

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, 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:

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

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

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

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

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

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

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

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

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

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

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

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

(3) the vendor has an unfair advantage.

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

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

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

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

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

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

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

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

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

Subd. 16. **Service contract.** "Service contract" means a contract for any nonprofessional or technical services.

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

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

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

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

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

History: 1998 c 386 art 1 s 3; 1Sp2001 c 10 art 2 s 33; 1Sp2003 c 1 art 2 s 45; 2007 c 148 art 2 s 24-29; art 3 s 1,2; 2009 c 131 s 1; 2013 c 142 art 3 s 16