

## CHAPTER 16C

### STATE PROCUREMENT

16C.02	Definitions.	16C.15	Rehabilitation facilities and extended employment providers.
16C.03	Commissioner's authority; powers and duties.	16C.16	Designation of procurements from small businesses.
16C.045	Reporting of violations.	16C.17	Encouragement of participation; advisory council.
16C.05	Contract management; validity and review.	16C.18	Reports.
16C.06	Acquisitions.	16C.23	Surplus property acquisition, distribution, and disposal.
16C.08	Professional or technical services.		
16C.085	Waiver.		
16C.10	Exceptions to the solicitation process.		
16C.144	Guaranteed savings contracts.		

#### 16C.02 DEFINITIONS.

*[For text of subds 1 to 5, see M.S.2002]*

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.

*[For text of subds 7 to 19, see M.S.2002]*

**History:** *1Sp2003 c 1 art 2 s 45*

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

*[For text of subds 1 to 16, see M.S.2002]*

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 finance, 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.

**History:** *1Sp2003 c 1 art 2 s 46*

#### 16C.045 REPORTING OF VIOLATIONS.

A state employee who discovers evidence of violation of laws or rules governing state contracts is encouraged to report the violation or suspected violation to the employee's supervisor, the commissioner or the commissioner's designee, or the legislative auditor. The legislative auditor must report to the Legislative Audit Commission if there are multiple complaints about the same agency. The auditor's report to the Legislative Audit Commission under this section must disclose only the number and type of violations alleged. An employee making a good faith report under this section is covered by section 181.932, prohibiting the employer from discriminating against the employee.

**History:** *1Sp2003 c 1 art 2 s 47*

#### 16C.05 CONTRACT MANAGEMENT; VALIDITY AND REVIEW.

*[For text of subd 1, see M.S.2002]*

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

- (1) it has first been executed by the head of the agency or a delegate who is a party to the contract;
- (2) it has been approved by the commissioner; and

(3) the accounting system shows an encumbrance for the amount of the contract liability.

(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.

(c) 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) 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) 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.

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

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 Economic Security distributing state and federal funds for the purpose of subcontracting the provision of program services to eligible recipients. For these contracts, the commissioner of economic security is authorized to directly enter into agency contracts and encumber available funds. For contracts distributing state or federal funds pursuant to the federal Economic Dislocation and Worker Adjustment Assistance Act, United States Code, title 29, section 1651 et seq., or sections 268.9771, 268.978, 268.9781, and 268.9782, the commissioner of economic security is authorized to directly enter into agency contracts with approval of the Workforce Development Council and encumber available funds to ensure a rapid response to the needs of dislocated workers. The commissioner of economic security 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 and the Jobs Skills Partnership Board that were previously entered into by the commissioner of economic security.

*[For text of subds 4 to 7, see M.S.2002]*

**History:** 2003 c 130 s 12; 1Sp2003 c 1 art 2 s 48,49

## 16C.06 ACQUISITIONS.

Subdivision 1. **Publication requirements.** Notices of solicitations for acquisitions estimated to be more than \$25,000, or \$100,000 in the case of a 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.

*[For text of subd 2, see M.S.2002]*

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

*[For text of subds 4 to 10, see M.S.2002]*

**History:** 1Sp2003 c 1 art 2 s 50; 1Sp2003 c 8 art 2 s 13

**16C.07** [Repealed, 1Sp2003 c 1 art 2 s 136]

**16C.08 PROFESSIONAL OR TECHNICAL SERVICES.**

*[For text of subd 1, see M.S.2002]*

Subd. 2. **Duties of contracting agency.** (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; and

(3) a description of the performance measures or other tools that will be used to monitor and evaluate contract performance.

(b) In addition to paragraph (a), the agency must certify that:

(1) no current state 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;

(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 specific agency personnel to manage the 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 not allow the 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 contract will not establish an employment relationship between the state or the agency and any persons performing under the contract; and

(7) 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.

(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 contract, a person would be considered an employee.

Subd. 3. **Procedure for professional or technical services contracts.** Before approving a proposed contract for professional or technical services, the commissioner must determine, at least, that:

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

(2) the agency has demonstrated 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.

**Subd. 4. Reports.** (a) The commissioner shall submit to the governor, the chairs of the house 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 \$50,000 covered by this subdivision, the head of the agency entering into the contract must submit a one-page report to the commissioner who must 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) be accompanied by the performance evaluation prepared according to subdivision 4a; and
- (4) 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.

**Subd. 4a. Performance evaluation.** Upon completion of a professional or technical services contract, an agency entering into the contract must complete 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.

*[For text of subds 5 to 7, see M.S.2002]*

**History:** *1Sp2003 c 1 art 2 s 51-54; 1Sp2003 c 8 art 1 s 7*

#### **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.

**History:** *1Sp2003 c 1 art 2 s 55*

#### 16C.10 EXCEPTIONS TO THE SOLICITATION PROCESS.

*[For text of subds 1 to 4, see M.S.2002]*

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 economic security;

(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; and

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

*[For text of subd 6, see M.S.2002]*

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 engineering design or computer services at the lowest selling price in an open and interactive environment.

(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.

**History:** *1Sp2003 c 1 art 2 s 56; 1Sp2003 c 8 art 1 s 8; art 2 s 14*

#### 16C.144 GUARANTEED SAVINGS CONTRACTS.

Subdivision 1. **Definitions.** The following definitions apply to this section.

(a) "Utility" means electricity, natural gas, or other energy resource, water, and wastewater.

(b) "Utility cost savings" means the difference between the utility costs under the precontract conditions and the utility costs after the changes have been made under the contract. Such savings shall be calculated in comparison to an established baseline of utility costs.

(c) "Established baseline" means the precontract utilities, operations, and maintenance costs.

(d) "Utility cost-savings measure" means a measure that produces utility cost savings and/or operation and maintenance cost savings.

(e) "Operation and maintenance cost savings" means a measurable decrease in operation and maintenance costs that is a direct result of the implementation of one or more utility cost-savings measures but does not include savings from in-house staff labor. Such savings shall be calculated in comparison to an established baseline of operation and maintenance costs.

(f) "Guaranteed savings contract" means a contract for the evaluation, recommendation, and installation of one or more utility cost-savings measures. The contract must provide that all payments are to be made over time but not to exceed ten years from the date of final installation, and the savings are guaranteed to the extent necessary to make payments for the utility cost-savings measures.

(g) "Baseline adjustments" means adjusting the established baselines in paragraphs (b) and (d) for changes in the following variables:

- (1) utility rates;
- (2) number of days in the utility billing cycle;
- (3) square footage of the facility;
- (4) operational schedule of the facility;
- (5) facility temperature set points;
- (6) weather; and
- (7) amount of equipment or lighting utilized in the facility.

(h) "Lease purchase contract" means a contract obligating the state to make regular lease payments to satisfy the lease costs of the utility cost-savings measures until the final payment, after which time the utility cost-savings measures become the sole property of the state of Minnesota.

(i) "Qualified provider" means a person or business experienced in the design, implementation, and installation of utility cost-savings measures.

(j) "Engineering report" means a report prepared by a professional engineer licensed by the state of Minnesota summarizing estimates of all costs of installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs, and estimates of the amounts by which utility and operation and maintenance costs will be reduced.

(k) "Capital cost avoidance" means money expended by a state agency to pay for utility cost-savings measures with a guaranteed savings contract so long as the measures that are being implemented to achieve the cost savings are a significant portion of an overall project.

(l) "Guaranteed savings contracting guidelines" means policies, procedures, and requirements of guaranteed savings contracts established by the Department of Administration upon enacting this legislation.

Subd. 2. **Guaranteed savings contract.** The commissioner may enter into a guaranteed savings contract with a qualified provider if:

(1) the qualified provider is selected through a competitive process in accordance with the guaranteed savings contracting guidelines within the Department of Administration;

(2) the qualified provider agrees to submit an engineering report prior to the execution of the guaranteed savings contract;

(3) the commissioner finds that the amount it would spend on the utility cost-savings measures recommended in the engineering report will not exceed the amount to be saved in utility operation and maintenance costs over ten years from the date of implementation of utility cost-savings measures;

(4) the qualified provider provides a written guarantee that the utility, operation, and maintenance cost savings will meet or exceed the costs of the guaranteed savings contract. The qualified provider shall reimburse the state for any shortfall of guaranteed utility cost savings; and

(5) the qualified provider gives a sufficient bond in accordance with section 574.26 to the commissioner for the faithful implementation and installation of the utility cost-savings measures.

Subd. 3. **Lease purchase contract.** The commissioner may enter into a lease purchase agreement with any party for the implementation of utility cost-savings measures in accordance with an engineering report. The implementation costs of the utility cost-savings measures recommended in the engineering report shall not exceed

the amount to be saved in utility and operation and maintenance costs over the term of the lease purchase agreement. The term of the lease purchase agreement shall not exceed ten years. The lease is assignable in accordance with terms approved by the commissioner of finance.

**Subd. 4. Use of capital cost avoidance.** The affected state agency may contribute funds for capital cost avoidance for guaranteed savings contracts. Use of capital cost avoidance is subject to the guaranteed savings contracting guidelines within the Department of Administration.

**Subd. 5. Report.** By January 15 of 2005 and 2007, the commissioner of administration shall submit to the commissioner of finance 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 savings contract 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.

**Subd. 6. Contract limits.** Contracts may not be entered into after June 30, 2007.

**History:** *1Sp2003 c 8 art 1 s 9*

#### **16C.15 REHABILITATION FACILITIES AND EXTENDED EMPLOYMENT PROVIDERS.**

The commissioner, in consultation with the commissioner of economic security, shall prepare a list containing products and services of certified rehabilitation facilities and extended employment providers as described in chapter 268A for acquisition by state agencies and institutions.

**History:** *1Sp2003 c 8 art 1 s 10*

#### **16C.16 DESIGNATION OF PROCUREMENTS FROM SMALL BUSINESSES.**

*[For text of subs 1 to 6, see M.S.2002]*

**Subd. 7. Economically disadvantaged areas.** (a) Except as otherwise provided in paragraph (b), the commissioner may award up to a six percent preference in the amount bid on state procurement to small businesses located in an economically disadvantaged area.

(b) The commissioner may award up to a four percent preference in the amount bid on state construction to small businesses located in an economically disadvantaged area.

(c) A business is located in an economically disadvantaged area if:

(1) the owner resides in or the business is located in a county in which the median income for married couples is less than 70 percent of the state median income for married couples;

(2) the owner resides in or the business is located in an area designated a labor surplus area by the United States Department of Labor; or

(3) the business is a certified rehabilitation facility or extended employment provider as described in chapter 268A.

(d) The commissioner may designate one or more areas designated as targeted neighborhoods under section 469.202 or as enterprise zones under section 469.167 as economically disadvantaged areas for purposes of this subdivision if the commissioner determines that this designation would further the purposes of this section. If the owner of a small business resides or is employed in a designated area, the small business is eligible for any preference provided under this subdivision.

(e) The Department of Revenue shall gather data necessary to make the determinations required by paragraph (c), clause (1), and shall annually certify counties that qualify under paragraph (c), clause (1). An area designated a labor surplus area retains that status for 120 days after certified small businesses in the area are notified of the termination of the designation by the United States Department of Labor.

*[For text of subds 8 to 12, see M.S.2002]*

**History:** 1Sp2003 c 8 art 1 s 11

## **16C.17 ENCOURAGEMENT OF PARTICIPATION; ADVISORY COUNCIL.**

**Subdivision 1. Commissioner of administration.** The commissioners of administration and employment and economic development shall publicize the provisions of the purchasing programs in sections 16C.16 to 16C.21, attempt to locate small businesses or small targeted group businesses able to perform under the programs, and encourage participation through education, technical assistance, mentoring, and other means. When the commissioner of administration determines that a small business or small targeted group business is unable to perform under a program established in sections 16C.16 to 16C.21, the commissioner shall inform the commissioner of employment and economic development who shall assist the small business or small targeted group business in attempting to remedy the causes of the inability to perform the award. In assisting the small business or small targeted group business, the commissioner of employment and economic development in cooperation with the commissioner of administration shall use management or financial assistance programs made available by or through the Department of Employment and Economic Development, other state or governmental agencies, or private sources.

*[For text of subd 2, see M.S.2002]*

**Subd. 3. Duties.** The Small Business Procurement Advisory Council shall:

- (1) advise the commissioner of administration on matters relating to the small business and small targeted group business procurement program;
- (2) review complaints or grievances from small businesses and small targeted group businesses who are doing or attempting to do business under the program; and
- (3) review the reports of the commissioners of administration and employment and economic development provided by section 16C.18 to ensure compliance with the goals of the program.

**History:** 1Sp2003 c 4 s 1

## **16C.18 REPORTS.**

**Subdivision 1.** [Repealed, 1Sp2003 c 8 art 1 s 13]

**Subd. 2. Commissioner of employment and economic development.** The commissioner of employment and economic development shall submit an annual report to the governor and the legislature pursuant to section 3.195 with a copy to the commissioner of administration. This report shall include the following information:

- (1) the efforts undertaken to publicize the provisions of the small business and small targeted group business procurement program during the preceding fiscal year;
- (2) the efforts undertaken to identify small businesses and small targeted group businesses and the efforts undertaken to encourage participation in the targeted group purchasing program;
- (3) the efforts undertaken by the commissioner to remedy the inability of small businesses and small targeted group businesses to perform on potential awards; and
- (4) the commissioner's recommendations for strengthening the small business and small targeted group business procurement program and delivery of services to small businesses.



*[For text of subd 3, see M.S.2002]*

**History:** 1Sp2003 c 4 s 1

**16C.23 SURPLUS PROPERTY ACQUISITION, DISTRIBUTION, AND DISPOSAL.**

*[For text of subds 1 to 6, see M.S.2002]*

Subd. 7. **Gifts.** The commissioner is authorized to solicit and accept donated money and fixed and consumable property for the benefit of the state and any other governmental unit or nonprofit organization for any purpose authorized by state and federal law and in accordance with federal regulations and rules. The gift acceptance procedures of sections 16A.013 to 16A.016 do not apply to this subdivision.

**History:** 2003 c 112 art 2 s 50

**16C.31** [Expired, 2002 c 393 s 41]