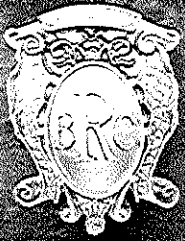


BUILDING RESTORATION CORPORATION



1920 OAKCREST AVENUE
ROSEVILLE, MN 55113

SUPERIOR MASONRY REPAIR FROM CRAFTSMEN WHO CARE

9:57 a.m.

FILED
THIS DATE
APR 16 2013
ARTHUR JOHNSTON, CHANCERY CLERK
BY *Kim Smith*

Madison County Board of Supervisors
c/o Chancery Clerk's Office, Rooms 225-227
Chancery Courthouse
146 West Center Street
Canton, MS 39046

Sealed Bid: Building Leak Repair
Madison Cty Administration Bldg
Canton, MS 39046

SECTION 00410

BID FORM

THE PROJECT AND THE PARTIES

1.01 TO:

- A. Madison County Board of Supervisors (Owner)
P.O. Box 608
Street Address: 125 West North Street
Canton, MS 39046

1.02 FOR:

- A. Building Leak Repair - Madison County Administration Building, 125 West North Street, Canton, MS

1.03 DATE: April 16, 2013 (Bidder to enter date)

1.04 SUBMITTED BY: (Bidder to enter name and address)

- A. Bidder's Full Name Building Restoration Corporation Certificate of Responsibility
1. Address 1920 Oakcrest Avenue #1 # 19737-SC
2. City, State, Zip Roseville, MN 55113

1.05 OFFER

- A. Having examined the Place of The Work and all matters referred to in the Instructions to Bidders and the Contract Documents prepared by JH&H Architects | Planners | Interiors, PA for the above mentioned project, we, the undersigned, hereby offer to enter into a Contract to perform the Work for the Sum of:
- B. One Hundred Fifty Eight Thousand
Four Hundred dollars
(\$ 158,400.00), in lawful money of the United States of America.
- C. We have included the required security deposit as required by the Instruction to Bidders.
- D. All applicable federal taxes are included and State of Mississippi taxes are included in the Bid Sum.
- E. All Cash and Contingency Allowances described in Section 01210 (01 2100) are included in the Bid Sum.

1.06 ACCEPTANCE

- A. This offer shall be open to acceptance and is irrevocable for forty-five days from the bid closing date.
- B. If this bid is accepted by Owner within the time period stated above, we will:
 - 1. Execute the Agreement within seven days of receipt of Notice of Award.
 - 2. Furnish the required bonds within seven days of receipt of Notice of Award.

3. Commence work within seven days after written Notice to Proceed of this bid.
- C. If this bid is accepted within the time stated, and we fail to commence the Work or we fail to provide the required Bond(s), the security deposit shall be forfeited as damages to Owner by reason of our failure, limited in amount to the lesser of the face value of the security deposit or the difference between this bid and the bid upon which a Contract is signed.
- D. In the event our bid is not accepted within the time stated above, the required security deposit shall be returned to the undersigned, in accordance with the provisions of the Instructions to Bidders; unless a mutually satisfactory arrangement is made for its retention and validity for an extended period of time.

1.07 CONTRACT TIME

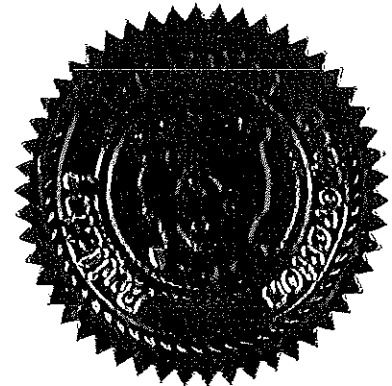
- A. If this Bid is accepted, we will:
- B. Complete the Work in ninety (90) calendar days from Notice to Proceed.

1.08 ADDENDA

- A. The following Addenda have been received. The modifications to the Bid Documents noted below have been considered and all costs are included in the Bid Sum.
 1. Addendum # 1 Dated 10/10/2012.
 2. Addendum # 2 Dated 10/14/2012.
 3. Addendum # 1 Dated 12/07/2012.
 4. Addendum # _____ Dated _____.

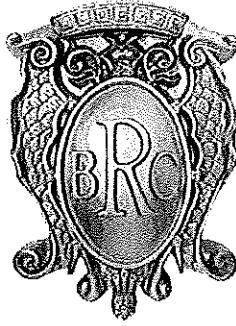
1.09 BID FORM SIGNATURE(S)

- A. The Corporate Seal of
- B. Building Restoration Corporation
(Bidder - print the full name of your firm)
- C. was hereunto affixed in the presence of:
Dale Zoerb
Dale Zoerb, President
(Authorized signing officer, Title)
(Seal)
- D. _____
(Authorized signing officer, Title)



1.10 If the Bid is a joint venture or partnership, add additional forms of execution for each member of the joint venture in the appropriate form or forms as above.

END OF BID FORM



BUILDING RESTORATION CORPORATION

1920 OAKCREST AVENUE SUITE 1, ROSEVILLE, MN 55113

PHONE: 612-789-2800 FAX: 612-789-2875

April 16, 2013

Madison County Board of Supervisors
c/o Chancery Clerk's Office, Rooms 225-227
Chancery Courthouse
146 West Center Street
Canton, MS 39046

RE: Administrative Building Leak Repair

It is my pleasure to submit to you Building Restoration Corporation's attached proposal in response to the above-referenced solicitation.

We have spent a considerable amount of time evaluating the project documents. We are confident we can provide you with the highest quality and most durable repair of the specified scope of work.

With 27 years of experience restoring and preserving masonry, we are ideally suited to perform this project. If you have any questions or need any additional information regarding our bid, please do not hesitate to contact me at 612-789-2800 or 1-800-798-8125.

Sincerely,

BUILDING RESTORATION CORPORATION

Dale Zoerb, President

Bid Bond

CONTRACTOR:

Building Restoration Corporation
1920 Oakcrest Ave Suite #1
Roseville MN 55113

SURETY:

North American Specialty Insurance Company
650 Elm Street 6th Floor, Manchester, NH 03101-2524

OWNER:

Madison County Board of Supervisors
146 West Center Street
Canton MS 39046

BOND AMOUNT: 5 % of accompanying bid. (\$ 5 % of bid)

PROJECT: Madison County Courthouse
Building Leak Repair

Location: Canton, MS

Project #

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 16th day of April, 2013

[Signature]

(Witness)

Building Restoration Corporation

(Principal) *[Signature]* (Seal)

(Title) Dale Zoerb, President

North American Specialty Insurance Company

(Surety) _____ (Seal)

[Signature]

(Witness)

[Signature]

(Title) David J. Rudnik, Attorney-in-Fact



By arrangement with the American Institute of Architects, the National Association of Surety Bond Producers (NASBP) (www.nasbp.org) makes this form document available to its members, affiliates, and associates in Microsoft Word format for use in the regular course of surety business. NASBP vouches that the original text of this document conforms exactly to the text in AIA Document A310-2010, Bid Bond. Subsequent modifications may be made to the original text of this document by users, so careful review of its wording and consultation with an attorney are encouraged before its completion, execution or acceptance.

NAS SURETY GROUP

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
WASHINGTON INTERNATIONAL INSURANCE COMPANY

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT North American Specialty Insurance Company, a corporation duly organized and existing under laws of the State of New Hampshire, and having its principal office in the City of Manchester, New Hampshire, and Washington International Insurance Company, a corporation organized and existing under the laws of the State of New Hampshire and having its principal office in the City of Schaumburg, Illinois, each does hereby make, constitute and appoint:

NICHOLAS L. NEWTON, DAVID J. RUDNIK,

JANET L. RUDNIK, CHELSEA A. BREMER and JENNIFER F. NEWTON

JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

FIFTY MILLION (\$50,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both North American Specialty Insurance Company and Washington International Insurance Company at meetings duly called and held on the 9th of May, 2012:

"RESOLVED, that any two of the Presidents, any Managing Director, any Senior Vice President, any Vice President, any Assistant Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By [Signature]
Steven P. Anderson, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company



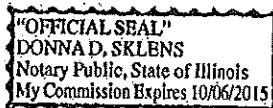
By [Signature]
David M. Layman, Vice President of Washington International Insurance Company
& Vice President of North American Specialty Insurance Company

IN WITNESS WHEREOF, North American Specialty Insurance Company and Washington International Insurance Company have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 20th day of June, 2012.

North American Specialty Insurance Company
Washington International Insurance Company

State of Illinois
County of Cook ss:

On this 20th day of June, 2012, before me, a Notary Public personally appeared Steven P. Anderson, Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company and David M. Layman, Vice President of Washington International Insurance Company and Vice President of North American Specialty Insurance Company, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



[Signature]
Donna D. Sklens, Notary Public

I, Jeffrey Goldberg, the duly elected Assistant Secretary of North American Specialty Insurance Company and Washington International Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said North American Specialty Insurance Company and Washington International Insurance Company, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 16th day of April, 2013.

[Signature]
Jeffrey Goldberg, Vice President & Assistant Secretary of
Washington International Insurance Company & North American Specialty Insurance Company

State of Mississippi

BOARD OF CONTRACTORS

BUILDING RESTORATION CORPORATION
1920 OAKCREST AVE. STE. 1
ROSEVILLE, MN 55113

is duly registered and entitled to perform

MASONRY, BRICK & STONE



We have hereunto set our hand and caused the Seal of the Mississippi Board of Contractors to be affixed this 7 day of Nov., 2012

CERTIFICATE OF RESPONSIBILITY

No. 19737-SC

Expires Oct. 9, 2013

James H. Kline
CHARMAN OF THE BOARD

CHAPTER 16C

STATE PROCUREMENT

16C.02	DEFINITIONS.	16C.144	GUARANTEED ENERGY-SAVINGS PROGRAM.
16C.03	COMMISSIONER'S AUTHORITY; POWERS AND DUTIES.	16C.145	NONVISUAL TECHNOLOGY ACCESS STANDARDS.
16C.04	ETHICAL PRACTICES AND CONFLICT OF INTEREST.	16C.147	DOCUMENT IMAGING; USE OF PERSONS WITH DEVELOPMENTAL DISABILITIES.
16C.045	REPORTING OF VIOLATIONS.	16C.15	REHABILITATION FACILITIES AND EXTENDED EMPLOYMENT PROVIDERS.
16C.046	WEB SITE; SEARCHABLE DATABASE; STATE CONTRACTS; GRANTS.	16C.155	JANITORIAL CONTRACTS; REHABILITATION PROGRAMS AND EXTENDED EMPLOYMENT PROVIDERS.
16C.05	CONTRACT MANAGEMENT; VALIDITY AND REVIEW.	16C.16	DESIGNATION OF PROCUREMENTS FROM SMALL BUSINESSES.
16C.055	BARTER ARRANGEMENTS LIMITED.	16C.17	ENCOURAGEMENT OF PARTICIPATION.
16C.06	ACQUISITIONS.	16C.18	REPORTS.
16C.075	E-VERIFY.	16C.19	ELIGIBILITY; RULES.
16C.08	PROFESSIONAL OR TECHNICAL SERVICES.	16C.20	CERTIFICATION.
16C.081	EXCEPTION FOR FEDERAL CONTRACTS.	16C.21	CRIMINAL PENALTY.
16C.082	CONTRACTS FOR TAX-RELATED ACTIVITIES.	16C.22	DISTRICT HEATING.
16C.085	WAIVER.	16C.23	SURPLUS PROPERTY ACQUISITION, DISTRIBUTION, AND DISPOSAL.
16C.086	CALL CENTER.	16C.231	SURPLUS PROPERTY.
16C.09	PROCEDURE FOR SERVICE CONTRACTS.	16C.24	RULES.
16C.095	SELECTION OF CERTAIN PROFESSIONAL SERVICE CONTRACTORS.	16C.25	BUILDING AND CONSTRUCTION CONTRACTS.
16C.10	EXCEPTIONS TO THE SOLICITATION PROCESS.	16C.251	BEST AND FINAL OFFER.
16C.11	COOPERATIVE PURCHASING VENTURE; REVOLVING FUND.	16C.26	COMPETITIVE BIDS OR PROPOSALS.
16C.12	AGRICULTURAL FOOD PRODUCTS GROWN IN STATE.	16C.27	BIDS NOT REQUIRED.
16C.13	CERTAIN VEHICLES.	16C.28	CONTRACTS; AWARD.
16C.135	PURCHASES OF FUEL AND VEHICLES BY STATE AGENCIES.	16C.29	CONTRACT MANAGEMENT AND REVIEW.
16C.137	MINIMIZING ENERGY USE; RENEWABLE FUELS.	16C.32	DESIGN-BUILD CONTRACTS, DEFINITIONS.
16C.138	STATE PURCHASING OF ELECTRIC AND PLUG-IN HYBRID ELECTRIC VEHICLES.	16C.33	DESIGN-BUILD.
16C.14	ENERGY EFFICIENCY INSTALLMENT PURCHASES.	16C.34	CONSTRUCTION MANAGER AT RISK.
16C.143	ENERGY FORWARD PRICING MECHANISMS.	16C.35	JOB ORDER CONTRACTING.
		16C.36	REORGANIZATION SERVICES UNDER MASTER CONTRACT.

16C.01 [Repealed, 1985 c 285 s 54]

16C.02 DEFINITIONS.

Subdivision 1. **Applicability.** For purposes of this chapter, the following terms have the meanings given them, unless the context clearly indicates otherwise.

Subd. 1a. **Accessibility and accessible.** "Accessibility" and "accessible" are defined by the accessibility standards developed and required under section 16E.03, subdivision 9.

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 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.

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. **Service contract.** "Service contract" means a contract for any nonprofessional or technical services.

Subd. 17. **Services.** "Services" means, unless otherwise indicated, both professional or technical services and service performed under a 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.

Subd. 19. **Solicitation.** "Solicitation" means the process used to communicate procurement requirements and to request responses from interested vendors. A solicitation may be, but is not limited to, a request for bid and request for proposal.

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

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, the application of accessibility standards, specifications, and other requirements.

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

Subd. 5. Amendments, cancellations, and appeals. The commissioner shall, in addition to the duties set forth in subdivisions 3 and 4, make all decisions regarding amendments, cancellations, and appeals of all agency acquisition activities unless the duties are delegated pursuant to this section.

Subd. 6. Lease and installment purchases. The commissioner is authorized to enter into lease purchases or installment purchases for periods not exceeding the anticipated useful life of the items acquired unless otherwise prohibited by law.

Subd. 7. Lease, rental, and installment agreements. The commissioner is authorized to enter into lease, lease purchase, rental, or installment agreements for the use or acquisition, whichever is applicable, of real or personal property.

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.

Subd. 9. Employee purchasing. The commissioner is authorized to enter into contracts under which a vendor agrees to sell computer equipment and related products to state employees, for their own use related to work, at contract prices. Employees may make only one purchase under this subdivision. Under no circumstances shall the state be liable for purchases made under this subdivision. The provisions of section 43A.38, subdivisions 4 and 5, clause (1), do not apply to this subdivision.

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 43A.50; 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.

(b) Beginning January 1, 2006, each vendor or affiliate of a vendor selling goods or services, subject to tax under chapter 297A, to an agency or the legislature must provide its Minnesota sales and use tax business identification number, upon request, to show that the vendor is registered to collect Minnesota sales or use tax.

(c) The commissioner of revenue shall periodically provide to the commissioner and the legislative branch a list of vendors who have not registered to collect Minnesota sales and use tax and who are subject to being suspended or debarred as vendors or having their contracts canceled.

(d) The provisions of this subdivision may be waived by the commissioner or the legislative branch when the vendor is the single source of such goods or services, in the event of an emergency, or when it is in the best interests of the state as determined by the commissioner in consultation with the commissioner of revenue. Such consultation is not a disclosure violation under chapter 270B.

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: 1998 c 386 art 1 s 4; 2000 c 420 s 1; 1Sp2001 c 10 art 2 s 34,35; 1Sp2003 c 1 art 2 s 46; 1Sp2005 c 3 art 5 s 1; 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; 2008 c 277 art 1 s 2; 2009 c 101 art 2 s 109; 2009 c 131 s 2

16C.04 ETHICAL PRACTICES AND CONFLICT OF INTEREST.

Subdivision 1. **Duty.** An employee of the executive branch involved directly or indirectly in the acquisition or grants process, at any level, is subject to the code of ethics in section 43A.38.

Subd. 2. **Conflict of interest policy development.** (a) The commissioner must develop policies regarding code of ethics and conflict of interest designed to prevent conflicts of interest for employees involved in the acquisition of goods, services, and utilities or the award and administration of grant contracts. The policies must apply to employees who are directly or indirectly involved in the acquisition of goods, services, and utilities, developing requests for proposals, evaluating bids or proposals, awarding the contract, selecting the final vendor, drafting and entering into contracts, evaluating performance under these contracts, and authorizing payments under the contract.

(b) The policies must contain a process for making employees aware of policy and laws relating to conflict of interest, and for training employees on how to avoid and deal with potential conflicts.

(c) The policies must contain a process under which an employee who has a conflict of interest or a potential conflict of interest must disclose the matter, and a process under which work on the contract may be assigned to another employee if possible.

Subd. 3. **Organizational conflicts of interest.** (a) The commissioner shall make reasonable efforts to avoid, mitigate, or neutralize organizational conflicts of interest. To avoid an organizational conflict of interest, the commissioner may utilize methods including disqualifying a vendor from eligibility for a contract award or canceling the contract if the conflict is discovered

(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; 2009 c 101 art 2 s 110

NOTE: The repeal of this section by Laws 2009, chapter 101, article 2, section 110, is effective the day following certification by the commissioner of management and budget that a new statewide accounting and procurement system has been implemented. Laws 2009, chapter 101, article 2, section 110.

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 management and budget 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.

Subd. 7. **Contracts with Indian tribes and bands.** Notwithstanding any other law, an agency may not require an Indian tribe or band to deny its sovereignty as a requirement or condition of a contract with an agency.

History: 1998 c 386 art 1 s 6; 1999 c 86 art 1 s 11; 1999 c 230 s 1; 2000 c 488 art 2 s 1; 1Sp2001 c 8 art 2 s 10; 1Sp2001 c 10 art 2 s 37; 2003 c 130 s 12; 1Sp2003 c 1 art 2 s 48,49; 2004 c 206 s 7; 2007 c 148 art 2 s 35,36; 2009 c 101 art 2 s 109

16C.055 BARTER ARRANGEMENTS LIMITED.

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

Subd. 2. **Restriction.** After July 1, 2002, 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

16C.06 ACQUISITIONS.

Subdivision 1. **Publication requirements.** Notices of solicitations for acquisitions estimated to be more than \$25,000, or \$100,000 in the case of a Department of Transportation acquisition, must be publicized in a manner designated by the commissioner. To the extent practical, this must include posting on a state Web site.

Subd. 2. **Solicitation process.** (a) A formal solicitation must be used to acquire all goods, service contracts, and utilities estimated at or more than \$50,000, or in the case of a Department of Transportation solicitation, at or more than \$100,000, unless otherwise provided for. All formal responses must be sealed when they are received and must be opened in public at the hour stated in the solicitation. Formal responses must be authenticated by the responder in a manner specified by the commissioner.

(b) An informal solicitation may be used to acquire all goods, service contracts, and utilities that are estimated at less than \$50,000, or in the case of a Department of Transportation solicitation, at or less than \$100,000. The number of vendors required to receive solicitations may be determined by the commissioner. Informal responses must be authenticated by the responder in a manner specified by the commissioner.

Subd. 3. [Repealed, 2001 c 202 s 21]

Subd. 3a. **Information in bids and proposals.** Data relating to bids and proposals are governed by section 13.591.

Subd. 4. **Multiple awards.** The commissioner may award a contract to more than one vendor if, in the opinion of the commissioner, it is in the best interest of the state.

Subd. 5. **State as responder.** The head of an agency, in consultation with the requesting agency and the commissioner, may respond to a solicitation or request if the goods and services meet the needs of the requesting agency and provide the state with the best value. When an agency responds to a solicitation, all work product relating to the response is classified by section 13.591, subdivision 4.

Subd. 6. **Awards.** Awards must be based on best value, which includes an evaluation of price, and may include other considerations including, but not limited to, environmental

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, including accessibility measures if applicable, 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.

Subd. 3. Procedure for professional or technical services contracts. Before approving a proposed contract for professional or technical services, the commissioner must determine, at least, that:

(1) all provisions of subdivision 2 and section 16C.16 have been verified or complied with;

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.

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

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

Subd. 6. **Filing copy.** If the final product of the contract is a written report, a copy must be filed with the Legislative Reference Library.

Subd. 7. **Exclusions.** This section does not apply to contracts with individuals or organizations for administration of employee pension plans authorized under chapter 354B or 354C.

History: 1998 c 386 art 1 s 9; 1999 c 116 s 1; 1Sp2003 c 1 art 2 s 51-54; 1Sp2003 c 8 art 1 s 7; 2007 c 148 art 2 s 37-40; 2009 c 131 s 3; 2010 c 302 s 1

16C.081 EXCEPTION FOR FEDERAL CONTRACTS.

Notwithstanding any law to the contrary, an agency may, when required by a federal agency entering into an intergovernmental contract, negotiate contract terms providing for full or partial prepayment to the federal agency before work is performed or services are provided.

History: 1998 c 403 s 1; 1999 c 86 art 1 s 7,8; 1999 c 231 s 21; 1Sp2001 c 10 art 2 s 42

16C.082 CONTRACTS FOR TAX-RELATED ACTIVITIES.

An agency may not enter into a contract for tax fraud prevention or detection, or tax audit-related activities, that compensates a vendor based on a percentage of taxes assessed or collected. This section does not apply to the commissioner's authority to contract for debt collection under section 16D.04.

History: 2011 c 112 art 11 s 1

16C.085 WAIVER.

Notwithstanding sections 16C.08, 16C.09, 43A.047, or other law to the contrary, the commissioner of administration may enter into or approve a service contract for printing services

Surveying, Landscape Architecture, Geoscience, and Interior Design for which the agency, with the approval of the commissioner, decides to use procedures under this section. If the agency, with the approval of the commissioner, decides to use procedures under this section, it must comply with subdivisions 2, 3, and 4. This section does not apply to an agency contract that is subject to section 16B.33.

Subd. 2. Qualification-based selection. Notwithstanding section 16C.06, subdivision 6, an agency must rank contractors described in subdivision 1 on the basis of qualifications, as described in subdivision 3, for the type of professional service required. An agency may solicit pricing information from a single responder at a time in rank order, commencing with the highest ranked contractor, to determine contractor compensation only after the agency has ranked prospective contractors based on the factors the agency specifies in accordance with subdivisions 3 and 4.

Subd. 3. Procedures. Subject to subdivision 2, procedures for screening and selection of contractors are within the sole discretion of the agency and must be approved by the commissioner when the agency seeks approval to use this alternative. Procedures may be adjusted to accommodate the agency's cost, scope, and schedule objectives for a particular project. Screening and selection procedures may include a consideration of each contractor's:

- (1) specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;
- (2) resources available to perform the work, including any specialized services, within the specified time limits for the project;
- (3) record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
- (4) ownership status and employment practices regarding women, minorities, and emerging small businesses or historically underutilized businesses;
- (5) availability to the project locale;
- (6) familiarity with the project locale;
- (7) proposed project management techniques; and
- (8) ability and proven history in handling special project constraints.

Subd. 4. Selection. (a) The agency shall rank prospective contractors based on the factors approved by the commissioner, which the agency must specify in the request for proposal, in accordance with this section. The agency and the highest ranked contractor shall mutually discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to compensation and performance schedule, based on the scope of the services. The compensation level paid must be reasonable and fair to the agency, as determined solely by the agency.

(b) If the agency and the highest ranked contractor are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency shall, either orally or in writing, terminate negotiations with this contractor. The agency may then negotiate with the next highest ranked contractor, as provided in this subdivision. The negotiation process may continue through successive contractors, according to agency ranking, until an agreement is reached or the agency terminates the contracting process.

History: 2001 c 100 s 1

(1) acquisition of goods or services, other than professional or technical services, in an amount of \$2,500 or less; or

(2) acquisition of professional or technical services in an amount of \$5,000 or less, provided the requirements of section 16C.08, subdivisions 3 to 6, are met.

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: 1998 c 386 art 1 s 11; 1999 c 245 art 5 s 1; 2000 c 420 s 2; 1Sp2003 c 1 art 2 s 56; 1Sp2003 c 8 art 1 s 8; art 2 s 14; 2004 c 206 s 52; 2005 c 9 s 1; 2005 c 156 art 2 s 22; 2007 c 148 art 2 s 42; 2009 c 111 s 2

16C.11 COOPERATIVE PURCHASING VENTURE; 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: 1998 c 386 art 1 s 12; 2007 c 83 s 2

16C.12 AGRICULTURAL FOOD PRODUCTS GROWN IN STATE.

The commissioner shall encourage and make a reasonable attempt to identify and purchase food products that are grown in the state.

History: 1998 c 386 art 1 s 13

16C.13 CERTAIN VEHICLES.

Upon the written request of the commissioner of public safety, motor vehicles for use by investigative and undercover agents of the Department of Public Safety must be purchased by the brand, make, and model specified by the agency.

History: 1998 c 386 art 1 s 14

16C.135 PURCHASES OF FUEL AND VEHICLES BY STATE AGENCIES.

Subdivision 1. **Definition.** For purposes of this section "cleaner fuels" means:

- (1) biodiesel blends of 20 percent or greater by volume (B20-B100);
- (2) compressed natural gas;
- (3) ethanol blends of 70 percent or greater by volume (E70-E100);
- (4) hydrogen;
- (5) liquefied natural gas; and

recommendations to the governor and appropriate committees of the legislature for new or adjusted goals and directives, in light of the progress the state has made implementing this section, and of the availability of new or improved technologies.

(c) For the systematic and efficient monitoring of progress in implementing this section by the SmartFleet Committee, the Department of Administration shall implement a fleet reporting and information management system. Each department will use this management system to demonstrate its progress in complying with this section.

Subd. 3. Exclusion. Petroleum-based diesel fuel used in a vehicle which a department has retrofit to use ultra low sulfur diesel fuel and to add additional emissions control technologies is excluded when evaluating progress toward the reduction goals established in subdivision 1. This exclusion applies only to vehicles purchased before the model year in which the federal Environmental Protection Agency's new clean diesel emission reduction rules take effect.

History: *1Sp2005 c 1 art 1 s 6; 2009 c 134 s 1*

16C.138 STATE PURCHASING OF ELECTRIC AND PLUG-IN HYBRID ELECTRIC VEHICLES.

Subdivision 1. Definition. (a) As used in this section, "plug-in hybrid electric vehicle (PHEV)" means a vehicle containing an internal combustion engine that also allows power to be delivered to the drive wheels by a battery-powered electric motor and that meets applicable federal motor vehicle safety standards. When connected to the electrical grid via an electrical outlet, the vehicle must be able to recharge its battery. The vehicle must have the ability to travel at least 20 miles, powered substantially by electricity.

(b) As used in this section, "neighborhood electric vehicle" means an electrically powered motor vehicle that has four wheels and has a speed attainable in one mile of at least 20 miles per hour but not more than 25 miles per hour on a paved level surface.

(c) As used in this section, "electric vehicle" has the meaning given in section 169.011, subdivision 26a.

Subd. 2. Notice of state procurement policy in bid documents. All solicitation documents for the purchase of a passenger automobile, as defined in section 168.002, subdivision 24; pickup truck, as defined in section 168.002, subdivision 26; or van, as defined in section 168.002, subdivision 40, issued under the jurisdiction of the Department of Administration after June 30, 2006, must contain the following language: "It is the intention of the state of Minnesota to begin purchasing electric vehicles, plug-in hybrid electric vehicles, and neighborhood electric vehicles as soon as they become commercially available, meet the state's performance specifications, and are priced no more than ten percent above the price for comparable gasoline-powered vehicles. It is the intention of the state to purchase electric vehicles, plug-in hybrid electric vehicles, and neighborhood electric vehicles whenever practicable after these conditions have been met and as fleet needs dictate for at least five years after these conditions have been met."

History: *2006 c 245 s 1; 2009 c 134 s 7,9; 2010 c 382 s 8*

16C.14 ENERGY EFFICIENCY INSTALLMENT PURCHASES.

Subdivision 1. Contract conditions. The commissioner may contract to purchase by installment payments capital or other equipment or services intended to improve the energy efficiency or reduce the energy costs of a state building or facility if:

(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.

Subd. 2. **Authority.** Notwithstanding any other law to the contrary, the commissioner may use forward pricing mechanisms for budget risk reduction.

Subd. 3. **Conditions.** Forward pricing mechanism transactions must be made only under the following conditions:

(1) the quantity of energy affected by the forward pricing mechanism must not exceed 90 percent of the estimated energy use for the state agency for the same period, which shall not exceed 24 months; and

(2) a separate account must be established for each state agency using a forward pricing mechanism.

Subd. 4. **Written policies and procedures.** Before exercising the authority under this section, the commissioner must develop written policies and procedures governing the use of forward pricing mechanisms.

History: 2005 c 156 art 2 s 23; 2007 c 68 s 1

16C.144 GUARANTEED ENERGY-SAVINGS PROGRAM.

Subdivision 1. **Definitions.** The following definitions apply to this section.

(a) "Utility" means electricity, natural gas, or other energy resource, water, and wastewater.

(b) "Utility cost savings" means the difference between the utility costs after installation of the utility cost-savings measures pursuant to the guaranteed energy-savings agreement and the baseline utility costs after baseline adjustments have been made.

(c) "Baseline" means the preagreement utilities, operations, and maintenance costs.

(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

cost-savings measures recommended in the engineering report shall not exceed the amount to be saved in utility and operation and maintenance costs over the term of the lease purchase agreement. The term of the lease purchase agreement shall not exceed 15 years from the date of final installation. The lease 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. Report. By January 15, 2007, the commissioner of administration shall submit to the commissioner of management and budget and the chairs of the senate and house of representatives capital investment committees a list of projects in the agency that have been funded using guaranteed energy savings, as outlined in this section, during the preceding biennium. 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*

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 nonvisual access standards must include the following minimum specifications:

(1) that effective, interactive control and use of the technology including the operating system, applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;

(2) that the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;

(3) that nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and

(4) that the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

(c) Nothing in this section requires the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

History: *1998 c 366 s 27; 1999 c 250 art 1 s 54*

- (3) the applicable commodity codes for each service identified in subdivision 1;
- (4) the need for each authority for local purchasing buyers to record the applicable commodity code for each contract entered under subdivision 1 and for each contract covering one of the service areas identified in subdivision 1; and
- (5) the authority granted to the authority for local purchasing buyers to contract directly with the eligible providers as provided in section 16C.10.

Subd. 3. Contract tracking and annual report. The commissioner shall track, by the commodity code for each service area identified in subdivision 1, each contract entered into pursuant to this section. By February 15 of each year, the commissioner shall submit the following information for the previous fiscal year to the chairs and ranking members of the legislative committees with jurisdiction over workforce development:

- (1) the value of the contracts awarded to eligible service providers for each of the applicable commodity codes; and
- (2) the total value for all contracts awarded in each of the service areas identified in subdivision 1.

History: 2007 c 147 art 8 s 1; 2010 c 266 s 1

16C.16 DESIGNATION OF PROCUREMENTS FROM SMALL BUSINESSES.

Subdivision 1. Small business procurements. (a) The commissioner shall for each fiscal year ensure that small businesses receive at least 25 percent of the value of anticipated total state procurement of goods and services, including printing and construction. The commissioner shall divide the procurements so designated into contract award units of economically feasible production runs in order to facilitate offers or bids from small businesses.

(b) The commissioner must solicit and encourage Minnesota small businesses to submit responses or bids when the commissioner is entering into master contracts. If cost-effective, when entering into a master contract, the commissioner must attempt to negotiate contract terms that allow agencies the option of purchasing from small businesses, particularly small businesses that are geographically proximate to the entity making the purchase.

(c) In making the annual designation of such procurements the commissioner shall attempt (1) to vary the included procurements so that a variety of goods and services produced by different small businesses are obtained each year, and (2) to designate small business procurements in a manner that will encourage proportional distribution of such awards among the geographical regions of the state. To promote the geographical distribution of awards, the commissioner may designate a portion of the small business procurement for award to bidders from a specified congressional district or other geographical region specified by the commissioner. The failure of the commissioner to designate particular procurements shall not be deemed to prohibit or discourage small businesses from seeking the procurement award through the normal process.

Subd. 2. Small business. The commissioner shall adopt rules defining "small business" for purposes of sections 16C.16 to 16C.21, 137.31, 137.35, 161.321, and 473.142. The definition must include only businesses with their principal place of business in Minnesota. The definition must establish different size standards for various types of businesses. In establishing these standards, the commissioner must consider the differences among industries caused by the size of the market for goods or services and the relative size and market share of the competitors operating in those markets.

(1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs;

(2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs; or

(3) any other veteran-owned small businesses certified under section 16C.19, paragraph (d).

(b) The purpose of this designation is to facilitate the transition of veterans from military to civilian life, and to help compensate veterans for their sacrifices, including but not limited to their sacrifice of health and time, to the state and nation during their military service, as well as to enhance economic development within Minnesota.

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

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

(c) A business is located in an economically disadvantaged area if:

(1) the owner resides in or the business is located in a county in which the median income for married couples is less than 70 percent of the state median income for married couples;

(2) the owner resides in or the business is located in an area designated a labor surplus area by the United States Department of Labor; or

(3) the business is a certified rehabilitation facility or extended employment provider as described in chapter 268A.

(d) 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.

(e) The Department of Revenue shall gather data necessary to make the determinations required by paragraph (c), clause (1), and shall annually certify counties that qualify under paragraph (c), clause (1). An area designated a labor surplus area retains that status for 120 days after certified small businesses in the area are notified of the termination of the designation by the United States Department of Labor.

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. Determination of ability to perform. Before making an award under the preference programs established in subdivisions 4 to 7, the commissioner shall evaluate whether the small business or small targeted group business scheduled to receive the award is able to perform the contract. This determination shall include consideration of production and financial capacity and technical competence.

16C.19 ELIGIBILITY; RULES.

(a) A small business wishing to participate in the programs under section 16C.16, subdivisions 4 to 7, must be certified by the commissioner. The commissioner shall adopt by rule standards and procedures for certifying that small businesses, small targeted group businesses, and small businesses located in economically disadvantaged areas are eligible to participate under the requirements of sections 16C.16 to 16C.21. The commissioner shall adopt by rule standards and procedures for hearing appeals and grievances and other rules necessary to carry out the duties set forth in sections 16C.16 to 16C.21.

(b) The commissioner may make rules which exclude or limit the participation of nonmanufacturing business, including third-party lessors, brokers, franchises, jobbers, manufacturers' representatives, and others from eligibility under sections 16C.16 to 16C.21.

(c) The commissioner may make rules that set time limits and other eligibility limits on business participation in programs under sections 16C.16 to 16C.21.

(d) Notwithstanding paragraph (c), for purposes of sections 16C.16 to 16C.21, a veteran-owned small business, the principal place of business of which is in Minnesota, is certified if it has been verified by the United States Department of Veterans Affairs as being either a veteran-owned small business or a service-disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

History: 1998 c 386 art 1 s 20; 2009 c 94 art 3 s 4; 2009 c 101 art 2 s 57,110; 2010 c 333 art 2 s 4

16C.20 CERTIFICATION.

A business that is certified by the commissioner of administration as a small business, small targeted group business, a small business located in an economically disadvantaged area, or a veteran-owned small business is eligible to participate under the requirements of sections 137.31 and 161.321 and, if certified as a small business, small targeted group business, or veteran-owned small business, under section 473.142 without further certification by the contracting agency.

History: 1998 c 386 art 1 s 21; 2009 c 94 art 3 s 5; 2009 c 101 art 2 s 58,110

16C.21 CRIMINAL PENALTY.

A person who knowingly provides false information to a public official or employee for the purpose of obtaining or retaining certification as a small targeted group business or a small business located in an economically disadvantaged area under sections 16C.16 to 16C.20, 137.31, 137.35, 161.321, or 473.142 is guilty of a misdemeanor.

History: 1998 c 386 art 1 s 22

16C.22 DISTRICT HEATING.

Notwithstanding any other law, general or special, the commissioner is authorized to enter into or approve a written agreement not to exceed 31 years with a district heating or cooling utility that will specify, but not be limited to, the appropriate terms and conditions for the interchange of district heating or cooling services.

History: 1998 c 386 art 1 s 23; 1Sp2001 c 10 art 2 s 43

the appropriation of the agency receiving the surplus property to the surplus services revolving fund. The determination of the commissioner is final as to the cost of the surplus property to the agency receiving the property.

(b) When any governmental unit or nonprofit organization other than an agency receives surplus property from the commissioner, the governmental unit or nonprofit organization must reimburse the surplus services revolving fund for the cost of the property, including the expenses of acquiring, accepting, warehousing, and distributing it, in an amount the commissioner sets. The commissioner may, however, require the governmental unit or nonprofit organization to deposit in advance in the surplus services revolving fund the cost of the surplus property upon mutually agreeable terms and conditions.

(c) The commissioner may transfer or sell state surplus property to any person at public auction, at prepriced sale, or by sealed bid process in accordance with applicable state laws.

Subd. 6. **State surplus property.** The commissioner may do any of the following to dispose of state surplus property:

- (1) transfer it to or between state agencies;
- (2) transfer it to a governmental unit or nonprofit organization in Minnesota; or
- (3) sell it and charge a fee to cover expenses incurred by the commissioner in the disposal of the surplus property.

The proceeds of the sale less the fee must be deposited in an account in a fund other than the general fund and are appropriated to the agency for whose account the sale was made, to be used and expended by that agency to purchase similar state property.

Subd. 6a. **Computers for schools.** The commissioner may transfer state surplus computers to Minnesota Computers for Schools for refurbishing and distribution to any school, school system, college, or university in Minnesota.

Subd. 7. **Gifts.** The commissioner is authorized to solicit and accept donated money and fixed and consumable property for the benefit of the state and any other governmental unit or nonprofit organization for any purpose authorized by state and federal law and in accordance with federal regulations and rules. The gift acceptance procedures of sections 16A.013 to 16A.016 do not apply to this subdivision.

History: 1998 c 386 art 1 s 24; 2003 c 112 art 2 s 50; 2005 c 65 s 1; 2007 c 54 art 6 s 3; 2009 c 101 art 2 s 109; 1Sp2010 c 1 art 14 s 4

16C.231 SURPLUS PROPERTY.

Notwithstanding section 15.054 or 16C.23, the commissioner may sell a surplus gun used by a state trooper to the trooper who used the gun in the course of employment. The sale price must be the fair market value of the gun, as determined by the commissioner.

History: 2005 c 156 art 2 s 26

16C.24 RULES.

Minnesota Rules, parts 1230.0100 to 1230.4300, adopted under chapter 16B, govern under this chapter until amended, repealed, or superseded by rules adopted under chapter 16B or this chapter. In the event rules adopted under chapter 16B conflict with provisions of this chapter, this chapter governs.

History: 1998 c 386 art 1 s 25

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: 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

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.

Subd. 2. **Negotiated contracts.** In lieu of any of the other requirements of sections 16C.26 to 16C.28, the commissioner may negotiate a contract for public work to be performed at a state-owned institution or installation if the cost does not exceed \$15,000 and if the head of the affected state agency requests the commissioner to do so. The commissioner shall have prepared whatever plans and specifications for the public work deemed necessary by the commissioner to protect the public interest. Contractor's bonds or security pursuant to chapter 574 are not required for contracts entered into under this subdivision.

Subd. 3. **Emergency purchases.** In emergencies, the commissioner may, without calling for bids, contract directly for the repair, rehabilitation, and improvement of a state-owned structure or may authorize an agency to do so. An emergency for the purposes of this subdivision is an unforeseen occurrence or combination of circumstances which calls for immediate action in the public interest.

History: 2002 c 254 s 3; 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

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.

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

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;

(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.

(e) The commissioner shall, for each design-build or construction manager at risk contract, make a written determination, including specific findings, indicating whether use of the design-build or construction manager at risk procurement serves the public interest.

(f) The solicitation of requests for qualifications or proposals does not obligate the commissioner to enter into a design-build or construction manager at risk contract. In accordance with the stated criteria and subcriteria for evaluating qualifications or proposals, the commissioner may accept or reject any or all responses received as a result of the request. The solicitation for qualifications or proposals may be canceled at any time in the commissioner's sole discretion if it is considered to be in the public's best interest. If the commissioner rejects all responses or

(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 the State Register.

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

(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

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

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

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.095.

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.

(f) The construction manager at risk and the commissioner shall enter into a guaranteed maximum price contract for the project.

History: 2005 c 78 s 8

(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*