

CHAPTER 16C

STATE PROCUREMENT

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16C.02 DEFINITIONS.

[For text of subs 1 to 3, see M.S.2006]

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. **Best value; construction.** For purposes of construction, building, alteration, improvement, or repair services, "best value" describes the result determined by a procurement method that considers price and performance 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 capacities;
- (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.

[For text of subs 5 and 6, see M.S.2006]

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.

[For text of subs 7 to 11, see M.S.2006]

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.

[For text of subd 13, see M.S.2006]

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.”

[For text of subs 15 to 19, see M.S.2006]

Subd. 20. **Strategic sourcing.** “Strategic sourcing” means methods used to analyze and reduce spending on goods and services, including but not limited to spend analysis, product standardization, contract consolidation, negotiations, multiple jurisdiction purchasing alliances, reverse and forward auctions, life-cycle costing, and other techniques.

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: 2007 c 148 art 2 s 24–29; art 3 s 1,2

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

[For text of subd 1, see M.S.2006]

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

(1) procurement process including solicitations and responses to solicitations, bid security, vendor errors, opening of responses, award of contracts, tied bids, and award protest process;

(2) contract performance and failure to perform;

(3) authority to debar or suspend vendors, and reinstatement of vendors;

(4) contract cancellation;

(5) procurement from rehabilitation facilities;

(6) organizational conflicts of interest; and

(7) surplus property acquisition, distribution, and disposal.

Subd. 3. **Acquisition authority.** The commissioner shall acquire all goods, services, and utilities needed by agencies. The commissioner shall acquire goods, services, and utilities by requests for bids, requests for proposals, reverse auctions as provided in section 16C.10, subdivision 7, or other methods provided by law, unless a section of law requires a particular method of acquisition to be used. The commissioner shall make all decisions regarding acquisition activities. The determination of the acquisition method and all decisions involved in the acquisition process, unless otherwise provided for by law, shall be based on best value which includes an evaluation of price and may include other considerations including, but not limited to, environmental considerations, quality, and vendor performance. A best value determination must be based on the evaluation criteria detailed in the solicitation document. If criteria other than price are used, the solicitation document must state the relative importance of price and other factors. Any or all responses may be rejected. When using the request for bid process, the bid must be awarded to the lowest responsive and responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract or purchase is intended, the status and capability of

the vendor, and other considerations imposed in the request for bids. The commissioner may decide which is the lowest responsible bidder for all purchases and may use the principles of life-cycle costing, where appropriate, in determining the lowest overall bid. The duties set forth in this subdivision are subject to delegation pursuant to this section.

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

Subd. 4. Contracting authority. The commissioner shall conduct all contracting by, for, and between agencies and perform all contract management and review functions for contracts, except those functions specifically delegated to be performed by the contracting agency, the attorney general, or otherwise provided for by law. The commissioner may require that agency staff participate in the development of enterprise procurements including the development of product standards, specifications and other requirements.

[For text of subs 4a to 7, see M.S.2006]

Subd. 8. Policy and procedures. The commissioner is authorized to issue policies, procedures, and standards applicable to all acquisition activities by and for agencies. Consistent with the authority specified in this chapter, the commissioner shall develop and implement policies, procedures, and standards ensuring the optimal use of strategic sourcing techniques.

[For text of subd 9, see M.S.2006]

Subd. 10. Cooperative purchasing. The commissioner is authorized to enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with one or more other states or governmental units, as described in section 471.59, subdivision 1; entities defined in section 16C.23, subdivision 1; a registered combined charitable organization and its affiliated agencies as defined by section 309.501; a charitable organization defined in section 309.50, subdivision 4, that is also a recipient of a state grant or contract; or a nonprofit community health clinic defined in section 145.9268. The commissioner is authorized to enter into cooperative purchasing agreements for the purchase of goods, services, and utilities with health care facilities that are required to provide indigent care or any entity recognized by another state’s statutes as authorized to use that state’s commodity or service contracts.

[For text of subs 11 to 15, see M.S.2006]

Subd. 16. Delegation of duties. The commissioner may delegate duties imposed by this chapter to the head of an agency and to any subordinate of the agency head. Delegated duties shall be exercised in the name of the commissioner and under the commissioner’s direct supervision and control. A delegation of duties may include, but is not limited to, allowing individuals within agencies to acquire goods, services, and utilities within dollar limitations and for designated types of acquisitions. Delegation of contract management and review functions must be filed with the secretary of state and may not, except with respect to delegations within the Department of Administration, exceed two years in duration. The commissioner may withdraw any delegation at the commissioner’s sole discretion. The commissioner may require an agency head or subordinate to accept delegated responsibility to procure goods or services intended for the exclusive use of the agency receiving the delegation.

[For text of subs 17 and 18, see M.S.2006]

Subd. 19. Training. Any personnel administering procurement procedures for a user of best value procurement or any consultant retained by a local unit of government to prepare or

evaluate solicitation documents must be trained, either by the department or through other training, in the request for proposals process for best value contracting for construction projects. The commissioner may establish a training program for state and local officials, and vendors and contractors, on best value procurement for construction projects, including those governed by section 16C.28. If the commissioner establishes such a training program, the state may charge a fee for providing training.

History: 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

16C.046 WEB SITE WITH SEARCHABLE DATABASE ON STATE CONTRACTS AND GRANTS.

(a) The commissioner of administration must maintain a Web site with a searchable database providing the public with information on state contracts, including grant contracts. The database must include the following information for each state contract valued in excess of \$25,000:

- (1) the name and address of the entity receiving the contract;
- (2) the name of the agency entering into the contract;
- (3) whether the contract is:
 - (i) for goods;
 - (ii) for professional or technical services;
 - (iii) for services other than professional and technical services; or
 - (iv) a grant;
- (4) a brief statement of the purpose of the contract or grant;
- (5) the amount of the contract or grant and the fund from which this amount will be paid;

and

(6) the dollar value of state contracts, other than grants, the entity has received in each fiscal year and the dollar value of state grants the entity has received in each fiscal year.

(b) Required information on a new contract or grant must be entered into the database within 30 days of the time the contract is entered into.

(c) For purposes of this section, a “grant” is a contract between a state agency and a recipient, the primary purpose of which is to transfer cash or a thing of value to the recipient to support a public purpose. Grant does not include payments to units of local government, payments to state employees, or payments made under laws providing for assistance to individuals.

(d) The database must include information on grants and contracts entered into beginning with fiscal year 2008 funds, and must retain that data for ten years.

History: 2007 c 148 art 2 s 34

16C.05 CONTRACT MANAGEMENT; VALIDITY AND REVIEW.

Subdivision 1. Agency cooperation. Agencies shall fully cooperate with the commissioner in the management and review of state contracts and in the development and implementation of strategic sourcing techniques.

Subd. 2. Creation and validity of contracts. (a) A contract is not valid and the state is not bound by it and no agency, without the prior written approval of the commissioner granted pursuant to subdivision 2a, may authorize work to begin on 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; 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 finance for routine, low-dollar procurements.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

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

[For text of subs 2a to 7, see M.S.2006]

History: 2007 c 148 art 2 s 35,36

16C.055 BARTER ARRANGEMENTS LIMITED.

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

[For text of subd 2, see M.S.2006]

16C.08 PROFESSIONAL OR TECHNICAL SERVICES.

[For text of subd 1, see M.S.2006]

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

Subd. 2. **Duties of contracting agency.** (a) Before an agency may seek approval of a professional or technical services contract valued in excess of \$5,000, it must provide the following:

(1) a description of how the proposed contract or amendment is necessary and reasonable to advance the statutory mission of the agency;

(2) a description of the agency's plan to notify firms or individuals who may be available to perform the services called for in the solicitation;

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

(4) an explanation detailing, if applicable, why this procurement is being pursued unilaterally by the agency and not as an enterprise procurement.

(b) In addition to paragraph (a), the agency must certify that:

- (1) no current state employee is able and available to perform the services called for by the contract;
 - (2) the normal competitive bidding mechanisms will not provide for adequate performance of the services;
 - (3) reasonable efforts will be made to publicize the availability of the contract to the public;
 - (4) the agency will develop and implement a written plan providing for the assignment of specific agency personnel to manage the contract, including a monitoring and liaison function, the periodic review of interim reports or other indications of past performance, and the ultimate utilization of the final product of the services;
 - (5) the agency will not allow the contractor to begin work before the contract is fully executed unless an exception under section 16C.05, subdivision 2a, has been granted by the commissioner and funds are fully encumbered;
 - (6) the contract will not establish an employment relationship between the state or the agency and any persons performing under the contract;
 - (7) in the event the results of the contract work will be carried out or continued by state employees upon completion of the contract, the contractor is required to include state employees in development and training, to the extent necessary to ensure that after completion of the contract, state employees can perform any ongoing work related to the same function; and
 - (8) the agency will not contract out its previously eliminated jobs for four years without first considering the same former employees who are on the seniority unit layoff list who meet the minimum qualifications determined by the agency.
- (c) A contract establishes an employment relationship for purposes of paragraph (b), clause (6), if, under federal laws governing the distinction between an employee and an independent contractor, a person would be considered an employee.

[For text of subd 3, see M.S.2006]

Subd. 4. Reports. (a) The commissioner shall submit to the governor, the chairs of the house 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 \$50,000 covered by this subdivision, the head of the agency entering into the contract must submit a one-page report to the commissioner who must 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.

[For text of subs 5 to 7, see M.S.2006]

History: 2007 c 148 art 2 s 37–40

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.10 EXCEPTIONS TO THE SOLICITATION PROCESS.

[For text of subs 1 to 6, see M.S.2006]

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: 2007 c 148 art 2 s 42

16C.11 COOPERATIVE PURCHASING VENTURE; PURCHASING 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: 2007 c 83 s 2

16C.141 EMPLOYEE SUGGESTIONS; ENERGY SAVINGS INCENTIVE PROGRAM.

Subdivision 1. **Creation of program.** The commissioner of administration must implement a program using best practices and develop policies under which state employees may receive cash awards for making suggestions that result in documented cost savings to state agencies from reduced energy usage in state-owned buildings. The program must be structured to provide state employees an opportunity to receive a cash award for suggestions that are implemented and result in documented cost savings to state agencies from reduced energy use in state-owned buildings. The program must also include methods to document submissions of suggestions and energy and cost savings resulting from the implementation of employee suggestions.

Subd. 2. **Funding.** To the extent necessary to fund the program under this section, the commissioner of administration, with approval of the commissioner of finance, may transfer a portion of the documented cost savings resulting from a suggestion under this section from the general services revolving fund to an energy savings reward account. Money in the energy savings reward account is appropriated to the commissioner for purposes of making cash rewards and paying the commissioner's incentive program developments costs and administrative expenses under this section.

Subd. 3. **Report to legislature.** The commissioner of administration shall report to the chairs of the senate and house of representatives committees with jurisdiction over energy policy by January 1, 2008, on the development of the incentive program, and by January 15 each year thereafter on the implementation of this section, including the ideas submitted and energy savings realized.

Subd. 4. **Minnesota State Colleges and Universities.** This section does not apply to the Minnesota State Colleges and Universities, except to the extent the Board of Trustees of the Minnesota State Colleges and Universities provides that the section does apply.

Subd. 5. **Repeal.** This section is repealed July 1, 2009.

History: 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.

[For text of subds 2 to 4, see M.S.2006]

History: 2007 c 68 s 1

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.155 JANITORIAL CONTRACTS FOR REHABILITATION PROGRAMS AND EXTENDED EMPLOYMENT PROVIDERS.

The commissioner of administration shall ensure that a portion of all janitorial services contracts be awarded by the state to rehabilitation programs and extended employment providers listed under section 16C.15. The total value of the contracts under this section must exceed 19 percent of the total value of janitorial services contracts entered into in the previous fiscal year. The amount of each contract awarded under this section may exceed the estimated fair market price for the same goods and services by up to five percent.

History: 2007 c 147 art 8 s 1

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: 2007 c 133 art 2 s 3

16C.18 REPORTS.

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

[For text of subd 3, see M.S.2006]

16C.23 SURPLUS PROPERTY ACQUISITION, DISTRIBUTION, AND DISPOSAL.

[For text of subd 1, see M.S.2006]

Subd. 2. **Surplus property.** "Surplus property" means state or federal commodities, equipment, materials, supplies, books, printed matter, buildings, and other personal or real property that is obsolete, unused, not needed for a public purpose, or ineffective for current use. Surplus property does not include products manufactured by or held in inventory by prison industries for sale to the general public in the normal course of its business.

[For text of subs 3 to 7, see M.S.2006]

History: 2007 c 54 art 6 s 3

16C.251 BEST AND FINAL OFFER.

A "best and final offer" solicitation process may not be used for building and construction contracts.

History: 2007 c 148 art 2 s 44

16C.26 COMPETITIVE BIDS OR PROPOSALS.

Subdivision 1. **Application.** Except as otherwise provided by sections 16C.10, 16C.26 and 16C.27, 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 replace-

ment 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 Web site. For expenditures over \$50,000, when a call for bids is issued, the commissioner shall solicit sealed bids by providing notices to all prospective bidders known to the commissioner by posting notice on a state Web site at least seven days before the final date of submitting bids. All bids over \$50,000 must be sealed when they are received and must be opened in public 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. 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.

History: 2007 c 148 art 3 s 6

16C.27 BIDS NOT REQUIRED.

Subdivision 1. Single source of supply. Competitive bidding or proposals are not required for contracts clearly and legitimately limited to a single source of supply, and the contract price may be best established by direct negotiation.

[For text of subs 2 and 3, see M.S.2006]

History: 2007 c 148 art 3 s 7

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 section 16C.02, subdivision 4a, 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 choose the best value system in different phases.

(b) "Best value" means the procurement method defined in section 16C.02, subdivision 4a.

(c) The following entities are eligible to participate in phase I:

- (1) state agencies;
- (2) counties;
- (3) cities; and
- (4) school districts with the highest 25 percent enrollment of students in the state.

Phase I begins on July 1, 2007.

(d) The following entities are eligible to participate in phase II:

- (1) those entities included in phase I; and
- (2) school districts with the highest 50 percent enrollment of students in the state.

Phase II begins two years from July 1, 2007.

(e) The following entities are eligible to participate in phase III:

- (1) all entities included in phases I and II; and
- (2) all other townships, school districts, and political subdivisions in the state.

Phase III begins three years from July 1, 2007.

(f) The commissioner or any agency for which competitive bids or proposals are required may not use best value contracting as defined in section 16C.02, subdivision 4a, 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. 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. Record. A record must be kept of all bids or proposals, including names of bidders, amounts of bids or proposals, and each successful bid or proposal. This record is open to public inspection, subject to section 13.591 and other applicable law.

Subd. 5. Preferences not cumulative. The preferences under sections 16B.121, 16C.06, subdivision 7, and 16C.16 apply, but 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 those sections.

History: *2007 c 148 art 3 s 8*