

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. 1a. **Enterprise procurement.** Notwithstanding section 15.061 or any other law, the commissioner shall, to the fullest extent practicable, conduct enterprise procurements that result in the establishment of professional or technical contracts for use by multiple state agencies. The commissioner is authorized to mandate use of any contract entered into as a result of an enterprise procurement process. Agencies shall fully cooperate in the development and use of contracts entered into under this section.

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.

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 and ranking minority members of the house of representatives 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 \$25,000 covered by this subdivision, the head of the agency entering into the contract must submit a report to the commissioner who

must make the report publicly available online and 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) 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; and
- (4) include 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. 4a. [Repealed, 2007 c 148 art 2 s 84]

Subd. 4b. **Limitations on actions.** No action may be maintained by a contractor against an employee or agency who discloses information about a current or former contractor under subdivision 4, unless the contractor demonstrates by clear and convincing evidence that:

- (1) the information was false and defamatory;
- (2) the employee or agency knew or should have known the information was false and acted with malicious intent to injure the current or former contractor; and
- (3) the information was acted upon in a manner that caused harm to the current or former contractor.

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; 2007 c 148 art 2 s 37-40; 2009 c 131 s 3; 2010 c 302 s 1