

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) procurement process including solicitations and responses to solicitations, bid security, vendor errors, opening of responses, award of contracts, tied bids, and award protest process;
- (2) contract performance and failure to perform;
- (3) authority to debar or suspend vendors, and reinstatement of vendors;
- (4) contract cancellation;
- (5) procurement from rehabilitation facilities;
- (6) organizational conflicts of interest; and
- (7) surplus property acquisition, distribution, and disposal.

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. 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. 3a. **Acquisition authority; construction contracts.** For all building and construction contracts, the commissioner shall award contracts pursuant to section 16C.28, and "best value" shall be defined and applied as set forth in sections 16C.02, subdivision 4a, and 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c). The duties set forth in this subdivision are subject to delegation pursuant to this section. The commissioner shall establish procedures for developing and awarding best value requests for proposals for construction projects. The criteria to be used to evaluate the proposals must be included in the solicitation document and must be evaluated in an open and competitive manner.

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.

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. Consistent with the authority specified in this chapter, the commissioner shall develop and implement policies, procedures, and standards ensuring the optimal use of strategic sourcing techniques.

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

Subd. 10. **Cooperative purchasing.** The commissioner is authorized to enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with one or more other states or governmental units, as described in section 471.59, subdivision 1; entities defined in section 16C.23, subdivision 1; a registered combined charitable organization and its affiliated agencies as defined by section 43A.50; a charitable organization defined in section 309.50, subdivision 4, that is also a recipient of a state grant or contract; or a nonprofit community health clinic defined in section 145.9268. The commissioner is authorized to enter into cooperative purchasing agreements for the purchase of goods, services, and utilities with health care facilities that are required to provide indigent care or any entity recognized by another state's statutes as authorized to use that state's commodity or service contracts.

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. The commissioner may require an agency head or subordinate to accept delegated responsibility to procure goods or services intended for the exclusive use of the agency receiving the delegation.

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

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

(b) Beginning January 1, 2006, each vendor or affiliate of a vendor selling goods or services, subject to tax under chapter 297A, to an agency or the legislature must provide its Minnesota sales and use tax business identification number, upon request, to show that the vendor is registered to collect Minnesota sales or use tax.

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

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

Subd. 19. **Training.** Any personnel administering procurement procedures for a user of best value procurement or any consultant retained by a local unit of government to prepare or evaluate solicitation documents must be trained, either by the department or through other training, in the request for proposals process for best value contracting for construction projects. The commissioner may establish a training program for state and local officials, and vendors and contractors, on best value procurement for construction projects, including those governed by section 16C.28. If the commissioner establishes such a training program, the state may charge a fee for providing training.

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; 2007 c 67 s 1; 2007 c 83 s 1; 2007 c 139 s 1; 2007 c 148 art 2 s 30-33; art 3 s 3-5; 2008 c 277 art 1 s 2; 2009 c 101 art 2 s 109; 2009 c 131 s 2