

CHAPTER 196--S.F.No. 2312

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

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

ARTICLE 1

CHANGES TO CHAPTER 16B

Section 1. 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. 2. 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. 3. 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. 4. 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. 5. **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. 6. **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:~~

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

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

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

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

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

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 general 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.

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

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

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

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

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

(2) contract performance and failure to perform;

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

(4) contract cancellation;

(5) procurement from rehabilitation facilities;

(6) organizational conflicts of interest; and

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

(b) 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.

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.

Subd. 4. **Contracting authority Enterprise contracts.** ~~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 otherwise provided for by law. The commissioner may require that agency staff participate in the development of enterprise procurements including the development of product standards, the application of accessibility standards, specifications, and other requirements.~~

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

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

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

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

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

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

Subd. 10. **Cooperative purchasing.** The commissioner is authorized to enter into a cooperative purchasing agreement for the provision of goods, services, construction, and utilities ~~with one or more other states or governmental units, as described in section 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 delegated responsibility to procure goods or services intended for the exclusive use of the agency receiving the delegation.~~

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

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

~~(b) Beginning January 1, 2006, each vendor or affiliate of a vendor selling goods or services, subject to tax under chapter 297A, to an agency or the legislature must provide its Minnesota sales and use tax~~

business identification number, upon request, to show that the vendor is registered to collect Minnesota sales or use tax.

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

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

~~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.~~

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

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

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

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

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

16C.05 CONTRACT MANAGEMENT; VALIDITY AND REVIEW.

Subdivision 1. **Agency cooperation and delegation.** Agencies shall fully cooperate with the commissioner in the creation, management, and review oversight of state contracts and in the development and implementation of strategic sourcing techniques. Authority delegated to agencies 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, construction, 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. The commissioner may withdraw any delegation at the commissioner's sole discretion. The commissioner may require an agency

head or subordinate to accept delegated responsibility to procure goods, services, or construction intended for the exclusive use of the agency receiving the delegation.

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

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

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

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

~~(b) The combined contract and amendments must not exceed five years without specific, written approval by the commissioner according to established policy, procedures, and standards, or 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.~~

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

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

~~(e) (d)~~ A record must be kept of all responses to solicitations, including names of bidders and amounts of bids or proposals. A fully executed copy of every contract, amendments to the contract, and performance evaluations relating to the contract must be kept on file at the contracting agency for a time equal to that specified for contract vendors and other parties in subdivision 5. These records are open to public inspection, subject to section 13.591 and other applicable law.

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

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

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

~~Subd. 3. **Exception.** The requirements of subdivision 2 do not apply to 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., or section 116L.17, 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. 4. **Contract administration.** A contracting agency shall diligently administer and monitor any contract it has entered into, pursuant to a delegation of duties from the commissioner. The commissioner may require an agency to report to the commissioner at any time on the status of any contracts to which the agency is a party.

Subd. 5. **Subject to audit.** A contract or any pass-through disbursement of public funds to a vendor of goods or services or a grantee made by or under the supervision of the commissioner or any county or unit of local government must include, expressed or implied, an audit clause that provides that the books, records, documents, and accounting procedures and practices of the vendor or other party, that are relevant to the contract or transaction, are subject to examination by the contracting agency and either the legislative auditor or the state auditor, as appropriate, for a minimum of six years. If the 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 a state Web site. The manner of publication shall be designated by the commissioner. Notice requirements for procurement transactions \$25,000 and under shall be determined by the commissioner.~~

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

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

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

Subd. 3b. **Term of contracts.** (a) For goods, general services, and building construction, the combined contract and amendments must not exceed five years without specific, written approval by the commissioner according to established policy, procedures, and standards, or 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.

(b) For professional or technical services, the combined contract and amendments must 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.

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

(d) 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.

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

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

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

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

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

~~(7) (6) in the event the results of the contract work will be carried out or continued by state employees upon completion of the contract, the contractor is required to include state employees in development and~~

training, to the extent necessary to ensure that after completion of the contract, state employees can perform any ongoing work related to the same function; and

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

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

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

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

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

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

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

(4) state the termination date of each contract;

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

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

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

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

(2) state the amount spent on the contract;

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

(4) include a written performance evaluation of the work done under the contract. The evaluation must include an appraisal of the contractor's timeliness, quality, cost, and overall performance in meeting the terms and objectives of the contract. Contractors may request copies of evaluations prepared under this subdivision and may respond in writing. Contractor responses must be maintained with the contract file.

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

(1) the information was false and defamatory;

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

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

~~Subd. 5. **Contract terms.** (a) A professional or technical services contract must by its terms permit the commissioner to unilaterally terminate the contract prior to completion, upon payment of just compensation, if the commissioner determines that further performance under the contract would not serve agency purposes.~~

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

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

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

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

16C.09 PROCEDURE FOR GENERAL SERVICE CONTRACTS.

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

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

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

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

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

~~(6) the combined contract and amendments will not exceed five years without specific, written approval by the commissioner according to established policy, procedures, and standards, or 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.~~

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

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

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

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

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

(1) community service; or

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

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

16C.10 EXCEPTIONS TO THE SOLICITATION PROCESS AUTHORIZED.

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

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

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

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

Subd. 4. **Cooperative agreements.** The solicitation process described in this chapter is not required for cooperative agreements. The commissioner may enter into contracts or accept prices effective for sales to any governmental unit as defined in section 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~~ 16C.251 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~~, 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.~~

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

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

Subd. 1b. **Best value; definition.** For the purposes of construction, building, alteration, improvement, or repair services, "best value" describes the result determined by a procurement method that considers price and other 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 capabilities;

(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. 1c. **Procedures.** 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.

Subd. 1d. **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 or construction projects.

Subd. 2. **Alterations and erasures.** A bid containing an alteration or erasure of any price contained in the bid which is used in determining the lowest responsible bid must be rejected unless the alteration or erasure is corrected in a manner that is clear and 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>
<u>16C.231</u>	<u>16B.298</u>
<u>16C.26, subdivision 6</u>	<u>16C.06, subdivision 11</u>

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

Sec. 16. **REPEALER.**

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

ARTICLE 3

CONFORMING AMENDMENTS

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

Subdivision 1. **Set rates.** The commissioner shall approve the rates an agency must pay to a revolving fund for services. Funds subject to this subdivision include, but are not limited to, the revolving funds established in sections 14.46; 14.53; 16B.297, subdivision 3; 16B.48; 16B.54; 16B.58; 16B.85; ~~16C.03, subdivision 11;~~ 16E.14; 43A.55; and 176.591; and the fund established in section 43A.30.

Sec. 2. Minnesota Statutes 2012, section 161.3206, is amended to read:

161.3206 BEST-VALUE CONTRACTING AUTHORITY.

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

Sec. 3. Minnesota Statutes 2012, section 469.101, subdivision 5a, is amended to read:

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

Sec. 4. Minnesota Statutes 2012, section 471.345, subdivision 16, is amended to read:

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

Presented to the governor May 1, 2014

Signed by the governor May 5, 2014, 4:22 p.m.