

## CHAPTER 16C

## STATE PROCUREMENT

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**16C.01** [Repealed, 1985 c 285 s 54]

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

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

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

Subd. 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.

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

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

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

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

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

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

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

- (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state;
- (2) the vendor's objectivity in performing the contract work is or might be otherwise impaired; or
- (3) the vendor has an unfair advantage.

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

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

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

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," or "proposals."

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

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

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

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

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

**History:** 1998 c 386 art 1 s 3; 1Sp2001 c 10 art 2 s 33; 1Sp2003 c 1 art 2 s 45

## 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.** Subject to chapter 14, the commissioner may adopt rules, consistent with this chapter and chapter 16B, relating to the following topics:

- (1) 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; and
- (6) organizational conflicts of interest.

Subd. 3. **Acquisition authority.** The commissioner shall acquire all goods, services, 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. Unless it is determined by the commissioner that an alternative solicitation method provided by law should be used to determine best value, a request for bid must be used to solicit formal responses for all building and construction contracts. 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.

Subd. 4. **Contracting authority.** 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.

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

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.

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 (a), 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, and utilities with one or more other states or governmental units, as described in section 471.59, subdivision 1. 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.

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, 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.

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 up-front 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.

**History:** 1998 c 386 art 1 s 4; 2000 c 420 s 1; 1Sp2001 c 10 art 2 s 34,35; 1Sp2003 c 1 art 2 s 46; 1Sp2005 c 3 art 5 s 1

#### 16C.04 ETHICAL PRACTICES AND CONFLICT OF INTEREST.

Subdivision 1. **Duty.** An employee of the executive branch involved directly or indirectly in the acquisition or grants process, at any level, is subject to the code of ethics in section 43A.38.

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, 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.

Subd. 3. **Organizational conflicts of interest.** (a) The commissioner shall make reasonable efforts to avoid, mitigate, or neutralize organizational conflicts of interest. To avoid an organizational conflict of interest, the commissioner may utilize methods including disqualifying a vendor from eligibility for a contract award or canceling the contract if the conflict is discovered after a contract has been issued. To mitigate or neutralize a conflict, the commissioner may use methods such as revising the scope of work to be conducted, allowing vendors to propose the exclusion of task areas that create a conflict, or providing information to all vendors to assure that all facts are known to all vendors.

(b) In instances where a conflict or potential conflict has been identified and the commissioner determines that vital operations of the state will be jeopardized if a contract with the vendor is not established, the commissioner may waive the requirements in paragraph (a).

**History:** 1998 c 386 art 1 s 5; 1Sp2001 c 10 art 2 s 36; 2002 c 298 s 1,2

#### 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.**

Subdivision 1. **Agency cooperation.** Agencies shall fully cooperate with the commissioner in the management and review of state contracts.

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 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 com-

missioner. 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.

**History:** 1998 c 386 art 1 s 6; 1999 c 86 art 1 s 11; 1999 c 230 s 1; 2000 c 488 art 2 s 1; 1Sp2001 c 8 art 2 s 10; 1Sp2001 c 10 art 2 s 37; 2003 c 130 s 12; 1Sp2003 c 1 art 2 s 48,49; 2004 c 206 s 7

#### 16C.055 BARTER ARRANGEMENTS LIMITED.

**Subdivision 1. Report.** By January 15, 2002, the legislative auditor shall report to the legislature and governor on agency use of barter agreements in furtherance of an agency's mission. The report shall list the type and approximate value of each agency's agreement or agreements.

**Subd. 2. Restriction.** After July 1, 2002, an agency may not contract or otherwise agree with a nongovernmental entity to receive total nonmonetary consideration valued at more than \$100,000 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.

**History:** 1Sp2001 c 10 art 2 s 38

#### 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.

**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 opened in

public at the hour stated in the solicitation. 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. 3. [Repealed, 2001 c 202 s 21]

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

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.** Awards must 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. If criteria other than price are used, the solicitation document must state the relative importance of price and other factors.

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.

**History:** 1998 c 386 art 1 s 7; 1Sp2001 c 8 art 2 s 11,12; 1Sp2001 c 10 art 2 s 39,40; 1Sp2003 c 1 art 2 s 50; 1Sp2003 c 8 art 2 s 13,20; 2005 c 163 s 51

### 16C.064 COST-BENEFIT ANALYSIS.

(a) The commissioner or an agency official to whom the commissioner has delegated duties under section 16C.03, subdivision 16, may not approve a contract or purchase of goods or services in an amount greater than \$50,000,000 unless a cost-benefit analysis has been completed and shows a positive benefit to the public. The Management Analysis Division must perform or direct the performance of the analysis. Money appropriated for the contract or purchase must be used to pay for the analysis. A cost-benefit analysis must be performed for a project if an aggregation of contracts or purchases for a project exceeds \$50,000,000.

(b) All cost-benefit analysis documents under this section, including preliminary drafts and notes, are public data.

(c) If a cost-benefit analysis does not show a positive benefit to the public, the governor may approve a contract or purchase of goods or services if a cost-effectiveness study had been done that shows the proposed project is the most effective way to provide a necessary public good.



(d) This section applies to contracts for goods or services that are expected to have a useful life of more than three years. This section does not apply for purchase of goods or services for response to a natural disaster if an emergency has been declared by the governor. This section does not apply to contracts involving the Minnesota state colleges and universities, state buildings, or state highways.

(e) This section is repealed effective July 1, 2008.

**History:** 2005 c 156 art 2 s 21

**16C.065** [Repealed, 2000 c 492 art 1 s 88]

**16C.066** [Expired, 1Sp2001 c 10 art 2 s 41]

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

## **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. 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 contractor, 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.

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.

**History:** 1998 c 386 art 1 s 9; 1999 c 116 s 1; 1Sp2003 c 1 art 2 s 51-54; 1Sp2003 c 8 art 1 s 7

#### 16C.081 EXCEPTION FOR FEDERAL CONTRACTS.

Notwithstanding any law to the contrary, an agency may, when required by a federal agency entering into an intergovernmental contract, negotiate contract terms providing for full or partial prepayment to the federal agency before work is performed or services are provided.

**History:** 1998 c 403 s 1; 1999 c 86 art 1 s 7,8; 1999 c 231 s 21; 1Sp2001 c 10 art 2 s 42

#### 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.09 PROCEDURE FOR SERVICE CONTRACTS.

(a) Before entering into or approving a service contract, 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;

(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.

**History:** 1998 c 386 art 1 s 10; 1999 c 230 s 2; 2005 c 136 art 13 s 1

### 16C.095 SELECTION OF CERTAIN PROFESSIONAL SERVICE CONTRACTORS.

**Subdivision 1. Professional services covered.** This section applies to an agency contract for professional services of persons regulated by the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design for which the agency, with the approval of the commissioner, decides to use procedures under this section. If the agency, with the approval of the commissioner, decides to use procedures under this section, it must comply with subdivisions 2, 3, and 4. This section does not apply to an agency contract that is subject to section 16B.33.

**Subd. 2. Qualification-based selection.** Notwithstanding section 16C.06, subdivision 6, an agency must rank contractors described in subdivision 1 on the basis of qualifications, as described in subdivision 3, for the type of professional service required. An agency may solicit pricing information from a single responder at a time in rank order, commencing with the highest ranked contractor, to determine contractor compensation only after the agency has ranked prospective contractors based on the factors the agency specifies in accordance with subdivisions 3 and 4.

**Subd. 3. Procedures.** Subject to subdivision 2, procedures for screening and selection of contractors are within the sole discretion of the agency and must be approved by the commissioner when the agency seeks approval to use this alternative. Procedures may be adjusted to accommodate the agency's cost, scope, and schedule objectives for a particular project. Screening and selection procedures may include a consideration of each contractor's:

- (1) specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;
- (2) resources available to perform the work, including any specialized services, within the specified time limits for the project;
- (3) record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
- (4) ownership status and employment practices regarding women, minorities, and emerging small businesses or historically underutilized businesses;
- (5) availability to the project locale;
- (6) familiarity with the project locale;
- (7) proposed project management techniques; and
- (8) ability and proven history in handling special project constraints.

**Subd. 4. Selection.** (a) The agency shall rank prospective contractors based on the factors approved by the commissioner, which the agency must specify in the request for proposal, in accordance with this section. The agency and the highest ranked contractor shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation and performance schedule, based on the scope of the services. The compensation level paid must be reasonable and fair to the agency, as determined solely by the agency.

(b) If the agency and the highest ranked contractor are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency shall,

either orally or in writing, terminate negotiations with this contractor. The agency may then negotiate with the next highest ranked contractor, as provided in this subdivision. The negotiation process may continue through successive contractors, according to agency ranking, until an agreement is reached or the agency terminates the contracting process.

**History:** 2001 c 100 s 1

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

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 training and habilitation services licensed under sections 245B.01 to 245B.08;
- (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.

Subd. 6. **Expenditures under specified amounts.** The solicitation process described in this chapter is not required for:

- (1) acquisition of goods or services, other than professional or technical services, in an amount of \$2,500 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 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:** 1998 c 386 art 1 s 11; 1999 c 245 art 5 s 1; 2000 c 420 s 2; 1Sp2003 c 1 art 2 s 56; 1Sp2003 c 8 art 1 s 8; art 2 s 14; 2004 c 206 s 52; 2005 c 9 s 1; 2005 c 156 art 2 s 22

### 16C.11 COOPERATIVE PURCHASING VENTURE; PURCHASING REVOLVING FUND.

The commissioner may enter into joint or cooperative purchasing agreements with any entity that is authorized under section 471.59 to do so. The cooperative purchasing venture revolving fund is a separate account in the state treasury. The commissioner may charge a fee to cover the commissioner’s administrative expenses to governmental units that have joint or cooperative purchasing agreements with the state under section 471.59. The fees collected must be deposited in the revolving fund established by this section. Money in the fund is appropriated to the commissioner to administer the programs and services covered by this chapter.

**History:** 1998 c 386 art 1 s 12

### 16C.12 AGRICULTURAL FOOD PRODUCTS GROWN IN STATE.

The commissioner shall encourage and make a reasonable attempt to identify and purchase food products that are grown in the state.

**History:** 1998 c 386 art 1 s 13

### 16C.13 CERTAIN VEHICLES.

Upon the written request of the commissioner of public safety, motor vehicles for use by investigative and undercover agents of the Department of Public Safety must be purchased by the brand, make, and model specified by the agency.

**History:** 1998 c 386 art 1 s 14

### 16C.135 PURCHASES OF FUEL AND VEHICLES BY STATE AGENCIES.

Subdivision 1. **Definition.** For purposes of this section “cleaner fuels” means:

- (1) biodiesel blends of 20 percent or greater by volume (B20–B100);
- (2) compressed natural gas;
- (3) ethanol blends of 70 percent or greater by volume (E70–E100);
- (4) hydrogen;
- (5) liquefied natural gas; and
- (6) liquefied petroleum gas.

Subd. 2. **Fuel purchases.** When purchasing fuel for use in the central motor pool or for use in a motor vehicle owned or leased by an agency, the commissioner or the agency shall purchase, and shall require persons purchasing on their behalf to purchase, cleaner fuels for use in the motor vehicle if cleaner fuels are reasonably available at similar costs to other fuels and if cleaner fuels are compatible with the use to which the motor vehicle is put.

Subd. 3. **Vehicle purchases.** When purchasing a motor vehicle for the central motor pool or for use by an agency, the commissioner or the agency shall purchase a motor vehicle that is capable of being powered by cleaner fuels, or a motor vehicle powered by electricity or by a combination of electricity and liquid fuel, if such a motor vehicle is reasonably available at similar costs to other vehicles and if the vehicle is capable of carrying out the purpose for which it is purchased.

**History:** 2002 c 312 s 1

**16C.137 MINIMIZING ENERGY USE; RENEWABLE FUELS.**

Subdivision 1. **Goals and actions.** (a) Using 2005 as a baseline, the state of Minnesota shall reduce the use of gasoline by on-road vehicles owned by state departments by 25 percent by 2010 and by 50 percent by 2015, and the use of petroleum-based diesel fuel in diesel-fueled vehicles by ten percent by 2010 and 25 percent by 2015.

(b) To meet the goals established in paragraph (a), each state department must, whenever legally, technically, and economically feasible, subject to the specific needs of the department and responsible management of agency finances:

(1) ensure that all new on-road vehicles purchased, excluding emergency and law enforcement vehicles:

(i) use "cleaner fuels" as that term is defined in section 16C.135, subdivision 1, clauses (1), (3), and (4); or

(ii) have fuel efficiency ratings that exceed 30 miles per gallon for city usage or 35 miles per gallon for highway usage, including but not limited to hybrid electric cars and hydrogen-powered vehicles;

(2) increase its use of renewable transportation fuels, including ethanol, biodiesel, and hydrogen from agricultural products; and

(3) increase its use of Web-based Internet applications and other electronic information technologies to enhance the access to and delivery of government information and services to the public, and reduce the reliance on the department's fleet for the delivery of such information and services.

Subd. 2. **SmartFleet Committee.** (a) The commissioner of administration, or the commissioner's designee, shall chair a SmartFleet Committee consisting of representatives designated by the commissioners of the Pollution Control Agency, the Departments of Agriculture and Commerce, and other state departments that wish to participate. To ensure effective and efficient state participation, the SmartFleet Committee must assist state departments in implementing the requirements of this section, including providing information, guidance, sample policies and procedures, and technical and planning assistance.

(b) The SmartFleet Committee must evaluate the goals and directives established in this section by December 2006 and periodically thereafter. The committee may make recommendations to the governor and appropriate committees of the legislature for new or adjusted goals and directives, in light of the progress the state has made implementing this section, and of the availability of new or improved technologies.

(c) For the systematic and efficient monitoring of progress in implementing this section by the SmartFleet Committee, the Department of Administration shall implement a fleet reporting and information management system. Each department will use this management system to demonstrate its progress in complying with this section.

Subd. 3. **Exclusion.** Petroleum-based diesel fuel used in a vehicle which a department has retrofit to use ultra low sulfur diesel fuel and to add additional emissions control technologies is excluded when evaluating progress toward the reduction goals established in subdivision 1. This exclusion applies only to vehicles purchased before the model year in which the federal Environmental Protection Agency's new clean diesel emission reduction rules take effect.

**History:** *1Sp2005 c 1 art 1 s 6*

**16C.14 ENERGY EFFICIENCY INSTALLMENT PURCHASES.**

Subdivision 1. **Contract conditions.** The commissioner may contract to purchase by installment payments capital or other equipment or services intended to improve the energy efficiency or reduce the energy costs of a state building or facility if:

(1) the term of the contract does not exceed 15 years, with not more than a 15-year payback beginning at the completion of the project;

(2) the entire cost of the contract is a percentage of the resultant savings in energy costs and measurable operational costs. "Savings in energy cost" means a comparison of energy

cost and energy usage under the precontract conditions, including reasonable projections of energy cost and usage if no change is made to the precontract conditions, against energy cost and usage with the changes made under the contract. If it is not cost effective to directly measure energy cost and/or energy usage, reasonable engineering estimates may be substituted for measured results. "Savings in measurable operational costs" may include savings from inventory reductions and outside maintenance expense, but do not include savings from in-house staff labor;

(3) the contract for purchase must be completed using a solicitation;

(4) the commissioner has determined that the contract vendor is a responsible vendor;

(5) the contract vendor can finance or obtain financing for the performance of the contract without state assistance or guarantee; and

(6) the state may unilaterally cancel the agreement if the legislature fails to appropriate funds to continue the contract or if the contractor at any time during the term of the contract fails to perform its contractual obligations, including failure to deliver or install equipment or materials, failure to replace faulty equipment or materials in a timely fashion, and failure to maintain the equipment as agreed in the contract.

**Subd. 2. Energy appropriation.** The commissioner may spend money appropriated for energy costs in payment of a contract under this section.

**Subd. 3. Energy conservation incentives.** Notwithstanding any other law to the contrary, fuel cost savings resulting from energy conservation actions shall be available at the managerial level at which the actions took place for expenditure for other purposes within the biennium in which the actions occur or in the case of a shared savings agreement for the contract period of the shared savings agreement. For purposes of this subdivision "shared savings agreement" means a contract meeting the terms and conditions of subdivision 1.

**Subd. 4. Energy and operational costs.** (a) The entire cost of an energy efficiency installment purchase contract must be a percentage of the resultant savings in energy and operational costs. Neither the state nor any agency is liable to make payments on the contract except to the extent that there are savings in energy and operational costs that must be shared with other parties to the contract.

(b) The state and the contract vendor may agree to a reasonable floor price for each type of energy used in the savings calculations at the time of contract execution. If the state and the vendor agree to a floor price, that floor price shall be used throughout the term of the contract.

**History:** 1998 c 386 art 1 s 15; 1999 c 250 art 1 s 66; 2002 c 260 s 1

#### 16C.143 ENERGY FORWARD PRICING MECHANISMS.

Subdivision 1. **Definitions.** The following definitions apply in this section:

(1) "energy" means natural gas, heating oil, propane, and any other energy source except electricity used in state facilities; and

(2) "forward pricing mechanism" means a contract or financial instrument that obligates a state agency to buy or sell a specified quantity of energy at a future date at a set price.

**Subd. 2. Authority.** Notwithstanding any other law to the contrary, the commissioner may use forward pricing mechanisms for budget risk reduction.

**Subd. 3. Conditions.** Forward pricing mechanism transactions must be made only under the following conditions:

(1) the quantity of energy affected by the forward pricing mechanism must not exceed 90 percent of the estimated energy use for the state agency for the same period, which shall not exceed 24 months; and

(2) a separate account must be established for each state agency using a forward pricing mechanism.

**Subd. 4. Written policies and procedures.** Before exercising the authority under this section, the commissioner must develop written policies and procedures governing the use of forward pricing mechanisms.

**History:** 2005 c 156 art 2 s 23



**16C.144 GUARANTEED ENERGY SAVINGS PROGRAM.**

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 after installation of the utility cost-savings measures pursuant to the guaranteed energy savings agreement and the baseline utility costs after baseline adjustments have been made.

(c) "Baseline" means the preagreement utilities, operations, and maintenance costs.

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

(e) "Operation and maintenance cost savings" means a measurable difference between operation and maintenance costs after the installation of the utility cost-savings measures pursuant to the guaranteed energy savings agreement and the baseline operation and maintenance costs after inflation adjustments have been made. Operation and maintenance cost savings shall not include savings from in-house staff labor.

(f) "Guaranteed energy-savings agreement" means an agreement for the installation of one or more utility cost-savings measures that includes the qualified provider's guarantee as required under subdivision 2.

(g) "Baseline adjustments" means adjusting the utility cost-savings baselines annually 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) "Inflation adjustment" means adjusting the operation and maintenance cost-savings baseline annually for inflation.

(i) "Lease purchase agreement" means an agreement 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.

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

(k) "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.

(l) "Capital cost avoidance" means money expended by a state agency to pay for utility cost-savings measures with a guaranteed savings agreement so long as the measures that are being implemented to achieve the utility, operation, and maintenance cost savings are a significant portion of an overall project as determined by the commissioner.

(m) "Guaranteed energy-savings program guidelines" means policies, procedures, and requirements of guaranteed savings agreements established by the Department of Administration.

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

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

(2) the qualified provider agrees to submit an engineering report prior to the execution of the guaranteed energy-savings agreement. The cost of the engineering report may be considered as part of the implementation costs if the commissioner enters into a guaranteed energy-savings agreement with the provider;

(3) the term of the guaranteed energy-savings agreement shall not exceed 15 years from the date of final installation;

(4) 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 15 years from the date of implementation of utility cost-savings measures;

(5) the qualified provider provides a written guarantee that the annual utility, operation, and maintenance cost savings during the term of the guaranteed energy-savings agreement will meet or exceed the annual payments due under a lease purchase agreement. The qualified provider shall reimburse the state for any shortfall of guaranteed utility, operation, and maintenance cost savings; and

(6) 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 agreement.** The commissioner may enter into a lease purchase agreement with any party for the implementation of utility cost-savings measures in accordance with the guaranteed energy-savings agreement. 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 15 years from the date of final installation. 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 energy-savings agreements. Use of capital cost avoidance is subject to the guaranteed energy-savings program guidelines within the Department of Administration.

**Subd. 5. Report.** By January 15, 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 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.

Subd. 6. [Repealed by amendment, 2005 c 156 art 2 s 24]

**History:** *1Sp2003 c 8 art 1 s 9; 2005 c 156 art 2 s 24*

## 16C.145 NONVISUAL TECHNOLOGY ACCESS STANDARDS.

(a) The commissioner shall develop nonvisual technology access standards. The standards must be included in all contracts for the procurement of information technology by, or for the use of, agencies, political subdivisions, and the Minnesota State Colleges and Universities. The University of Minnesota is encouraged to consider similar standards.

(b) The nonvisual access standards must include the following minimum specifications:

(1) that effective, interactive control and use of the technology including the operating system, applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;

(2) that the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;

(3) that nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and

(4) that the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

(c) *Nothing in this section requires the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.*

**History:** 1998 c 366 s 27; 1999 c 250 art 1 s 54

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

The commissioner, in consultation with the commissioner of employment and economic development, 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:** 1998 c 386 art 1 s 16; 1Sp2003 c 8 art 1 s 10; 2004 c 206 s 52

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

Subdivision 1. **Small business procurements.** (a) The commissioner shall for each fiscal year ensure that small businesses receive at least 25 percent of the value of anticipated total state procurement of goods and services, including printing and construction. The commissioner shall divide the procurements so designated into contract award units of economically feasible production runs in order to facilitate offers or bids from small businesses.

(b) The commissioner must solicit and encourage Minnesota small businesses to submit responses or bids when the commissioner is entering into master contracts. If cost-effective, when entering into a master contract, the commissioner must attempt to negotiate contract terms that allow agencies the option of purchasing from small businesses, particularly small businesses that are geographically proximate to the entity making the purchase.

(c) *In making the annual designation of such procurements the commissioner shall attempt (1) to vary the included procurements so that a variety of goods and services produced by different small businesses are obtained each year, and (2) to designate small business procurements in a manner that will encourage proportional distribution of such awards among the geographical regions of the state. To promote the geographical distribution of awards, the commissioner may designate a portion of the small business procurement for award to bidders from a specified congressional district or other geographical region specified by the commissioner. The failure of the commissioner to designate particular procurements shall not be deemed to prohibit or discourage small businesses from seeking the procurement award through the normal process.*

Subd. 2. **Small business.** The commissioner shall adopt rules defining "small business" for purposes of sections 16C.16 to 16C.21, 137.31, 137.35, 161.321, and 473.142. The definition must include only businesses with their principal place of business in Minnesota. The definition must establish different size standards for various types of businesses. In establishing these standards, the commissioner must consider the differences among industries caused by the size of the market for goods or services and the relative size and market share of the competitors operating in those markets.

Subd. 3. **Professional or technical procurements.** Every state agency must for each fiscal year designate for awarding to small businesses at least 25 percent of the value of anticipated procurements of that agency for professional or technical services. The set-aside under this subdivision is in addition to that provided by subdivision 1, but must otherwise comply with section 16C.08.

**Subd. 4. Targeted group purchasing.** The commissioner shall establish a program for purchasing goods and services from targeted group businesses, as designated in subdivision 5. The purpose of the program is to remedy the effects of past discrimination against members of targeted groups. In furtherance of this purpose, the commissioner shall attempt to ensure that purchases from targeted group businesses reflect a fair and equitable representation of all the state's purchasing.

**Subd. 5. Designation of targeted groups.** (a) The commissioner of administration shall periodically designate businesses that are majority owned and operated by women, persons with a substantial physical disability, or specific minorities as targeted group businesses within purchasing categories as determined by the commissioner. A group may be targeted within a purchasing category if the commissioner determines there is a statistical disparity between the percentage of purchasing from businesses owned by group members and the representation of businesses owned by group members among all businesses in the state in the purchasing category.

(b) In addition to designations under paragraph (a), an individual business may be included as a targeted group business if the commissioner determines that inclusion is necessary to remedy discrimination against the owner based on race, gender, or disability in attempting to operate a business that would provide goods or services to public agencies.

(c) The designations of purchasing categories and businesses under paragraphs (a) and (b) are not rules for purposes of chapter 14, and are not subject to rulemaking procedures of that chapter.

**Subd. 6. Purchasing methods.** (a) The commissioner may award up to a six percent preference in the amount bid for specified goods or services to small targeted group businesses.

(b) The commissioner may designate a purchase of goods or services for award only to small businesses or small targeted group businesses if the commissioner determines that at least three small businesses or small targeted group businesses are likely to bid.

(c) The commissioner, as a condition of awarding a construction contract or approving a contract for professional or technical services, may set goals that require the prime contractor to subcontract a portion of the contract to small businesses or small targeted group businesses. The commissioner must establish a procedure for granting waivers from the subcontracting requirement when qualified small businesses or small targeted group businesses are not reasonably available. The commissioner may establish financial incentives for prime contractors who exceed the goals for use of small business or small targeted group business subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting requirements of this paragraph do not apply to prime contractors who are small businesses or small targeted group businesses.

**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.

**Subd. 8. Surety bonds.** Surety bonds guaranteed by the federal Small Business Administration and second party bonds are acceptable security for a construction award under this section. "Second party bond" means a bond that designates as principal, guarantor, or both, a person or persons in addition to the person to whom the contract is proposed for award.

**Subd. 9. Determination of ability to perform.** Before making an award under the preference programs established in subdivisions 4 to 7, the commissioner shall evaluate whether the small business or small targeted group business scheduled to receive the award is able to perform the contract. This determination shall include consideration of production and financial capacity and technical competence.

**Subd. 10. Limits.** At least 75 percent of the value of the subcontracts awarded to small businesses or small targeted group businesses under subdivision 6, paragraph (c), must be performed by the business to which the subcontract is awarded or by another small business or small targeted group business.

**Subd. 11. Procurement procedures.** All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply equally to procurements designated for small businesses or small targeted group businesses. In the event of conflict with other rules, section 16C.15 and rules adopted under it govern, if section 16C.15 applies. If it does not apply, sections 16C.16 to 16C.21 and rules adopted under those sections govern.

**Subd. 12. Applicability.** This section does not apply to construction contracts or contracts for professional or technical services under section 16C.08 that are financed in whole or in part with federal funds and that are subject to federal disadvantaged business enterprise regulations.

**History:** 1998 c 386 art 1 s 17; 1999 c 232 s 1; 1Sp2003 c 8 art 1 s 11; 2005 c 156 art 2 s 25

## 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.

**Subd. 2. Advisory council.** The Small Business Procurement Advisory Council consists of 13 members appointed by the commissioner of administration. A chair of the advisory council shall be elected from among the members. The appointments are subject to the appointments program provided by section 15.0597. The terms, compensation, and removal of members are as provided in section 15.059. Notwithstanding section 15.059, the council expires June 30, 2003.

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:** 1998 c 386 art 1 s 18; 2001 c 162 s 9; 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.

Subd. 3. **Reports from other agencies.** The commissioner of transportation, and each metropolitan agency listed in section 473.143, subdivision 1, shall report to the commissioner of administration all information that the commissioner requests to make reports required under this section. The information must be reported at the time and in the manner requested by the commissioner of administration.

**History:** 1998 c 386 art 1 s 19; 1Sp2003 c 4 s 1

### 16C.19 ELIGIBILITY; RULES.

(a) A small business wishing to participate in the programs under section 16C.16, subdivisions 4 to 7, must be certified by the commissioner. The commissioner shall adopt by rule standards and procedures for certifying that small businesses, small targeted group businesses, and small businesses located in economically disadvantaged areas are eligible to participate under the requirements of sections 16C.16 to 16C.21. The commissioner shall adopt by rule standards and procedures for hearing appeals and grievances and other rules necessary to carry out the duties set forth in sections 16C.16 to 16C.21.

(b) The commissioner may make rules which exclude or limit the participation of non-manufacturing business, including third-party lessors, brokers, franchises, jobbers, manufacturers' representatives, and others from eligibility under sections 16C.16 to 16C.21.

(c) The commissioner may make rules that set time limits and other eligibility limits on business participation in programs under sections 16C.16 to 16C.21.

**History:** 1998 c 386 art 1 s 20

### 16C.20 CERTIFICATION.

A business that is certified by the commissioner of administration as a small business, small targeted group business or a small business located in an economically disadvantaged

area is eligible to participate under the requirements of sections 137.31 and 161.321 and, if certified as a small business or small targeted group business, under section 473.142 without further certification by the contracting agency.

**History:** 1998 c 386 art 1 s 21

#### 16C.21 CRIMINAL PENALTY.

A person who knowingly provides false information to a public official or employee for the purpose of obtaining or retaining certification as a small targeted group business or a small business located in an economically disadvantaged area under sections 16C.16 to 16C.20, 137.31, 137.35, 161.321, or 473.142 is guilty of a misdemeanor.

**History:** 1998 c 386 art 1 s 22

#### 16C.22 DISTRICT HEATING.

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

**History:** 1998 c 386 art 1 s 23; 1Sp2001 c 10 art 2 s 43

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

Subdivision 1. **Definitions.** "Governmental unit or nonprofit organization" means a governmental unit as defined in section 471.59, subdivision 1, an Indian tribal government, and any nonprofit and tax-exempt medical institution, hospital, clinic, health center, school, school system, college, university, or other institution organized and existing for any purpose authorized by federal law to accept surplus federal property.

Subd. 2. **Surplus property.** "Surplus property" means state or federal commodities, equipment, materials, supplies, books, printed matter, buildings, and other personal or real property that is obsolete, unused, not needed for a public purpose, or ineffective for current use.

Subd. 3. **Authorization.** (a) The commissioner is the state agency designated to transfer, purchase, accept, sell, or dispose of surplus property for the state and for the benefit of any other governmental unit or nonprofit organization for any purpose authorized by state and federal law and in accordance with state and federal rules and regulations. Any governmental unit or nonprofit organization may designate the commissioner to purchase or accept surplus property for it upon mutually agreeable terms and conditions. The commissioner may acquire, accept, warehouse, and distribute surplus property and charge a fee to cover any expenses incurred in connection with any of these acts.

(b) Federal surplus property that has been transferred to the state for donation to public agencies and nonprofit organizations must be transferred or sold in accordance with the plan developed under paragraph (c). Expenses incurred in connection with the acquisition, warehousing, distribution, and disposal of federal surplus property must be paid from the surplus services revolving fund. Proceeds of sales, minus any expenses, must be deposited in the surplus services revolving fund.

(c) The commissioner shall develop a detailed plan for disposal of donated federal property in conformance with state law and federal regulations. The plan must be submitted to the governor for certification and submission to the federal administrator of general services.

(d) The commissioner, after consultation with one or more nonprofit organizations with an interest in providing housing for homeless veterans and their families, may acquire property from the United States government that is designated by the General Services Administration as surplus property. The commissioner may lease the property to a qualified nonprofit organization that agrees to develop or rehabilitate the property for the purpose of providing suitable housing for veterans and their families. The lease agreement with the nonprofit orga-

nization may require that the property be developed for use as housing for homeless and displaced veterans and their families and for veterans and their families who lose their housing.

**Subd. 4. Deposit of receipts.** The surplus services revolving fund is a separate fund in the state treasury. All money resulting from the acquisition, acceptance, warehousing, distribution, and public sale of surplus property, must be deposited in the fund. Money paid into the surplus services revolving fund is appropriated to the commissioner for the purposes of the programs and services referred to in this section.

**Subd. 5. Transfer or sale.** (a) When the state or an agency operating under a legislative appropriation obtains surplus property from the commissioner, the commissioner of finance must, at the commissioner's request, transfer the cost of the surplus property, including any expenses of acquiring, accepting, warehousing, and distributing the surplus property, from the appropriation of the agency receiving the surplus property to the surplus services revolving fund. The determination of the commissioner is final as to the cost of the surplus property to the agency receiving the property.

(b) When any governmental unit or nonprofit organization other than an agency receives surplus property from the commissioner, the governmental unit or nonprofit organization must reimburse the surplus services revolving fund for the cost of the property, including the expenses of acquiring, accepting, warehousing, and distributing it, in an amount the commissioner sets. The commissioner may, however, require the governmental unit or nonprofit organization to deposit in advance in the surplus services revolving fund the cost of the surplus property upon mutually agreeable terms and conditions.

(c) The commissioner may transfer or sell state surplus property to any person at public auction, at prepriced sale, or by sealed bid process in accordance with applicable state laws.

**Subd. 6. State surplus property.** The commissioner may do any of the following to dispose of state surplus property:

- (1) transfer it to or between state agencies;
- (2) transfer it to a governmental unit or nonprofit organization in Minnesota; or
- (3) sell it and charge a fee to cover expenses incurred by the commissioner in the disposal of the surplus property.

The proceeds of the sale less the fee are appropriated to the agency for whose account the sale was made, to be used and expended by that agency to purchase similar state property.

**Subd. 6a. Computers for schools.** The commissioner may transfer state surplus computers to Minnesota Computers for Schools for refurbishing and distribution to any school, school system, college, or university in Minnesota.

**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:** 1998 c 386 art 1 s 24; 2003 c 112 art 2 s 50; 2005 c 65 s 1

### 16C.231 SURPLUS PROPERTY.

Notwithstanding section 15.054 or 16C.23, the commissioner may sell a surplus gun used by a state trooper to the trooper who used the gun in the course of employment. The sale price must be the fair market value of the gun, as determined by the commissioner.

**History:** 2005 c 156 art 2 s 26

### 16C.24 RULES.

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

**History:** 1998 c 386 art 1 s 25



**16C.25 BUILDING AND CONSTRUCTION CONTRACTS.**

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

**History:** 1998 c 386 art 1 s 26; 2002 c 254 s 1

**16C.26 COMPETITIVE BIDS.**

Subdivision 1. **Application.** Except as otherwise provided by sections 16C.26 and 16C.27, all contracts for building and construction or repairs must be based on competitive bids.

Subd. 2. **Requirement contracts.** Standard requirement price contracts for building and construction must be established by competitive bids as provided in subdivision 1. The standard requirement price contracts may contain escalation clauses and may provide for a negotiated price increase or decrease based upon a demonstrable industrywide or regional increase or decrease in the vendor's costs or for the addition of similar products or replacement items not significant to the total value of existing contracts. The term of these contracts may not exceed five years including all extensions.

Subd. 3. **Publication of notice; expenditures over \$25,000.** If the amount of an expenditure is estimated to exceed \$25,000, bids 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, the commissioner shall solicit sealed bids by providing 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. All bids over \$50,000 must be sealed when they are received and must be opened in public at the hour stated in the notice. All original bids 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.

Subd. 4. **Building and construction contracts; \$50,000 or less.** An informal bid may be used for building, construction, and repair contracts that are estimated at less than \$50,000. Informal bids must be authenticated by the bidder in a manner specified by the commissioner.

Subd. 5. **Standard specifications, security.** Contracts must be based on the standard specifications prescribed and enforced by the commissioner under this chapter, unless otherwise expressly provided. Each bidder for a contract must furnish security approved by the commissioner to ensure the making of the contract being bid for.

Subd. 6. **Noncompetitive bids.** Agencies are encouraged to contract with small targeted group businesses designated under section 16C.16 when entering into contracts that are not subject to competitive bidding procedures.

**History:** 2002 c 254 s 2; 2005 c 78 s 3,4; 2005 c 156 art 2 s 27,28

**16C.27 BIDS NOT REQUIRED.**

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

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

Subd. 3. **Emergency purchases.** In emergencies, the commissioner may, without calling for bids, contract directly for the repair, rehabilitation, and improvement of a state-

owned structure or may authorize an agency to do so. An emergency for the purposes of this subdivision is an unforeseen occurrence or combination of circumstances which calls for immediate action in the public interest.

**History:** 2002 c 254 s 3

### 16C.28 CONTRACTS; AWARD.

Subdivision 1. **Lowest responsible bidder.** All state building and construction contracts entered into by or under the supervision of the commissioner or an agency for which competitive bids are required must be awarded to 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, and other considerations imposed in the call for bids. The commissioner may decide which is the lowest responsible bidder for all contracts and may use the principles of life cycle costing, where appropriate, in determining the lowest overall bid. The head of the interested agency shall make the decision, subject to the approval of the commissioner. Any or all bids may be rejected. In a case where competitive bids are required and where all bids are rejected, new bids, if solicited, must be called for as in the first instance, unless otherwise provided by law.

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 of any bidder 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 bidder 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, including names of bidders, amounts of bids, and each successful bid. This record is open to public inspection.

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.

**History:** 2002 c 254 s 4; 2005 c 78 s 5; 2005 c 156 art 2 s 29

### 16C.29 CONTRACT MANAGEMENT AND REVIEW.

The commissioner must develop procedures to audit agency personnel to whom the commissioner has delegated contracting authority, in order to ensure compliance with laws and guidelines governing issuance of contracts, including laws and guidelines governing conflicts of interest.

**History:** 2002 c 254 s 5

**16C.30** [Expired, 2002 c 393 s 40]

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

### 16C.32 DESIGN-BUILD, CONSTRUCTION MANAGER AT RISK, AND JOB ORDER CONTRACTING CONTRACTS.

Subdivision 1. **Definitions.** As used in sections 16C.32 to 16C.35, the following terms have the meanings given them, unless the context clearly indicates otherwise:

(1) "acceptance" means a formal resolution of the commissioner authorizing the execution of a design-build, construction manager at risk, or job order contracting contract;

(2) “agency” means any state officer, employee, board, commission, authority, department, or other agency of the executive branch of state government. Unless specifically indicated otherwise, as used in sections 16C.32 to 16C.35, agency also includes the Minnesota State Colleges and Universities;

(3) “architect” means an architect or landscape architect registered to practice under sections 326.02 to 326.15;

(4) “board” means the state Designer Selection Board, unless the estimated cost of the project is less than \$2,000,000, in which case the commissioner may act as the board;

(5) “Capitol Area Architectural and Planning Board” means the board established to govern the Capitol area under chapter 15B;

(6) “commissioner” means the commissioner of administration or the Board of Trustees of the Minnesota State Colleges and Universities, whichever controls a project;

(7) “construction manager at risk” means a person who is selected by the commissioner to act as a construction manager to manage the construction process, which includes, but is not limited to, responsibility for the price, schedule, and workmanship of the construction performed in accordance with the procedures of section 16C.34;

(8) “construction manager at risk contract” means a contract for construction of a project between a construction manager at risk and the commissioner, which contract shall include a guaranteed maximum price, construction schedule, and workmanship of the construction performed;

(9) “design–build contract” means a contract between the commissioner and a design–builder to furnish the architectural, engineering, and related design services as well as the labor, materials, supplies, equipment, and construction services for a project;

(10) “design and price–based proposal” means the proposal to be submitted by a design–builder in the design and price–based selection process, as described in section 16C.33, which proposal meets the requirements of section 16C.33, subdivision 7, paragraph (c), in such detail as required in the request for proposals;

(11) “design and price–based selection” means the selection of a design–builder as described in section 16C.33, subdivision 8;

(12) “design criteria package” means performance criteria prepared by a design criteria professional who shall be either an employee of the commissioner or shall be selected in compliance with section 16B.33, 16C.08, or 16C.095;

(13) “design criteria professional” means a person licensed under chapter 326, or a person who employs an individual or individuals licensed under chapter 326, required to design a project, and who is employed by or under contract to the commissioner to provide professional, architectural, or engineering services in connection with the preparation of the design criteria package;

(14) “guaranteed maximum price” means the maximum amount that a design–builder, construction manager at risk, or subcontractor will be paid pursuant to a contract to perform a defined scope of work;

(15) “guaranteed maximum price contract” means a contract under which a design–builder, construction manager, or subcontractor is paid on the basis of their actual cost to perform the work specified in the contract plus an amount for overhead and profit, the sum of which must not exceed the guaranteed maximum price set forth in the contract;

(16) “job order contracting” means a project delivery method that requests a limited number of bids from a list of qualified contractors, selected from a registry of qualified contractors who have been prescreened and who have entered into master contracts with the commissioner, as provided in section 16C.35;

(17) “past performance” or “experience” does not include the exercise or assertion of a person’s legal rights;

(18) “person” includes an individual, corporation, partnership, association, or any other legal entity;

(19) “project” means an undertaking to construct, alter, or enlarge a building, structure, or other improvements, except highways and bridges, by or for the state or an agency;

(20) “qualifications–based selection” means the selection of a design–builder as provided in section 16C.33;

(21) “request for qualifications” means the document or publication soliciting qualifications for a design–build, construction manager at risk, or job order contracting contract as provided in sections 16C.33 to 16C.35;

(22) “request for proposals” means the document or publication soliciting proposals for a design–build or construction manager at risk contract as provided in sections 16C.33 and 16C.34; and

(23) “trade contract work” means the furnishing of labor, materials, or equipment by contractors or vendors that are incorporated into the completed project or are major components of the means of construction. Work performed by trade contractors involves specific portions of the project, but not the entire project.

Subd. 2. **Authority.** (a) Subject to limitations in sections 16B.31, subdivision 1; 16B.33, subdivision 1; 16C.16; and 16C.32 to 16C.34, and notwithstanding any other law to the contrary, the commissioner may:

(1) solicit and award a design–build contract on the basis of either a qualifications based or a design and price–based selection process provided in section 16C.33 if the conditions in paragraph (b) are met;

(2) select a construction manager at risk as provided in section 16C.34, and award a guaranteed maximum price contract for a construction manager at risk if the conditions of paragraph (c) are met; and

(3) select a contractor by a job order contracting delivery method as provided in section 16C.35.

(b) The commissioner may not utilize design–build contracts for more than five percent of its total projects let, by number, in each of the fiscal years 2006 and 2007, and ten percent of its total projects let, by number, in each fiscal year thereafter, that are funded in whole or in part with proceeds from the sale of state general obligation bonds; and

(c) The commissioner may not utilize construction manager at risk contracts for more than five percent of its total projects let, by number, in each of the fiscal years 2006 and 2007, and ten percent of its total projects let, by number, in each fiscal year thereafter, that are funded in whole or in part with proceeds from the sale of state general obligation bonds.

(d) Pursuant to section 16B.31, subdivision 4, if the project is within the Capitol area, the project shall comply with sections 15B.03, subdivision 3; 15B.08, subdivision 2; 15B.10; and 15B.15, subdivision 4.

(e) The commissioner shall, for each design–build or construction manager at risk contract, make a written determination, including specific findings, indicating whether use of the design–build or construction manager at risk procurement serves the public interest.

(f) The solicitation of requests for qualifications or proposals does not obligate the commissioner to enter into a design–build or construction manager at risk contract. In accordance with the stated criteria and subcriteria for evaluating qualifications or proposals, the commissioner may accept or reject any or all responses received as a result of the request. The solicitation for qualifications or proposals may be canceled at any time in the commissioner’s sole discretion if it is considered to be in the public’s best interest. If the commissioner rejects all responses or cancels the solicitation for proposals, the commissioner may resolicit a request for qualifications or proposals using the same or different requirements or request selection of a primary designer pursuant to section 16B.33, 16C.08, or 16C.095 and proceed with competitive bidding pursuant to sections 16C.25 to 16C.29.

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

**History:** 2005 c 78 s 6

**16C.33 DESIGN-BUILD.**

Subdivision 1. **Conflict of interest.** A board member may not participate in the review, discussion, or selection of a primary designer, a design-builder, or a firm in which the member has a financial interest.

Subd. 2. **Design-builder licensing requirements.** (a) Each design-builder must be, employ, or have as a partner, member, coventurer, or subcontractor, persons or a firm with persons who are duly licensed and registered to provide the services required to complete the project and do business in this state.

(b) A design-builder may contract with the commissioner to provide professional or construction services for which the design-builder is not itself licensed, registered, or qualified to perform, so long as the design-builder provides such services through subcontracts with duly licensed, registered, or otherwise qualified persons in accordance with this section.

(c) Nothing in this section or section 16C.32 is intended to limit or eliminate the responsibility or liability owed by an architect or engineer on a design-build project to the commissioner and third parties under existing law. The design service portion of a design-build contract is considered a service and not a product.

Subd. 3. **Solicitation of qualifications or proposals.** (a) Every user agency, except the Capitol Area Architectural and Planning Board, shall submit a written request for a design-builder for its project to the commissioner who shall forward the request to the board, consistent with section 16B.33, subdivision 3, paragraph (a). The University of Minnesota shall follow the process in subdivision 4 to select design-builders for projects that are subject to section 16B.33. The written request must include a description of the project, the total project cost, a description of any special requirements or unique features of the proposed project, and other information requested by the board which will assist the board in carrying out its duties and responsibilities set forth in this section.

(b) A request for qualifications or proposals soliciting design-builders shall be prepared for each design-build contract pursuant to subdivision 5 or 7. The request for qualifications or proposals shall contain, at a minimum, the following elements:

(1) the identity of the agency for which the project will be built and that will award the design-build contract;

(2) procedures for submitting qualifications or proposals, the criteria for evaluation of qualifications or proposals and the relative weight for each criterion and subcriterion, and the procedures for making awards according to the stated criteria and subcriteria, including a reference to the requirements of this section;

(3) the proposed terms and conditions for the contract;

(4) the desired qualifications of the design-builder and the desired or permitted areas of construction to be performed by named members of the design-build team, if applicable. The primary designer shall be a named member of the design-build team;

(5) the schedule for commencement and completion of the project;

(6) any applicable budget limits for the project;

(7) the requirements for insurance and statutorily required performance and payment bonds;

(8) the identification and location of any other information in the possession or control of the agency that the user agency determines is material, which may include surveys, soils reports, drawings or models of existing structures, environmental studies, photographs, or references to public records;

(9) for a design-build design and price-based selection process, the request shall also include the design criteria package, including the performance and technical requirements for the project, and the functional and operational elements for the delivery of the completed project. The request shall also contain a description of the drawings, specifications, or other submittals to be included with the proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable, and the stipend to be paid to the design-builders selected to submit the above described information; and

(10) the criteria shall not impose unnecessary conditions beyond reasonable requirements to ensure maximum participation of qualified design-builders. The criteria shall not consider the collective bargaining status of the design-builder.

(c) Notice of requests for qualifications or proposals must be advertised in the State Register.

**Subd. 4. University of Minnesota projects.** (a) The University of Minnesota may elect to use the design-build method of project delivery for projects involving construction or major remodeling, as defined in section 16B.335, subdivision 1, with an estimated cost greater than \$2,000,000, in which case the University of Minnesota shall submit a written request for a design-builder to the commissioner of administration, who shall forward the request to the board, as provided in subdivision 3. For design-build projects undertaken by the University of Minnesota under this subdivision, the Board of Regents shall exercise the powers and duties of the commissioner granted in subdivisions 5, 6, 7, and 8.

(b) When the University of Minnesota undertakes any other project involving construction, renovation, repair, replacement, or rehabilitation, the Board of Regents may, in addition to any other method of project delivery available to the University of Minnesota, submit a written request for a design-builder to the commissioner of administration, who shall forward the request to the board, as provided in subdivision 3.

(c) For projects for which the University of Minnesota requests a design-builder, the University of Minnesota may use either the design-build qualifications-based selection process under subdivision 5 or the design-build design and price-based selection process under subdivision 7. The board shall score proposals in accordance with subdivision 5 or 7, as applicable, and narrow the selection to the two highest scoring proposers for recommendation to the Board of Regents. The Board of Regents shall make the final selection and shall notify the board of the selection. Meeting records or written evaluations that document the final selection are public records.

(d) The University of Minnesota may not utilize design-build contracts for more than five percent of its total projects let, by number, in each of the fiscal years 2006 and 2007, and ten percent of its total projects let, by number, in each fiscal year thereafter, that are funded in whole or in part with proceeds from the sale of state general obligation bonds.

**Subd. 5. Design-build qualifications-based selection process.** In a design-build qualifications-based selection process, the following shall apply:

(a)(1) the commissioner shall establish procedures for determining the appropriate content of each request for qualifications, the weighted criteria and subcriteria to be used to evaluate the design-builders, and the procedures for evaluating qualifications in an open, competitive, and objective manner; (2) the criteria and subcriteria shall include, but are not limited to, the proposer's experience as a constructor or primary designer, including capacity of key personnel, technical competence and capability to perform, the past performance of the proposer and its employees, its safety record and compliance with state and federal law, and availability to and familiarity with the project locale; (3) the commissioner may include in the request for qualifications criteria a requirement that the proposer include the overhead and fee that the design-builder proposes to charge for its construction services; and (4) the commissioner shall issue a request for qualifications that includes the information as described in subdivision 3.

(b) After obtaining and evaluating qualifications from each design-builder, in accordance with the weighted criteria and subcriteria and procedures set forth in the request for qualifications, the board shall select a short list of at least three and no more than five proposals. The board must receive at least three proposals from design-builders or the commissioner shall either:

(1) solicit new proposals;

(2) revise the request for qualifications and thereafter solicit new proposals using the revised request for qualifications; or

(3) request selection of a primary designer pursuant to section 16B.33, 16C.08, or 16C.095 and proceed with competitive bidding pursuant to sections 16C.25 to 16C.29.

(c) The board shall conduct formal interviews with the short list of proposers, but shall not disclose any proprietary or confidential information contained in one proposal to another proposer.

(d) The board shall select the design–builder that scores the highest on the evaluation criteria and subcriteria. The commissioner shall make the award to the design–builder who scores the highest score pursuant to the weighted criteria and subcriteria as determined by the board, unless the commissioner rejects all proposals or proceeds pursuant to paragraphs (f) and (g). In the case of the Minnesota State Colleges and Universities, the board shall narrow the selection to the two design–builders that score the highest on the evaluation criteria and subcriteria for recommendation to the respective commissioner, and the commissioner shall make the final selection and shall notify the board of the selection.

(e) The commissioner shall conduct fee and contract negotiations with the selected design–builder and shall enter into the contract consistent with subdivision 6.

(f) If the selected design–builder declines the appointment or is unable to reach agreement with the commissioner on the terms of the contract, the commissioner may, within 60 days after the first selection, request the board to make another selection.

(g) If the board fails to make a selection and forward its recommendation to the commissioner within 60 days of the request for a second selection, the commissioner may appoint a design–builder without the recommendation of the board.

(h) If a project for which a design–builder has been selected by the board becomes inactive, lapses, or changes as the result of a project phasing, insufficient appropriations, or other reasons, the commissioner may, if the project is reactivated, retain the same design–builder to complete the project.

**Subd. 6. Design–build qualifications–based acceptance by commissioner.** The contract between the commissioner and the design–builder selected under subdivision 5 shall require the following:

(a) The design–builder shall develop design documents of the project for review and approval by the commissioner prior to project bidding.

(b) The design–builder shall competitively bid all trade contract work for the project from a list of qualified firms, subject to availability of such qualified firms for the specific work. The list of qualified firms shall be based upon an open, competitive, and objective pre-qualification process in which the selection criteria includes, in addition to the proposed price, the firm’s experience as a constructor or primary designer, including capacity of key personnel, technical competence, capability to perform, the past performance of the firm and its employees, including its safety record and compliance with state and federal law, availability to and familiarity with the project locale, and other considerations as defined by the design–builder and the commissioner. The design–builder and the commissioner shall jointly determine the composition of the list of qualified firms. The criteria shall not impose unnecessary conditions beyond reasonable requirements to ensure maximum participation of qualified contractors.

(c) With the approval of the commissioner, the design–builder may name either or both a mechanical and electrical subcontractor or subcontractors as a named member of the design–builder’s team, and if either or both a mechanical and electrical subcontractor or subcontractors is so named, the design–builder is not required to competitively bid the mechanical or electrical trade contract work. A named mechanical or electrical subcontractor member of a design–builder’s team shall competitively bid all subcontracted portions of the mechanical or electrical subcontractor’s work from a list of qualified firms. Such qualified firms shall be determined as described in paragraph (b). The commissioner and the design–builder shall agree to a list of labor, materials, and equipment that shall be competitively bid.

(d) With the commissioner’s approval or request, team members of the design–builder, including the design–builder, may also submit bids for trade contract work.

(e) Either or both the mechanical or electrical subcontractor or subcontractors who are named subcontractor members of the design–builder’s team shall enter into guaranteed maximum price contracts with the design–builder.

(f) The design–builder and the commissioner shall enter into a guaranteed maximum price contract.

**Subd. 7. Design–build design and price–based proposals.** (a) In a design and price–based selection process the following shall apply:

(1) selection must be based on best value, which includes an evaluation of price and design, and may include other criteria including, but not limited to, the proposer’s experience as a constructor or primary designer;

(2) the commissioner shall establish procedures for determining the appropriate content of each request for qualifications, and the weighted criteria and subcriteria to be used to evaluate the design–builders including, but not limited to, the proposer’s experience as a constructor or primary designer, including capacity of key personnel, technical competence, capability to perform and the past performance of the proposer and its employees, its safety record and compliance with state and federal law, quality and past performance, and the procedures for evaluating qualifications in an open, competitive, and objective manner; and

(3) the commissioner shall issue a request for qualifications that includes the information as described in subdivision 3.

(b) After obtaining and evaluating qualifications from each design–builder, in accordance with the weighted criteria and subcriteria and procedures set forth in the request for qualifications, the board shall select a short list of three proposers. The board must receive at least three proposals from design–builders or the commissioner shall either:

(1) solicit new proposals;

(2) revise the request for qualifications and thereafter solicit new proposals using the revised request for qualifications; or

(3) request selection of a primary designer pursuant to section 16B.33, 16C.08, or 16C.095 and proceed with competitive bidding pursuant to sections 16C.25 to 16C.29.

(c) The commissioner shall issue a request for proposals to the selected design–builders. The submitted proposals shall consist of, at a minimum, the following elements:

(1) preliminary plans and specifications and other information in sufficient detail to describe the character, quality, and scope of the project;

(2) a design and construction critical path schedule;

(3) the price at which the design–builder will complete all design and construction requested in the proposal for the project if selected; and

(4) other materials the board determines are necessary to fix the design, schedule, and cost of the project.

(d) Proposals must be sealed and may not be opened until the expiration of the time established for making proposals as set forth in the request for proposals.

(e) Proposals must identify the primary designer and the primary construction contracting entity that are members of the design–builder’s team.

(f) The amount and type of design services requested by the board shall not be exceeded by those submitting proposals. Proposals exceeding the amount and type of design services requested by the board may be rejected by the board. Unless compensated in excess of the minimum stipend for their effort, design–builders must not be required to submit detailed architectural or engineering design or construction documents as part of the proposal.

(g) Except as described in paragraph (h), the commissioner shall award to each design–builder that submits a responsive design–build proposal under this subdivision, a stipend in an amount of not less than 0.3 percent of the commissioner’s estimated cost of design and construction. If the request for proposals requires extensive design services beyond preliminary plans and specifications as requested as part of the proposal, the stipend shall be adjusted to an amount commensurate with the amount of design services requested for each proposal.



(h) No stipend shall be awarded to the design–builder selected to complete the project.

(i) For projects where the design–builder accepts the stipend offered by the board, the commissioner shall be deemed the owner of the design, subject to the rights of the proposer to such design for publication and use in other projects. However, the use of the design in its totality, or near totality, by the commissioner is prohibited.

(j) The commissioner may require each design–builder to submit with its proposal a cash deposit, letter of credit in a form acceptable to the commissioner, or bid bond not to exceed five percent of the maximum cost of the design–builder’s proposal. If the proposal is accepted but the design–builder fails, without good cause to execute the design–build contract, the deposit or bond is forfeited in an amount not to exceed the difference between the proposal in question and the next highest proposal.

**Subd. 8. Design–build design and price–based selection process.** (a) The board shall review submissions as described in subdivision 7; conduct formal interviews with all three proposers but not allow the disclosure of any price, proprietary, or confidential information contained in one proposal to another proposer; and select the proposal that scores the highest based on the weighted evaluation criteria and subcriteria, except for projects under the control of Minnesota State Colleges and Universities. The commissioner shall make the award to the design–builder who scores the highest score pursuant to the weighted criteria and subcriteria as determined by the board, unless the commissioner rejects all proposals or proceeds pursuant to paragraph (c) or (d). For Minnesota State Colleges and Universities projects, the board shall narrow the selection to the two highest scoring proposers for recommendation to the commissioner, and the commissioner shall review the submissions as described in subdivision 7; conduct formal interviews with both proposers recommended by the board, but not allow the disclosure of any price, proprietary, or confidential information contained in one proposal to another proposer; and select the proposal that scores the highest based on the commissioner’s application of the weighted evaluation criteria and subcriteria; and shall notify the board of the selection.

(b) After a proposal is accepted, the commissioner is deemed the owner of the design, subject to the rights of the proposer to such design for publication and use in other projects.

(c) After a proposal is accepted, the commissioner and the design–builder shall enter into a fixed–price contract.

(d) If the design–builder selected for a project declines the appointment or is unable to reach agreement with the commissioner concerning the terms of the contract, the commissioner may, within 60 days after the first selection, request the board to make another selection.

(e) If the design–builder selected for a project, prior to executing a design–build contract, replaces either the primary designer or the primary construction contracting entity, the commissioner shall notify the board of the replacement and request the board to either approve the new design–builder or to select another design–builder.

(f) If the board fails to make a second selection as described in paragraph (d) or (e) and forward its recommendation to the commissioner within 60 days of the commissioner’s request for a second selection, the commissioner may appoint a design–builder to the project without the recommendation of the board.

**History:** 2005 c 78 s 7; 2006 c 212 art 3 s 1

## 16C.34 CONSTRUCTION MANAGER AT RISK.

**Subdivision 1. Solicitation of qualifications.** (a) Every user agency, except the Capitol Area Architectural and Planning Board, shall submit a written request for proposals for a construction manager at risk for its project to the commissioner. The written request for proposals must include a description of the project, the estimated cost of completing the project, a description of any special requirements or unique features of the proposed project, and oth-

er information which will assist the commissioner in carrying out its duties and responsibilities set forth in this section.

(b) The commissioner may include in the request for qualifications criteria a requirement that the proposer include the overhead and fee that the construction manager at risk proposes to charge for its services.

(c) A request for qualifications shall be prepared for each construction manager at risk contract as provided in this section. The request for qualifications shall contain, at a minimum, the following elements:

(1) the identity of the agency for which the project will be built and that will award the construction manager at risk contract;

(2) procedures for submitting qualifications, the criteria and subcriteria for evaluation of qualifications and the relative weight for each criteria and subcriteria, and the procedures for making awards in an open, competitive, and objective manner, and according to the stated criteria and subcriteria, including a reference to the requirements of this section;

(3) the terms and conditions for the contract;

(4) the qualifications that the construction manager at risk shall be desired to have;

(5) a schedule for commencement and completion of the project;

(6) any applicable budget limits for the project;

(7) requirements for insurance, statutorily required performance and payment bonds;

(8) identification and location of any other information in the possession or control of the agency that the user agency determines is material, which may include surveys, soils reports, drawings or models of existing structures, environmental studies, photographs, or references to public records; and

(9) criteria shall not impose unnecessary conditions beyond reasonable requirements to ensure maximum participation of construction managers at risk. The criteria shall not consider the collective bargaining status of the construction manager at risk.

(d) Notice of requests for qualifications must be advertised in the State Register.

**Subd. 2. Construction manager at risk selection process.** In a construction manager at risk selection process, the following shall apply:

(a)(1) Upon receipt of a written request from a user agency for a construction manager at risk for its project, the commissioner shall create a selection committee composed of a minimum of three persons, at least one of whom has construction industry expertise; (2) the selection committee shall establish procedures for determining the appropriate content of each request for qualifications, the weighted criteria and subcriteria to be used to score the proposals of the construction managers at risk, and shall establish procedures for evaluating qualifications in an open, competitive, and objective manner; and (3) the commissioner shall issue a request for qualifications that includes the information as described in subdivision 1.

(b) In accordance with the criteria and procedures set forth in the request for qualifications, the selection committee shall evaluate the construction manager at risk's experience as a constructor, including, but not limited to, capacity of key personnel, technical competence, capability to perform, the past performance of the construction manager at risk and its employees, its safety record and compliance with state and federal law, availability to and familiarity with the project locale, and other appropriate facts submitted by the construction manager at risk in response to the request for qualifications. The commissioner must receive at least three proposals from construction managers or the commissioner may either (1) solicit new proposals; (2) request the selection committee to revise the request for qualifications and thereafter solicit new proposals using the revised request for qualifications; (3) select another allowed procurement method; or (4) reject all proposals.

(c)(1) The selection committee shall review the proposers' qualifications and create a short list of three to five proposals of construction managers at risk; (2) the commissioner shall issue a request for proposal requiring fee and expense proposals and other information as desired from the short-listed construction managers at risk; (3) the selection committee

shall conduct formal interviews with the short-listed construction managers at risk but shall not disclose any proprietary or confidential information contained in one proposal to another proposer; and (4) the selection committee shall recommend the construction manager at risk achieving the highest score on the evaluation criteria as described in subdivision 1, paragraph (b).

(d) The board shall select the primary designer as described in section 16B.33 or in the case of the commissioner, section 16C.08 or 16C.095.

Subd. 3. **Construction manager at risk contract.** (a) The commissioner shall conduct contract negotiations with the recommended construction manager at risk.

(b) If the construction manager at risk selected for the project declines the appointment or is unable to reach agreement with the commissioner concerning the fee or terms of the contract, the commissioner shall, within 60 days after the first selection, request the selection committee to make another recommendation.

(c) If the selection committee fails to make a second recommendation and forward it to the commissioner within 60 days of the commissioner's request for a second recommendation, the commissioner may select a construction manager at risk without the recommendation of the selection committee.

(d) The primary designer selected by the board shall develop various design documents for review and approval by the commissioner.

(e) The construction manager at risk shall competitively bid all trade contract work for the project from a list of qualified firms, subject to availability of such qualified firms for the specific work. The list of qualified firms shall be based upon an open, competitive, and objective prequalification process in which the selection criteria includes the firm's experience as a constructor, including capacity of key personnel, technical competence, capability to perform, the past performance of the firm and its employees, including its safety record and compliance with state and federal law, availability to and familiarity with the project locale, and other considerations as defined by the construction manager at risk and the commissioner. The construction manager at risk and the commissioner shall jointly determine the composition of the list of qualified firms. The criteria shall not impose unnecessary conditions beyond reasonable requirements to ensure maximum participation of qualified contractors. With the commissioner's approval or request, the construction manager at risk may also submit bids for trade contract work.

(f) The construction manager at risk and the commissioner shall enter into a guaranteed maximum price contract for the project.

**History:** 2005 c 78 s 8

### 16C.35 JOB ORDER CONTRACTING.

Subdivision 1. **Authority.** The commissioner may undertake construction utilizing job order contracting for projects that do not exceed a construction cost of \$250,000.

Subd. 2. **Job order contracting request for qualifications.** (a) The commissioner is authorized to issue a request for qualifications that includes the criteria that will be used for the projects, provided that these criteria do not unduly restrict competition, nor impose conditions beyond reasonable requirements to ensure maximum participation of all qualified contractors, and does not relate to the collective bargaining status of the contractor.

(b) The request for qualifications must be publicized in a manner designated by the commissioner that ensures open and unrestricted access for any potential responder. To the extent practical, this must include posting on a state Web site. To the extent practical, the commissioner must give notice to representatives of targeted group businesses designated under section 16C.16.

Subd. 3. **Qualified contractors.** (a) The commissioner shall review the responses to the request for qualifications and determine responder's ability to enter into the master contract that will be utilized for the projects. The commissioner shall establish a list of qualified con-

tractors based on the proposers' ability to enter into a master contract as described in the request for qualifications.

(b) The commissioner shall enter into master contracts with all qualified contractors.

(c) The commissioner shall establish procedures to allow firms to submit qualifications at least annually to allow placement on the list of contractors qualified to enter into a master contract.

Subd. 4. **Construction services bidding.** The commissioner shall request bids for construction services for any project using job order contracting from qualified contractors as follows:

(1) for construction projects up to a maximum cost of \$50,000, the commissioner shall request a minimum of two bids;

(2) for construction projects with a cost greater than \$50,000, but less than or equal to \$100,000, the commissioner shall request a minimum of three bids;

(3) for construction projects with a cost greater than \$100,000 but less than or equal to \$250,000, the commissioner shall request a minimum of four bids.

Subd. 5. **Qualified contractor selection.** The commissioner shall select the contractor who submits the lowest price bid for the construction services proposed.

Subd. 6. **Reasonable distribution of bid requests among qualified contractors.** The commissioner in requesting bidding for projects using job order contracting as described in this section shall develop a system to ensure a reasonable opportunity for all qualified contractors to bid on construction services on a periodic basis.

**History:** 2005 c 78 s 9