CHAPTER 16C

STATE PROCUREMENT

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16C.001 COMMISSIONER'S AUTHORITY; 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.

History: *1998 c 386 art 1 s 4; 2009 c 101 art 2 s 109; 2014 c 196 art 2 s 15*

16C.01 [Repealed, 1985 c 285 s 54]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. 1a. [Repealed by amendment, 2014 c 196 art 2 s 1]

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, construction, or utilities.

Subd. 3a. **Best and final offer.** "Best and final offer" means an optional step in the solicitation process in which responders are requested to improve their response by methods including, but not limited to, the reduction of cost, clarification or modification of the response, or the provision of additional information.

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. In achieving "best value" strategic sourcing tools, including but not limited to best and final offers, negotiations, contract consolidation, product standardization, and mandatory-use enterprise contracts shall be used at the commissioner's discretion.

Subd. 4a. [Repealed by amendment, 2014 c 196 art 2 s 1]

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

Subd. 5a. **Competitive proposal.** "Competitive proposal" means a response to a request for proposal in which the evaluation criteria upon which an award is based consists of price and other factors such as vendor qualifications.

Subd. 5b. **Construction.** "Construction" means building construction, alteration improvements, or repair. Construction does not mean highway construction.

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.

Subd. 6a. **Enterprise procurement.** "Enterprise procurement" means the process undertaken by the commissioner to leverage economies of scale of multiple end users to achieve cost savings and other favorable terms in contracts for goods and services.

Subd. 6b. **Emergency.** "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.

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

Subd. 7a. **General services.** "General services" means any nonprofessional or technical services. General services does not include construction.

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 negotiated to achieve best value for the state.

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

(1) is 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;

(2) has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought;

(3) has a business address in the state; and

(4) has affirmatively claimed that status in the bid or proposal submission.

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," "proposals," "best and final offers," or "negotiated offers."

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. [Repealed by amendment, 2014 c 196 art 2 s 1]

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

Subd. 20. [Repealed by amendment, 2014 c 196 art 2 s 1]

Subd. 21. **Vendor.** "Vendor" means a business, including a construction contractor or a natural person, and includes both if the natural person is engaged in a business.

History: *1998 c 386 art 1 s 3; 1Sp2001 c 10 art 2 s 33; 1Sp2003 c 1 art 2 s 45; 2007 c 148 art 2 s 24-29; art 3 s 1,2; 2009 c 131 s 1; 2013 c 142 art 3 s 16; 2014 c 196 art 2 s 1*

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

Subdivision 1. MS 2012 [Renumbered 16C.001]

Subd. 2. **Rulemaking authority.** (a) 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.

(b) 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.

Subd. 3. **Acquisition authority.** The commissioner shall acquire all goods, general services, building construction, and utilities needed by agencies. The commissioner shall make all decisions regarding acquisition activities. 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 as otherwise provided for by law.

Subd. 3a. **Acquisition authority; best value construction contracts.** The commissioner is authorized to award construction contracts based on best value pursuant to section 16C.28.

Subd. 4. **Enterprise contracts.** The commissioner may require that agency staff participate in the development of enterprise procurements.

Subd. 4a. **Commissioner approval.** Notwithstanding any law to the contrary, any contract entered into by the Department of Transportation must be approved by the commissioner.

Subd. 5. **Amendments, cancellations, and protests.** The commissioner shall make all decisions regarding agency amendments, cancellations, and protests.

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. [Repealed by amendment, 2014 c 196 art 2 s 2]

Subd. 10. **Cooperative purchasing.** The commissioner is authorized to enter into a cooperative purchasing agreement for the provision of goods, services, construction, and utilities in accordance with section 16C.105.

Subd. 11. [Repealed by amendment, 2014 c 196 art 2 s 2]

Subd. 12. [Repealed by amendment, 2014 c 196 art 2 s 2]

Subd. 13. [Repealed by amendment, 2014 c 196 art 2 s 2]

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, construction, 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.

Subd. 17. [Repealed by amendment, 2014 c 196 art 2 s 2]

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. [Repealed, 2014 c 196 art 2 s 2,16]

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; 2014 c 196 art 2 s 2,15*

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, construction, 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; 2014 c 196 art 2 s 3*

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.046 [Repealed, 2009 c 101 art 2 s 110]

16C.05 CONTRACT MANAGEMENT; VALIDITY AND REVIEW.

Subdivision 1. **Agency cooperation and delegation.** Agencies shall fully cooperate with the commissioner in the creation, management, and oversight of state contracts. Authority delegated to agencies 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, construction, 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. 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, services, or construction intended for the exclusive use of the agency receiving the delegation.

Subd. 2. **Creation and validity of contracts.** (a) A contract and amendments are not valid and the state is not bound by them and no agency, without the prior written approval of the commissioner granted pursuant to subdivision 2a, may authorize work to begin on them unless:

(1) they have first been executed by the head of the agency or a delegate who is a party to the contract;

(2) they have been approved by the commissioner; and

(3) the accounting system shows an encumbrance for the amount of the contract liability, except as allowed by policy approved by the commissioner and commissioner of management and budget for routine, low-dollar procurements and section 16B.98, subdivision 11.

(b) 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.

(c) 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.

(d) A record must be kept of all responses to solicitations, including names of bidders and amounts of bids or proposals. 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. These records are open to public inspection, subject to section 13.591 and other applicable law.

(e) The attorney general must periodically review and evaluate a sample of state agency contracts to ensure compliance with laws.

(f) Before executing a contract or license agreement involving intellectual property developed or acquired by the state, a state agency shall seek review and comment from the attorney general on the terms and conditions of the contract or agreement.

(g) If funding is canceled, withdrawn, or terminated, an agency may, at its option, suspend its performance until funding is restored. Nothing in this paragraph releases the state from its obligations during a period of suspension.

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. [Repealed by amendment, 2014 c 196 art 2 s 4]

Subd. 4. **Contract administration.** A contracting agency shall diligently administer and monitor any contract it has entered into. 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.

Subd. 8. **Unenforceable terms.** (a) A contract entered into by the state shall not contain a term that:

(1) requires the state to defend, indemnify, or hold harmless another person or entity, unless specifically authorized by statute;

(2) binds a party by terms and conditions that may be unilaterally changed by the other party;

(3) requires mandatory arbitration;

(4) attempts to extend arbitration obligations to disputes unrelated to the original contract;

(5) construes the contract in accordance with the laws of a state other than Minnesota;

(6) obligates state funds in subsequent fiscal years in the form of automatic renewal as defined in section 325G.56; or

(7) is inconsistent with chapter 13, the Minnesota Government Data Practices Act.

(b) If a contract is entered into that contains a term prohibited in paragraph (a), that term shall be void and the contract is enforceable as if it did not contain that term.

(c) The commissioner shall post a copy of this section on the department's website.

History: *1994 c 632 art 3 s 33; 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; 2007 c 148 art 2 s 35,36; 2009 c 101 art 2 s 109; 2014 c 187 s 3; 2014 c 196 art 1 s 5; art 2 s 4; 2025 c 39 art 2 s 44,45*

16C.051 CONTRACTS WITH RUSSIA OR BELARUS.

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Belarusian entity" means an institution or company that is headquartered in the Republic of Belarus or has its principal place of business in the Republic of Belarus.

(c) "Russian entity" means an institution or company that is headquartered in the Russian Federation or has its principal place of business in the Russian Federation.

Subd. 2. **Terminating contracts with Russia or Belarus.** (a) All state agencies must:

(1) review existing contracts to determine if any existing contracts are with Russian entities or Belarusian entities;

(2) promptly terminate existing contracts with Russian entities or Belarusian entities as practicable; and

(3) refrain from entering into contracts with Russian entities or Belarusian entities unless the head of the state agency determines that there is no suitable alternative.

(b) Nothing in this section is intended to require or encourage state agencies to terminate or avoid contracts with Minnesota companies or other domestic entities, or to relieve state agencies of any obligations under applicable laws, rules, or regulations related to contracting and procurement.

Subd. 3. **Severability.** The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

History: *2022 c 43 s 2*

16C.053 CONTRACTS WITH VENDORS WHO DISCRIMINATE AGAINST ISRAEL PROHIBITED.

Subdivision 1. **Discrimination by vendor.** (a) A state agency may not enter into a contract with a vendor that engages in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business.

(b) For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

Subd. 2. **Exemption; commissioner may waive.** (a) This section does not apply to contracts with a value of less than $50,000.

(b) The commissioner may waive application of this section on a contract if the commissioner determines that compliance is not practicable or in the best interests of the state.

Subd. 3. **Relation to existing law.** This section does not prohibit a vendor from engaging in free speech or expression protected under the First Amendment of the United States Constitution or the Constitution of the state of Minnesota.

History: *2017 c 21 s 3; 1Sp2017 c 4 art 2 s 51*

16C.054 ACCOMMODATION FOR HARD-OF-HEARING IN STATE-FUNDED CAPITAL PROJECTS.

Subdivision 1. **Definition.** For purposes of this section, "public gathering space" means a space that is constructed or renovated as part of the project: (1) that accommodates and is intended to be used for gatherings of 15 or more people; and (2) in which audible communications are integral to a use of the space.

Subd. 2. **Accommodation for hard-of-hearing in state-funded capital projects.** No commissioner or agency head may approve a contract or grant state funds for a capital improvement project to construct or renovate a public gathering space in a building unless:

(1) the project includes equipping the public gathering space, if the public gathering space has or will have a permanent audio-amplification system, with audio-induction loops to provide an electromagnetic signal for hearing aids and cochlear implants; and

(2) the project includes meeting the American National Standards Institute Acoustical Performance Criteria, Design Requirements and Guidelines for Schools on maximum background noise level and reverberation times in the public gathering space.

Subd. 3. **Exemption.** A commissioner or agency head may approve a contract or grant state funds for a capital improvement project to construct or renovate a building that does not meet a requirement of subdivision 2, when the commissioner or agency head determines that meeting that requirement is not feasible, is in conflict with other requirements in law, is in conflict with other project requirements, or that costs outweigh the benefits. The commissioner must consult with the Commission of the Deaf, DeafBlind and Hard of Hearing before making the determination.

Subd. 4. **Exemption reports.** A commissioner or agency head who determines a contract is exempt under subdivision 3 must report the exemption to the Commission of the Deaf, DeafBlind and Hard of Hearing within three months of making the determination. The chair of the Commission of the Deaf, DeafBlind and Hard of Hearing shall submit a report to the chairs and ranking minority members of the committees in

the house of representatives and senate with jurisdiction over state contracting by January 30 of even-numbered years beginning in 2020 identifying each exemption reported in the previous two calendar years.

History: *1Sp2017 c 8 art 2 s 3; 2018 c 121 s 7*

16C.055 BARTER ARRANGEMENTS LIMITED.

Subdivision 1. [Repealed, 2007 c 148 art 2 s 84]

Subd. 2. **Restriction.** An agency may not enter into a contract or otherwise agree with a nongovernmental entity to receive total nonmonetary consideration valued at more than $100,000 annually 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, optical fiber owned by the state as of July 1, 2019, or private aquaculture businesses involved in state stocking contracts.

History: *1Sp2001 c 10 art 2 s 38; 2010 c 392 art 1 s 5; 1Sp2011 c 2 art 5 s 2; 2014 c 196 art 2 s 5; 1Sp2019 c 10 art 2 s 9*

16C.06 PROCUREMENT REQUIREMENTS.

Subdivision 1. **Public notice required over $25,000.** Unless otherwise required by law, public notice of solicitations is required for all purchases for goods and general services, professional and technical services contracts, and construction estimated to be more than $25,000, or $100,000 in the case of the Department of Transportation. To the extent practical, this must include posting on a state website. The manner of publication shall be designated by the commissioner. Notice requirements for procurement transactions $25,000 and under shall be determined by the commissioner.

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. 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. [Repealed by amendment, 2014 c 196 art 2 s 6]

Subd. 3b. **Term of contracts.** (a) For goods, general services, and building construction, 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.

(b) For professional or technical services, the combined contract and amendments must 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.

(c) The term of a contract may be extended for a time longer than the time specified in this section, 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.

(d) 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.

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. [Repealed by amendment, 2014 c 196 art 2 s 6]

Subd. 6. **Awards.** (a) Contract awards shall be made utilizing 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 determination of the acquisition method and all decisions involved in the acquisition process, unless otherwise provided for by law, shall be determined by the commissioner. The commissioner is authorized to utilize tools, including but not limited to contract consolidation, product standardization, and mandatory-use enterprise contracts to the extent determined to be in the best interest of the state.

(b) Awards based on competitive proposals must include an evaluation of price and other considerations, such as environmental considerations, quality, and vendor performance. The solicitation document used to obtain competitive proposals must state the relative importance of price and the other factors.

(c) Awards based on a low bid process must be made 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.

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 16C.0725 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.

Subd. 11. **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.

Subd. 12. **Certification of compliance with this chapter.** The commissioner shall require that the terms of any contract include a certification of the vendor's compliance with all requirements of this chapter in entering and executing the contract.

History: *1998 c 386 art 1 s 7; 1Sp2001 c 8 art 2 s 11,12; 1Sp2001 c 10 art 2 s 39,40; 2002 c 254 s 2; 1Sp2003 c 1 art 2 s 50; 1Sp2003 c 8 art 2 s 13,20; 2005 c 163 s 51; 2013 c 142 art 3 s 17; 2014 c 196 art 1 s 5; art 2 s 6,15; 2017 c 21 s 4*

16C.064 MS 2006 [Repealed, 2005 c 156 art 2 s 21 para (e)]

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.071 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; 2014 c 196 art 2 s 15*

16C.072 CONTRACTS FOR TAX-RELATED ACTIVITIES.

An agency may not enter into a contract for tax fraud prevention or detection, or tax audit-related activities, that compensates a vendor based on a percentage of taxes assessed or collected. This section does not apply to the commissioner's authority to contract for debt collection under section 16D.04.

History: *2011 c 112 art 11 s 1; 2014 c 196 art 2 s 15*

RECYCLABILITY AND ENERGY EFFICIENCY

16C.0725 PURCHASE OF RECYCLED, REPAIRABLE, AND DURABLE MATERIALS.

The commissioner shall take the recycled content and recyclability of commodities to be purchased into consideration in bid specifications. When feasible and when the price of recycled materials does not exceed the price of nonrecycled materials by more than ten percent, the commissioner, and state agencies when purchasing under delegated authority, shall purchase recycled materials. In order to maximize the quantity and quality of recycled materials purchased, the commissioner, and state agencies when purchasing under delegated authority, may also use other appropriate procedures to acquire recycled materials at the most economical cost to the state.

When purchasing commodities and services, the commissioner, and state agencies when purchasing under delegated authority, shall apply and promote the preferred waste management practices listed in section 115A.02, with special emphasis on reduction of the quantity and toxicity of materials in waste. The commissioner, and state agencies when purchasing under delegated authority, in developing bid specifications, shall consider the extent to which a commodity or product is durable, reusable, or recyclable and marketable

through the state resource recovery program and the extent to which the commodity or product contains postconsumer material.

History: *1Sp1989 c 1 art 18 s 1; 1992 c 514 s 3; 1992 c 593 art 1 s 1; 1993 c 249 s 1; 2014 c 196 art 1 s 5*

16C.073 PURCHASE AND USE OF PAPER STOCK; PRINTING.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Copier paper" means paper purchased for use in copying machines.

(c) "Office paper" means notepads, loose-leaf fillers, tablets, and other paper commonly used in offices.

(d) "Postconsumer material" means a finished material that would normally be discarded as a solid waste, having completed its life cycle as a consumer item.

(e) "Practicable" means capable of being used, consistent with performance, in accordance with applicable specifications, and availability within a reasonable time.

(f) "Printing paper" means paper designed for printing, other than newsprint, such as offset and publication paper.

(g) "Public entity" means the state, an office, agency, or institution of the state, the Metropolitan Council, a metropolitan agency, the Metropolitan Mosquito Control District, the legislature, the courts, a county, a statutory or home rule charter city, a town, a school district, another special taxing district, or any contractor acting pursuant to a contract with a public entity.

(h) "Soy-based ink" means printing ink made from soy oil.

(i) "Uncoated" means not coated with plastic, clay, or other material used to create a glossy finish.

Subd. 2. **Purchases.** (a) Whenever practicable, a public entity shall:

(1) purchase uncoated copy paper, office paper, and printing paper;

(2) purchase recycled content copy paper with at least 30 percent postconsumer material by weight and purchase printing and office paper with at least ten percent postconsumer material by weight;

(3) purchase copy, office, and printing paper which has not been dyed with colors, excluding pastel colors;

(4) purchase recycled content copy, office, and printing paper that is manufactured using little or no chlorine bleach or chlorine derivatives;

(5) use reusable binding materials or staples and bind documents by methods that do not use glue;

(6) use soy-based inks;

(7) purchase printer or duplication cartridges that:

(i) have ten percent postconsumer material; or

(ii) are purchased as remanufactured; or

(iii) are backed by a vendor-offered program that will take back the printer cartridges after their useful life, ensure that the cartridge is recycled, and comply with the definition of recycling in section 115A.03, subdivision 25b;

(8) produce reports, publications, and periodicals that are readily recyclable; and

(9) purchase paper which has been made on a paper machine located in Minnesota.

(b) Paragraph (a), clause (1), does not apply to coated paper that is made with at least 50 percent postconsumer material.

(c) A public entity shall print documents on both sides of the paper where commonly accepted publishing practices allow.

Subd. 3. **Public entity purchasing.** (a) Notwithstanding section 365.37, 375.21, 412.311, or 473.705, a public entity may purchase recycled materials when the price of the recycled materials does not exceed the price of nonrecycled materials by more than ten percent. In order to maximize the quantity and quality of recycled materials purchased, a public entity also may use other appropriate procedures to acquire recycled materials at the most economical cost to the public entity.

(b) When purchasing commodities and services, a public entity shall apply and promote the preferred waste management practices listed in section 115A.02, with special emphasis on reduction of the quantity and toxicity of materials in waste. A public entity, in developing bid specifications, shall consider the extent to which a commodity or product is durable, reusable, or recyclable and marketable through the applicable local or regional recycling program and the extent to which the commodity or product contains postconsumer material. When a project by a public entity involves the replacement of carpeting, the public entity may require all persons who wish to bid on the project to designate a carpet recycling company in their bids.

History: *1Sp1989 c 1 art 18 s 2; 1991 c 337 s 3; 1992 c 464 art 1 s 7; 1992 c 593 art 1 s 2; 1993 c 249 s 2; 1994 c 465 art 1 s 1; 1995 c 247 art 1 s 1; 2013 c 85 art 5 s 1; 2014 c 196 art 1 s 5; 1Sp2015 c 4 art 4 s 3; 2016 c 189 art 13 s 20*

16C.074 CONSIDERATION OF ENVIRONMENTAL IMPACTS OF METAL RECYCLING FACILITIES.

(a) The state, counties, towns, and home rule charter or statutory cities shall include consideration of environmental impacts in selecting a recycling facility for the recycling of scrap metal.

(b) For the purposes of this section, "recycling facility" has the meaning given in section 115A.03, subdivision 25c.

History: *1995 c 247 art 1 s 2; 2014 c 196 art 1 s 5*

16C.0745 [Repealed, 2015 c 54 art 5 s 16]

16C.075 E-VERIFY.

A contract for services valued in excess of $50,000 must require certification from the vendor and any subcontractors that, as of the date services on behalf of the state of Minnesota will be performed, the vendor and all subcontractors have implemented or are in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the state of Minnesota. This section does not apply to contracts entered into by the:

(1) State Board of Investment; or

(2) the Office of Higher Education for contracts related to credit reporting services if the office certifies that those services cannot be reasonably obtained if this section applies.

History: *1Sp2011 c 10 art 3 s 29; 2015 c 69 art 2 s 2*

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 agencies.** The following applies to all contracts for professional or technical services:

(1) no contract shall be entered into if a current state agency employee is able and available to perform the services called for by the contract;

(2) unless otherwise authorized by law, a competitive proposal process shall be used to acquire professional or technical services. A competitive bidding process shall not be utilized to acquire professional or technical services;

(3) agencies shall assign specific agency personnel to manage each contract;

(4) agencies shall not allow a 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;

(5) a contract shall not establish an employment relationship between the state or the agency and any persons performing under the contract;

(6) 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;

(7) agencies shall not contract out their 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;

(8) the contractor and agents must not be employees of the state;

(9) 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; and

(10) 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 or modified in writing by the commissioner. This clause does not apply to contracts for professional services as defined in sections 326.02 to 326.15.

Subd. 3. **Review of professional or technical services transactions.** Before issuing notice of a proposed contract for professional or technical services in excess of $25,000, the agency must provide the solicitation document along with the following for review and approval by the commissioner:

(1) a certification that all provisions of subdivision 2 and section 16C.16 have been verified or complied with;

(2) a description demonstrating 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) 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;

(4) a description of the performance measures or other tools that will be used to monitor and evaluate contractor performance; and

(5) a description of the procurement method to be utilized to address accessibility standards for technology services.

Subd. 3a. **Single source requests.** The commissioner is required to review and approve all agency requests to enter into contracts based on single source authority specified in section 16C.10, subdivision 1. Agencies shall submit a written request to the commissioner describing the search conducted and reasons supporting the request for single source authority along with the information specified in subdivision 3, clauses (1), (2), and (4).

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. [Repealed by amendment, 2014 c 196 art 2 s 7]

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; 2014 c 196 art 2 s 7*

16C.081 MS 2012 [Renumbered 16C.071]

16C.082 MS 2012 [Renumbered 16C.072]

16C.085 [Repealed, 2014 c 196 art 2 s 16]

16C.086 CALL CENTER.

An agency may not enter into a contract for operation of a call center, or a contract whose primary purpose is to provide similar services answering or responding to telephone calls on behalf of an agency without determining if the service can be provided by state employees, and the services must be provided at offices located in the United States. For purposes of this section, "agency" includes the Minnesota State Colleges and Universities.

History: *2007 c 148 art 2 s 41*

16C.087 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; 2014 c 196 art 2 s 15*

16C.09 PROCEDURE FOR GENERAL SERVICE CONTRACTS.

(a) Before entering into or approving a general service contract valued in excess of $5,000, the commissioner must determine 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; and

(5) the contracting agency has specified a satisfactory method of evaluating and using the results of the work to be performed.

(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; 2013 c 142 art 3 s 18; 2014 c 196 art 2 s 8*

16C.095 MS 2012 [Renumbered 16C.087]

16C.10 EXCEPTIONS AUTHORIZED.

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.** The solicitation process described in this chapter and chapter 16B is not required in emergencies. In emergencies, the commissioner may make or authorize any purchases necessary for the design, construction, repair, rehabilitation, and improvement of a publicly owned structure or may make or authorize an agency to do so and may purchase, or may authorize an agency to purchase, any goods, services, or utility services directly for immediate use. This provision applies to projects conducted by Minnesota State Colleges and Universities.

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 services licensed under chapter 245D;

(5) goods and services for use by a community-based facility operated by the Direct Care and Treatment executive board;

(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;

(8) goods and services from Minnesota Sex Offender Program facilities; and

(9) 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., 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. 6. **Expenditures under specified amounts.** A competitive solicitation process described in this chapter is not required for the acquisition of goods, services, construction, and utilities in an amount of $5,000 or less or as authorized by section 16C.16, subdivisions 6, paragraph (b), 6a, paragraph (b), and 7, paragraph (b).

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 services at the lowest selling price in an open and interactive environment. Reverse auctions may not be utilized to procure engineering design services or architectural services or to establish building and construction contracts under sections 16C.26 to 16C.29.

(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; 2007 c 148 art 2 s 42; 2009 c 111 s 2; 2013 c 108 art 9 s 1; 2013 c 142 art 3 s 19; 2014 c 196 art 2 s 9; 2016 c 189 art 12 s 3; 2023 c 62 art 2 s 76; 2024 c 79 art 10 s 3*

16C.105 COOPERATIVES AUTHORIZED.

The following entities are authorized to enter into cooperative purchasing agreements with the commissioner in accordance with section 16C.03, subdivision 10:

(1) one or more other states or governmental units, as described in section 471.59, subdivision 1;

(2) entities defined in section 16B.2975, subdivision 1;

(3) a registered combined charitable organization and its affiliated agencies as defined by section 43A.50;

(4) a charitable organization defined in section 309.50, subdivision 4, that is also a recipient of a state grant or contract;

(5) a nonprofit community health clinic defined in section 145.9268; and

(6) 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.

History: *2014 c 196 art 2 s 10,15*

16C.11 COOPERATIVE PURCHASING VENTURE; REVOLVING FUND.

The commissioner may enter into joint or cooperative purchasing agreements with any entity that is authorized under section 16C.03, subdivision 10. 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 entities that have joint or cooperative purchasing agreements with the state under section 16C.03, subdivision 10. 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; 2007 c 83 s 2*

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 enterprise fleet 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.** (a) Consistent with section 16C.137, subdivision 1, when purchasing a motor vehicle for the enterprise fleet or for use by an agency, the commissioner or the agency shall purchase the motor vehicle according to the following vehicle preference order:

(1) an electric vehicle;

(2) a hybrid electric vehicle;

(3) a vehicle capable of being powered by cleaner fuels; and

(4) a vehicle powered by gasoline or diesel fuel.

(b) The commissioner may only reject a vehicle that is higher on the vehicle preference order if:

(1) the vehicle type is incapable of carrying out the purpose for which it is purchased; or

(2) the total life-cycle cost of ownership of a preferred vehicle type is more than ten percent higher than the next vehicle type in the vehicle preference order.

History: *2002 c 312 s 1; 2014 c 281 s 1; 2021 c 31 art 1 s 26; 2023 c 60 art 12 s 3*

16C.137 MINIMIZING ENERGY USE; RENEWABLE FUELS.

Subdivision 1. **Goals and actions.** 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, excluding emergency and law enforcement vehicles, are purchased in conformity with the vehicle preference order established in section 16C.135, subdivision 3;

(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. **Evaluation.** (a) The commissioner of administration, in collaboration with the commissioners of the Pollution Control Agency, the Departments of Agriculture, Commerce, Natural Resources, and Transportation, and other state departments, must evaluate the goals and directives established in this section and include their findings in the public dashboard under section 16B.372. In the public dashboard, the commissioner must make recommendations for new or adjusted goals, directives, or legislative initiatives, in light of the progress the state has made implementing this section and the availability of new or improved technologies.

(b) 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; 2009 c 134 s 1; 2014 c 281 s 2,3; 2015 c 21 art 1 s 6; 2023 c 60 art 12 s 4; 2025 c 39 art 2 s 46*

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 168.002, subdivision 24; pickup truck, as defined in section 168.002, subdivision 26; or van, as defined in section 168.002, subdivision 40, 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, neighborhood electric vehicles, and natural gas vehicles if the total life-cycle cost of ownership is less than or comparable to that of gasoline-powered vehicles. It is the intention of the state to purchase electric vehicles, plug-in hybrid electric vehicles, neighborhood electric vehicles, and natural gas 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; 2010 c 382 s 8; 2014 c 281 s 4*

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.141 MS 2008 [Repealed, 2007 c 57 art 2 s 6]

16C.143 ENERGY FORWARD PRICING MECHANISMS.

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

(1) "energy" means natural gas, heating oil, propane, diesel fuel, and any other energy source except electricity used in state operations; 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; 2007 c 68 s 1*

16C.144 GUARANTEED ENERGY-SAVINGS PROGRAM.

Subdivision 1. **Definitions.** (a) The following definitions apply to this section.

(b) "Utility" means electricity, natural gas, or other energy resource, water, and wastewater.

(c) "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.

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

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

(f) "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 costs savings shall not include savings from in-house staff labor.

(g) "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.

(h) "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.

(i) "Inflation adjustment" means adjusting the operation and maintenance cost-savings baseline annually for inflation.

(j) "Project financing" means any type of financing including but not limited to lease, lease purchase, installment agreements, or bonds issued by an entity, other than the state, with authority to issue bonds, obligating the state to make regular payments to satisfy the costs of the utility cost-savings measures until the final payment.

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

(l) "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.

(m) "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.

(n) "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 25 years from the date of final installation;

(4) the commissioner finds that the amount the state would spend, less the amount contributed for capital cost avoidance, 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 25 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 the project financing. 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. **Project financing.** The commissioner may enter into project financing with any party for the implementation of utility cost-savings measures in accordance with the guaranteed energy-savings agreement. The term of the project financing shall not exceed 25 years from the date of final installation. The project financing is assignable in accordance with terms approved by the commissioner of management and budget.

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. **Independent report.** 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; 2009 c 101 art 2 s 109; 2013 c 85 art 13 s 1; 2014 c 196 art 2 s 11; 2014 c 254 s 1; 2015 c 77 art 2 s 12*

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.

(d) Executive branch state agencies subject to section 16E.03, subdivision 9, are not required to include nonvisual technology access standards developed under this section in contracts for the procurement of information technology.

History: *1998 c 366 s 27; 1999 c 250 art 1 s 54; 2013 c 142 art 3 s 20*

16C.147 DOCUMENT IMAGING; USE OF PERSONS WITH DEVELOPMENTAL DISABILITIES.

The commissioner shall promote the use of persons with developmental disabilities to provide document imaging services for state and local government agencies.

History: *2007 c 148 art 2 s 43*

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.151 PURCHASES FROM CORRECTIONS INDUSTRIES.

Subdivision 1. **Definitions.** As used in this section:

(1) "public entity" or "public entities" includes the state and an agency, department, or institution of the state, any governmental unit as defined in section 471.59, the state legislative and judicial branches, and state colleges and universities; and

(2) "items" includes articles, products, supplies, and services.

Subd. 2. **Public entities; purchases from corrections industries.** (a) The commissioner of corrections, in consultation with the commissioner of administration, shall prepare updated lists of the items available for purchase from Department of Corrections industries and annually forward a copy of the most recent list to all public entities within the state. A public entity that is supported in whole or in part with funds from the state treasury may purchase items directly from corrections industries. The bid solicitation process is not required for these purchases.

(b) The commissioner of administration shall develop a contract or contracts to enable public entities to purchase items directly from corrections industries. The commissioner of administration shall require that all requests for bids or proposals, for items provided by corrections industries, be forwarded to the commissioner of corrections to enable corrections industries to submit bids. The commissioner of corrections shall consult with the commissioner of administration prior to introducing new products to the state agency market.

(c) No public entity may evade the intent of this section by adopting slight variations in specifications, when Minnesota corrections industry items meet the reasonable needs and specifications of the public entity.

History: *1995 c 226 art 5 s 1; 1996 c 408 art 8 s 1; 1998 c 386 art 1 s 2; 2001 c 161 s 4; 2001 c 210 s 1; 2002 c 379 art 1 s 114; 2004 c 206 s 52; 2007 c 54 art 6 s 2; 2007 c 133 art 2 s 2; 2014 c 196 art 1 s 5*

16C.155 JANITORIAL CONTRACTS; REHABILITATION PROGRAMS AND EXTENDED EMPLOYMENT PROVIDERS.

Subdivision 1. **Service contracts.** The commissioner of administration shall ensure that a portion of all contracts for janitorial services; document imaging; document shredding; and mailing, collating, and sorting services be awarded by the state to rehabilitation programs and extended employment providers that are certified by the commissioner of employment and economic development, and day services licensed under chapter 245D. The amount of each contract awarded under this section may exceed the estimated fair market price as determined by the commissioner for the same goods and services by up to six percent. The aggregate value of the contracts awarded to eligible providers under this section in any given year must exceed 19 percent of the total value of all contracts for janitorial services; document imaging; document shredding; and mailing, collating, and sorting services entered into in the same year. For the 19 percent requirement to be applicable in any given year, the contract amounts proposed by eligible providers must be within six percent of the estimated fair market price for at least 19 percent of the contracts awarded for the corresponding service area.

Subd. 2. **Agency notification.** (a) On an annual basis, eligible service providers shall provide the following information to the commissioner in a format prescribed by the commissioner:

(1) the address for all locations where the service provider operates;

(2) the name, telephone number, and email address for a contact person at each location;

(3) the capacity of the organization, by location, to provide the services identified in subdivision 1; and

(4) the state of Minnesota vendor number for the provider.

(b) The commissioner shall annually provide notice of the contracting requirements under subdivision 1 to all state authority for local purchasing buyers, as determined by the commissioner. The list shall include the names and principal addresses of the eligible service providers and the information provided to the commissioner by eligible service providers under paragraph (a). The commissioner shall inform each authority for local purchasing buyers of:

(1) the requirements of subdivision 1;

(2) the policy adopted by the commissioner to implement subdivision 1;

(3) the applicable commodity codes for each service identified in subdivision 1;

(4) the need for each authority for local purchasing buyers to record the applicable commodity code for each contract entered under subdivision 1 and for each contract covering one of the service areas identified in subdivision 1; and

(5) the authority granted to the authority for local purchasing buyers to contract directly with the eligible providers as provided in section 16C.10.

Subd. 3. **Contract tracking and annual report.** The commissioner shall track, by the commodity code for each service area identified in subdivision 1, each contract entered into pursuant to this section. By February 15 of each year, the commissioner shall submit the following information for the previous fiscal year to the chairs and ranking members of the legislative committees with jurisdiction over workforce development:

(1) the value of the contracts awarded to eligible service providers for each of the applicable commodity codes; and

(2) the total value for all contracts awarded in each of the service areas identified in subdivision 1.

History: *2007 c 147 art 8 s 1; 2010 c 266 s 1; 2013 c 108 art 9 s 2*

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 the size standards for a small business for purposes of sections 16C.16 to 16C.21, 137.31, 137.35, 161.321, and 473.142, provided that the business has its principal place of business in Minnesota. The commissioner may use the definition for "small business" in the Code of Federal Regulations, title 49, section 26.65, or may adopt another standard.

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 12 percent preference for specified goods or services to small targeted group businesses.

(b) The commissioner may award a contract for goods, services, or construction directly to a small business or small targeted group business without going through a competitive solicitation process up to a total contract award value, including extension options, of $100,000.

(c) 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 respond to a solicitation.

(d) 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.

Subd. 6a. **Veteran-owned small businesses.** (a) Except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a 12 percent preference, but no less than the percentage awarded to any other group under this section, on state procurement to certified small businesses that are majority-owned and operated by veterans.

(b) The commissioner may award a contract for goods, services, or construction directly to a veteran-owned small business without going through a competitive solicitation process up to a total contract award value, including extension options, of $100,000.

(c) The commissioner may designate a purchase of goods or services for award only to a veteran-owned small business if the commissioner determines that at least three veteran-owned small businesses are likely to respond to a solicitation.

(d) 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 a veteran-owned small business. The commissioner must establish a procedure for granting waivers from the subcontracting requirement when qualified veteran-owned small businesses are not reasonably available. The commissioner may establish financial incentives for prime contractors who exceed the goals for use of veteran-owned small business subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph.

(e) 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.

(f) Before the commissioner certifies that a small business is majority-owned and operated by a veteran, the commissioner of veterans affairs must verify that the owner of the small business is a veteran, as defined in section 197.447.

Subd. 7. **Economically disadvantaged areas.** (a) The commissioner may award up to a 12 percent preference on state procurement to small businesses located in an economically disadvantaged area.

(b) The commissioner may award a contract for goods, services, or construction directly to a small business located in an economically disadvantaged area without going through a competitive solicitation process up to a total contract award value, including extension options, of $100,000.

(c) The commissioner may designate a purchase of goods or services for award only to a small business located in an economically disadvantaged area if the commissioner determines that at least three small businesses located in an economically disadvantaged area are likely to respond to a solicitation.

(d) 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 a small business located in an economically disadvantaged area. The commissioner must establish a procedure for granting waivers from the subcontracting requirement when qualified small businesses located in an economically disadvantaged area are not reasonably available. The commissioner may establish financial incentives for prime contractors who exceed the goals for use of subcontractors that are small businesses located in an economically disadvantaged area and financial penalties for prime contractors who fail to meet goals under this paragraph.

(e) 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.

(f) The commissioner may designate one or more areas designated as targeted neighborhoods under section 469.202 or as border city enterprise zones under section 469.166 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.

(g) The Department of Revenue shall gather data necessary to make the determinations required by paragraph (e), clause (1), and shall annually certify counties that qualify under paragraph (e), 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. 7a. **Designated purchases and subcontractor goals.** (a) When designating purchases directly to a business in accordance with this section, the commissioner may also designate a purchase of goods or services directly to any combination of small businesses, small targeted group businesses, veteran-owned small businesses or small businesses located in an economically disadvantaged area if the commissioner determines that at least three businesses in two or more of the disadvantaged business categories are likely to respond.

(b) When establishing subcontractor goals under this section, the commissioner may set goals that require the prime contractor to subcontract a portion of the contract to any combination of a small business, small targeted group business, veteran-owned small business, or small business located in an economically disadvantaged area.

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. [Repealed, 2014 c 196 art 2 s 16]

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 (d), 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 involving any small business, small targeted group business, veteran-owned business, or small business located in an economically disadvantaged area.

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.

Subd. 13. **State-funded projects.** (a) Notwithstanding section 16C.001, this subdivision applies to contracts for state-funded capital improvement projects in excess of $100,000 that are issued by organizations not subject to the small business requirements of this section, including municipalities as defined in section 466.01, subdivision 1.

(b) Organizations administering contracts described in paragraph (a) shall promote the use of targeted group businesses designated under this section and take steps to remove barriers to equitable participation of targeted group businesses.

(c) Organizations shall cooperate with the commissioner's efforts to monitor and measure compliance with this subdivision in the performance of state-funded contracts.

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; 2009 c 94 art 3 s 3; 2009 c 101 art 2 s 56,110; 2010 c 333 art 2 s 3; 2010 c 385 s 12; 2010 c 392 art 1 s 6; 2011 c 76 art 1 s 80; 2012 c 294 art 2 s 1; 2014 c 312 art 4 s 7; 2015 c 77 art 2 s 13-15; 2016 c 189 art 12 s 4-8; 2023 c 62 art 2 s 77-79; 2025 c 20 s 4; 2025 c 39 art 2 s 47-50*

16C.17 ENCOURAGEMENT OF PARTICIPATION.

Subdivision 1. **Commissioners' duties.** 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. [Repealed by amendment, 2007 c 133 art 2 s 3]

Subd. 3. [Repealed by amendment, 2007 c 133 art 2 s 3]

History: *1998 c 386 art 1 s 18; 2001 c 162 s 9; 1Sp2003 c 4 s 1; 2007 c 133 art 2 s 3*

16C.18 REPORTS.

Subdivision 1. [Repealed, 1Sp2003 c 8 art 1 s 13]

Subd. 2. [Repealed, 2007 c 135 art 2 s 40]

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 or, if authorized by the commissioner, by a nationally recognized certifying organization. The commissioner may choose to authorize a nationally recognized certifying organization if the certification requirements are substantially the same as those adopted under the rules authorized in this section and the business meets the requirements in section 16C.16, subdivision 2.

(b) The commissioner shall adopt by rule standards and procedures for certifying that small targeted group businesses, small businesses located in economically disadvantaged areas, and veteran-owned small businesses 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.

(c) 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.

(d) 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.

(e) Notwithstanding paragraph (a), for purposes of sections 16C.16 to 16C.21, a 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 either a veteran-owned small business or a service-disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74; or

(2) the veteran-owned small business supplies the commissioner with proof that the small business is majority-owned and operated by:

(i) a veteran as defined in section 197.447; or

(ii) a veteran with a service-connected disability, as determined at any time by the United States Department of Veterans Affairs.

(f) Until rules are adopted pursuant to paragraph (a) for the purpose of certifying veteran-owned small businesses, the provisions of Minnesota Rules, part 1230.1700, may be read to include veteran-owned small businesses. In addition to the documentation required in Minnesota Rules, part 1230.1700, the veteran owner must have been discharged under honorable conditions from active service, as indicated by the veteran owner's most current United States Department of Defense form DD-214.

(g) Notwithstanding paragraph (a), for purposes of sections 16C.16 to 16C.21, a minority- or woman-owned small business, the principal place of business of which is in Minnesota, is certified if it has been certified by the Minnesota unified certification program under the provisions of Code of Federal Regulations, title 49, part 26, and a Tribal-owned small business, the principal place of business of which is in Minnesota, is certified if it has been certified by the Small Business Administration (SBA) 8(a) program under the provisions of Code of Federal Regulations, title 13, part 124.

(h) The commissioner may adopt rules to implement the programs under section 16C.16, subdivisions 4 to 7, using the expedited rulemaking process in section 14.389.

History: *1998 c 386 art 1 s 20; 2009 c 94 art 3 s 4; 2009 c 101 art 2 s 57,110; 2010 c 333 art 2 s 4; 2014 c 312 art 4 s 8; 2015 c 77 art 2 s 16; 2023 c 62 art 2 s 80*

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: *1998 c 386 art 1 s 21; 2009 c 94 art 3 s 5; 2009 c 101 art 2 s 58,110*

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 [Repealed, 2014 c 196 art 2 s 16]

16C.23 MS 2012 [Renumbered 16B.2975]

16C.231 MS 2012 [Renumbered 16B.298]

16C.24 [Repealed, 2014 c 196 art 2 s 16]

16C.25 BUILDING AND CONSTRUCTION CONTRACTS.

Notwithstanding sections 16C.06 and 16C.10, sections 16C.251 to 16C.29, and other provisions of law not inconsistent with the provisions of sections 16C.251 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; 2014 c 196 art 2 s 12*

16C.251 BEST AND FINAL OFFER.

A "best and final offer" solicitation process may not be used for building and construction contracts awarded based on competitive bids.

History: *2007 c 148 art 2 s 44; 2023 c 62 art 2 s 81*

16C.26 COMPETITIVE BIDS OR PROPOSALS.

Subdivision 1. **Application.** Except as otherwise provided by section 16C.10 and this section, all contracts for building and construction or repairs must be based on competitive bids or proposals. "Competitive proposals" specifically refers to the method of procurement described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c).

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 or proposals must be solicited by public notice in a manner designated by the commissioner. To the extent practical, this must include posting on a state website. For expenditures over $50,000, when a solicitation is issued, the commissioner shall solicit sealed responses by posting notices at

least seven days before the due date and time. All bids over $50,000 must be sealed when they are received and must be opened in public or electronically at the hour stated in the notice. All proposals responsive to a request for proposals according to section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c), shall be submitted and evaluated in the manner described in the request for proposals, regardless of the dollar amount. All original bids and proposals 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. Alternatively, a request for proposals may be issued according to section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c), for such contracts.

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 or as authorized under section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c). Each vendor or contractor must furnish security approved by the commissioner to ensure the making of the contract being bid for.

Subd. 6. MS 2012 [Renumbered 16C.06, subd 11]

History: *2002 c 254 s 2; 2005 c 78 s 3,4; 2005 c 156 art 2 s 27,28; 2007 c 148 art 3 s 6; 2014 c 196 art 2 s 13,15*

16C.27 [Repealed, 2014 c 196 art 2 s 16]

16C.28 CONTRACTS; AWARD.

Subdivision 1. **Award requirements.** (a) All state building and construction contracts entered into by or under the supervision of the commissioner or an agency for which competitive bids or proposals are required may be awarded to either of the following:

(1) 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 or contractor, other considerations imposed in the call for bids, and, where appropriate, principles of life-cycle costing; or

(2) the vendor or contractor offering the best value, taking into account the specifications of the request for proposals, the price and performance criteria as set forth in subdivision 1b, and described in the solicitation document.

(b) The vendor or contractor must secure bonding, commercial general insurance coverage, and workers' compensation insurance coverage under paragraph (a), clause (1) or (2). The commissioner shall determine whether to use the procurement process described in paragraph (a), clause (1), or the procurement process described in paragraph (a), clause (2), and paragraph (c). If the commissioner uses the method in paragraph (a), clause (2), and paragraph (c), the head of the agency shall determine which vendor or contractor offers the best value, subject to the approval of the commissioner. Any or all bids or proposals may be rejected.

(c) When using the procurement process described in subdivision 1, paragraph (a), clause (2), the solicitation document must state the relative weight of price and other selection criteria. The award must be made to the vendor or contractor offering the best value applying the weighted selection criteria. If an interview of the vendor's or contractor's personnel is one of the selection criteria, the relative weight of the interview shall be stated in the solicitation document and applied accordingly.

Subd. 1a. **Establishment and purpose.** (a) The state recognizes the importance of the inclusion of a best value contracting system for construction as an alternative to the current low-bid system of procurement. In order to accomplish that goal, state and local governmental entities shall be able to use best value.

(b) "Best value" means the procurement method defined in subdivision 1b.

(c) The commissioner or any agency for which competitive bids or proposals are required may not use best value contracting for more than one project annually, or 20 percent of its projects, whichever is greater, in each of the first three fiscal years in which best value construction contracting is used.

Subd. 1b. **Best value; definition.** For the purposes of construction, building, alteration, improvement, or repair services, "best value" describes the result determined by a procurement method that considers price and other criteria, which may include, but are not limited to:

(1) the quality of the vendor's or contractor's performance on previous projects;

(2) the timeliness of the vendor's or contractor's performance on previous projects;

(3) the level of customer satisfaction with the vendor's or contractor's performance on previous projects;

(4) the vendor's or contractor's record of performing previous projects on budget and ability to minimize cost overruns;

(5) the vendor's or contractor's ability to minimize change orders;

(6) the vendor's or contractor's ability to prepare appropriate project plans;

(7) the vendor's or contractor's technical capabilities;

(8) the individual qualifications of the contractor's key personnel; or

(9) the vendor's or contractor's ability to assess and minimize risks.

"Performance on previous projects" does not include the exercise or assertion of a person's legal rights. This definition does not apply to sections 16C.32, 16C.33, 16C.34, and 16C.35.

Subd. 1c. **Procedures.** 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. 1d. **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 or construction projects.

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 or proposal of any vendor or contractor 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 vendor or contractor in accordance with subdivision 1, if doing so does not decrease the service level or diminish the effect of competition.

Subd. 4. [Repealed by amendment, 2014 c 196 art 2 s 14]

Subd. 5. [Repealed by amendment, 2014 c 196 art 2 s 14]

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: *2002 c 254 s 4; 2005 c 78 s 5; 2005 c 156 art 2 s 29; 2007 c 148 art 3 s 8; 2009 c 78 art 5 s 1; 2014 c 196 art 2 s 14*

16C.281 ORIGINAL JURISDICTION OF PUBLIC PROCUREMENT ACTIONS.

Subdivision 1. **Original jurisdiction.** (a) Original jurisdiction is granted to the district court over any action seeking legal, equitable, or declaratory relief arising under or based upon the alleged violation of any law governing public procurement requirements, public procurement procedures, or the award of any public contract.

(b) The grant of original jurisdiction under paragraph (a) applies regardless of whether a public entity involved or implicated in the action is alleged to have acted, or may be held to have acted, in a judicial or quasi-judicial capacity.

(c) The grant of original jurisdiction under paragraph (a) does not: (1) alter the standard of review to be applied by a district court; (2) alter the standard of review applied by an appellate court; (3) affect section 471.345, subdivision 14; (4) affect the available remedies, including, but not limited to, the availability or nonavailability of attorney fees awards and bid preparation costs; or (5) affect the procedural or administrative steps, if any, set out by statute, rule, or procurement procedure, that a party must comply with prior to initiating any such action.

Subd. 2. **Timing for filing.** (a) A procurement process participant must file an action prior to the date when the procurement contract at issue is fully executed unless:

(1) the party demonstrates that it acted diligently in seeking access to information the party reasonably deemed necessary to review prior to bringing an action; and

(2) the procurement process participant has not been afforded (i) reasonable access to information necessary to prepare the action for filing, or (ii) a reasonable opportunity to bring the action and seek appropriate relief from the court before the public procurement contract is fully executed. Reasonable access to necessary information and a reasonable opportunity to seek relief includes receipt of data described under section 13.591, subdivision 3 or 4, at least 15 days prior to full execution of the procurement contract.

(b) This subdivision does not apply to matters alleging: (1) fraud or misrepresentation, or (2) acts following contract execution that would have been improper or illegal prior to contract execution.

History: *2019 c 21 s 1*

16C.285 RESPONSIBLE CONTRACTOR REQUIREMENT DEFINED.

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Construction contract" means a contract or subcontract of any tier for work on a project.

(c) "Contractor" means a prime contractor or subcontractor or motor carrier, and does not include a design professional or a material supplier. A "design professional" is a business or natural person retained to perform services on the project for which licensure is required by section 326.02. A "material supplier" is a business or natural person that supplies materials, equipment, or supplies to a subcontractor or contractor on a project, including performing delivery or unloading services in connection with the supply of materials, equipment, or supplies; provided, however, that a material supplier does not include a natural person or business that delivers mineral aggregate such as sand, gravel, or stone that is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

(d) "Contracting authority" means a state agency, the Minnesota State Colleges and Universities, the University of Minnesota, the Metropolitan Council, the Metropolitan Airports Commission, or a municipality that enters into a construction contract or authorizes or directs entering into a construction contract.

(e) "Motor carrier" means a business or natural person providing for-hire transportation of materials, equipment, or supplies for a project.

(f) "Municipality" means a county, town, home rule charter or statutory city, school district, housing and redevelopment authority, port authority, economic development authority, sports facilities authority, joint powers board or organization created under section 471.59 or other statute, special district, instrumentality, drainage authority, watershed district, destination medical center corporation, or other municipal corporation or political subdivision of the state authorized by law to enter into contracts.

(g) "Prime contractor" means a vendor that submits a bid or proposal or otherwise responds to a solicitation document of a contracting authority for work on a project or is awarded a construction contract by a contracting authority for work on a project. A prime contractor includes a construction manager for purposes of this section.

(h) "Principal" means an owner holding at least a 25 percent ownership interest in a business.

(i) "Project" means building, erection, construction, alteration, remodeling, demolition, or repair of buildings, real property, highways, roads, bridges, or other construction work performed pursuant to a construction contract.

(j) "Related entity" means:

(1) a firm, partnership, corporation, joint venture, or other legal entity substantially under the control of a contractor or vendor;

(2) a predecessor corporation or other legal entity having one or more of the same principals as the contractor or vendor;

(3) a subsidiary of a contractor or vendor;

(4) one or more principals of a contractor or vendor; and

(5) a person, firm, partnership, corporation, joint venture, or other legal entity that substantially controls a contractor or vendor.

(k) "Solicitation document" means an invitation to bid, bid specifications, request for proposals, request for qualifications, or other solicitation of contractors for purposes of a construction contract.

(l) "Subcontractor" means a vendor that seeks to enter into a subcontract or enters into a subcontract for work on a project.

(m) "Vendor" means a business, including a construction contractor or a natural person, and includes both if the natural person is engaged in a business.

Subd. 2. **Responsible contractor required.** (a) A contractor must meet the minimum criteria in subdivision 3 to be eligible to be awarded a construction contract as the lowest responsible bidder or the vendor or contractor offering the best value as provided in section 16C.28, 103D.811, 103E.505, 116A.13, 123B.52, 160.17, 160.262, 161.32, 161.3206, 161.3209, 161.38, 162.17, 365.37, 374.13, 375.21, 383C.094, 412.311, 429.041, 458D.21, 469.015, 469.068, 469.101, 471.345, 473.4057, 473.523, 473.652, 473.756, 473J.11, or any of their successor provisions.

(b) This section applies to publicly owned or financed projects where the contracting authority's construction contract with the prime contractor is estimated to exceed $50,000 and is awarded pursuant to a lowest responsible bidder selection method or a best value selection method as provided in paragraph (a). The amount of any tax increment financing must be excluded in determining whether a construction contract exceeds $50,000. A subcontractor or motor carrier must meet the minimum criteria in subdivision 3 to be eligible to be awarded a subcontract on a project regardless of the value of the subcontract.

(c) If only one prime contractor responds to a solicitation document, a contracting authority may award a construction contract to the responding prime contractor even if the minimum criteria in subdivision 3 are not met.

Subd. 3. **Minimum criteria.** "Responsible contractor" means a contractor that conforms to the responsibility requirements in the solicitation document for its portion of the work on the project and verifies that it meets the following minimum criteria:

(1) the contractor:

(i) is in compliance with workers' compensation and unemployment insurance requirements;

(ii) is in compliance with Department of Revenue and Department of Employment and Economic Development registration requirements if it has employees;

(iii) has a valid federal tax identification number or a valid Social Security number if an individual; and

(iv) has filed a certificate of authority to transact business in Minnesota with the secretary of state if a foreign corporation or cooperative;

(2) the contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 177.24, 177.25, 177.41 to 177.44, 181.03, 181.101, 181.13, 181.14, or 181.722, and has not violated United States Code, title 29, sections 201 to 219, or United

States Code, title 40, sections 3141 to 3148. For purposes of this clause, a violation occurs when a contractor or related entity:

(i) repeatedly fails to pay statutorily required wages or penalties on one or more separate projects for a total underpayment of $25,000 or more within the three-year period, provided that a failure to pay is "repeated" only if it involves two or more separate and distinct occurrences of underpayment during the three-year period;

(ii) has been issued an order to comply by the commissioner of labor and industry that has become final;

(iii) has been issued at least two determination letters within the three-year period by the Department of Transportation finding an underpayment by the contractor or related entity to its own employees;

(iv) has been found by the commissioner of labor and industry to have repeatedly or willfully violated any of the sections referenced in this clause pursuant to section 177.27;

(v) has been issued a ruling or findings of underpayment by the administrator of the Wage and Hour Division of the United States Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Review Board;

(vi) has been found liable for underpayment of wages or penalties or misrepresenting a construction worker as an independent contractor in an action brought in a court having jurisdiction; or

(vii) has been convicted of a violation of section 609.52, subdivision 2, clause (19).

Provided that, if the contractor or related entity contests a determination of underpayment by the Department of Transportation in a contested case proceeding, a violation does not occur until the contested case proceeding has concluded with a determination that the contractor or related entity underpaid wages or penalties;

(3) the contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 181.723 or chapter 326B. For purposes of this clause, a violation occurs when a contractor or related entity has been issued a final administrative or licensing order;

(4) the contractor or related entity has not, more than twice during the three-year period before submitting the verification, had a certificate of compliance under section 363A.36 revoked or suspended based on the provisions of section 363A.36, with the revocation or suspension becoming final because it was upheld by the Court of Administrative Hearings or was not appealed to the court;

(5) the contractor or related entity has not received a final determination assessing a monetary sanction from the Department of Administration or Transportation for failure to meet targeted group business, disadvantaged business enterprise, or veteran-owned business goals, due to a lack of good faith effort, more than once during the three-year period before submitting the verification;

(6) the contractor or related entity is not currently suspended or debarred by the federal government or the state of Minnesota or any of its departments, commissions, agencies, or political subdivisions that have authority to debar a contractor; and

(7) all subcontractors and motor carriers that the contractor intends to use to perform project work have verified to the contractor through a signed statement under oath by an owner or officer that they meet the minimum criteria listed in clauses (1) to (6).

Any violations, suspensions, revocations, or sanctions, as defined in clauses (2) to (5), occurring prior to July 1, 2014, shall not be considered in determining whether a contractor or related entity meets the minimum criteria.

Subd. 4. **Verification of compliance.** A contractor responding to a solicitation document of a contracting authority shall submit to the contracting authority a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria in subdivision 3, with the exception of clause (7), at the time that it responds to the solicitation document. A contracting authority may accept a signed statement under oath as sufficient to demonstrate that a contractor is a responsible contractor and shall not be held liable for awarding a contract in reasonable reliance on that statement. A prime contractor, subcontractor, or motor carrier that fails to verify compliance with any one of the required minimum criteria or makes a false statement under oath in a verification of compliance shall be ineligible to be awarded a construction contract on the project for which the verification was submitted. A false statement under oath verifying compliance with any of the minimum criteria may result in termination of a construction contract that has already been awarded to a prime contractor or subcontractor or motor carrier that submits a false statement. A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria. A verification of compliance need not be notarized. An electronic verification of compliance made and submitted as part of an electronic bid shall be an acceptable verification of compliance under this section, provided that it contains an electronic signature as defined in section 325L.02, paragraph (h).

Subd. 5. **Subcontractor verification.** A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project. Prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the apparent successful prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with subdivision 3, clause (7). Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor. If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors. A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to subdivision 3, clause (7). A prime contractor and subcontractors shall not be responsible for the false statements of any subcontractor with which they do not have a direct contractual relationship. A prime contractor and subcontractors shall be responsible for false statements by their first-tier subcontractors with which they have a direct contractual relationship only if they accept the verification of compliance with actual knowledge that it contains a false statement.

Subd. 5a. **Motor carrier verification.** A prime contractor or subcontractor shall obtain annually from all motor carriers with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each motor carrier. A prime contractor or subcontractor shall require each such motor carrier to provide it with immediate written notification in the event that the motor carrier no longer meets one or more of the minimum criteria in subdivision 3 after submitting its annual verification. A motor carrier shall be ineligible to perform work on a project covered by this section if it does not meet

all the minimum criteria in subdivision 3. Upon request, a prime contractor or subcontractor shall submit to the contracting authority the signed verifications of compliance from all motor carriers providing for-hire transportation of materials, equipment, or supplies for a project.

Subd. 6. **Additional criteria.** Nothing in this section shall restrict the discretion of a contracting authority to establish additional factors for defining contractor responsibility. This subdivision is not an independent grant of authority to a contracting authority to establish additional minimum criteria pursuant to subdivision 3.

Subd. 7. **Implementation.** The definition of responsible contractor, as defined in subdivision 3, or a statement that the term responsible contractor as used in the solicitation document means a contractor as defined in subdivision 3, shall be included in the solicitation document for all projects covered by this section. The solicitation document for any project shall state that any prime contractor or subcontractor or motor carrier that does not meet the minimum criteria in subdivision 3 or fails to verify that it meets those criteria is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project. The solicitation document shall provide that a false statement under oath verifying compliance with any of the minimum criteria shall render the prime contractor or subcontractor or motor carrier that makes the false statement ineligible to be awarded a construction contract on the project and may result in termination of a contract awarded to a prime contractor or subcontractor or motor carrier that submits a false statement. The solicitation document shall state that a prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier and motor carriers, pursuant to subdivision 3, clause (7).

Subd. 8. **Effective date.** This section is effective January 1, 2015, and shall apply to all construction contracts entered into based on solicitation documents issued on or after that date.

History: *2014 c 253 s 1; 2015 c 64 s 1-8; 1Sp2019 c 7 art 3 s 1; 2025 c 39 art 2 s 68*

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 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 the amount specified in section 16B.33, subdivision 3, 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.087;

(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.087 and proceed with competitive bidding pursuant to sections 16C.25 to 16C.29.

Subd. 3. [Repealed, 2014 c 196 art 2 s 16]

History: *2005 c 78 s 6; 2014 c 196 art 2 s 15; 2023 c 62 art 2 s 82*

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 a manner designated by the commissioner.

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.** (a) In a design-build qualifications-based selection process, the following shall apply:

(b)(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.

(c) 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.087 and proceed with competitive bidding pursuant to sections 16C.25 to 16C.29.

(d) 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.

(e) 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 (g) and (h). 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.

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

(g) 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.

(h) 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.

(i) 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.** (a) The contract between the commissioner and the design-builder selected under subdivision 5 shall require the following:

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

(c) 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 prequalification 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.

(d) 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 (c). The commissioner and the design-builder shall agree to a list of labor, materials, and equipment that shall be competitively bid.

(e) 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.

(f) 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.

(g) 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.087 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; 2013 c 142 art 3 s 21; 2014 c 196 art 2 s 15*

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 other 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 a manner designated by the commissioner.

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

(b)(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.

(c) 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.

(d)(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).

(e) 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.087.

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; 2013 c 142 art 3 s 22; 2014 c 196 art 2 s 15*

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 website. 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 contractors 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*

16C.36 MS 2024 [Repealed, 2025 c 39 art 2 s 69]