

161.3205 PROFESSIONAL AND TECHNICAL SERVICES CONTRACTS.

Subdivision 1. **Scope; authority generally.** (a) Notwithstanding other law to the contrary, this section applies to professional and technical services contracts entered into by the commissioner of transportation.

(b) The commissioner has the authority and duty to:

- (1) approve state transportation project plans and specifications;
- (2) award transportation construction and maintenance contracts;
- (3) approve, select, and award professional and technical consultant contracts for state transportation projects; and
- (4) approve utility and municipal agreements affecting state transportation projects.

Subd. 2. **Definition of professional or technical services.** For purposes of this section, "professional or technical services" means services that are intellectual in character, including consultative, analytical, evaluative, predictive, planning, programming, or recommendatory, and that 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 (1) by the approval of the commissioner or (2) as incidental to providing professional or technical services.

Subd. 3. **Duties of commissioner.** Before entering into a professional or technical services contract with a value exceeding \$100,000, the commissioner shall 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 do not provide for adequate performance of the services;
- (3) the contractor has certified that the product of the services will be original in character;
- (4) reasonable efforts were made to publicize the availability of the contract to the public;
- (5) the agency has received, reviewed, and accepted a detailed work plan from the contractor for performance under the contract, if applicable;
- (6) the commissioner has developed and will implement a written plan providing for the assignment of specific agency personnel to 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; and
- (7) the department will not allow the contractor to begin work before funds are fully encumbered.

Subd. 4. **Contract procedures.** Before approving a proposed contract for professional or technical services, the commissioner shall determine, at least, that:

- (1) 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;
- (2) the contract does not establish an employment relationship between the state or the agency and any persons performing under the contract;
- (3) the contractor and agents are not employees of the state;

(4) no agency has previously performed or contracted for the performance of tasks that would be substantially duplicated under the proposed contract;

(5) the commissioner 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, unless otherwise provided for by law. The term of the original contract must not exceed two years, unless the commissioner determines that a longer duration is in the best interest of the state.

Subd. 5. Contract termination and payment 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 commissioner shall approve and make final payment on all professional and technical services contracts within six months after the contractor delivers the final documents and invoice. Overdue payments are subject to the applicable prompt payment provisions of section 16A.124.

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

Subd. 6. Reports. (a) The commissioner shall submit to the governor, the chair of the Ways and Means Committee of the house of representatives, the chair of the senate State Government Finance Committee, 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 contractor;

(2) show the aggregate value of contracts 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; and

(5) identify services by commodity code, including topics such as contracts for training and contracts for research.

(c) Within 30 days of final completion of a contract over \$100,000 covered by this subdivision, the commissioner must submit a one-page report 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; and

(3) explain why this amount was a cost-effective way to enable the agency to provide its services or products better or more efficiently.

Subd. 7. **Procurement from small business.** This section is subject to section 16C.16.

History: *1Sp2001 c 8 art 2 s 21*