

HOUSE RESEARCH

Bill Summary

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Overview

Authorizes the commissioner of administration to use the following methods of contracting for state construction: (1) design-build; (2) construction manager at-risk; and (3) job order contracting. All of these methods are subject to specified conditions. Authorizes the University of Minnesota to enter into design-build contracts.

Section 4 specifies further requirements for design-build contracts, and authorizes two processes for entering into these contracts: a design-build qualification-based process, and a design-build and price-based process. Section 5 specifies requirements for state construction manager at risk contracts. Section 6 specifies requirements for state job order contracting.

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- 1** **State construction contracts.** Authorizes the commissioner of administration to use the following methods for state construction: (1) design-build; (2) construction manager at-risk; and (3) job order contracting. All of these methods are subject to the conditions specified in later sections of this bill.

Provides that the commissioner may require a primary designer and a construction manager at risk to cooperate, but that the contract cannot make one of them a subcontractor or joint

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venture partner to the other or limit their independent obligations to the commissioner.

Provides that the MnSCU board of trustees has the powers granted in this section with respect to MnSCU projects

2 **Definitions.** In the law governing the designer selection process, defines "design-build" as a process in which the design-builder agrees to both design and construct a project at a guaranteed maximum or a fixed price. Amends the definition of "user agency" to provide that for state projects, "user agency" means the Department of Administration or a state agency with a delegation to act on behalf of the department.

3 **Design-build, construction manager at risk, and job order contracts.**

Subd. 1. Definitions. Defines terms used in this section. (Among these definitions, the term "commissioner" means the Commissioner of Administration (for a state project) or the MnSCU Board of Trustees (for a MnSCU project).

Subd. 2. Authority. Authorizes the Commissioner of Administration to: (1) award a design-build contract, either under a qualification-based or design and price-based selection process; (2) select a construction manager at risk, and award a guaranteed maximum price contract; and (3) select a contractor by job order contracting. For the first two types of contracts, requires the commissioner to make specific written findings that these contracts are in the public interest.

Provides that for projects funded with state general obligation bonds:

- not more than five percent in fiscal years 2006 and 2007, and ten percent after that of the number of projects may use design-build contracts;
- not more than five percent in fiscal years 2006 and 2007, and ten percent after that of the number of projects may use construction manager at risk contracts.

Requires projects to comply with specified laws relating to the Capitol Area Architectural and Planning Board.

Provides that soliciting requests for qualifications or proposals does not obligate the Commissioner to enter into a design-build or construction manager at risk contract. Solicitations may be canceled or responses rejected, and a competitive bidding process used.

4 **Design-build.** This section specifies procedures and criteria governing design-build contracts. (This summary highlights some of these procedures, but does not mention all of the details specified in the bill.)

Subd. 1. Conflict of interest. Provides that a member of the Designer Selection Board (DSB) may not participate in review, discussion, or selection of a designer or form in which the member has a financial interest.

Subd. 2. Licensing requirements. Requires design-builders to have specified relationships with persons licensed to perform the services under the contract. States

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that this section does not limit liability of an architect or engineer to the commissioner and third parties. States that the design portion of the contract is a service, not a product.

Subd. 3. Solicitation of qualifications or proposals. Requires user agencies to submit requests for a design-builder to the Commissioner of Administration, who must forward the request to the Designer Selection Board (DSB). Specifies the contents of these requests.

Specifies the elements that must be contained in a request for qualifications or proposals. Some of the required elements are the criteria for evaluating qualifications or proposals, procedures for making awards, the proposed terms and conditions of the contracts, the schedule, budget limits. Requires notice of requests for qualifications or proposals to be advertised in the State Register.

Subd. 4. University of Minnesota projects. Authorizes the University of Minnesota to use the design-build method. Authorizes the University to use either the design-build qualification-based selection process or the design-build design and price-based selection process. Requires the DSB to score proposals and send the two highest-scoring proposals to the Board of Regents, which will make the final choice. Provides that the University may not use design-build contracts for more than 5 percent of the total number of projects in fiscal years 2006 and 2007, and for more than 10 percent after that.

Subd. 5. Design-build qualification-based selection. Specifies requirements for a design-build qualification-based selection process. Requires the commissioner of administration to establish procedures and criteria for evaluating design-builders and qualifications. Provides that after obtaining and evaluating qualifications from each design-builder, the DSB will select three to five proposals, and will then select the design-builder that scores highest on evaluation criteria. For MnSCU projects, the DSB will pick two design-builders, and the MnSCU board will pick among them. The commissioner or the MnSCU board will then negotiate fees and enter into contract with the selected design-builder. If these negotiations are not successful, the commissioner may request the board to make another selection.

Subd. 6. Acceptance by the commissioner. Specifies requirements for a design-build qualifications-based contract. These include requirements that the design-builder develop design documents prior to project bidding; that the design-builder competitively bid all trade contract work; that a mechanical or electrical subcontractor member of a design-builder's team competitively bid subcontracted work; and that the design-builder and the commissioner enter into a guaranteed maximum price contract.

Subd. 7. Design-build and price-based proposals. Specifies requirement for a design-build and price-based process. Provides that selection must be based on best value, which includes price and design, and may include other criteria. Requires the commissioner to establish procedures and criteria used to evaluate design-builders. Provides that after obtaining and evaluating qualifications from each design-builder,

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the DSB will selected three proposers. The commissioner will then issue a request for proposals to these three design-builders. The proposals will be sealed until the time specified for opening. Requires the commissioner to award a stipend of not less than .3 percent of the estimated cost of design and construction to each design-builder submitting a proposal who is not selected to complete the project.

Subd. 8. Design-build and price-based selection process. Requires the DSB to interview the three proposers selected under subdivision 7, without discussing price, and to select one proposal, based on the criteria for the project. (For MnSCU, the DSB will forward the two highest-scoring proposals to the MnSCU board). After a proposal is accepted, the commissioner and the design-builder will enter into a fixed-price contract. If they are unable to agree, the commissioner may request the DSB to make another selection.

5 **Construction Manager At Risk.**

Subd. 1. Solicitation of qualifications. Requires that requests for a construction manager at risk for a project be submitted to the Commissioner of Administration, and specifies contents of requests for proposal. Requires a request for qualifications to be prepared for each construction manager at risk contract, and specifies the contents of the request for qualifications.

Subd. 2. Selection process. Upon receiving a request for a construction manager at risk, requires the commissioner to create a selection committee of at least three people. Provides for the committee to establish criteria to be used to score proposals of construction managers at risk and procedures for evaluating qualifications. Provides for the selection committee to create a list of three to five proposals, and for the commissioner to issue a request for proposal requiring fee, expense, and other information from the managers on the list. Requires the selection committee to interview the construction managers, and to recommend the construction manager at risk achieving the highest score on evaluation criteria.

Subd. 3. Contract. Requires the commissioner to negotiate with the recommended construction manager at risk. Provides for obtaining another recommendation if negotiations with the first manager are unsuccessful. Requires the designers selected by the DSB to develop design documents for approval by the commissioner. Requires a construction manager at risk to competitively bid all trade contract work from a list of qualified firms, but provides that mechanical or electrical subcontractors may be listed as part of the construction manager team instead of being bid separately. Requires any mechanical or electrical subcontractors to enter into guaranteed maximum price contracts with the construction manager. Requires the construction manager at risk and the commission to enter into a guaranteed maximum price contract for the project.

6 **Job order contracting.**

Subd. 1. Authority. Authorizes the commissioner to use job order contracting for projects with a construction cost that does not exceed \$250,000.

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Subd. 2. Preselection process. Authorizes the commissioner to issue a request for qualifications that includes criteria that will be used for projects. Provides that criteria cannot unduly restrict competition. Specifies notice requirements. Requires that to the extent practical, the commissioner must give notice to representatives of targeted group businesses.

Subd. 3. Qualified contractors. Requires the commissioner to review responses and establish a list of responders who have the ability to enter into the master contract for the project. Requires the commissioner to enter into master contracts with qualified contractors.

Subd. 4. Construction services bidding. Provides that when using job order contracting: (1) for projects up to \$50,000 the commissioner must request at least two bids; (2) for projects over \$50,000 and not exceeding \$100,000, the commissioner must request at least three bids; (3) for projects over \$100,000 and less than \$250,00, the commissioner must request at least four bids.

Subd. 5. Selection. Requires the commissioner to select the contractor who submits the lowest price bid.

Subd. 6. Distribution of bid requests. Requires the commissioner to develop a system to ensure a reasonable opportunity for all qualified contractors to bid on construction services.

7 Effective date. Effective the day following final enactment.