

**16C.32 DESIGN-BUILD CONTRACTS, DEFINITIONS.**

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; design-build contract; construction manager at risk.** (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 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