###### COUNTY

###### CONTRACTING - BID LAWS

**LEGAL COMPLIANCE AUDIT GUIDE**

**CONTRACTING - BID LAWS**

Introduction

A county entering into an agreement for the sale or purchase of supplies, materials, equipment or the rental thereof, or the construction, alteration, repair, or maintenance of real or personal property must abide by the statutes relating to contracting and bidding. In addition, for counties, such statutory requirements also apply to contracts for “work or labor.”

Complete the questionnaire to determine if the county conformed to the contracting and bidding statutes.

Minnesota Statutes § 471.345, the Uniform Municipal Contracting Law, was established to provide dollar limits for all municipalities upon contracts which shall or may be entered into on the basis of competitive bids, quotations, or purchase or sale in the open market. Vendors may now submit bids, quotations, and proposals electronically in a form and manner required by the municipality. Minn. Stat. § 471.345, subd. 18. Generally, the following thresholds apply:

1. For contracts over $175,000 - sealed bids, solicited by public notice and subject to the particular requirements of the governmental subdivision.

2. For contracts from $25,000 to $175,000 - sealed bids or direct negotiation, with two quotations whenever possible.

3. For contracts of $25,000 or less - open market or quotations (with at least two contract quotations, if practicable).

In addition, Minn. Stat. § 471.345, subds. 16 and 17, allow counties to purchase supplies, materials, and equipment using an electronic reverse auction process; and to sell supplies, materials, and equipment which is surplus, obsolete, or unused using an electronic selling process.

Best value procurement is a process based on competitive proposals (as an alternative to bids) that awards the contract to “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 [Minn. Stat. § 16C.28, subd. 1b] and described in the solicitation document.” Minn. Stat. § 16C.28, subd. 1(a)(2). Before administering best value procurement procedures, personnel must be trained in the best value RFP process. *See* Minn. Stat. § 16C.28, subd. 1d.

Minnesota Statutes § 471.3457 authorizes counties to implement programs to provide bid preferences to designated veteran-owned small businesses, as provided in Minn. Stat. § 375.771, in awarding service contracts and contracts as defined in Minn. Stat. § 471.345.

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| **Part I. Uniform Municipal and Contracting Law** |
|  | A. | Generally, for all municipalities: |  |  |  |
| § 471.345 |  | The estimated contract amount determines whether sealed bids or quotations are required. Vendors may submit bids, quotations, and proposals electronically in a form and manner required by the municipality. |  |  |  |
|  |  | 1. | Contracts over $175,000 (sealed bids or best value procurement) |  |  |  |
|  |  |  | a. | Sealed bids |  |  |  |
| § 471.345,subd. 3 |  |  |  | (1) | Have all contracts estimated to exceed $175,000 been let on sealed bids? |  |  |  |
|  |  |  |  | (2) | Have the bids been solicited by public notice? |  |  |  |
| Minn. Stat.§§ 15.17,138.17 |  |  |  | (3) | Were bids preserved and on file if the appropriate records retention period has not expired? (See Introduction section entitled “Destruction of Records,” pages iii - iv, and the county’s records retention schedule.) |  |  |  |
| Minn. Stat. §§ 375.21,subd. 1b;and 471.345,subds. 3a,4a, and 5 |  |  | b. | Best value procurement alternative |  |  |  |
| § 16C.28, sub. 1 |  |  |  | If a best value procurement procedure was used as an alternative: |  |  |  |
| Minn. Stat.§§ 375.21,subd. 1band 471.345,subds. 3a,4a, and 5 |  |  |  | (1) | Was the contract a contract for construction, building, alteration, improvement, repair, or maintenance? |  |  |  |
| § 16C.28,subd. 1(c) |  |  |  | (2) | Did the solicitation document state the relative weight of price and other selection criteria?   |  |  |  |
|  |  |  |  | (3) | Was the award made to the vendor or contractor offering the best value applying the weighted selection criteria?  |  |  |  |
|  |  |  |  | (4) | If an interview of the vendor’s or contractor’s personnel was one of the selection criteria, was the relative weight of the interview stated in the solicitation document and applied accordingly? Minn. Stat. § 16C.28, subd. 1(c) (2008). |  |  |  |

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|  |  | 2. | Contracts from $25,000 to $175,000 can be made on sealed bids, by direct negotiation based on quotations, or through best value procurement. |  |  |  |
| § 471.345,subd. 4 |  |  | a. | Sealed bids or quotations |  |  |  |
|  |  |  |  | (1) | Have contracts estimated to exceed $25,000 but not to exceed $175,000 been let on sealed bids or negotiated quotes? |  |  |  |
|  |  |  |  | (2) | If sealed bids were used, were the requirements of A.1. met? |  |  |  |
|  |  |  |  | (3) | If quotations were used and obtaining two or more quotes was possible, were two or more quotes obtained? |  |  |  |
|  |  |  |  | (4) | If quotations were used, were the quotations kept on file for at least one year? |  |  |  |
| Minn. Stat.§§ 375.21,subd. 1b;and 471.345,subds. 3a,4a, and 5 |  |  | b. | Best value procurement alternative |  |  |  |
| § 16C.28,subd. 1 |  |  |  | If a best value procurement procedure was used as an alternative: |  |  |  |
| Minn. Stat.§§ 375.21,subd. 1b;and 471.345,subds. 3a,4a, and 5 |  |  |  | (1) | Was the contract a contract for construction, building, alteration, improvement, repair, or maintenance? |  |  |  |
| § 16C.28, subd. 1(c) |  |  |  | (2) | Did the solicitation document state the relative weight of price and other selection criteria?   |  |  |  |
|  |  |  |  | (3) | Was the award made to the vendor or contractor offering the best value applying the weighted selection criteria?  |  |  |  |
|  |  |  |  | (4) | If an interview of the vendor’s or contractor’s personnel was one of the selection criteria, was the relative weight of the interview stated in the solicitation document and applied accordingly? Minn. Stat. § 16C.28, subd. 1(c) (2008). |  |  |  |

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|  |  | 3. | Contracts estimated to be $25,000 or less may be made either upon quotation, in the open market, or through best value procurement. |  |  |  |
| § 471.345,subd. 5 |  |  | a. | If quotations were used, are they on file? |  |  |  |
| Minn. Stat.§§ 375.21,subd. 1b;and 471.345,subds. 3a,4a, and 5 |  |  | b. | Best value procurement alternative |  |  |  |
| § 16C.28,subd. 1 |  |  |  | If a best value procurement procedure was used as an alternative: |  |  |  |
| Minn. Stat.§§ 375.21,subd. 1b;and 471.345,subds. 3a,4a, and 5 |  |  |  | (1) | Was the contract a contract for construction, building, alteration, improvement, repair, or maintenance? |  |  |  |
| § 16C.28,subd. 1(c) |  |  |  | (2) | Did the solicitation document state the relative weight of price and other selection criteria?   |  |  |  |
|  |  |  |  | (3) | Was the award made to the vendor or contractor offering the best value applying the weighted selection criteria?  |  |  |  |
|  |  |  |  | (4) | If an interview of the vendor’s or contractor’s personnel was one of the selection criteria, was the relative weight of the interview stated in the solicitation document and applied accordingly? Minn. Stat. § 16C.28, subd. 1(c). |  |  |  |
| § 471.345,subd. 16 | B. | Reverse Auction Purchase |  |  |  |
|  |  | If the county contracted to purchase using an electronic purchasing process:  |  |  |  |
|  |  | 1. | Was the purchase a purchase of supplies, materials, or equipment, and not a contract for services or a service contract as defined in Minn. Stat. §§ 16C.02, subds. 16 and 17; and |  |  |  |
|  |  | 2. | Was the electronic process a purchasing process in which vendors competed to provide the supplies, materials, or equipment at the lowest selling price in an open and interactive environment? |  |  |  |

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| § 471.345,subd. 17 | C. | Electronic Sale |  |  |  |
|  |  | If the county contracted to sell using an electronic selling process: |  |  |  |
|  |  | 1. | Was the sale a sale of supplies, materials, or equipment which was surplus, obsolete, or unused; and |  |  |  |
|  |  | 2. | Was the electronic process a selling process in which purchasers competed to purchase the surplus supplies, materials, or equipment at the highest purchase price in an open and interactive environment? |  |  |  |
| § 331A.12 | D.  | Website publication - Transportation Contracts[For Transportation contracts, publication on the website may be used in place of or in addition to any other required form of publication, if certain requirements are met.] |  |  |  |
|  | If publication on the website was used in place of other required forms of publication: |  |  |  |
|  |  | 1. | Did the County Board designate this manner of publication (on the county’s website) at the meeting at which it designated its official newspaper? |  |  |  |
|  |  | 2.  | Had the county annually published notice (in a qualified newspaper and on the website) that the political subdivision would publish any advertisements for bids on its website? |  |  |  |
|  |  | 3. Did the county post the information on its website in substantially the same format and for the same period of time as required for publication in an official newspaper or other print publication? |  |  |  |
|  |  | 4. Did the county ensure that a permanent record of publication is maintained in a form accessible by the public? |  |  |  |
| § 331A.03,subd. 3 | E. | Alternative Dissemination of Bids and Requests |  |  |  |
|  |  | If, as an alternative to publishing them in a newspaper, a county disseminated solicitations of bids, requests for information or requests for proposals by using a website or recognized industry trade journals: |  |  |  |
|  |  | 1. | Did the county simultaneously publish, either in minutes or separately, in a notice published in the official newspaper, a description of all solicitations or requests so disseminated, along with the means by which the disseminations occurred? |  |  |  |
|  |  | 2. | Was the dissemination by alternative means in substantially the same format and for the same period of time as a publication in a qualified newspaper? |  |  |  |
|  |  | 3. | For the first six months after the county designated an alternative means of dissemination, did it continue to publish solicitation of bids, requests for information, and requests for proposals in the official newspaper in addition to the alternative method? |  |  |  |
|  |  | 4. | Did the publication in the official newspaper indicate where to find the designated alternative method? |  |  |  |
| § 331A.01,subd. 11 |  |  | Note: “Recognized industry trade journal” means a printed or digital publication or website that contains building and construction news of interest to contractors in this state, or that publishes project advertisements and bids for review by contractors or other interested bidders in its regular course of business. |  |  |  |
| § 471.345,subd. 5a | F. | County or town contracts for the rental of equipment estimated to be $60,000 or less may, at the discretion of the board, be made by direct negotiation by obtaining two or more quotations when possible. If this method was used, were quotations kept on file for at least one year? |  |  |  |
| § 471.345,subd. 15 | G. | If the county contracted for the purchase of supplies, materials, or equipment without regard to competitive bidding requirements, was the purchase through the State of Minnesota’s cooperative purchasing venture or a national municipal association’s purchasing alliance or cooperative created by a joint powers agreement that purchases items from more than one source on the basis of competitive bids or competitive quotations? |  |  |  |
| § 471.345,Subd. 15 | H. | For each contract for the purchase of supplies, materials, or equipment over $25,000, did the county consider the availability, price and quality of supplies, materials, or equipment available through the state’s cooperative purchasing venture before purchasing through another source |  |  |  |
|  |  | Note: Exceptions to the competitive bidding requirements of Minn. Stat. § 471.345 exist for water tank service contracts, procurement from economically disadvantaged persons, shared hospital or ambulance service purchasing, fuel contracts for generation of municipal power, procurement from rehabilitation facilities, energy efficient projects, contracts with small businesses under a county program, contracts with businesses certified as veteran or disabled veteran businesses by the Commissioner of Administration, and solid waste contracts. If a contract you audit falls into one of these categories, review the relevant exceptions to see if its criteria are met. *See* Minn. Stat. §§ 471.345, subds. 5b, 8, 10, 11, 12, 13, 19, and 20; and 400.04. |  |  |  |
| § 16C.285 | I. | Responsible Contractor RequirementFor each construction contract in excess of $50,000, awarded pursuant to a lowest responsible bidder or best value process, did the successful contractor submit a verification of compliance signed under oath by an owner or officer verifying compliance with the minimum criteria set forth in Minn. Stat. § 16C.285, subd. 3 (with the exception of clause (7), as required by Minn. Stat. § 16C.285, subd. 4? |  |  |  |
| § 471.35 | J. | Other Considerations |  |  |  |
|  |  | 1. | Specifications on contracts. If sealed bids were solicited, were the specifications written so as not to exclude all but one type or kind of supplies or equipment? |  |  |  |
|  |  | 2. | Interest in contract. (*See* Conflicts of Interest Section, page 2‑1.) |  |  |  |

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| § 574.26 |  | 3. | Contractor’s performance and payment bonds. Contractors doing public work are required to give both a performance bond and a payment bond in an amount not less than the contract price if the contract is more than $175,000. |  |  |  |
|  |  |  | a. | Were bonds received for all contracts greater than $175,000? |  |  |  |
|  |  |  | b. | Were the amounts sufficient? |  |  |  |
| § 574.261,subd. 1a | Note: If the project is under $50,000, contractor may provide for irrevocable bank letter of credit in place of a performance bond provided the letter of credit is subject to the same conditions as a performance bond. |  |  |  |
| § 471.6161 | K. | Group Insurance |  |  |  |
|  |  | Any county that provides group insurance for 25 or more employees must comply with certain bidding requirements in contracting for or renewing said insurance. |  |  |  |
| § 43A.316,subd. 10 |  | Note: Counties participating in the public employee insurance program are exempt from the bidding requirements of Minn. Stat. § 471.6161. If this exemption does not apply: |  |  |  |
|  |  | 1. | Was the request for proposals (RFP) in writing? |  |  |  |
|  |  | 2. | Did the RFP include: |  |  |  |
|  |  |  | a. | the coverage to be provided; |  |  |  |
|  |  |  | b. | the criteria for evaluation of proposals; and |  |  |  |
|  |  |  | c. | the aggregate claims record for the appropriate period? |  |  |  |
|  |  | 3. | Was the RFP notice placed in a newspaper or trade journal at least 21 days before the final date for submitting proposals? |  |  |  |
|  |  | 4. | Was a written rationale explaining the county’s decision prepared prior to entering into a contract? |  |  |  |
|  |  | 5. | Was the term of the contract five years or less, including extensions? |  |  |  |
| § 471.3455 | L. | Public Safety Equipment Purchase or Lease |  |  |  |
|  |  | If equipment was acquired by the county pursuant to this statute without competitive bidding or proposals: |  |  |  |
|  |  | 1. | Was the public safety equipment used, and |  |  |  |
|  |  | 2. | was the equipment “public safety equipment,” defined as vehicles and specialized equipment used by a fire department, as defined in Minn. Stat. § 299N.01, subd. 2, in firefighting, ambulance and emergency medical treatment services, rescue, and hazardous materials response, and |  |  |  |
|  |  | 3. | was the equipment clearly and legitimately limited to a single source of supply?  |  |  |  |
| § 471.425,subd. 4a | M. | Did each contract between the county and a prime contractor require the prime contractor to pay subcontractors within ten days of receipt of payment from the government entity or pay interest at the rate of 1½ percent per month or any part of a month? |  |  |  |
| § 15.72(See also§ 541.051,subd. 1(a)) | N. | RetainageFor a contract for public improvement, a public contracting agency may withhold up to five percent of any progress payment as retainage to ensure satisfactory performance. If it does so, it must release the retainage no more than 60 days after substantial completion.“Substantial completion” is the date when construction is sufficiently completed so that the owner can occupy or use the improvement for the intended purpose. For streets, highways, and bridges, “substantial completion” is defined as the date when construction-related traffic devices and ongoing inspections are no longer required. The public contracting agency is permitted to continue to withhold the following two amounts even after the 60-day period: |  |  |  |
|  |  | 1. | up to 250 percent of the cost to correct or complete work known at the time of substantial completion, and |  |  |  |
|  |  | 2. | the greater of $500 or one percent of the value of the contract pending submission of final paperwork. |  |  |  |
|  |  | The first amount must be released within 60 days of work completion. The second must be released within 60 days of submission of final paperwork. |  |  |  |
|  |  | If the county withheld retainage in a contract for public improvement, did it release the retainage 60 days after substantial completion, except for those amounts permitted to be withheld to complete or correct work, and for final paperwork? |  |  |  |
| § 270C.66 | O. | Withholding Affidavit/Certificate |  |  |  |
|  |  | Before making final settlement with any contractor under a contract requiring the employment of employees for wages by said contractor and by subcontractors, did the county obtain a certificate by the Commissioner of Revenue that the contractor or subcontractor has complied with the withholding requirements of Minn. Stat. § 290.92 (either Form IC134 or a Contractor’s Withholding Affidavit Confirmation)? |  |  |  |
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| Part II. Laws Relating Specifically to Counties |
|  | A. | Contracts formally bid |  |  |  |
| § 375.21 |  | 1. | Advertisement for Bids. (For sales of personal property, *see* 2 below.) If the contract was awarded by bidding: |  |  |  |
|  |  |  | a. | Were bids advertised for in a qualified legal newspaper of the county? (For alternative methods, *see* section I.D. above.) |  |  |  |
|  |  |  | b. | If the contract is for the purchase of property or for work and labor, was the public notice, stating time and place for bids, published two weeks prior to the deadline? |  |  |  |
| § 160.17 |  |  | c. | If the contract is for the construction or repair of roads, bridges, or buildings, was the public notice, stating time and place for bids, published three weeks prior to the deadline? |  |  |  |
|  |  |  | d. | Did the published notice include the time and place of awarding the contract? |  |  |  |
|  |  |  | e. | Did the published notice include a brief description of the work? |  |  |  |
| § 373.01,subd. 1(c) |  | 2. | Advertisement for bids or proposals - sale of personal property $15,000 or more. |  |  |  |
|  |  |  | a. | If the county sold personal property, the value of which is estimated to be $15,000 or more: |  |  |  |
|  |  |  |  | (1) | Were bids or contracts in the county’s official newspaper, on the county’s website, or in a recognized industry trade journal? |  |  |  |
|  |  |  |  | (2) | If the county posted on its website or published in a trade journal, did the county publish, either in minutes or separately, in the official newspaper a summary of all requests for bids or proposals that the county advertises on its website or in the trade journal? |  |  |  |
|  |  |  |  | (3) | Did the county publish in the official newspaper, on the website, or in a trade journal before it solicited or accepted bids or proposals by the electronic selling process authorized in Minn. Stat. § 471,345, subd. 17? |  |  |  |
| § 375.21,subd. 1 |  | 3. | Awarding the Contract. (For contracts awarded by bidding.) |  |  |  |
|  |  |  | a. | Was the contract awarded to the lowest responsible bidder? |  |  |  |
| § 15.17 |  |  | b. | If the contract was not awarded to the lowest bidder, were reasonable and appropriate reasons documented in the minutes? |  |  |  |
| § 15.17 |  |  | c. | Were the names of the bidders and the amount of the bids put on record? |  |  |  |
|  |  |  | d. | Was the contract executed in writing? |  |  |  |
| *See* also§ 574.26 |  |  | e. | If the contract involved work and labor for the construction or repair of roads, bridges, or buildings, was a faithful performance bond received from the contractor? |  |  |  |

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| § 375.21 |  | 4. | Emergency Exceptions to bidding |  |  |  |
|  |  |  | a. | In the case of an emergency arising from the destruction or impassability of roads or bridges by floods, rain, or snow, or other casualty, or the breaking or damaging of any property in the county if the public health, safety, or welfare would suffer by delay, contracts for purchase or repairs may be made without advertising for bids but, in that case, the action of the board shall be recorded in its official proceedings. |  |  |  |
|  |  |  | b. | In the case of an emergency arising from breakage, damage, or decay in county property that cannot be allowed to wait for the time required to advertise for bids, repairs may be made without advertising for bids if the work is authorized by a majority of the board of county commissioners and the action is ratified and recorded in the official proceedings of the board at its next meeting. |  |  |  |
|  |  |  | c. | If any emergency exceptions were taken by the county, were the required board actions recorded in the official proceedings? |  |  |  |
| § 373.01,subd. 1 |  | 5. | Sale of Real Property. |  |  |  |
|  |  |  | a. | If the county sold real property by advertising for bids: |  |  |  |
|  |  |  |  | (1)  | Were bids advertised for in the official newspaper of the county for three consecutive weeks? (For alternative methods, *see* section I.D., above.) |  |  |  |
|  |  |  |  | (2)  | Were bids advertised at least once in a newspaper of general circulation in the area where the property is located? |  |  |  |
|  |  |  |  | (3)  | Did the notice contain the time and place for considering proposals as well as a legal description of the real property involved? |  |  |  |
|  |  |  |  | (4) | Was the real property sold to the highest bidder? |  |  |  |
|  |  |  |  |  | If no, were reasons documented in the minutes and were the reasons stated reasonable and appropriate? |  |  |  |
|  |  |  | b. | If the county employed a broker to sell the property; |  |  |  |
|  |  |  |  | (1) | Had the property remained unsold after advertising for and consideration of bids or proposals? |  |  |  |
|  |  |  |  | (2) | Did the broker sell the property for not less than 90 percent of its appraised market value as determined by the county? |  |  |  |
|  |  |  | (3) | Was the broker’s fee paid from the proceeds of the sale, and did it not exceed ten percent of the sale price? |  |  |  |

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|  |  |  | c. | If the county sold real property without advertising for bids or employing a broker: |  |  |  |
|  |  |  |  | (1) | Did the county own the real property in fee simple and could it not be improved because of noncompliance with local ordinance regarding minimum area, shape, frontage, or access? |  |  |  |
|  |  |  |  | (2) | Were all owners of adjoining land given written notice at least 30 days before the sale? |  |  |  |
|  |  | 6. | Drainage Systems |  |  |  |
| § 103E.705,subd. 5(Citing§ 471.345,subd. 3) |  |  | a. | If the estimated cost of repairs and maintenance of one drainage system for one year will be less than the greater of $175,000, or $1,000 per mile of open ditch in the ditch system, the draining authority may have such work done without advertising for bids or entering into a contract. Were these conditions met? |  |  |  |

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| **Part III. Audit Conclusion** |
| The auditor must state a conclusion--based on this questionnaire and any other audit procedures performed--whether the county has complied with the legal provisions reviewed relating to contracting and bidding. |
| Conclusion: |  |  |  |  |  |  |  |  |
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