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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. **1726**

03/01/2021 Authored by Xiong, J.,
The bill was read for the first time and referred to the Committee on State Government Finance and Elections

1.1 A bill for an act
1.2 relating to state government; changing procurement provisions; amending
1.3 Minnesota Statutes 2020, sections 16C.16, subdivisions 6, 6a, 7; 16C.19; 16C.251.

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

1.5 Section 1. Minnesota Statutes 2020, section 16C.16, subdivision 6, is amended to read:

1.6 Subd. 6. **Purchasing methods.** (a) The commissioner may award up to a ~~six~~ 12 percent
1.7 preference for specified goods or services to small targeted group businesses.

1.8 (b) The commissioner may award a contract for goods, services, or construction directly
1.9 to a small business or small targeted group business without going through a competitive
1.10 solicitation process up to a total contract award value, including extension options, of
1.11 ~~\$25,000~~ \$50,000.

1.12 (c) The commissioner may designate a purchase of goods or services for award only to
1.13 small businesses or small targeted group businesses if the commissioner determines that at
1.14 least three small businesses or small targeted group businesses are likely to respond to a
1.15 solicitation.

1.16 (d) The commissioner, as a condition of awarding a construction contract or approving
1.17 a contract for professional or technical services, may set goals that require the prime
1.18 contractor to subcontract a portion of the contract to small businesses or small targeted
1.19 group businesses. The commissioner must establish a procedure for granting waivers from
1.20 the subcontracting requirement when qualified small businesses or small targeted group
1.21 businesses are not reasonably available. The commissioner may establish financial incentives
1.22 for prime contractors who exceed the goals for use of small business or small targeted group

2.1 business subcontractors and financial penalties for prime contractors who fail to meet goals
2.2 under this paragraph. The subcontracting requirements of this paragraph do not apply to
2.3 prime contractors who are small businesses or small targeted group businesses.

2.4 Sec. 2. Minnesota Statutes 2020, section 16C.16, subdivision 6a, is amended to read:

2.5 Subd. 6a. **Veteran-owned small businesses.** (a) Except when mandated by the federal
2.6 government as a condition of receiving federal funds, the commissioner shall award up to
2.7 a ~~six~~ 12 percent preference, but no less than the percentage awarded to any other group
2.8 under this section, on state procurement to certified small businesses that are majority-owned
2.9 and operated by veterans.

2.10 (b) The commissioner may award a contract for goods, services, or construction directly
2.11 to a veteran-owned small business without going through a competitive solicitation process
2.12 up to a total contract award value, including extension options, of ~~\$25,000~~ \$50,000.

2.13 (c) The commissioner may designate a purchase of goods or services for award only to
2.14 a veteran-owned small business if the commissioner determines that at least three
2.15 veteran-owned small businesses are likely to respond to a solicitation.

2.16 (d) The commissioner, as a condition of awarding a construction contract or approving
2.17 a contract for professional or technical services, may set goals that require the prime
2.18 contractor to subcontract a portion of the contract to a veteran-owned small business. The
2.19 commissioner must establish a procedure for granting waivers from the subcontracting
2.20 requirement when qualified veteran-owned small businesses are not reasonably available.
2.21 The commissioner may establish financial incentives for prime contractors who exceed the
2.22 goals for use of veteran-owned small business subcontractors and financial penalties for
2.23 prime contractors who fail to meet goals under this paragraph. The subcontracting
2.24 requirements of this paragraph do not apply to prime contractors who are veteran-owned
2.25 small businesses.

2.26 (e) The purpose of this designation is to facilitate the transition of veterans from military
2.27 to civilian life, and to help compensate veterans for their sacrifices, including but not limited
2.28 to their sacrifice of health and time, to the state and nation during their military service, as
2.29 well as to enhance economic development within Minnesota.

2.30 (f) Before the commissioner certifies that a small business is majority-owned and operated
2.31 by a veteran, the commissioner of veterans affairs must verify that the owner of the small
2.32 business is a veteran, as defined in section 197.447.

3.1 Sec. 3. Minnesota Statutes 2020, section 16C.16, subdivision 7, is amended to read:

3.2 Subd. 7. **Economically disadvantaged areas.** (a) The commissioner may award up to
3.3 a ~~six~~ 12 percent preference on state procurement to small businesses located in an
3.4 economically disadvantaged area.

3.5 (b) The commissioner may award a contract for goods, services, or construction directly
3.6 to a small business located in an economically disadvantaged area without going through
3.7 a competitive solicitation process up to a total contract award value, including extension
3.8 options, of ~~\$25,000~~ \$50,000.

3.9 (c) The commissioner may designate a purchase of goods or services for award only to
3.10 a small business located in an economically disadvantaged area if the commissioner
3.11 determines that at least three small businesses located in an economically disadvantaged
3.12 area are likely to respond to a solicitation.

3.13 (d) The commissioner, as a condition of awarding a construction contract or approving
3.14 a contract for professional or technical services, may set goals that require the prime
3.15 contractor to subcontract a portion of the contract to a small business located in an
3.16 economically disadvantaged area. The commissioner must establish a procedure for granting
3.17 waivers from the subcontracting requirement when qualified small businesses located in an
3.18 economically disadvantaged area are not reasonably available. The commissioner may
3.19 establish financial incentives for prime contractors who exceed the goals for use of
3.20 subcontractors that are small businesses located in an economically disadvantaged area and
3.21 financial penalties for prime contractors who fail to meet goals under this paragraph. The
3.22 subcontracting requirements of this paragraph do not apply to prime contractors who are
3.23 small businesses located in an economically disadvantaged area.

3.24 (e) A business is located in an economically disadvantaged area if:

3.25 (1) the owner resides in or the business is located in a county in which the median income
3.26 for married couples is less than 70 percent of the state median income for married couples;

3.27 (2) the owner resides in or the business is located in an area designated a labor surplus
3.28 area by the United States Department of Labor; or

3.29 (3) the business is a certified rehabilitation facility or extended employment provider as
3.30 described in chapter 268A.

3.31 (f) The commissioner may designate one or more areas designated as targeted
3.32 neighborhoods under section 469.202 or as border city enterprise zones under section
3.33 469.166 as economically disadvantaged areas for purposes of this subdivision if the

4.1 commissioner determines that this designation would further the purposes of this section.
4.2 If the owner of a small business resides or is employed in a designated area, the small
4.3 business is eligible for any preference provided under this subdivision.

4.4 (g) The Department of Revenue shall gather data necessary to make the determinations
4.5 required by paragraph (e), clause (1), and shall annually certify counties that qualify under
4.6 paragraph (e), clause (1). An area designated a labor surplus area retains that status for 120
4.7 days after certified small businesses in the area are notified of the termination of the
4.8 designation by the United States Department of Labor.

4.9 Sec. 4. Minnesota Statutes 2020, section 16C.19, is amended to read:

4.10 **16C.19 ELIGIBILITY; RULES.**

4.11 (a) A small business wishing to participate in the programs under section 16C.16,
4.12 subdivisions 4 to 7, must be certified by the commissioner or, if authorized by the
4.13 commissioner, by a nationally recognized certifying organization. The commissioner may
4.14 choose to authorize a nationally recognized certifying organization if the certification
4.15 requirements are substantially the same as those adopted under the rules authorized in this
4.16 section and the business meets the requirements in section 16C.16, subdivision 2.

4.17 (b) The commissioner shall adopt by rule standards and procedures for certifying that
4.18 small targeted group businesses, small businesses located in economically disadvantaged
4.19 areas, and veteran-owned small businesses are eligible to participate under the requirements
4.20 of sections 16C.16 to 16C.21. The commissioner shall adopt by rule standards and procedures
4.21 for hearing appeals and grievances and other rules necessary to carry out the duties set forth
4.22 in sections 16C.16 to 16C.21.

4.23 ~~(b)~~ (c) The commissioner may make rules which exclude or limit the participation of
4.24 nonmanufacturing business, including third-party lessors, brokers, franchises, jobbers,
4.25 manufacturers' representatives, and others from eligibility under sections 16C.16 to 16C.21.

4.26 ~~(e)~~ (d) The commissioner may make rules that set time limits and other eligibility limits
4.27 on business participation in programs under sections 16C.16 to 16C.21.

4.28 ~~(d)~~ (e) Notwithstanding paragraph (a), for purposes of sections 16C.16 to 16C.21, a
4.29 veteran-owned small business, the principal place of business of which is in Minnesota, is
4.30 certified if:

4.31 (1) it has been verified by the United States Department of Veterans Affairs as being
4.32 either a veteran-owned small business or a service-disabled veteran-owned small business,

5.1 in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74;
5.2 or

5.3 (2) the veteran-owned small business supplies the commissioner with proof that the
5.4 small business is majority-owned and operated by:

5.5 (i) a veteran as defined in section 197.447; or

5.6 (ii) a veteran with a service-connected disability, as determined at any time by the United
5.7 States Department of Veterans Affairs.

5.8 ~~(e)~~ (f) Until rules are adopted pursuant to paragraph (a) for the purpose of certifying
5.9 veteran-owned small businesses, the provisions of Minnesota Rules, part 1230.1700, may
5.10 be read to include veteran-owned small businesses. In addition to the documentation required
5.11 in Minnesota Rules, part 1230.1700, the veteran owner must have been discharged under
5.12 honorable conditions from active service, as indicated by the veteran owner's most current
5.13 United States Department of Defense form DD-214.

5.14 ~~(f)~~ (g) Notwithstanding paragraph (a), for purposes of sections 16C.16 to 16C.21, a
5.15 minority- or woman-owned small business, the principal place of business of which is in
5.16 Minnesota, is certified if it has been certified by the Minnesota unified certification program
5.17 under the provisions of Code of Federal Regulations, title 49, part 26.

5.18 ~~(g)~~ (h) The commissioner may adopt rules to implement the programs under section
5.19 16C.16, subdivisions 4 to 7, using the expedited rulemaking process in section 14.389.

5.20 Sec. 5. Minnesota Statutes 2020, section 16C.251, is amended to read:

5.21 **16C.251 BEST AND FINAL OFFER.**

5.22 A "best and final offer" solicitation process may not be used for building and construction
5.23 contracts awarded based on competitive bids.