiver and fail to meet goals set under this subdivision.

(b) The subcontracting requirements of this subdivision do not apply to prime contractors who are veteran-owned small businesses.

Subd. 3. **Small targeted group business subcontract awards to small businesses.** At least 75 percent of subcontracts awarded to small targeted group businesses must be performed by the business to which the subcontract is awarded or another small targeted group business.

Subd. 3a. **Veteran-owned small business; subcontract awards.** At least 75 percent of subcontracts awarded to veteran-owned small businesses must be performed by the business to which the subcontract is awarded or another veteran-owned small business.

Subd. 4. **Contract awards, limitations.** Contracts awarded pursuant to this section are subject to all limitations contained in rules adopted by the commissioner of administration.

Subd. 4a. **Small targeted group business; limited duration and reevaluation.** The commissioner shall cooperate with the commissioner of administration to periodically reevaluate the targeted group businesses to determine whether there is a statistical disparity between the percentage of construction contracts awarded to businesses owned by targeted group members and the representation of businesses owned by targeted group members among all businesses in the state in the construction category. The commissioner of administration shall designate targeted groups pursuant to section 16C.16, subdivision 5.

Subd. 5. **Recourse to other businesses.** If the commissioner is unable to award a contract pursuant to the provisions of subdivisions 2 ~~and 3~~ to 4a, the award may be placed pursuant to the normal solicitation and award provisions set forth in this chapter and chapter 16C.

Subd. 6. **Rules; eligibility.** (a) The rules adopted by the commissioner of administration to define small businesses and to set time and other eligibility requirements for participation in programs under sections 16C.16 to 16C.19 apply to this section. The commissioner may promulgate other rules necessary to carry out this section.

(b) In addition to other eligibility requirements, a small targeted group business or veteran-owned small business is eligible for the bid preferences under this section only for eight years following the latest of:

(1) the effective date of this section;

(2) for a targeted group business, the date of initial certification by the commissioner of administration, as provided under section 16C.19;

(3) for a veteran-owned small business, the date of initial certification by the United States Department of Veterans Affairs, as provided under section 16C.19, paragraph (d); or

(4) for a veteran-owned small business, the release or discharge of any one of the owners from military active service, as defined in section 190.05, subdivision 5, lasting for a period of 179 days or longer.

Subd. 7. **Noncompetitive bids.** The commissioner is encouraged to purchase from small targeted group businesses and veteran-owned small businesses designated under section 16C.16 when making purchases that are not subject to competitive bidding procedures.

Subd. 8. ~~Report by commissioner~~ **Reporting.** (a) ~~The commissioner of transportation~~ shall report to the commissioner of administration on compliance with this section. The information must be reported at the time and in the manner requested by the commissioner of administration.

(b) By February 1 of each even-numbered year, the commissioner of transportation shall submit a report to the chairs and ranking minority members of the legislative committees with jurisdiction over transportation policy and finance and veterans policy and finance concerning contract awards during the preceding biennium under this section. At a minimum, the report must include:

(1) a summary of the program;

(2) a review of the use of preferences for contracting during the preceding biennium, including frequency of establishment of a preference and frequency and amount of contract awards to:

(i) small targeted group businesses; and

(ii) veteran-owned small businesses;

(3) a review of goals and good faith efforts to use small targeted group businesses and veteran-owned small businesses in subcontracts, including analysis of methods used for, and effectiveness of, good faith efforts;

(4) a summary of any financial incentives used or sanctions imposed;

(5) agency commentary on any perceived impediments, whether statutory, administrative, or otherwise, that may be limiting the participation of small targeted group businesses and veteran-owned small businesses in the agency's contract preference program;

(6) information on each reevaluation under subdivision 4a, including details on the methodology for reevaluation; and

(7) any recommendations for legislative or programmatic changes.

Subd. 9. **Veteran-owned small business; purpose.** The purpose of the state contracting bid preference program for veteran-owned small businesses is to facilitate the healthy transition of veterans from military to civilian life, and to help compensate veterans for their sacrifices including, but not limited to, their sacrifice of health and time to the state and nation during their military service, as well as to enhance economic development within Minnesota.

EFFECTIVE DATE. This section is effective the day following final enactment, and applies to contracts let on or after July 1, 2012.

ARTICLE 2

AUTHORIZING COUNTIES FOR BID PREFERENCE FOR VETERAN-OWNED SMALL BUSINESSES

Section 1. [375.771] VETERAN-OWNED SMALL BUSINESS CONTRACTS.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Award" means the granting of a contract in accordance with all applicable laws and rules governing competitive bidding, except as otherwise provided in this section.

(c) "Contract" means an agreement entered into between a business entity and the county for procurement of goods and services including both technical and nontechnical goods and services, printing, and construction.

(d) "County board" or "board" has the meaning given in section 375.01.

(e) "County purchasing department" has the meaning given in section 375.72.

(f) "Director of purchasing" has the meaning given in section 375.74.

(g) "Subcontractor" means a business entity that enters into a legally binding agreement with another business entity that is a party to a contract as defined in paragraph (c).

(h) "Veteran" has the meaning given in section 197.447.

(i) "Veteran-owned small business" means a business designated under section 16C.16, subdivision 6a.

Subd. 2. **Policy; purpose; director.** (a) A county board may establish a program within the county in accordance with this section to provide a bid preference for awarding contracts to designated veteran-owned small businesses for the procurement of technical and nontechnical goods and services including, but not limited to, printing and construction, broadly defined to include all phases of the construction process.

(b) The purpose of this program is to facilitate the transition of veterans from military to civilian life, and to help compensate veterans for their sacrifices including, but not limited to, their sacrifice of health and time to the community, state, and nation during their military service, as well as to enhance economic development throughout Minnesota.

(c) The county board may direct the county director of purchasing, or other designated official within the county purchasing department, to administer this program in accordance with county policy established by the board.

Subd. 3. **Small business set-asides.** (a) The county director of purchasing may award up to a six percent preference in the amount bid for procurement of goods and services including, but not limited to, technical and nontechnical goods and services, printing, and construction to veteran-owned small businesses having their principal place of business in Minnesota.

(b) The board, as a condition of awarding a construction contract, may set goals that require the prime contractor to subcontract a portion of the contract to veteran-owned small businesses. The board must establish a procedure for granting waivers from the subcontracting requirement when qualified veteran-owned small businesses are not reasonably available. The board may establish financial incentives for prime contractors who exceed the goals for use of veteran-owned small business subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting requirements of this paragraph do not apply to prime contractors who are veteran-owned small businesses.

Subd. 4. **Awards to small businesses.** At least 75 percent of subcontracts awarded to veteran-owned small businesses must be performed by the business to which the subcontract is awarded or another veteran-owned small business.

Subd. 5. **Awards, limitations.** Contracts awarded under this section are subject to all limitations adopted by the board.

Subd. 6. **Recourse to other businesses.** If the director is unable to award a contract under subdivisions 3 and 4, the award may be placed under normal solicitation and award statutes and rules.

Subd. 7. **Noncompetitive bids.** The board is encouraged to purchase from veteran-owned small businesses designated under section 16C.16, subdivision 6a, when making purchases that are not subject to competitive bidding procedures.

Subd. 8. **Report to board.** At the request of the county board, the county treasurer shall report to the board on compliance with this section. The information must be reported at the time and in the manner requested by the board.

EFFECTIVE DATE. This section is effective July 1, 2012, for contracts awarded by counties on or after that date.

Presented to the governor April 26, 2012

Signed by the governor April 30, 2012, 11:04 a.m.