

CHAPTER 16C

STATE PROCUREMENT

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16C.02 DEFINITIONS.

[For text of subs 1 to 10, see M.S.2000]

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.

[For text of subs 11 to 19, see M.S.2000]

History: 1Sp2001 c 10 art 2 s 33

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

[For text of subd 1, see M.S.2000]

Subd. 2. **Rulemaking authority.** Subject to chapter 14, the commissioner may adopt rules, consistent with this chapter and chapter 16B, relating to the following topics:

- (1) 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; and
- (6) organizational conflicts of interest.

[For text of subs 3 and 4, see M.S.2000]

Subd. 4a. **Commissioner approval.** Notwithstanding any law to the contrary, after January 1, 2002, any contract entered into by the department of transportation must be approved by the commissioner, unless the commissioner has delegated approval authority to the department of transportation under subdivision 16.

[For text of subs 5 to 16, see M.S.2000]

History: 1Sp2001 c 10 art 2 s 34,35

16C.04 ETHICAL PRACTICES AND CONFLICT OF INTEREST.

[For text of subs 1 and 2, see M.S.2000]

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: *1Sp2001 c 10 art 2 s 36*

16C.05 CONTRACT MANAGEMENT; VALIDITY AND REVIEW.

[For text of subd 1, see M.S.2000]

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, 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) 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.2000]

History: *1Sp2001 c 8 art 2 s 10; 1Sp2001 c 10 art 2 s 37*

16C.055 BARTER ARRANGEMENTS LIMITED.

Subdivision 1. **Report.** By January 15, 2002, the legislative auditor shall report to the legislature and governor on agency use of barter agreements in furtherance of an agency's mission. The report shall list the type and approximate value of each agency's agreement or agreements.

Subd. 2. **Restriction.** After July 1, 2002, an agency may not contract or otherwise agree with a nongovernmental entity to receive total nonmonetary consideration valued at more than \$100,000 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.

History: *1Sp2001 c 10 art 2 s 38*

16C.06 ACQUISITIONS.

Subdivision 1. **Publication requirements.** Notices of solicitations for acquisitions estimated to be more than \$25,000, or \$100,000 in the case of a department of transportation acquisition, must be publicized in a manner designated 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. All formal responses must be sealed when they are received and must be opened in public at the hour stated in the solicitation. 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]

[For text of subds 4 to 10, see M.S.2000]

History: *1Sp2001 c 8 art 2 s 11,12; 1Sp2001 c 10 art 2 s 39,40*

NOTE: Subdivision 3 was also amended by Laws 2001, First Special Session chapter 10, article 2, section 39.

"Subd. 3. [Information in bids and proposals.] (a) Only the name of the vendor and dollar amounts specified in a response to a request for bids shall be read at the time of opening. Only the name of the responding vendors to all requests for proposals shall be read at the time of opening. All other information contained in a vendor's response to a bid is classified as nonpublic data, as defined in section 13.02, and remains nonpublic data until completion of the selection process. All other information contained in a vendor's response to a request for proposal, other than the name of the vendor, is classified as nonpublic data, as defined in section 13.02, and remains nonpublic data until the completion of the evaluation process.

(b) All responses are public information at the time of the award unless otherwise provided for. All responses and documents pertaining to the final award of an acquisition must be retained and made a part of a permanent file or record and remain open to public inspection, after award, unless otherwise provided for by law.

(c) If the commissioner rejects all responses to a solicitation, information in the responses, other than the information made public pursuant to paragraph (a), remains nonpublic data, as defined in section 13.02, until a selection is made based on responses to a resolicitation of bids, the evaluation process is completed based on responses to a resolicitation of a request for proposals, or a determination is made to abandon the purchase."

16C.066 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 for transit or other transportation purposes in an amount greater than \$10,000,000 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 \$10,000,000.

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

(c) 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.

(d) This section expires June 30, 2003.

History: *1Sp2001 c 10 art 2 s 41*

16C.081 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: *1Sp2001 c 10 art 2 s 42*

16C.095 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

16C.17 ENCOURAGEMENT OF PARTICIPATION; ADVISORY COUNCIL.

[For text of subd 1, see M.S.2000]

Subd. 2. **Advisory council.** The small business procurement advisory council consists of 13 members appointed by the commissioner of administration. A chair of

the advisory council shall be elected from among the members. The appointments are subject to the appointments program provided by section 15.0597. The terms, compensation, and removal of members are as provided in section 15.059. Notwithstanding section 15.059, the council expires June 30, 2003.

[For text of subd 3, see M.S.2000]

History: 2001 c 162 s 9

16C.22 DISTRICT HEATING.

Notwithstanding any other law, general or special, 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.

History: 1Sp2001 c 10 art 2 s 43