

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 [Repealed by amendment, 2014 c 196 art 2 s 1]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

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 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*

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

(e) "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.

(f) "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.

(g) "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.

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

(i) "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.

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

(k) "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.

(l) "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.

(m) "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 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 e-mail 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;

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 six 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 \$25,000.

(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. The subcontracting requirements of this paragraph do not apply to prime contractors who are small businesses or small targeted group businesses.

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 six 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 \$25,000.

(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 (c), 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.

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.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, 181.13, 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; or

(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.

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 Office of Administrative Hearings or was not appealed to the office;

(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*

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 \$2,000,000, 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.

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

(a)(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.

(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 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.

(c) 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.

(d) 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 (f) and (g). 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.

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

(f) 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.

(g) 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.

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

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

(b) 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.

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

(d) 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.

(e) 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.

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

(a)(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.

(b) 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.

(c)(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).

(d) 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.

16C.36 REORGANIZATION SERVICES UNDER MASTER CONTRACT.

The commissioner of administration must make available under a master contract program a list of eligible contractors who can assist state agencies in using data analytics to:

(1) accomplish agency reorganization along service rather than functional lines in order to provide more efficient and effective service; and

(2) bring about internal reorganization of management functions in order to flatten the organizational structure by requiring that decisions are made closer to the service needed, eliminating redundancies, and optimizing the span of control ratios to public and private sector industry benchmarks.

The commissioner of administration must report to the legislature by January 15, 2013, and January 15, 2014, on state agency use of eligible contractors under this section, and on improvements in efficiency and effectiveness, including the contract oversight process, of state services as a result of services provided by contractors.

History: 2012 c 220 s 1