

CHAPTER 16C

STATE PROCUREMENT

<p>16C.02 DEFINITIONS.</p> <p>16C.03 COMMISSIONER'S AUTHORITY; POWERS AND DUTIES.</p> <p>16C.08 PROFESSIONAL OR TECHNICAL SERVICES.</p> <p>16C.10 EXCEPTIONS TO THE SOLICITATION PROCESS.</p> <p>16C.137 MINIMIZING ENERGY USE; RENEWABLE FUELS.</p>	<p>16C.138 STATE PURCHASING OF ELECTRIC AND PLUG-IN HYBRID ELECTRIC VEHICLES.</p> <p>16C.16 DESIGNATION OF PROCUREMENTS FROM SMALL BUSINESSES.</p> <p>16C.19 ELIGIBILITY; RULES.</p> <p>16C.20 CERTIFICATION.</p> <p>16C.28 CONTRACTS; AWARD.</p>
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16C.02 DEFINITIONS.

[For text of subd 1, see M.S.2008]

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

[For text of subds 2 to 21, see M.S.2008]

History: 2009 c 131 s 1

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

[For text of subds 1 to 3a, see M.S.2008]

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. The commissioner may require that agency staff participate in the development of enterprise procurements including the development of product standards, the application of accessibility standards, specifications, and other requirements.

[For text of subds 4a to 19, see M.S.2008]

History: 2009 c 131 s 2

16C.08 PROFESSIONAL OR TECHNICAL SERVICES.

[For text of subds 1 and 1a, see M.S.2008]

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;

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

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

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

(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;

(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; and

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

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

[For text of subs 3 to 7, see M.S.2008]

History: 2009 c 131 s 3

16C.10 EXCEPTIONS TO THE SOLICITATION PROCESS.

[For text of subs 1 to 4, see M.S.2008]

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;

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

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

[For text of subs 6 and 7, see M.S.2008]

History: 2009 c 111 s 2

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);

(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; or

(iii) are powered solely by electricity;

(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.

[For text of subs 2 and 3, see M.S.2008]

History: 2009 c 134 s 1

16C.138 STATE PURCHASING OF ELECTRIC AND PLUG-IN HYBRID ELECTRIC VEHICLES.

Subdivision 1. **Definition.** (a) As used in this section, "plug-in hybrid electric vehicle (PHEV)" means a vehicle containing an internal combustion engine that also allows power to be delivered to the drive wheels by a battery-powered electric motor and that meets applicable federal motor vehicle safety standards. When connected to the electrical grid via an electrical outlet, the vehicle must be able to recharge its battery. The vehicle must have the ability to travel at least 20 miles, powered substantially by electricity.

(b) As used in this section, "neighborhood electric vehicle" means an electrically powered motor vehicle that has four wheels and has a speed attainable in one mile of at least 20 miles per hour but not more than 25 miles per hour on a paved level surface.

(c) As used in this section, "electric vehicle" has the meaning given in section 169.011, subdivision 26a.

Subd. 2. **Notice of state procurement policy in bid documents.** All solicitation documents for the purchase of a passenger automobile, as defined in section 168.011, subdivision 7; pickup truck, as defined in section 168.011, subdivision 29; or van, as defined in section 168.011, subdivision 28, issued under the jurisdiction of the Department of Administration after June 30, 2006, must contain the following language: "It is the intention of the state of Minnesota to begin purchasing electric vehicles, plug-in hybrid

electric vehicles, and neighborhood electric vehicles as soon as they become commercially available, meet the state's performance specifications, and are priced no more than ten percent above the price for comparable gasoline-powered vehicles. It is the intention of the state to purchase electric vehicles, plug-in hybrid electric vehicles, and neighborhood electric vehicles whenever practicable after these conditions have been met and as fleet needs dictate for at least five years after these conditions have been met."

History: 2006 c 245 s 1; 2009 c 134 s 7,9

16C.16 DESIGNATION OF PROCUREMENTS FROM SMALL BUSINESSES.

[For text of subs 1 to 6, see M.S.2008]

Subd. 6a. **Veteran-owned small businesses.** (a) The commissioner shall award up to a six percent preference, but no less than the percentage awarded to any other group under this section, in the amount bid on state procurement to certified small businesses that are majority-owned and operated either:

(1) by recently separated veterans, who are veterans as defined in section 197.447, who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs; or

(2) by veterans who are veterans as defined in section 197.447, with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs.

(b) The purpose of this designation is to facilitate the transition of veterans from military to civilian life, and to help compensate veterans for their sacrifices, including but not limited to their sacrifice of health and time, to the state and nation during their military service, as well as to enhance economic development within Minnesota.

(c) For purposes of this section and section 16C.19, "service-connected disability" has the meaning given in United States Code, title 38, section 101(16), as determined by the United States Department of Veterans Affairs.

[For text of subs 7 to 12, see M.S.2008]

History: 2009 c 94 art 3 s 3; 2009 c 101 art 2 s 56,110

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 nonmanufacturing 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.

(d) Notwithstanding paragraph (c), for purposes of sections 16C.16 to 16C.21, a veteran-owned small business or service-disabled veteran-owned small business, the principal place of business of which is in Minnesota, is certified if:

(1) it has been verified by the United States Department of Veterans Affairs as being a veteran-owned small business in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74, and a majority of the owners of the business are recently separated veterans as provided in section 16C.16, subdivision 6a; or

(2) it has been verified by the United States Department of Veterans Affairs as being a service-disabled veteran-owned small business in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

History: 2009 c 94 art 3 s 4; 2009 c 101 art 2 s 57,110

16C.20 CERTIFICATION.

A business that is certified by the commissioner of administration as a small business, small targeted group business, a small business located in an economically disadvantaged area, or a veteran-owned small business is eligible to participate under the requirements of sections 137.31 and 161.321 and, if certified as a small business, small targeted group business, or veteran-owned small business, under section 473.142 without further certification by the contracting agency.

History: 2009 c 94 art 3 s 5; 2009 c 101 art 2 s 58,110

16C.28 CONTRACTS; AWARD.

[For text of subs 1 to 5, see M.S.2008]

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

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

History: 2009 c 78 art 5 s 1