HF3237 - 0 - State Procurement & Contract Provisions; Modified

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Commitee:	**State Government Finance and Policy**
Date Completed:	**2/22/2022 7:59:59 AM**
Agency:	Administration Dept

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X

Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative.
Reductions shown in the parentheses.

State Cost (Savings)		Biennium		Biennium	
Dollars in Thousands	**FY2021**	**FY2022**	**FY2023**	**FY2024**	**FY2025**
General Fund	-	-	-	-	-
Total	-	-	-	-	-
Biennial Total			-		-

Full Time Equivalent Positions (FTE)		Biennium		Biennium	
	FY2021	**FY2022**	**FY2023**	**FY2024**	**FY2025**
General Fund	-	-	-	-	-
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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State Cost (Savings) Calculation Details
This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.
*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium		Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	-	-
Total	-	-	-	-	-
Biennial Total			-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*					
General Fund					
Expenditures	-	1	-	-	-
Absorbed Costs	-	(1)	-	-	-
Total	-	-	-	-	-
Biennial Total			-		-
2 - Revenues, Transfers In*					
General Fund	-	-	-	-	-
Total	-	-	-	-	-
Biennial Total			-		-

Bill Description

HF3237 is the Department of Administration's Small Business Program Enhancement and State Contracting Clarifications bill. The bill proposes the following:

· **Standardized language** - Throughout Minnesota Statutes 16C.16 there are various versions of the phrase "goods, services, including printing and construction". This bill changes each instance to be "goods and services, including construction" throughout the Targeted Group/Economically Disadvantaged/Veteran-Owned (TG/ED/VO) provisions to ensure consistent application.

· **Consistent subcontractor goal application** - Currently, the law authorizes the state to require a prime contractor to subcontract a portion of the contract to TG/ED/VO small businesses. However, those requirements do not apply to prime contractors who are themselves certified as TG/ED/VO small businesses. This bill makes the requirements the same for all prime contractors regardless of certification status.

· **Best and Final Offer Clarification** This bill includes a clarification to the prohibition on the Best and Final Offer negotiation technique**.** This change will make it clear that using best and final offer for building construction contracts is prohibited when using a low bid process, but is not prohibited under a best value process.

· **Streamlining of Certification Process** This bill provides the authority to recognize certifications that small businesses have received from nationally recognized certifying organizations as part of their state certification. The requirements would need to be substantially the same as those adopted in Minnesota and approved by the Department of Administration.

· **Report Clean-up** This bill deletes an obsolete and completed reporting requirement specified in Minn. Stat. 16C.36 requiring reporting in 2013 and 2014.

· **Increase to Equity Select Threshold** This bill increases the $25,000 Equity Select contract threshold to $100,000.

· **Increase Percentage of Preference for Certified Small Businesses** This bill increases the percentage of preference that a certified TG/ED/VO small business receives in a competitive process from 6% to 12%.

The following pertains to the last two bullets that address changes in how Minnesota's Small Business program is administered:

As a mechanism to promote equity in the State's contracting practices, current law (Minn. Stat. 16C.16) authorizes the commissioner of Administration to apply up to a six percent preference in the award of contracts to small targeted group, economically disadvantaged and veteran-owned businesses (TG/ED/VO). Further, current law authorizes the commissioner of Administration to award a contract directly to a certified TG/ED/VO small business without going through a competitive process for contracts valued at $25,000 or less.

H3237.0 changes the dollar thresholds for these procurement tools. Specifically, the bill raises the preference percentage for certified, small TG/ED/VO businesses to up to 12% and raises the dollar threshold for direct purchases to these businesses to $100,000 or less.

Assumptions

If enacted, this bill will require modifications to the Office of State Procurement's (OSP's) procurement documents, including its solicitation documents (RFPs and RFBs), SWIFT templates, policy documents, manuals and training materials. The changes to thresholds will require OSP to provide direction to procurement staff across the enterprise, respond to questions, and conduct training to ensure the new dollar levels are understood and properly applied. Because current thresholds exist, the effort involved in modifying documents and conducting instruction is minimized because the changes simply increase existing numbers but do not change the associated processes. We assume the effort involved in making these changes will be modest and could be absorbed by the department.

This fiscal note assumes that increasing the dollar threshold under which a purchase or contract award can be made directly to a TG/ED/VO business without going through a competitive process results in a streamlined process that yields efficiencies. Tasks such as creating solicitation documents and evaluating responses would no longer be required for procurements that utilize this authority. For purposes of this fiscal note, it is assumed that time and resources gained by these efficiencies would be redirected to other work and that this change would not result in the ability to reduce staff or capture savings.

Regarding the increase to the preference percentage, based on an internal assessment of OSP's procurement of goods and general services conducted in FY19 and a review of FY21 construction contracts, we are assuming that a small number of procurements will be impacted by this percentage increase, and that while there will be an enterprise fiscal impact, the costs will be modest in comparison to the state's total spend.

Expenditure and/or Revenue Formula

One-Time Expenditure - $1,060.20

20 hours calculated at the midpoint level of an Acquisition Management Specialist for development of bid and proposal templates, SWIFT templates, manuals, policy and training materials. This one-time cost is reflected in FY22 as a cost the agency can absorb.

	Annual	Per Hour	Hours	Cost FY22
Salary+Fringe	110,687.24	53.01	20	1,060.20

Long-Term Fiscal Considerations

This bill authorizes paying up to a 12% preference when purchasing from small, Minnesota-based, certified businesses owned by minorities, women, veterans, people with disabilities, and businesses located in economically disadvantaged areas. This will impact the cost of goods, services and construction projects for state agencies and local governments that use state contracts. This additional cost is spread across government entities and is not disproportionately borne by the Department of Administration. The added cost is addressed below.

Cost of Preference

Goods and General Services

While a formal comprehensive study has not been completed on the subject of procurement preferences, in the fall of

2019, the Office of State Procurement conducted an internal assessment that studied all procurements conducted by the office for goods and general services over the course of FY19. The purpose of the assessment was to analyze the effectiveness of the 6% preference and its impact on cost.

Findings of the assessment for goods and general services included the following:

· Of 743 procurements assessed, only 15% (110 contracts) involved a procurement where a TG/ED/VO business responded to the solicitation.

· Of these 110 contracts, 38 were awarded to TG/ED/VO vendors without application of the preference, 67 were awarded to non-TG/ED/VO vendors and 5 contracts were awarded to a TG/ED/VO vendor as a result of application of the 6% preference.

· For all of the 5 contracts awarded to TG/ED/VO businesses as a result of the preference, none required the application of the full 6% preference.

· The cost impact for the 5 contracts awarded to a TG/ED/VO business as a result of the 6% preference totaled $1,889.33.

· Further analysis of the full data set for FY19 determined that if the preference had been set at 12%, 5 additional contracts would have changed to an award to a TG/ED/VO business.

· The increased cost of these 5 additional contracts would have been $60,872.62.

In sum, assuming future years will yield similar results to FY19, increasing the preference to 12% would be expected to result in an added cost of approximately **$61,000 per year** spread across all users of the contracts for goods and general services. Out of a total of $738 million in spend for goods and general services in FY19, this equates to an increase in cost of **.008%.**

Building Construction

The Office of State Procurement has also analyzed the impact of increasing the preference to 12% on building and construction contracts that were solicited by OSP in FY21. The office reviewed 127 projects that were subject to the application of the preference. This included projects bid out by the Office of State Procurement as well as projects procured under delegated authority by the Department of Natural Resources and the Department of Military Affairs. The following was determined:

· Of the 127 procurements assessed, 72% (91 contracts) involved a procurement where there was at least one TG/ED/VO responder.

· Of those 91 contracts, 9 of the events were within the 12% threshold and would have been awarded to the TG/ED/VO vendor had a 12% preference been in place.

- The increased cost of these 9 contracts would have been $540,905.

In sum, assuming future years will yield similar results to FY21, increasing the preference to 12% would be expected to result in an added cost of approximately $540,905 per year for building construction projects bid by OSP, DNR and Military Affairs. Out of a total of $103,750.047 in spend for building construction assessed for FY21, this equates to an increase in cost of **.52%.**

The building construction numbers from the Department of Transportation were not available in time for inclusion in this fiscal note. However, a similar analysis of FY19 contracts that included MnDOT construction awards similarly yielded an increased cost of less than one percent; specifically an increase of **.31%.**

Local Fiscal Impact

Similar to the impact on state government described under **Long-Term Fiscal Considerations**, increasing the TG/ED/VO preference percentage would result in a slight cost increase for local units of government that use state contracts for purchasing.

References/Sources

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