

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2617

03/03/2014 Authored by Nelson

The bill was read for the first time and referred to the Committee on Government Operations

1.1 A bill for an act
1.2 relating to state government; making technical changes; renumbering sections;
1.3 eliminating or modernizing antiquated, unnecessary, and obsolete language;
1.4 updating existing provisions; amending Minnesota Statutes 2012, sections 3.225,
1.5 subdivision 2; 14.46, subdivision 4; 16A.126, subdivision 1; 16B.01, subdivision
1.6 6; 16B.04, subdivisions 2, 4; 16B.48, subdivision 2; 16C.02, as amended;
1.7 16C.03; 16C.04, subdivision 2; 16C.05; 16C.055, subdivision 2; 16C.06, as
1.8 amended; 16C.08; 16C.10, as amended; 16C.144, subdivision 5; 16C.25; 16C.26,
1.9 subdivision 3; 16C.28; 161.3206; 469.101, subdivision 5a; 471.345, subdivision
1.10 16; Minnesota Statutes 2013 Supplement, section 16C.09; proposing coding for
1.11 new law in Minnesota Statutes, chapter 16C; repealing Minnesota Statutes 2012,
1.12 sections 16B.01, subdivisions 4, 5; 16B.24, subdivision 7; 16B.295; 16B.47;
1.13 16B.93, subdivisions 1, 2, 3, 4, 5, 6, 7; 16B.94, subdivisions 1, 2, 3, 4; 16B.95,
1.14 subdivisions 1, 2; 16B.96; 16C.03, subdivision 19; 16C.085; 16C.16, subdivision
1.15 9; 16C.22; 16C.24; 16C.27, subdivisions 1, 2, 3; 16C.32, subdivision 3.

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

1.17 **ARTICLE 1**

1.18 **CHANGES TO CHAPTER 16B**

1.19 Section 1. Minnesota Statutes 2012, section 14.46, subdivision 4, is amended to read:

1.20 Subd. 4. **Cost; distribution.** When an agency properly submits a rule, proposed
1.21 rule, notice, or other material to the commissioner of administration, the commissioner
1.22 must then be accountable for the publication of the same in the State Register. The
1.23 commissioner of administration must require each agency which requests the publication
1.24 of rules, proposed rules, notices, or other material in the State Register to pay its
1.25 proportionate cost of the State Register unless other funds are provided and are sufficient
1.26 to cover the cost of the State Register.

1.27 The State Register must be offered for public sale at a location centrally located as
1.28 determined by the commissioner of administration and at a price as the commissioner of

administration determines. The commissioner of administration must further provide for the mailing of the State Register to any person, agency, or organization if so requested, provided that reasonable costs are borne by the requesting party. The supply and expense appropriation to any state agency is deemed to include funds to purchase the State Register. ~~Ten copies of each issue of the State Register, however, must be provided without cost to the Legislative Reference Library and ten copies to the State Law Library. One copy must be provided without cost to a public library in each county seat in the state or, if there is no public library in a county seat, to a public library in the county as designated by the county board. The commissioner must advise the recipient libraries of the significance and content of the State Register and encourage efforts to promote its usage.~~

The commissioner must make an electronic version of the State Register available on the Internet free of charge through the North Star information service.

Sec. 2. Minnesota Statutes 2012, section 16B.01, subdivision 6, is amended to read:

Subd. 6. **Utility services.** "Utility services" includes telephone, ~~telegraph~~, postal, electric light, and power service, and all other services required for the maintenance, operation, and upkeep of buildings and offices.

Sec. 3. Minnesota Statutes 2012, section 16B.04, subdivision 2, is amended to read:

Subd. 2. **Powers and duties, generally.** Subject to other provisions of this chapter, the commissioner is authorized to:

- (1) supervise, control, review, and approve all state contracts and purchasing;
- (2) provide agencies with supplies and equipment ~~and operate all central store or supply rooms serving more than one agency;~~
- (3) investigate and study the management and organization of agencies, and reorganize them when necessary to ensure their effective and efficient operation;
- (4) manage and control state property, real and personal;
- (5) maintain and operate all state buildings, as described in section 16B.24, subdivision 1;
- (6) supervise, control, review, and approve all capital improvements to state buildings and the capitol building and grounds;
- (7) provide central ~~duplicating, printing, and~~ mail facilities;
- (8) oversee publication of official documents and provide for their sale;
- (9) manage and operate parking facilities for state employees and a central motor pool for travel on state business;

(10) provide rental space within the capitol complex for a private day care center for children of state employees. The commissioner shall contract for services as provided in this chapter;

(11) settle state employee workers' compensation claims; ~~and~~

(12) ~~operate a state recycling center.~~ purchase, accept, transfer, warehouse, sell, distribute, or dispose of surplus property in accordance with state and federal rules and regulations. The commissioner may charge a fee to cover any expenses incurred in connection with any of these acts; and

(13) provide and manage a central distribution center for federal and state surplus personal property, as defined in section 16C.23, and may provide and manage a warehouse facility.

Sec. 4. Minnesota Statutes 2012, section 16B.04, subdivision 4, is amended to read:

Subd. 4. **Mission; efficiency.** It is part of the department's mission that within the department's resources the commissioner shall endeavor to:

(1) prevent the waste ~~or unnecessary spending~~ of public money;

(2) use innovative fiscal and human resource practices ~~to manage the state's resources and operate the department as efficiently as possible;~~

(3) coordinate the department's activities ~~wherever appropriate with the activities of other governmental agencies;~~

(4) use technology ~~where appropriate~~ to increase agency productivity, improve customer service, increase public access to information about government, and increase public participation in the business of government;

(5) utilize constructive and cooperative labor-management practices to the extent otherwise required by chapters 43A and 179A;

(6) report to the legislature ~~on the performance of agency operations and the accomplishment of agency goals in the agency's biennial budget according to section 16A.10, subdivision 1; and~~

(7) recommend to the legislature ~~appropriate~~ changes in law necessary to carry out the mission and improve the performance of the department.

Sec. 5. Minnesota Statutes 2012, section 16B.48, subdivision 2, is amended to read:

Subd. 2. **Purpose of funds.** Money in the state treasury credited to the general services revolving fund and money that is deposited in the fund is appropriated annually to the commissioner for the following purposes:

~~(1) to operate a central store and equipment service;~~

(2) (1) to operate the central mailing service, including purchasing postage and related items and refunding postage deposits;

(3) (2) to operate a documents service as prescribed by section 16B.51;

(4) (3) to provide services for the maintenance, operation, and upkeep of buildings and grounds managed by the commissioner of administration;

(5) (4) to operate a materials handling service, including interagency mail and product delivery, solid waste removal, courier service, equipment rental, and vehicle and equipment maintenance;

(6) (5) to provide analytical, statistical, and organizational development services to state agencies, local units of government, metropolitan and regional agencies, and school districts;

~~(7) to operate a records center and provide micrographics products and services;~~

(8) (6) to perform services for any other agency. Money may be expended for this purpose only when directed by the governor. The agency receiving the services shall reimburse the fund for their cost, and the commissioner shall make the appropriate transfers when requested. The term "services" as used in this clause means compensation paid officers and employees of the state government; supplies, materials, equipment, and other articles and things used by or furnished to an agency; and utility services and other services for the maintenance, operation, and upkeep of buildings and offices of the state government; and

(9) (7) to operate a state recycling center.

Sec. 6. **REVISOR'S INSTRUCTION.**

(a) In the next edition of Minnesota Statutes, the revisor shall renumber the statutory section in column A with the section in column B, and make necessary cross-reference changes consistent with the renumbering:

<u>Column A</u>	<u>Column B</u>
<u>16B.121</u>	<u>16C.0725</u>
<u>16B.122, subdivisions 1, 2, and 3</u>	<u>16C.073, subdivisions 1, 2, and 3</u>
<u>16B.124</u>	<u>16C.074</u>
<u>16B.126</u>	<u>16C.0745</u>
<u>16B.181</u>	<u>16C.151</u>
<u>16B.483</u>	<u>16C.05, subdivision 2, paragraph (f)</u>

(b) The revisor shall make changes necessary to correct the punctuation, grammar, or remaining text required by the renumbered and repealed sections in this article.

Sec. 7. **REPEALER.**

Minnesota Statutes 2012, sections 16B.01, subdivisions 4 and 5; 16B.24, subdivision 7; 16B.295; 16B.47; 16B.93, subdivisions 1, 2, 3, 4, 5, 6, and 7; 16B.94, subdivisions 1, 2, 3, and 4; 16B.95, subdivisions 1 and 2; and 16B.96, are repealed the day following final enactment.

ARTICLE 2

CHANGES TO CHAPTER 16C

Section 1. Minnesota Statutes 2012, section 16C.02, as amended by Laws 2013, chapter 142, article 3, section 16, is amended to read:

16C.02 DEFINITIONS.

Subdivision 1. **Applicability.** For purposes of this chapter, the following terms have the meanings given them, unless the context clearly indicates otherwise.

~~Subd. 1a. **Accessibility and accessible.** "Accessibility" and "accessible" are defined by the accessibility standards developed and required under section 16E.03, subdivision 9.~~

Subd. 2. **Agency.** "Agency" means any state officer, employee, board, commission, authority, department, entity, or organization of the executive branch of state government.

Unless specifically provided elsewhere in this chapter, agency does not include the Minnesota State Colleges and Universities.

Subd. 3. **Award.** "Award" means a commissioner's written acceptance of a bid or proposal to provide goods, services, construction, or utilities.

Subd. 3a. **Best and final offer.** "Best and final offer" means an optional step in the solicitation process in which responders are requested to improve their response by methods including, but not limited to, the reduction of cost, clarification or modification of the response, or the provision of additional information.

Subd. 4. **Best value.** "Best value" describes a result intended in the acquisition of all goods and services. Price must be one of the evaluation criteria when acquiring goods and services. Other evaluation criteria may include, but are not limited to, environmental considerations, quality, and vendor performance. In achieving "best value" strategic sourcing tools, including but not limited to best and final offers, negotiations, contract consolidation, product standardization, and mandatory-use enterprise contracts shall be used at the commissioner's discretion.

~~Subd. 4a. **Best value; construction.** For purposes of construction, building, alteration, improvement, or repair services, "best value" describes the result determined by a procurement method that considers price and performance criteria, which may include, but are not limited to:~~

6.1 ~~(1) the quality of the vendor's or contractor's performance on previous projects;~~
6.2 ~~(2) the timeliness of the vendor's or contractor's performance on previous projects;~~
6.3 ~~(3) the level of customer satisfaction with the vendor's or contractor's performance~~
6.4 ~~on previous projects;~~
6.5 ~~(4) the vendor's or contractor's record of performing previous projects on budget and~~
6.6 ~~ability to minimize cost overruns;~~
6.7 ~~(5) the vendor's or contractor's ability to minimize change orders;~~
6.8 ~~(6) the vendor's or contractor's ability to prepare appropriate project plans;~~
6.9 ~~(7) the vendor's or contractor's technical capacities;~~
6.10 ~~(8) the individual qualifications of the contractor's key personnel; or~~
6.11 ~~(9) the vendor's or contractor's ability to assess and minimize risks.~~

6.12 ~~"Performance on previous projects" does not include the exercise or assertion of a~~
6.13 ~~person's legal rights. This definition does not apply to sections 16C.32, 16C.33, 16C.34,~~
6.14 ~~and 16C.35.~~

6.15 Subd. 5. **Commissioner.** "Commissioner" means the commissioner of
6.16 administration.

6.17 Subd. 5a. **Competitive proposal.** "Competitive proposal" means a response to a
6.18 request for proposal in which the evaluation criteria upon which an award is based consists
6.19 of price and other factors such as vendor qualifications.

6.20 Subd. 5b. **Construction.** "Construction" means building construction, alteration
6.21 improvements, or repair. Construction does not mean highway construction.

6.22 Subd. 6. **Contract.** "Contract" means any written instrument or electronic document
6.23 containing the elements of offer, acceptance, and consideration to which an agency is a
6.24 party, ~~including an amendment to or extension of a contract.~~

6.25 Subd. 6a. **Enterprise procurement.** "Enterprise procurement" means the process
6.26 undertaken by the commissioner to leverage economies of scale of multiple end users to
6.27 achieve cost savings and other favorable terms in contracts for goods and services.

6.28 Subd. 6b. **Emergency.** "Emergency" means a threat to public health, welfare, or
6.29 safety that threatens the functioning of government, the protection of property, or the
6.30 health or safety of people.

6.31 Subd. 7. **Formal solicitation.** "Formal solicitation" means a solicitation which
6.32 requires a sealed response.

6.33 Subd. 7a. **General services.** "General services" means any nonprofessional or
6.34 technical services. General services does not include construction.

6.35 Subd. 8. **Goods.** "Goods" means all types of personal property including
6.36 commodities, materials, supplies, and equipment.

7.1 Subd. 9. **Informal solicitation.** "Informal solicitation" means a solicitation which
7.2 does not require a sealed response.

7.3 Subd. 10. **Lease.** "Lease" means a contract conveying from one entity to another the
7.4 use of real or personal property for a designated period of time in return for payment or
7.5 other consideration.

7.6 Subd. 10a. **Organizational conflict of interest.** "Organizational conflict of interest"
7.7 means that because of existing or planned activities or because of relationships with
7.8 other persons:

7.9 (1) the vendor is unable or potentially unable to render impartial assistance or
7.10 advice to the state;

7.11 (2) the vendor's objectivity in performing the contract work is or might be otherwise
7.12 impaired; or

7.13 (3) the vendor has an unfair advantage.

7.14 Subd. 11. **Request for bid or RFB.** "Request for bid" or "RFB" means a solicitation
7.15 in which the terms, conditions, and specifications are described and responses are not
7.16 subject to negotiation.

7.17 Subd. 12. **Request for proposal or RFP.** "Request for proposal" or "RFP" means a
7.18 solicitation in which it is not advantageous to set forth all the actual, detailed requirements
7.19 at the time of solicitation and responses are negotiated to achieve best value for the state.

7.20 Subd. 13. **Resident vendor.** "Resident vendor" means a person, firm, or corporation
7.21 that:

7.22 (1) is authorized to conduct business in the state of Minnesota on the date a
7.23 solicitation for a contract is first advertised or announced. It includes a foreign corporation
7.24 duly authorized to engage in business in Minnesota;

7.25 (2) has paid unemployment taxes or income taxes in this state during the 12 calendar
7.26 months immediately preceding submission of the bid or proposal for which any preference
7.27 is sought;

7.28 (3) has a business address in the state; and

7.29 (4) has affirmatively claimed that status in the bid or proposal submission.

7.30 Subd. 14. **Response.** "Response" means the offer received from a vendor in
7.31 response to a solicitation. A response includes submissions commonly referred to as
7.32 "offers," "bids," "quotes," "proposals," "best and final offers," or "negotiated offers."

7.33 Subd. 15. **Sealed.** "Sealed" means a method determined by the commissioner
7.34 to prevent the contents being revealed or known before the deadline for submission of
7.35 responses.

8.1 Subd. ~~16. Service contract.~~ "Service contract" means a contract for any
 8.2 nonprofessional or technical services.

8.3 Subd. 17. **Services.** "Services" means, unless otherwise indicated, both professional
 8.4 or technical services and service performed under a general service contract.

8.5 Subd. 18. **Single source.** "Single source" means an acquisition where, after a
 8.6 search, only one supplier is determined to be reasonably available for the required product,
 8.7 service, or construction item.

8.8 Subd. 19. **Solicitation.** "Solicitation" means the process used to communicate
 8.9 procurement requirements and to request responses from interested vendors. A solicitation
 8.10 may be, but is not limited to, a request for bid and request for proposal.

8.11 Subd. ~~20. Strategic sourcing.~~ "Strategic sourcing" means methods used to analyze
 8.12 and reduce spending on goods and services, including but not limited to spend analysis,
 8.13 product standardization, contract consolidation, negotiations, multiple jurisdiction
 8.14 purchasing alliances, reverse and forward auctions, life-cycle costing, and other techniques.

8.15 Subd. 21. **Vendor.** "Vendor" means a business, including a construction contractor
 8.16 or a natural person, and includes both if the natural person is engaged in a business.

8.17 Sec. 2. Minnesota Statutes 2012, section 16C.03, is amended to read:

8.18 **16C.03 COMMISSIONER'S AUTHORITY; POWERS AND DUTIES.**

8.19 Subdivision 1. **Scope.** The commissioner's authority in this section applies to an
 8.20 agency and is subject to other provisions of this chapter and chapter 16B. Unless otherwise
 8.21 provided, the provisions in this chapter and chapter 16B do not apply to the Minnesota
 8.22 State Colleges and Universities.

8.23 Subd. 2. **Rulemaking authority.** (a) Subject to chapter 14, the commissioner may
 8.24 adopt rules, consistent with this chapter and chapter 16B, relating to the following topics:

8.25 (1) procurement process including solicitations and responses to solicitations, bid
 8.26 security, vendor errors, opening of responses, award of contracts, tied bids, and award
 8.27 protest process;

8.28 (2) contract performance and failure to perform;

8.29 (3) authority to debar or suspend vendors, and reinstatement of vendors;

8.30 (4) contract cancellation;

8.31 (5) procurement from rehabilitation facilities;

8.32 (6) organizational conflicts of interest; and

8.33 (7) surplus property acquisition, distribution, and disposal.

8.34 (b) Minnesota Rules, parts 1230.0100 to 1230.4300, adopted under chapter 16B,
 8.35 govern under this chapter until amended, repealed, or superseded by rules adopted under

chapter 16B or this chapter. In the event rules adopted under chapter 16B conflict with provisions of this chapter, this chapter governs.

Subd. 3. **Acquisition authority.** The commissioner shall acquire all goods, general services, building construction, and utilities needed by agencies. ~~The commissioner shall acquire goods, services, and utilities by requests for bids, requests for proposals, reverse auctions as provided in section 16C.10, subdivision 7, or other methods provided by law, unless a section of law requires a particular method of acquisition to be used. The commissioner shall make all decisions regarding acquisition activities. The determination of the acquisition method and all decisions involved in the acquisition process, unless otherwise provided for by law, shall be based on best value which includes an evaluation of price and may include other considerations including, but not limited to, environmental considerations, quality, and vendor performance. A best value determination must be based on the evaluation criteria detailed in the solicitation document. If criteria other than price are used, the solicitation document must state the relative importance of price and other factors. Any or all responses may be rejected. When using the request for bid process, the bid must be awarded to the lowest responsive and responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract or purchase is intended, the status and capability of the vendor, and other considerations imposed in the request for bids. The commissioner may decide which is the lowest responsible bidder for all purchases and may use the principles of life-cycle costing, where appropriate, in determining the lowest overall bid. The duties set forth in this subdivision are subject to delegation pursuant to this section. The commissioner shall conduct all contracting by, for, and between agencies and perform all contract management and review functions for contracts, except those functions specifically delegated to be performed by the contracting agency, the attorney general, or as otherwise provided for by law.~~

Subd. 3a. **Acquisition authority; best value construction contracts.** ~~For all building and construction contracts, the commissioner shall award contracts pursuant to section 16C.28, and "best value" shall be defined and applied as set forth in sections 16C.02, subdivision 4a, and 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c). The duties set forth in this subdivision are subject to delegation pursuant to this section. The commissioner shall establish procedures for developing and awarding best value requests for proposals for construction projects. The criteria to be used to evaluate the proposals must be included in the solicitation document and must be evaluated in an open and competitive manner is authorized to award construction contracts based on best value pursuant to section 16C.28.~~

10.1 Subd. 4. **Contracting authority Enterprise contracts.** The commissioner shall
10.2 conduct all contracting by, for, and between agencies and perform all contract management
10.3 and review functions for contracts, except those functions specifically delegated to be
10.4 performed by the contracting agency, the attorney general, or otherwise provided for by
10.5 law. The commissioner may require that agency staff participate in the development of
10.6 enterprise procurements including the development of product standards, the application
10.7 of accessibility standards, specifications, and other requirements.

10.8 Subd. 4a. **Commissioner approval.** Notwithstanding any law to the contrary, after
10.9 January 1, 2002, any contract entered into by the Department of Transportation must be
10.10 approved by the commissioner, unless the commissioner has delegated approval authority
10.11 to the Department of Transportation under subdivision 16.

10.12 Subd. 5. **Amendments, cancellations, and appeals protests.** The commissioner
10.13 shall, in addition to the duties set forth in subdivisions 3 and 4, make all decisions
10.14 regarding agency amendments, cancellations, and appeals of all agency acquisition
10.15 activities unless the duties are delegated pursuant to this section protests.

10.16 Subd. 6. **Lease and installment purchases.** The commissioner is authorized
10.17 to enter into lease purchases or installment purchases for periods not exceeding the
10.18 anticipated useful life of the items acquired unless otherwise prohibited by law.

10.19 Subd. 7. **Lease, rental, and installment agreements.** The commissioner is
10.20 authorized to enter into lease, lease purchase, rental, or installment agreements for the use
10.21 or acquisition, whichever is applicable, of real or personal property.

10.22 Subd. 8. **Policy and procedures.** The commissioner is authorized to issue policies,
10.23 procedures, and standards applicable to all acquisition activities by and for agencies.
10.24 Consistent with the authority specified in this chapter, the commissioner shall develop
10.25 and implement policies, procedures, and standards ensuring the optimal use of strategic
10.26 sourcing techniques.

10.27 Subd. 9. **Employee purchasing.** The commissioner is authorized to enter into
10.28 contracts under which a vendor agrees to sell computer equipment and related products to
10.29 state employees, for their own use related to work, at contract prices. Employees may
10.30 make only one purchase under this subdivision. Under no circumstances shall the state
10.31 be liable for purchases made under this subdivision. The provisions of section 43A.38,
10.32 subdivisions 4 and 5, clause (1), do not apply to this subdivision.

10.33 Subd. 10. **Cooperative purchasing.** The commissioner is authorized to enter into
10.34 a cooperative purchasing agreement for the provision of goods, services, construction,
10.35 and utilities with one or more other states or governmental units, as described in section
10.36 471.59, subdivision 1; entities defined in section 16C.23, subdivision 1; a registered

combined charitable organization and its affiliated agencies as defined by section 43A.50; a charitable organization defined in section 309.50, subdivision 4, that is also a recipient of a state grant or contract; or a nonprofit community health clinic defined in section 145.9268. The commissioner is authorized to enter into cooperative purchasing agreements for the purchase of goods, services, and utilities with health care facilities that are required to provide indigent care or any entity recognized by another state's statutes as authorized to use that state's commodity or service contracts in accordance with section 16C.105.

~~Subd. 11. **Surplus property.** The commissioner is authorized to purchase, accept, transfer, warehouse, sell, distribute, or dispose of surplus property in accordance with state and federal rules and regulations. The commissioner may charge a fee to cover any expenses incurred in connection with any of these acts.~~

~~Subd. 12. **Central distribution center.** The commissioner is authorized to provide and manage a central distribution center for federal and state surplus personal property, as defined in section 16C.23, and may provide and manage a warehouse facility.~~

~~Subd. 13. **Central stores.** The commissioner is authorized to provide agencies with supplies and equipment and operate all central stores and supply rooms serving more than one agency.~~

Subd. 14. **Provision of goods, services, and utilities.** The commissioner has the authority to provide goods, services, and utilities under this chapter to state legislative and judicial branch agencies, political subdivisions, the Minnesota State Colleges and Universities, the University of Minnesota, and federal government agencies.

Subd. 15. **Reimbursement for goods, services, and utilities.** The commissioner is authorized to charge a fee to cover costs and expenses associated with operating a revolving fund or an enterprise fund to acquire goods, services, construction, and utilities. The fees are appropriated to the commissioner to administer and manage the programs and facilities covered under this section.

Subd. 16. **Delegation of duties.** The commissioner may delegate duties imposed by this chapter to the head of an agency and to any subordinate of the agency head. ~~Delegated duties shall be exercised in the name of the commissioner and under the commissioner's direct supervision and control. A delegation of duties may include, but is not limited to, allowing individuals within agencies to acquire goods, services, and utilities within dollar limitations and for designated types of acquisitions. Delegation of contract management and review functions must be filed with the secretary of state and may not, except with respect to delegations within the Department of Administration, exceed two years in duration. The commissioner may withdraw any delegation at the commissioner's sole discretion. The commissioner may require an agency head or subordinate to accept~~

12.1 delegated responsibility to procure goods or services intended for the exclusive use of the
12.2 agency receiving the delegation.

12.3 ~~Subd. 17. **Contract extension.** The term of a contract may be extended for a~~
12.4 ~~time longer than the time specified in this chapter, up to a total term of ten years, if~~
12.5 ~~the commissioner, in consultation with the commissioner of management and budget,~~
12.6 ~~determines that the contractor will incur upfront costs under the contract that cannot be~~
12.7 ~~recovered within a two-year period and that will provide cost savings to the state and that~~
12.8 ~~these costs will be amortized over the life of the contract.~~

12.9 Subd. 18. **Contracts with foreign vendors.** (a) The commissioner and other
12.10 agencies to which this section applies and the legislative branch of government shall,
12.11 subject to paragraph (d), cancel a contract for goods or services from a vendor or an
12.12 affiliate of a vendor or suspend or debar a vendor or an affiliate of a vendor from future
12.13 contracts upon notification from the commissioner of revenue that the vendor or an
12.14 affiliate of the vendor has not registered to collect the sales and use tax imposed under
12.15 chapter 297A on its sales in Minnesota or to a destination in Minnesota. This subdivision
12.16 shall not apply to state colleges and universities, the courts, and any agency in the judicial
12.17 branch of government. For purposes of this subdivision, the term "affiliate" means any
12.18 person or entity that is controlled by, or is under common control of, a vendor through
12.19 stock ownership or other affiliation.

12.20 (b) Beginning January 1, 2006, each vendor or affiliate of a vendor selling goods or
12.21 services, subject to tax under chapter 297A, to an agency or the legislature must provide
12.22 its Minnesota sales and use tax business identification number, upon request, to show that
12.23 the vendor is registered to collect Minnesota sales or use tax.

12.24 (c) The commissioner of revenue shall periodically provide to the commissioner
12.25 and the legislative branch a list of vendors who have not registered to collect Minnesota
12.26 sales and use tax and who are subject to being suspended or debarred as vendors or having
12.27 their contracts canceled.

12.28 (d) The provisions of this subdivision may be waived by the commissioner or the
12.29 legislative branch when the vendor is the single source of such goods or services, in the
12.30 event of an emergency, or when it is in the best interests of the state as determined by the
12.31 commissioner in consultation with the commissioner of revenue. Such consultation is not
12.32 a disclosure violation under chapter 270B.

12.33 ~~Subd. 19. **Training.** Any personnel administering procurement procedures for a~~
12.34 ~~user of best value procurement or any consultant retained by a local unit of government to~~
12.35 ~~prepare or evaluate solicitation documents must be trained, either by the department or~~
12.36 ~~through other training, in the request for proposals process for best value contracting for~~

13.1 ~~construction projects. The commissioner may establish a training program for state and~~
13.2 ~~local officials, and vendors and contractors, on best value procurement for construction~~
13.3 ~~projects, including those governed by section 16C.28. If the commissioner establishes~~
13.4 ~~such a training program, the state may charge a fee for providing training.~~

13.5 Subd. 20. **Workers' compensation insurance.** If a potential vendor provides
13.6 evidence that it has purchased workers' compensation insurance from an insurance
13.7 company domiciled outside of Minnesota that is rated in financial size category of VI or
13.8 better, the commissioner may not exclude the potential vendor from entering into a state
13.9 contract based on its workers' compensation coverage.

13.10 Sec. 3. Minnesota Statutes 2012, section 16C.04, subdivision 2, is amended to read:

13.11 Subd. 2. **Conflict of interest policy development.** (a) The commissioner must
13.12 develop policies regarding code of ethics and conflict of interest designed to prevent
13.13 conflicts of interest for employees involved in the acquisition of goods, services,
13.14 construction, and utilities or the award and administration of grant contracts. The policies
13.15 must apply to employees who are directly or indirectly involved in the acquisition of goods,
13.16 services, and utilities, developing requests for proposals, evaluating bids or proposals,
13.17 awarding the contract, selecting the final vendor, drafting and entering into contracts,
13.18 evaluating performance under these contracts, and authorizing payments under the contract.

13.19 (b) The policies must contain a process for making employees aware of policy and
13.20 laws relating to conflict of interest, and for training employees on how to avoid and deal
13.21 with potential conflicts.

13.22 (c) The policies must contain a process under which an employee who has a conflict
13.23 of interest or a potential conflict of interest must disclose the matter, and a process under
13.24 which work on the contract may be assigned to another employee if possible.

13.25 Sec. 4. Minnesota Statutes 2012, section 16C.05, is amended to read:

13.26 **16C.05 CONTRACT MANAGEMENT; VALIDITY AND REVIEW.**

13.27 Subdivision 1. **Agency cooperation and delegation.** Agencies shall fully cooperate
13.28 with the commissioner in the creation, management, and review oversight of state
13.29 contracts ~~and in the development and implementation of strategic sourcing techniques.~~
13.30 Authority delegated to agencies shall be exercised in the name of the commissioner and
13.31 under the commissioner's direct supervision and control. A delegation of duties may
13.32 include, but is not limited to, allowing individuals within agencies to acquire goods,
13.33 services, construction, and utilities within dollar limitations and for designated types
13.34 of acquisitions. Delegation of contract management and review functions must be

14.1 filed with the secretary of state. The commissioner may withdraw any delegation at
14.2 the commissioner's sole discretion. The commissioner may require an agency head or
14.3 subordinate to accept delegated responsibility to procure goods, services, or construction
14.4 intended for the exclusive use of the agency receiving the delegation.

14.5 Subd. 2. **Creation and validity of contracts.** (a) A contract ~~is~~ and amendments are
14.6 not valid and the state is not bound by it ~~them~~ and no agency, without the prior written
14.7 approval of the commissioner granted pursuant to subdivision 2a, may authorize work to
14.8 begin on it ~~them~~ unless:

14.9 (1) ~~it has~~ they have first been executed by the head of the agency or a delegate who
14.10 is a party to the contract;

14.11 (2) ~~it has~~ they have been approved by the commissioner; and

14.12 (3) the accounting system shows an encumbrance for the amount of the contract
14.13 liability, except as allowed by policy approved by the commissioner and commissioner of
14.14 management and budget for routine, low-dollar procurements.

14.15 ~~(b) The combined contract and amendments must not exceed five years without~~
14.16 ~~specific, written approval by the commissioner according to established policy, procedures,~~
14.17 ~~and standards, or unless otherwise provided for by law. The term of the original contract~~
14.18 ~~must not exceed two years unless the commissioner determines that a longer duration is~~
14.19 ~~in the best interest of the state.~~

14.20 ~~(e) (b)~~ Grants, interagency agreements, purchase orders, work orders, and annual
14.21 plans need not, in the discretion of the commissioner and attorney general, require the
14.22 signature of the commissioner and/or the attorney general. A signature is not required
14.23 for work orders and amendments to work orders related to Department of Transportation
14.24 contracts. Bond purchase agreements by the Minnesota Public Facilities Authority do not
14.25 require the approval of the commissioner.

14.26 ~~(d) (c)~~ Amendments to contracts must entail tasks that are substantially similar to
14.27 those in the original contract or involve tasks that are so closely related to the original
14.28 contract that it would be impracticable for a different contractor to perform the work. The
14.29 commissioner or an agency official to whom the commissioner has delegated contracting
14.30 authority under section 16C.03, subdivision 16, must determine that an amendment would
14.31 serve the interest of the state better than a new contract and would cost no more.

14.32 ~~(e) (d)~~ A record must be kept of all responses to solicitations, including names
14.33 of bidders and amounts of bids or proposals. A fully executed copy of every contract,
14.34 amendments to the contract, and performance evaluations relating to the contract must be
14.35 kept on file at the contracting agency for a time equal to that specified for contract vendors

15.1 and other parties in subdivision 5. These records are open to public inspection, subject to
15.2 section 13.591 and other applicable law.

15.3 ~~(f)~~ (e) The attorney general must periodically review and evaluate a sample of state
15.4 agency contracts to ensure compliance with laws.

15.5 (f) Before executing a contract or license agreement involving intellectual property
15.6 developed or acquired by the state , a state agency shall seek review and comment from
15.7 the attorney general on the terms and conditions of the contract or agreement.

15.8 Subd. 2a. **Emergency authorization.** The commissioner may grant an agency
15.9 approval to authorize work to begin on a contract prior to the full execution of the contract
15.10 in the event of an emergency as defined in section 16C.10, subdivision 2.

15.11 ~~Subd. 3. **Exception.** The requirements of subdivision 2 do not apply to contracts~~
15.12 ~~of the Department of Employment and Economic Development distributing state and~~
15.13 ~~federal funds for the purpose of subcontracting the provision of program services to~~
15.14 ~~eligible recipients. For these contracts, the commissioner of employment and economic~~
15.15 ~~development is authorized to directly enter into agency contracts and encumber available~~
15.16 ~~funds. For contracts distributing state or federal funds pursuant to the federal Workforce~~
15.17 ~~Investment Act, United States Code, title 29, section 2911 et seq., or section 116L.17, the~~
15.18 ~~commissioner of employment and economic development in consultation with the Job~~
15.19 ~~Skills Partnership Board is authorized to directly enter into agency contracts and encumber~~
15.20 ~~available funds to ensure a rapid response to the needs of dislocated workers. The~~
15.21 ~~commissioner of employment and economic development shall adopt internal procedures~~
15.22 ~~to administer and monitor funds distributed under these contracts. This exception~~
15.23 ~~also applies to any contracts entered into by the commissioner of education that were~~
15.24 ~~previously entered into by the commissioner of employment and economic development.~~

15.25 Subd. 4. **Contract administration.** A contracting agency shall diligently administer
15.26 and monitor any contract it has entered into, ~~pursuant to a delegation of duties from the~~
15.27 ~~commissioner.~~ The commissioner may require an agency to report to the commissioner at
15.28 any time on the status of any contracts to which the agency is a party.

15.29 Subd. 5. **Subject to audit.** A contract or any pass-through disbursement of public
15.30 funds to a vendor of goods or services or a grantee made by or under the supervision of
15.31 the commissioner or any county or unit of local government must include, expressed or
15.32 implied, an audit clause that provides that the books, records, documents, and accounting
15.33 procedures and practices of the vendor or other party, that are relevant to the contract
15.34 or transaction, are subject to examination by the contracting agency and either the
15.35 legislative auditor or the state auditor, as appropriate, for a minimum of six years. If the
15.36 contracting agency is a local unit of government, and the governing body of the local unit

of government requests that the state auditor examine the books, records, documents, and accounting procedures and practices of the vendor or other party pursuant to this subdivision, the contracting agency shall be liable for the cost of the examination. If the contracting agency is a local unit of government, and the grantee, vendor, or other party requests that the state auditor examine all books, records, documents, and accounting procedures and practices related to the contract, the grantee, vendor, or other party that requested the examination shall be liable for the cost of the examination. An agency contract made for purchase, lease, or license of software and data from the state is not required to contain this audit clause.

Subd. 6. **Authority of attorney general.** The attorney general may pursue remedies available by law to avoid the obligation of an agency to pay under a contract or to recover payments made if services performed or goods received under the contract are so unsatisfactory, incomplete, or inconsistent that payment would involve unjust enrichment. The contrary opinion of the contracting agency does not affect the power of the attorney general under this subdivision.

Subd. 7. **Contracts with Indian tribes and bands.** Notwithstanding any other law, an agency may not require an Indian tribe or band to deny its sovereignty as a requirement or condition of a contract with an agency.

Sec. 5. Minnesota Statutes 2012, section 16C.055, subdivision 2, is amended to read:

Subd. 2. **Restriction.** ~~After July 1, 2002,~~ An agency may not enter into a contract or otherwise agree with a nongovernmental entity to receive total nonmonetary consideration valued at more than \$100,000 annually in exchange for the agency providing nonmonetary consideration, unless such an agreement is specifically authorized by law. This subdivision does not apply to the State Lottery or private aquaculture businesses involved in state stocking contracts.

Sec. 6. Minnesota Statutes 2012, section 16C.06, as amended by Laws 2013, chapter 142, article 3, section 17, is amended to read:

16C.06 ACQUISITIONS PROCUREMENT REQUIREMENTS.

Subdivision 1. ~~Publication requirements~~ **Public notice required over \$25,000.** ~~Notices~~ Unless otherwise required by law, public notice of solicitations is required for acquisitions all purchases for goods and general services, professional and technical services contracts, and construction estimated to be more than \$25,000, or \$100,000 in the case of a the Department of Transportation acquisition, ~~must be publicized in a manner designated by the commissioner. To the extent practical, this must include posting on~~

17.1 ~~a state Web site.~~ The manner of publication shall be designated by the commissioner.
17.2 Notice requirements for procurement transactions \$25,000 and under shall be determined
17.3 by the commissioner.

17.4 Subd. 2. **Solicitation process.** (a) A formal solicitation must be used to acquire
17.5 all goods, service contracts, and utilities estimated at or more than \$50,000, or in the
17.6 case of a Department of Transportation solicitation, at or more than \$100,000, unless
17.7 otherwise provided for. ~~All formal responses must be sealed when they are received and~~
17.8 ~~must be made publicly available as required by section 13.591.~~ Formal responses must be
17.9 authenticated by the responder in a manner specified by the commissioner.

17.10 (b) An informal solicitation may be used to acquire all goods, service contracts,
17.11 and utilities that are estimated at less than \$50,000, or in the case of a Department of
17.12 Transportation solicitation, at or less than \$100,000. The number of vendors required to
17.13 receive solicitations may be determined by the commissioner. Informal responses must be
17.14 authenticated by the responder in a manner specified by the commissioner.

17.15 Subd. 3a. ~~**Information in bids and proposals.** Data relating to bids and proposals~~
17.16 ~~are governed by section 13.591.~~

17.17 Subd. 3b. **Term of contracts.** (a) For goods, general services, and building
17.18 construction, the combined contract and amendments must not exceed five years
17.19 without specific, written approval by the commissioner according to established policy,
17.20 procedures, and standards, or unless otherwise provided for by law. The term of the
17.21 original contract must not exceed two years unless the commissioner determines that a
17.22 longer duration is in the best interest of the state.

17.23 (b) For professional or technical services, the combined contract and amendments
17.24 must not exceed five years, unless otherwise provided for by law. The term of the original
17.25 contract must not exceed two years unless the commissioner determines that a longer
17.26 duration is in the best interest of the state.

17.27 (c) The term of a contract may be extended for a time longer than the time specified
17.28 in this section, up to a total term of ten years, if the commissioner, in consultation with
17.29 the commissioner of management and budget, determines that the contractor will incur
17.30 upfront costs under the contract that cannot be recovered within a two-year period and
17.31 that will provide cost savings to the state and that these costs will be amortized over the
17.32 life of the contract.

17.33 (d) The commissioner is authorized to enter into or approve a written agreement
17.34 not to exceed 31 years with a district heating or cooling utility that will specify, but not
17.35 be limited to, the appropriate terms and conditions for the interchange of district heating
17.36 or cooling services.

Subd. 4. **Multiple awards.** The commissioner may award a contract to more than one vendor if, in the opinion of the commissioner, it is in the best interest of the state.

~~Subd. 5. **State as responder.** The head of an agency, in consultation with the requesting agency and the commissioner, may respond to a solicitation or request if the goods and services meet the needs of the requesting agency and provide the state with the best value. When an agency responds to a solicitation, all work product relating to the response is classified by section 13.591, subdivision 4.~~

Subd. 6. **Awards.** (a) Contract awards shall be made utilizing requests for bids, requests for proposals, reverse auctions as provided in section 16C.10, subdivision 7, or other methods provided by law, unless a section of law requires a particular method of acquisition to be used. The determination of the acquisition method and all decisions involved in the acquisition process, unless otherwise provided for by law, shall be determined by the commissioner. The commissioner is authorized to utilize tools, including but not limited to contract consolidation, product standardization, and mandatory-use enterprise contracts to the extent determined to be in the best interest of the state.

(b) Awards based on competitive proposals must be based on best value, which includes include an evaluation of price; and may include other considerations including, but not limited to, such as environmental considerations, quality, and vendor performance. If criteria other than price are used, The solicitation document used to obtain competitive proposals must state the relative importance of price and the other factors.

(c) Awards based on a low bid process must be made to the lowest responsive and responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract or purchase is intended, the status and capability of the vendor, and other considerations imposed in the request for bids. The commissioner may decide which is the lowest responsible bidder for all purchases and may use the principles of life-cycle costing, where appropriate, in determining the lowest overall bid.

Subd. 7. **Other states with resident preference.** Acquisition of goods and services must be awarded according to the provisions of this chapter except that a resident vendor shall be allowed a preference over a nonresident vendor from a state that gives or requires a preference to vendors from that state. The preference shall be equal to the preference given or required by the state of the nonresident vendor.

Subd. 8. **Federally funded projects exempt.** Subdivision 7 does not apply to a contract for any project in which federal funds are expended.

Subd. 9. **Rejection.** At the discretion of the commissioner, any or all responses may be rejected if it is determined to be in the best interest of the state.

Subd. 10. **Preferences not cumulative.** The preferences provided for under subdivision 7 and sections 16B.121 and 16C.16 are not cumulative. The total percentage of preference granted on a contract may not exceed the highest percentage of preference allowed for that contract under any one of these statutory sections.

Sec. 7. Minnesota Statutes 2012, section 16C.08, is amended to read:

16C.08 PROFESSIONAL OR TECHNICAL SERVICES.

Subdivision 1. **Definition.** For the purposes of this section, "professional or technical services" means services that are intellectual in character, including consultation, analysis, evaluation, prediction, planning, programming, or recommendation, and result in the production of a report or the completion of a task. Professional or technical contracts do not include the provision of supplies or materials except by the approval of the commissioner or except as incidental to the provision of professional or technical services.

Subd. 1a. **Enterprise procurement.** Notwithstanding section 15.061 or any other law, the commissioner shall, to the fullest extent practicable, conduct enterprise procurements that result in the establishment of professional or technical contracts for use by multiple state agencies. The commissioner is authorized to mandate use of any contract entered into as a result of an enterprise procurement process. Agencies shall fully cooperate in the development and use of contracts entered into under this section.

Subd. 2. **Duties of contracting agency agencies.** ~~(a) Before an agency may seek approval of a professional or technical services contract valued in excess of \$5,000, it must provide the following:~~

~~(1) a description of how the proposed contract or amendment is necessary and reasonable to advance the statutory mission of the agency;~~

~~(2) a description of the agency's plan to notify firms or individuals who may be available to perform the services called for in the solicitation;~~

~~(3) a description of the performance measures or other tools, including accessibility measures if applicable, that will be used to monitor and evaluate contract performance; and~~

~~(4) an explanation detailing, if applicable, why this procurement is being pursued unilaterally by the agency and not as an enterprise procurement.~~

~~(b) In addition to paragraph (a), the agency must certify that~~ The following applies to all contracts for professional or technical services:

~~(1) no contract shall be entered into if a current state agency employee is able and available to perform the services called for by the contract;~~

~~(2) the normal competitive bidding mechanisms will not provide for adequate performance of the services~~ unless otherwise authorized by law, a competitive proposal

20.1 process shall be used to acquire professional or technical services. A competitive bidding
20.2 process shall not be utilized to acquire professional or technical services;

20.3 ~~(3) reasonable efforts will be made to publicize the availability of the contract to~~
20.4 ~~the public;~~

20.5 ~~(4) the agency will develop and implement a written plan providing for the~~
20.6 ~~assignment of (3) agencies shall assign specific agency personnel to manage the each~~
20.7 ~~contract, including a monitoring and liaison function, the periodic review of interim~~
20.8 ~~reports or other indications of past performance, and the ultimate utilization of the final~~
20.9 ~~product of the services;~~

20.10 ~~(5) the agency will~~ (4) agencies shall not allow the a contractor to begin work before
20.11 the contract is fully executed unless an exception under section 16C.05, subdivision 2a,
20.12 has been granted by the commissioner and funds are fully encumbered;

20.13 ~~(6) the~~ (5) a contract will ~~shall~~ not establish an employment relationship between the
20.14 state or the agency and any persons performing under the contract;

20.15 ~~(7)~~ (6) in the event the results of the contract work will be carried out or continued
20.16 by state employees upon completion of the contract, the contractor is required to include
20.17 state employees in development and training, to the extent necessary to ensure that after
20.18 completion of the contract, state employees can perform any ongoing work related to the
20.19 same function; and

20.20 ~~(8) the agency will~~ (7) agencies shall not contract out ~~its~~ their previously eliminated
20.21 jobs for four years without first considering the same former employees who are on the
20.22 seniority unit layoff list who meet the minimum qualifications determined by the agency;

20.23 ~~(e) A contract establishes an employment relationship for purposes of paragraph (b),~~
20.24 ~~clause (6), if, under federal laws governing the distinction between an employee and an~~
20.25 ~~independent contractor, a person would be considered an employee.~~

20.26 (8) the contractor and agents must not be employees of the state;

20.27 (9) a professional or technical services contract must by its terms permit the
20.28 commissioner to unilaterally terminate the contract prior to completion, upon payment
20.29 of just compensation, if the commissioner determines that further performance under the
20.30 contract would not serve agency purposes; and

20.31 (10) the terms of a contract must provide that no more than 90 percent of the amount
20.32 due under the contract may be paid until the final product has been reviewed by the head
20.33 of the agency entering into the contract and the head of the agency has certified that the
20.34 contractor has satisfactorily fulfilled the terms of the contract, unless specifically excluded
20.35 or modified in writing by the commissioner. This clause does not apply to contracts for
20.36 professional services as defined in sections 326.02 to 326.15.

Subd. 3. **Procedure for Review of professional or technical services contracts transactions.** Before ~~approving~~ issuing notice of a proposed contract for professional or technical services in excess of \$25,000, the ~~commissioner~~ agency must ~~determine, at least, that~~ provide the solicitation document along with the following for review and approval by the commissioner:

(1) a certification that all provisions of subdivision 2 and section 16C.16 have been verified or complied with;

(2) ~~the agency has demonstrated~~ a description demonstrating that the work to be performed under the contract is necessary to the agency's achievement of its statutory responsibilities and there is statutory authority to enter into the contract;

~~(3) the contractor and agents are not employees of the state;~~

~~(4) the contracting agency has specified a satisfactory method of evaluating and using the results of the work to be performed; and~~

~~(5) the combined contract and amendments will not exceed five years, unless otherwise provided for by law. The term of the original contract must not exceed two years unless the commissioner determines that a longer duration is in the best interest of the state.~~

(3) a description of the agency's plan to notify firms or individuals who may be available to perform the services called for in the solicitation;

(4) a description of the performance measures or other tools that will be used to monitor and evaluate contractor performance; and

(5) a description of the procurement method to be utilized to address accessibility standards for technology services.

Subd. 3a. **Single source requests.** The commissioner is required to review and approve all agency requests to enter into contracts based on single source authority specified in section 16C.10, subdivision 1. Agencies shall submit a written request to the commissioner describing the search conducted and reasons supporting the request for single source authority along with the information specified in subdivision 3, clauses (1), (2), and (4).

Subd. 4. **Reports.** (a) The commissioner shall submit to the governor, the chairs and ranking minority members of the house of representatives Ways and Means and senate Finance Committees, and the Legislative Reference Library a yearly listing of all contracts for professional or technical services executed. The report must identify the contractor, contract amount, duration, and services to be provided. The commissioner shall also issue yearly reports summarizing the contract review activities of the department by fiscal year.

(b) The fiscal year report must be submitted by September 1 of each year and must:

(1) be sorted by agency and by contractor;

22.1 (2) show the aggregate value of contracts issued by each agency and issued to each
22.2 contractor;

22.3 (3) distinguish between contracts that are being issued for the first time and contracts
22.4 that are being extended;

22.5 (4) state the termination date of each contract;

22.6 (5) identify services by commodity code, including topics such as contracts for
22.7 training, contracts for research and opinions, and contracts for computer systems; and

22.8 (6) identify which contracts were awarded without following the solicitation process
22.9 in this chapter because it was determined that there was only a single source for the services.

22.10 (c) Within 30 days of final completion of a contract over \$25,000 covered by this
22.11 subdivision, the head of the agency entering into the contract must submit a report to the
22.12 commissioner who must make the report publicly available online and submit a copy to
22.13 the Legislative Reference Library. The report must:

22.14 (1) summarize the purpose of the contract, including why it was necessary to enter
22.15 into a contract;

22.16 (2) state the amount spent on the contract;

22.17 (3) if the contract was awarded without following the solicitation process in this
22.18 chapter because it was determined that there was only a single source for the services,
22.19 explain why the agency determined there was only a single source for the services; and

22.20 (4) include a written performance evaluation of the work done under the contract.

22.21 The evaluation must include an appraisal of the contractor's timeliness, quality, cost, and
22.22 overall performance in meeting the terms and objectives of the contract. Contractors may
22.23 request copies of evaluations prepared under this subdivision and may respond in writing.
22.24 Contractor responses must be maintained with the contract file.

22.25 Subd. 4b. **Limitations on actions.** No action may be maintained by a contractor
22.26 against an employee or agency who discloses information about a current or former
22.27 contractor under subdivision 4, unless the contractor demonstrates by clear and convincing
22.28 evidence that:

22.29 (1) the information was false and defamatory;

22.30 (2) the employee or agency knew or should have known the information was false
22.31 and acted with malicious intent to injure the current or former contractor; and

22.32 (3) the information was acted upon in a manner that caused harm to the current or
22.33 former contractor.

22.34 ~~Subd. 5. **Contract terms.** (a) A professional or technical services contract must~~
22.35 ~~by its terms permit the commissioner to unilaterally terminate the contract prior to~~

23.1 completion, upon payment of just compensation, if the commissioner determines that
 23.2 further performance under the contract would not serve agency purposes.

23.3 (b) The terms of a contract must provide that no more than 90 percent of the amount
 23.4 due under the contract may be paid until the final product has been reviewed by the head
 23.5 of the agency entering into the contract and the head of the agency has certified that
 23.6 the contractor has satisfactorily fulfilled the terms of the contract, unless specifically
 23.7 excluded in writing by the commissioner. This paragraph does not apply to contracts for
 23.8 professional services as defined in sections 326.02 to 326.15.

23.9 Subd. 6. **Filing copy.** If the final product of the contract is a written report, a copy
 23.10 must be filed with the Legislative Reference Library.

23.11 Subd. 7. **Exclusions.** This section does not apply to contracts with individuals or
 23.12 organizations for administration of employee pension plans authorized under chapter
 23.13 354B or 354C.

23.14 Sec. 8. Minnesota Statutes 2013 Supplement, section 16C.09, is amended to read:

23.15 **16C.09 PROCEDURE FOR GENERAL SERVICE CONTRACTS.**

23.16 (a) Before entering into or approving a general service contract valued in excess of
 23.17 \$5,000, the commissioner must determine, ~~at least,~~ that:

23.18 (1) no current state employee is able and available to perform the services called
 23.19 for by the contract;

23.20 (2) the work to be performed under the contract is necessary to the agency's
 23.21 achievement of its statutory responsibilities and there is statutory authority to enter into
 23.22 the contract;

23.23 (3) the contract will not establish an employment relationship between the state or
 23.24 the agency and any persons performing under the contract;

23.25 (4) the contractor and agents are not employees of the state; and

23.26 (5) the contracting agency has specified a satisfactory method of evaluating and
 23.27 using the results of the work to be performed; and.

23.28 ~~(6) the combined contract and amendments will not exceed five years without~~
 23.29 ~~specific, written approval by the commissioner according to established policy, procedures,~~
 23.30 ~~and standards, or unless otherwise provided for by law. The term of the original contract~~
 23.31 ~~must not exceed two years, unless the commissioner determines that a longer duration is~~
 23.32 ~~in the best interest of the state.~~

23.33 (b) For purposes of paragraph (a), clause (1), employees are available if qualified and:

23.34 (1) are already doing the work in question; or

23.35 (2) are on layoff status in classes that can do the work in question.

24.1 An employee is not available if the employee is doing other work, is retired, or has decided
24.2 not to do the work in question.

24.3 (c) This section does not apply to an agency's use of inmates pursuant to sections
24.4 241.20 to 241.23 or to an agency's use of persons required by a court to provide:

24.5 (1) community service; or

24.6 (2) conservation or maintenance services on lands under the jurisdiction and control
24.7 of the state.

24.8 Sec. 9. Minnesota Statutes 2012, section 16C.10, as amended by Laws 2013, chapter
24.9 108, article 9, section 1, and Laws 2013, chapter 142, article 3, section 19, is amended to
24.10 read:

24.11 **16C.10 EXCEPTIONS ~~TO THE SOLICITATION PROCESS~~ AUTHORIZED.**

24.12 Subdivision 1. **Single source.** The solicitation process described in this chapter is
24.13 not required when there is clearly and legitimately only a single source for the goods and
24.14 services and the commissioner determines that the price has been fairly and reasonably
24.15 established.

24.16 Subd. 2. **Emergency acquisition.** ~~(a) For the purpose of this subdivision,~~
24.17 ~~"emergency" means a threat to public health, welfare, or safety that threatens the~~
24.18 ~~functioning of government, the protection of property, or the health or safety of people.~~

24.19 ~~(b)~~ The solicitation process described in this chapter is not required in emergencies.
24.20 In emergencies, the commissioner may make any purchases necessary for the repair,
24.21 rehabilitation, and improvement of a state-owned structure or may authorize an agency
24.22 to do so and may purchase, or may authorize an agency to purchase, goods, services, or
24.23 utility services directly for immediate use.

24.24 Subd. 3. **Federal agency price schedules.** Notwithstanding anything in this chapter
24.25 to the contrary, the commissioner may, instead of soliciting bids, contract for purchases
24.26 with suppliers who have published schedules of prices effective for sales to any federal
24.27 agency of the United States. These contracts may be entered into, regardless of the
24.28 amount of the purchase price, if the commissioner considers them advantageous and if
24.29 the purchase price of all the commodities purchased under the contract do not exceed the
24.30 price specified by the schedule.

24.31 Subd. 4. **Cooperative agreements.** The solicitation process described in this
24.32 chapter is not required for cooperative agreements. The commissioner may enter into
24.33 contracts or accept prices effective for sales to any governmental unit as defined in section
24.34 471.59, through a cooperative agreement as defined in section 471.59.

Subd. 5. **Specific purchases.** The solicitation process described in this chapter is not required for acquisition of the following:

(1) merchandise for resale purchased under policies determined by the commissioner;

(2) farm and garden products which, as determined by the commissioner, may be purchased at the prevailing market price on the date of sale;

(3) goods and services from the Minnesota correctional facilities;

(4) goods and services from rehabilitation facilities and extended employment providers that are certified by the commissioner of employment and economic development, and day services licensed under chapter 245D;

(5) goods and services for use by a community-based facility operated by the commissioner of human services;

(6) goods purchased at auction or when submitting a sealed bid at auction provided that before authorizing such an action, the commissioner consult with the requesting agency to determine a fair and reasonable value for the goods considering factors including, but not limited to, costs associated with submitting a bid, travel, transportation, and storage. This fair and reasonable value must represent the limit of the state's bid;

(7) utility services where no competition exists or where rates are fixed by law or ordinance; ~~and~~

(8) goods and services from Minnesota sex offender program facilities; and

(9) contracts of the Department of Employment and Economic Development distributing state and federal funds for the purpose of subcontracting the provision of program services to eligible recipients. For these contracts, the commissioner of employment and economic development is authorized to directly enter into agency contracts and encumber available funds. For contracts distributing state or federal funds pursuant to the federal Workforce Investment Act, United States Code, title 29, section 2911 et seq., the commissioner of employment and economic development in consultation with the Job Skills Partnership Board is authorized to directly enter into agency contracts and encumber available funds to ensure a rapid response to the needs of dislocated workers. The commissioner of employment and economic development shall adopt internal procedures to administer and monitor funds distributed under these contracts. This exception also applies to any contracts entered into by the commissioner of education that were previously entered into by the commissioner of employment and economic development.

Subd. 6. **Expenditures under specified amounts.** The A competitive solicitation process described in this chapter is not required for: the acquisition of goods, services, construction, and utilities in an amount of \$5,000 or less.

(1) acquisition of goods or services, other than professional or technical services, in an amount of \$5,000 or less; or

(2) acquisition of professional or technical services in an amount of \$5,000 or less, provided the requirements of section 16C.08, subdivisions 3 to 6, are met.

Subd. 7. **Reverse auction.** (a) For the purpose of this subdivision, "reverse auction" means a purchasing process in which vendors compete to provide goods or services at the lowest selling price in an open and interactive environment. Reverse auctions may not be utilized to procure engineering design services or architectural services or to establish building and construction contracts under sections 16C.26 to 16C.29.

(b) The provisions of sections 13.591, subdivision 3, and 16C.06, subdivision 2, do not apply when the commissioner determines that a reverse auction is the appropriate purchasing process.

Sec. 10. **[16C.105] COOPERATIVES AUTHORIZED.**

The following entities are authorized to enter into cooperative purchasing agreements with the commissioner in accordance with section 16C.03, subdivision 10:

(1) one or more other states or governmental units, as described in section 471.59, subdivision 1;

(2) entities defined in section 16C.23, subdivision 1;

(3) a registered combined charitable organization and its affiliated agencies as defined by section 43A.50;

(4) a charitable organization defined in section 309.50, subdivision 4, that is also a recipient of a state grant or contract;

(5) a nonprofit community health clinic defined in section 145.9268; and

(6) health care facilities that are required to provide indigent care, or any entity recognized by another state's statutes as authorized to use that state's commodity or service contracts.

Sec. 11. Minnesota Statutes 2012, section 16C.144, subdivision 5, is amended to read:

Subd. 5. **Independent report.** ~~By January 15, 2007, the commissioner of administration shall submit to the commissioner of management and budget and the chairs of the senate and house of representatives capital investment committees a list of projects in the agency that have been funded using guaranteed energy savings, as outlined in this section, during the preceding biennium.~~ For each guaranteed energy-savings agreement entered into, the commissioner of administration shall contract with an independent third party to evaluate the cost-effectiveness of each utility cost-savings measure implemented

to ensure that such measures were the least-cost measures available. For the purposes of this section, "independent third party" means an entity not affiliated with the qualified provider, that is not involved in creating or providing conservation project services to that provider, and that has expertise (or access to expertise) in energy-savings practices.

Sec. 12. Minnesota Statutes 2012, section 16C.25, is amended to read:

16C.25 BUILDING AND CONSTRUCTION CONTRACTS.

Notwithstanding sections 16C.06 and 16C.10, sections ~~16C.26~~ 16C.251 to 16C.29, and other provisions of law not inconsistent with the provisions of sections 16C.26 to 16C.29 apply to building and construction contracts entered into on or after August 1, 2002.

Sec. 13. Minnesota Statutes 2012, section 16C.26, subdivision 3, is amended to read:

Subd. 3. **Publication of notice; expenditures over \$25,000.** If the amount of an expenditure is estimated to exceed \$25,000, bids or proposals must be solicited by public notice in a manner designated by the commissioner. To the extent practical, this must include posting on a state Web site. For expenditures over \$50,000, when a ~~call for bids~~ solicitation is issued, the commissioner shall solicit sealed ~~bids~~ responses by ~~providing~~ posting notices to all prospective bidders known to the commissioner by ~~posting notice on a state Web site~~ at least seven days before the ~~final date of submitting bids~~ due date and time. All bids over \$50,000 must be sealed when they are received and must be opened in public or electronically at the hour stated in the notice. All proposals responsive to a request for proposals according to section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c), shall be submitted and evaluated in the manner described in the request for proposals, regardless of the dollar amount. All original bids and proposals and all documents pertaining to the award of a contract must be retained and made a part of a permanent file or record and remain open to public inspection.

Sec. 14. Minnesota Statutes 2012, section 16C.28, is amended to read:

16C.28 CONTRACTS; AWARD.

Subdivision 1. **Award requirements.** (a) All state building and construction contracts entered into by or under the supervision of the commissioner or an agency for which competitive bids or proposals are required may be awarded to either of the following:

(1) the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract is intended, the status and capability of the vendor or contractor, other considerations imposed in the call for bids, and, where appropriate, principles of life-cycle costing; or

(2) the vendor or contractor offering the best value, taking into account the specifications of the request for proposals, the price and performance criteria as set forth in section ~~16C.02~~ 16C.26, subdivision ~~4a~~ 1b, and described in the solicitation document.

(b) The vendor or contractor must secure bonding, commercial general insurance coverage, and workers' compensation insurance coverage under paragraph (a), clause (1) or (2). The commissioner shall determine whether to use the procurement process described in paragraph (a), clause (1), or the procurement process described in paragraph (a), clause (2), and paragraph (c). If the commissioner uses the method in paragraph (a), clause (2), and paragraph (c), the head of the agency shall determine which vendor or contractor offers the best value, subject to the approval of the commissioner. Any or all bids or proposals may be rejected.

(c) When using the procurement process described in subdivision 1, paragraph (a), clause (2), the solicitation document must state the relative weight of price and other selection criteria. The award must be made to the vendor or contractor offering the best value applying the weighted selection criteria. If an interview of the vendor's or contractor's personnel is one of the selection criteria, the relative weight of the interview shall be stated in the solicitation document and applied accordingly.

Subd. 1a. **Establishment and purpose.** (a) The state recognizes the importance of the inclusion of a best value contracting system for construction as an alternative to the current low-bid system of procurement. In order to accomplish that goal, state and local governmental entities shall be able to ~~choose the use~~ best value system in different phases.

(b) "Best value" means the procurement method defined in ~~section 16C.02~~, subdivision ~~4a~~ 1b.

~~(c) The following entities are eligible to participate in phase I:~~

~~(1) state agencies;~~

~~(2) counties;~~

~~(3) cities; and~~

~~(4) school districts with the highest 25 percent enrollment of students in the state.~~

~~Phase I begins on July 1, 2007.~~

~~(d) The following entities are eligible to participate in phase II:~~

~~(1) those entities included in phase I; and~~

~~(2) school districts with the highest 50 percent enrollment of students in the state.~~

~~Phase II begins two years from July 1, 2007.~~

~~(e) The following entities are eligible to participate in phase III:~~

~~(1) all entities included in phases I and II; and~~

~~(2) all other townships, school districts, and political subdivisions in the state.~~

29.1 ~~Phase III begins three years from July 1, 2007.~~

29.2 ~~(f) (c)~~ The commissioner or any agency for which competitive bids or proposals are
29.3 required may not use best value contracting as defined in section 16C.02, subdivision 4a,
29.4 for more than one project annually, or 20 percent of its projects, whichever is greater, in
29.5 each of the first three fiscal years in which best value construction contracting is used.

29.6 Subd. 1b. **Best value; definition.** For the purposes of construction, building,
29.7 alteration, improvement, or repair services, "best value" describes the result determined
29.8 by a procurement method that considers price and other criteria, which may include, but
29.9 are not limited to:

29.10 (1) the quality of the vendor's or contractor's performance on previous projects;

29.11 (2) the timeliness of the vendor's or contractor's performance on previous projects;

29.12 (3) the level of customer satisfaction with the vendor's or contractor's performance
29.13 on previous projects;

29.14 (4) the vendor's or contractor's record of performing previous projects on budget and
29.15 ability to minimize cost overruns;

29.16 (5) the vendor's or contractor's ability to minimize change orders;

29.17 (6) the vendor's or contractor's ability to prepare appropriate project plans;

29.18 (7) the vendor's or contractor's technical capabilities;

29.19 (8) the individual qualifications of the contractor's key personnel; or

29.20 (9) the vendor's or contractor's ability to assess and minimize risks.

29.21 "Performance on previous projects" does not include the exercise or assertion of a
29.22 person's legal rights. This definition does not apply to sections 16C.32, 16C.33, 16C.34,
29.23 and 16C.35.

29.24 Subd. 1c. **Procedures.** The commissioner shall establish procedures for developing
29.25 and awarding best value requests for proposals for construction projects. The criteria to be
29.26 used to evaluate the proposals must be included in the solicitation document and must be
29.27 evaluated in an open and competitive manner.

29.28 Subd. 1d. **Training.** Any personnel administering procurement procedures for a
29.29 user of best value procurement or any consultant retained by a local unit of government
29.30 to prepare or evaluate solicitation documents must be trained, either by the department
29.31 or through other training, in the request for proposals process for best value contracting
29.32 or construction projects.

29.33 **Subd. 2. Alterations and erasures.** A bid containing an alteration or erasure of
29.34 any price contained in the bid which is used in determining the lowest responsible bid
29.35 must be rejected unless the alteration or erasure is corrected in a manner that is clear and
29.36 authenticated by an authorized representative of the responder. An alteration or erasure

may be crossed out and the correction printed in ink or typewritten adjacent to it and initialed by an authorized representative of the responder.

Subd. 3. Special circumstances. The commissioner may reject the bid or proposal of any vendor or contractor who has failed to perform a previous contract with the state. In the case of identical low bids from two or more bidders, the commissioner may use negotiated procurement methods with the tied low bidders for that particular transaction so long as the price paid does not exceed the low tied bid price. The commissioner may award contracts to more than one vendor or contractor in accordance with subdivision 1, if doing so does not decrease the service level or diminish the effect of competition.

~~Subd. 4. **Record.** A record must be kept of all bids or proposals, including names of bidders, amounts of bids or proposals, and each successful bid or proposal. This record is open to public inspection, subject to section 13.591 and other applicable law.~~

~~Subd. 5. **Preferences not cumulative.** The preferences under sections 16B.121, 16C.06, subdivision 7, and 16C.16 apply, but are not cumulative. The total percentage of preference granted on a contract may not exceed the highest percentage of preference allowed for that contract under any one of those sections.~~

Subd. 6. Contract awards. When prevailing wage laws apply, an agency shall not be liable for costs under section 177.43, subdivision 3, if it has included language in its contracts which requires vendors and contractors to comply with prevailing wage laws and the contract also contains the following elements:

- (1) a description of the prevailing wage laws and a citation to relevant statutes;
- (2) contact details for further information from the Department of Labor and Industry; and
- (3) a statement of contractor and subcontractor liability for failure to adhere to prevailing wage laws.

Sec. 15. REVISOR'S INSTRUCTION.

(a) In the next edition of Minnesota Statutes, the revisor shall renumber the statutory section in column A with the section in column B, and make necessary cross-reference changes consistent with the renumbering:

<u>Column A</u>	<u>Column B</u>
<u>16C.03, subdivision 1</u>	<u>16C.001</u>
<u>16C.081</u>	<u>16C.071</u>
<u>16C.082</u>	<u>16C.072</u>
<u>16C.095</u>	<u>16C.087</u>
<u>16C.23</u>	<u>16B.297</u>

31.1	<u>16C.231</u>	<u>16B.298</u>
31.2	<u>16C.26, subdivision 6</u>	<u>16C.06, subdivision 11</u>

31.3 (b) The revisor shall make changes necessary to correct punctuation, grammar, or
 31.4 remaining text required by the renumbered and repealed sections in this article.

31.5 Sec. 16. **REPEALER.**

31.6 Minnesota Statutes 2012, sections 16C.03, subdivision 19; 16C.085; 16C.16,
 31.7 subdivision 9; 16C.22; 16C.24; 16C.27, subdivisions 1, 2, and 3; and 16C.32, subdivision
 31.8 3, are repealed the day following final enactment.

31.9 ARTICLE 3

31.10 CONFORMING AMENDMENTS

31.11 Section 1. Minnesota Statutes 2012, section 3.225, subdivision 2, is amended to read:

31.12 Subd. 2. **Requirements for all contracts.** Before entering into a contract for
 31.13 professional or technical services, the contracting entity must determine that:

31.14 ~~(1) all provisions of section 16C.16, subdivision 3, relating to purchases from small~~
 31.15 ~~businesses, have been verified or complied with;~~

31.16 ~~(2)~~ the work to be performed under the contract is necessary to the entity's
 31.17 achievement of its responsibilities;

31.18 ~~(3)~~ (2) the contract will not establish an employment relationship between the state
 31.19 or the entity and any persons performing under the contract;

31.20 ~~(4)~~ (3) no current legislative employees will engage in the performance of the
 31.21 contract;

31.22 ~~(5)~~ (4) no state agency has previously performed or contracted for the performance
 31.23 of tasks which would be substantially duplicated under the proposed contract;

31.24 ~~(6)~~ (5) the contracting entity has specified a satisfactory method of evaluating and
 31.25 using the results of the work to be performed; and

31.26 ~~(7)~~ (6) the combined contract and amendments will not extend for more than five
 31.27 years.

31.28 Sec. 2. Minnesota Statutes 2012, section 16A.126, subdivision 1, is amended to read:

31.29 Subdivision 1. **Set rates.** The commissioner shall approve the rates an agency
 31.30 must pay to a revolving fund for services. Funds subject to this subdivision include, but
 31.31 are not limited to, the revolving funds established in sections 14.46; 14.53; 16B.297,

32.1 subdivision 3; 16B.48; 16B.54; 16B.58; 16B.85; 16C.03, subdivision 11; 16E.14; 43A.55;
32.2 and 176.591; and the fund established in section 43A.30.

32.3 Sec. 3. Minnesota Statutes 2012, section 161.3206, is amended to read:

32.4 **161.3206 BEST-VALUE CONTRACTING AUTHORITY.**

32.5 Notwithstanding sections 16C.25, 161.32, 161.321, or any other law to the contrary,
32.6 the commissioner may solicit and award all contracts, other than design-build contracts
32.7 governed by section 161.3412, for a project on the basis of a best-value selection process
32.8 as defined in section ~~16C.02, subdivision 4a~~ 16C.28, subdivision 1b. Section 16C.08 does
32.9 not apply to this section.

32.10 Sec. 4. Minnesota Statutes 2012, section 469.101, subdivision 5a, is amended to read:

32.11 Subd. 5a. **Construction contracts.** For all contracts for construction, alteration,
32.12 repair, or maintenance work, the authority may award contracts to the vendor offering the
32.13 best value, and "best value" shall be defined and applied as set forth in ~~sections 16C.02,~~
32.14 ~~subdivision 4a, and section~~ 16C.28, subdivision subdivisions 1, paragraph (a), clause
32.15 (2), and paragraph (c), and 1b. Alternatively, the authority may award all contracts for
32.16 construction, alteration, repair, or maintenance work to the lowest responsible bidder,
32.17 reserving the right to reject any or all bids.

32.18 Sec. 5. Minnesota Statutes 2012, section 471.345, subdivision 16, is amended to read:

32.19 Subd. 16. **Reverse auction.** Notwithstanding any other procedural requirements of
32.20 this section, a municipality may contract to purchase supplies, materials, and equipment
32.21 using an electronic purchasing process in which vendors compete to provide the supplies,
32.22 materials, or equipment at the lowest selling price in an open and interactive environment.
32.23 A municipality may not use this process to contract for services, as defined by section
32.24 16C.02, subdivision 17, or a service contract, as defined by section 16C.02, subdivision
32.25 ~~16~~ 7a. Nothing in this subdivision must be construed to prohibit a municipality from
32.26 adopting a resolution, rule, regulation, or ordinance relating to minimum labor standards
32.27 under subdivision 7, or procurement from economically disadvantaged persons under
32.28 subdivision 8.

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16B.01 DEFINITIONS.

Subd. 4. **State contract.** "State contract" means any written instrument or electronic document containing the elements of offer, acceptance and consideration to which a state agency is a party.

Subd. 5. **Supplies, materials, and equipment.** "Supplies," "materials," and "equipment" includes articles and things used by or furnished to an agency, including printing, binding, and publication of books and records, repairs, and improvements.

16B.24 GENERAL AUTHORITY.

Subd. 7. **Power, heating, and lighting plants.** The commissioner shall inspect all state power, heating, and lighting plants, make rules governing their operation, and recommend improvements in the plants which will promote their economical and efficient operation.

16B.295 NOTICE OF DOCUMENTS TO LIBRARIES.

The commissioner of administration shall make available to educational institution libraries and public libraries documents the Department of Administration receives, does not need, and would otherwise discard. For purposes of this section, "documents" has the meaning given in section 3.302, subdivision 3.

16B.47 MICROGRAPHICS.

The commissioner may provide micrographics services and products to meet agency needs. Within available resources, the commissioner may also provide micrographic services to political subdivisions. Agency plans and programs for micrographics must be submitted to and receive the approval of the commissioner prior to implementation. Upon the commissioner's approval, subsidiary or independent microfilm operations may be implemented in other state agencies. The commissioner may direct that copies of official state documents be distributed to official state depositories on microfilm.

16B.93 DEFINITIONS.

Subdivision 1. **Applicability.** For purposes of sections 16B.93 to 16B.96, the terms in this section have the meanings given them.

Subd. 2. **Contractor.** "Contractor" means an individual, business entity, or other private organization that is awarded a contract by the commissioner to negotiate and administer the price contracts for prescription drugs under section 16B.94, subdivision 2.

Subd. 3. **Nongovernmental Pharmaceutical Contracting Alliance or Nongovernmental Alliance.** "Nongovernmental Pharmaceutical Contracting Alliance" or "Nongovernmental Alliance" means the alliance established and administered by the commissioner under the authority granted in section 16B.94.

Subd. 4. **Manufacturer.** "Manufacturer" means a manufacturer as defined under section 151.44, paragraph (c).

Subd. 5. **Prescription drug.** "Prescription drug" means a drug as defined in section 151.44, paragraph (d).

Subd. 6. **Purchaser.** "Purchaser" means a pharmacy as defined in section 151.01, subdivision 2, including pharmacies operated by health maintenance organizations and hospitals.

Subd. 7. **Seller.** "Seller" means a person, other than a manufacturer, who sells or distributes drugs to purchasers or other sellers within the state.

16B.94 NONGOVERNMENTAL PHARMACEUTICAL CONTRACTING ALLIANCE.

Subdivision 1. **Establishment and administration.** The commissioner, in consultation with appropriate experts on pharmaceutical pricing, shall establish and administer a Nongovernmental Pharmaceutical Contracting Alliance. The Nongovernmental Alliance shall negotiate contracts for prescription drugs with manufacturers and sellers and shall make the contract prices negotiated available to purchasers. The commissioner shall select the prescription drugs for which price contracts are negotiated. The commissioner shall, to the greatest extent feasible, operate the alliance using the administrative and contracting procedures of the Minnesota Multistate

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Governmental Contracting Alliance for Pharmaceuticals administered by the commissioner under the authority granted in section 471.59. The commissioner may negotiate a price differential based on volume purchasing and may also grant multiple awards.

Subd. 2. **Use of contractor.** The commissioner may contract with an individual, business entity, or other private organization to serve as a contractor to negotiate and administer the price contracts for prescription drugs. In developing requirements for the contractor, the commissioner shall consult with appropriate experts on pharmaceutical pricing.

Subd. 3. **Administrative costs.** The commissioner may charge manufacturers and sellers that enter into prescription drug price contracts with the commissioner under subdivision 1 a fee to cover the commissioner's expenses in negotiating and administering the price contracts. The fee established shall have the force and effect of law if the requirements of section 14.386, paragraph (a), are met. Section 14.386, paragraph (b), does not apply. Fees collected by the commissioner under this subdivision must be deposited in the state treasury and credited to a special account. Money in the account is appropriated to the commissioner to pay the costs of negotiating and administering price contracts under this section.

Subd. 4. **Expansion to other states.** The commissioner may expand the Nongovernmental Alliance to other states and make the contract prices negotiated available to non-Minnesota purchasers.

16B.95 STATE CONTRACT PRICE.

Subdivision 1. **Manufacturer and seller requirement.** A manufacturer or seller that contracts with the commissioner shall make the contract price negotiated available to all purchasers.

Subd. 2. **Purchaser requirement.** The commissioner shall require purchasers that purchase prescription drugs at the contract price to pass at least 75 percent of the savings resulting from purchases at the negotiated contract price to consumers. The commissioner may require a purchaser that plans to purchase prescription drugs at the contract price negotiated by the commissioner to submit any information regarding prescription drug purchase projections the commissioner determines is necessary for contract price negotiations.

16B.96 NONDISCRIMINATION.

A health plan company, as defined in section 62Q.01, shall not discriminate against a purchaser for taking advantage of the contract price negotiated by the commissioner.

16C.03 COMMISSIONER'S AUTHORITY; POWERS AND DUTIES.

Subd. 19. **Training.** Any personnel administering procurement procedures for a user of best value procurement or any consultant retained by a local unit of government to prepare or evaluate solicitation documents must be trained, either by the department or through other training, in the request for proposals process for best value contracting for construction projects. The commissioner may establish a training program for state and local officials, and vendors and contractors, on best value procurement for construction projects, including those governed by section 16C.28. If the commissioner establishes such a training program, the state may charge a fee for providing training.

16C.085 WAIVER.

Notwithstanding sections 16C.08, 16C.09, 43A.047, or other law to the contrary, the commissioner of administration may enter into or approve a service contract for printing services or services provided by the DocuComm Division without determining that no current state employee is able and available to perform the services called for by the contract.

16C.16 DESIGNATION OF PROCUREMENTS FROM SMALL BUSINESSES.

Subd. 9. **Determination of ability to perform.** Before making an award under the preference programs established in subdivisions 4 to 7, the commissioner shall evaluate whether the small business or small targeted group business scheduled to receive the award is able to

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perform the contract. This determination shall include consideration of production and financial capacity and technical competence.

16C.22 DISTRICT HEATING.

Notwithstanding any other law, general or special, the commissioner is authorized to enter into or approve a written agreement not to exceed 31 years with a district heating or cooling utility that will specify, but not be limited to, the appropriate terms and conditions for the interchange of district heating or cooling services.

16C.24 RULES.

Minnesota Rules, parts 1230.0100 to 1230.4300, adopted under chapter 16B, govern under this chapter until amended, repealed, or superseded by rules adopted under chapter 16B or this chapter. In the event rules adopted under chapter 16B conflict with provisions of this chapter, this chapter governs.

16C.27 BIDS NOT REQUIRED.

Subdivision 1. **Single source of supply.** Competitive bidding or proposals are not required for contracts clearly and legitimately limited to a single source of supply, and the contract price may be best established by direct negotiation.

Subd. 2. **Negotiated contracts.** In lieu of any of the other requirements of sections 16C.26 to 16C.28, the commissioner may negotiate a contract for public work to be performed at a state-owned institution or installation if the cost does not exceed \$15,000 and if the head of the affected state agency requests the commissioner to do so. The commissioner shall have prepared whatever plans and specifications for the public work deemed necessary by the commissioner to protect the public interest. Contractor's bonds or security pursuant to chapter 574 are not required for contracts entered into under this subdivision.

Subd. 3. **Emergency purchases.** In emergencies, the commissioner may, without calling for bids, contract directly for the repair, rehabilitation, and improvement of a state-owned structure or may authorize an agency to do so. An emergency for the purposes of this subdivision is an unforeseen occurrence or combination of circumstances which calls for immediate action in the public interest.

16C.32 DESIGN-BUILD CONTRACTS, DEFINITIONS.

Subd. 3. **Report to legislature.** The commissioner shall report to the legislature by January 15, 2010, the number of projects and the total cost of those projects that were delivered under contracts authorized under subdivision 2.