

HOUSE RESEARCH

Bill Summary

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Overview

Imposes a moratorium on state contracts for professional or technical services until July 1, 2005. Requires the Governor to reduce executive agency expenditures on contracts for professional or technical services by at least \$100 million in the biennium ending June 30, 2005, compared to the biennium ending June 30, 2003. Makes a number of changes in laws governing state contracting.

Article 1: Moratorium

1 Consultant contracts.

Subd. 1. Moratorium. Provides that an entity in the executive, legislative, or judicial branches (including MnSCU) may not enter into a new contract or renew an existing contract for professional or technical services before July 1, 2005. This prohibition does not apply to a contract that relates to:

- ▶ a threat to public health, welfare, or safety that threatens the functioning of government, protection of property, or health or safety of people; or
- ▶ care of persons in state institutions.

Provides that an entity may request a waiver for a contract necessary to avoid disruption of an essential state function or necessary to avoid a legal liability. Specifies procedures for entities in each branch of government to follow in considering waiver requests. Requires a monthly report on waivers granted.

Subd. 2. Contract expenditure reduction. Requires the governor to reduce executive

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agency expenditures on contracts for professional or technical services by at least \$100 million in the biennium ending June 30, 2005, compared to the biennium ending June 30, 2003.

Subd. 3. Definitions. Defines "professional or technical services" and "executive agency" for purposes of this section.

Article 2

Changes in Contracting Law

- 1 **1 Detailed budget.** Current law requires the governor's detailed budget to include certain information on professional or technical service contracts. This section requires this information to be provided by fund, and requires that the information be integrated into the budget information and proposals for each agency, not presented as a separate document. The section strikes the requirement that the budget present information on the number of these contracts.
- 2 **Reporting of violations.** Encourages state employees who discover violations of laws or rules governing state contracts to report to the commissioner of administration or the legislative auditor. Requires the legislative auditor to report to the legislative coordinating commission if there are multiple complaints about the same agency. Provides that an employee making a good faith report under this section is covered by existing section 181.932, prohibiting employer discrimination against the employee.
- 3 **Creation and validity of contracts.** This section:
 - ▶ Strikes the requirement that all contracts be approved by the Attorney General. Provides instead that the Attorney General must develop standard contract forms, and that contracts not based on these forms must be approved by the Attorney General. Also, requires the Attorney General to periodically review and evaluate a sample of state agency contracts to ensure compliance with law.
 - ▶ Provides that the maximum length of a state contract (including amendments to the contract) is two years, instead of five years, and that the original contract may not exceed one year (instead of two) unless the commissioner of administration determines that a longer duration is in the best interest of the state.
 - ▶ Strikes language exempting work orders and annual plans from approval requirements of the commissioner of administration.
 - ▶ Requires that an executed copy of a contract be kept on file at the contracting agency for at least three years after completion of the contract.
 - ▶ Specifies that an agency must not allow a contractor to begin work on a contract until the contract has been approved and funds obligated or encumbered.
- 4 **Appeal process.** Requires the commissioner of administration to establish a process, involving a neutral third party, under which an agency may appeal the commissioner's refusal to approve a proposed agency contract.
- 5 **Publication requirements.** Provides that the existing requirement to give notice of certain

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acquisitions must, to the extent practical, include posting on a state Web site.

6 **Notice of certain contracts.** Provides that for contracts over \$100,000, the commissioner of administration must attempt to publicize the contract in a manner reasonably calculated to notify a variety of interested vendors. If the commissioner has delegated contracting authority to another agency, the commissioner must approve the agency's plan to publicize the contract.

7 **Report on contracting activity.**

Subd. 1. Requirement. Requires the commissioner of administration to report to the governor and the legislature by September 1 each year on contracts entered into by executive agencies during the prior fiscal year.

Subd. 2. Aggregate information. Provides that the report must contain specified aggregate information on: (1) single-source contracts; (2) non-single-source contracts; and (3) master contracts.

Subd. 3. Single-source contracting. Requires the commissioner of administration to report to the governor and the legislature by September 1 each year on single-source contracts entered into by executive agencies during the prior fiscal year. Specifies information to be reported for each single-source contract.

8 **Notice of contracts.** Strikes the current requirement that the commissioner of employee relations develop a directory of professional or technical services that state agencies commonly provide. Provides that the current requirement for posting notice at state worksites of professional or technical service contracts applies to all of these contracts, not just contracts in excess of \$25,000. Provides that this posting should be done by Internet, and that it must occur at least 14 days before the agency solicits responses from outside contractors. Requires the commissioner to report to the legislature by August 1 on the number of times an agency finds a state employee to perform services as a result of these postings.

9 **Duties of contracting agency.** Provides that the current requirements governing professional or technical service contracts apply to all of these contracts, not just those valued over \$5,000, and apply to contract extensions and amendments that substantially change the scope of the contract.

Requires that the agency assign staff to manage the contract.

Provides that the agency cannot allow the contractor to begin work before the contract is fully executed.

Requires the contractor to include state employees in development or training, to the extent necessary to ensure that after completion of the contract state employees can perform any ongoing work related to the same function.

10 **Procedures for professional or technical contracts.** Makes a number of changes in laws governing professional or technical service contracts:

- ▶ Provides that the combined contract and amendment may not exceed two years, instead of five, except for emergency contracts.
- ▶ Requires contracts to provide that the state owns intellectual property rights in

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reports or products produced under the contract, unless the Attorney General waives this requirement.

- ▶ Forbids an agency from extending or amending a contract in a manner that increases the hourly rate of compensation or the total amount to be paid during a contract extension by more than 10 percent. Provides that before the commissioner of administration approves a contract amendment or extension, the commissioner must determine that the tasks to be performed are substantially similar to those in the original contract or are so closely related that it would be impracticable for a different contractor to perform the tasks.
- ▶ Current law provides that the contract may not establish an employment relationship between the state and persons performing under the contract. This section specifies that a contract establishes an employment relationship if under federal laws governing the distinction between an employee and an independent contractor, a person would be considered an employee.

- 11 Performance evaluation.** Requires an agency to complete a written performance evaluation for work done under a professional or technical services contract. Provides an agency limited immunity for disclosing information about a current or former contractor under this section.
- 12 Legislative review of contracts.** Requires the Legislative Coordinating Commission to designate legislative staff to perform a biennial audit of contracting practices by executive agencies. Specifies topics to be covered.
- 13 Effective date.** Sections 1 to 12 are effective the day following final enactment. Provisions relating to entering into contracts apply to contracts for which a solicitation is issue on or after the effective date.