

CHAPTER 16C

STATE PROCUREMENT

<p>16C.05 Contract management; validity and review.</p> <p>16C.065 Cost-benefit analysis.</p> <p>16C.08 Professional or technical services.</p> <p>16C.081 Exception for federal contracts.</p> <p>16C.09 Procedure for service contracts.</p>	<p>16C.10 Exceptions to the solicitation process.</p> <p>16C.14 Energy efficiency installment purchases.</p> <p>16C.16 Designation of procurements from small businesses.</p>
--	---

16C.05 CONTRACT MANAGEMENT; VALIDITY AND REVIEW.

[For text of subd 1, see M.S.1998]

Subd. 2. **Creation and validity of contracts.** (a) A contract is not valid and the state is not bound by it unless:

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

(2) it has been approved by the commissioner;

(3) it has been approved by the attorney general or a delegate as to form and execution;

(4) the accounting system shows an obligation in an expense budget or encumbrance for the amount of the contract liability; and

(5) the combined contract and amendments shall 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) Grants, interagency agreements, purchase 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. Bond purchase agreements by the Minnesota public facilities authority do not require the approval of the commissioner.

(c) A fully executed copy of every contract must be kept on file at the contracting agency.

[For text of subs 3 to 7, see M.S.1998]

History: 1999 c 86 art 1 s 11; 1999 c 230 s 1

16C.065 COST-BENEFIT ANALYSIS.

(a) The commissioner or an agency official to whom the commissioner has delegated duties under section 16C.03, subdivision 16, may not approve a contract or purchase of goods or services in an amount greater than \$5,000,000 unless a cost-benefit analysis has been completed and shows a positive benefit to the public. The management analysis division must perform or direct the performance of the analysis. A cost-benefit analysis must be performed for a project if an aggregation of contracts or purchases for a project exceeds \$5,000,000.

(b) All cost-benefit analysis documents under this section, including preliminary drafts and notes, are public data.

(c) If a cost-benefit analysis does not show a positive benefit to the public, the governor may approve a contract or purchase of goods or services if a cost-effectiveness study had been done that shows the proposed project is the most effective way to provide a necessary public good.

(d) This section applies to contracts for goods or services that are expected to have a useful life of more than three years. This section does not apply for purchase of goods or services for response to a natural disaster if an emergency has been declared by the governor.

History: 1999 c 250 art 1 s 65

16C.08 PROFESSIONAL OR TECHNICAL SERVICES.

[For text of subds 1 to 4, see M.S.1998]

Subd. 5. **Contract terms.** (a) A professional or technical services contract must by its terms permit the commissioner to unilaterally terminate the contract prior to completion, upon payment of just compensation, if the commissioner determines that further performance under the contract would not serve agency purposes.

(b) The terms of a contract must provide that no more than 90 percent of the amount due under the contract may be paid until the final product has been reviewed by the head of the agency entering into the contract and the head of the agency has certified that the contractor has satisfactorily fulfilled the terms of the contract, unless specifically excluded in writing by the commissioner. This paragraph does not apply to contracts for professional services as defined in sections 326.02 to 326.15.

[For text of subds 6 and 7, see M.S.1998]

History: 1999 c 116 s 1

16C.081 EXCEPTION FOR FEDERAL CONTRACTS.

Notwithstanding any law to the contrary, the commissioner of transportation, commissioner of the pollution control agency, or commissioner of natural resources 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

16C.09 PROCEDURE FOR SERVICE CONTRACTS.

(a) Before entering into or approving a service contract, the commissioner must determine, at least, 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;

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

(6) the combined contract and amendments will 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 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.

History: 1999 c 230 s 2

16C.10 EXCEPTIONS TO THE SOLICITATION PROCESS.

[For text of subds 1 to 4, see M.S.1998]

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 sheltered workshops that are certified by the commissioner of economic security;
- (5) goods and services for use by a community-based facility operated by the commissioner of human services;
- (6) goods purchased at auction or when submitting a sealed bid at auction provided that before authorizing such an action, the commissioner consult with the requesting agency to determine a fair and reasonable value for the goods considering factors including, but not limited to, costs associated with submitting a bid, travel, transportation, and storage. This fair and reasonable value must represent the limit of the state's bid; and
- (7) utility services where no competition exists or where rates are fixed by law or ordinance.

[For text of subd 6, see M.S.1998]

History: 1999 c 245 art 5 s 1

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 of a state building or facility if:

- (1) the term of the contract does not exceed ten years, with not more than a ten-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 only. "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 impractical to directly measure energy cost and/or energy usage, reasonable engineering estimates may be substituted for measured results;
- (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.

[For text of subs 2 to 4, see M.S.1998]

History: 1999 c 250 art 1 s 66

16C.16 DESIGNATION OF PROCUREMENTS FROM SMALL BUSINESSES.

[For text of subs 1 to 6, see M.S.1998]

Subd. 7. **Economically disadvantaged areas.** (a) Except as otherwise provided in paragraph (b), the commissioner may award up to a six percent preference in the amount bid on state procurement to small businesses located in an economically disadvantaged area.

(b) The commissioner may award up to a four percent preference in the amount bid on state construction to small businesses located in an economically disadvantaged area.

(c) 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 rehabilitation facility or work activity program.

(d) The commissioner may designate one or more areas designated as targeted neighborhoods under section 469.202 or as enterprise zones under section 469.167 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.

(e) The department of revenue shall gather data necessary to make the determinations required by paragraph (c), clause (1), and shall annually certify counties that qualify under paragraph (c), 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.

[For text of subs 8 to 12, see M.S.1998]

History: 1999 c 232 s 1