###### TOWN

###### CONTRACTING - BID LAWS

**LEGAL COMPLIANCE AUDIT GUIDE**

**CONTRACTING - BID LAWS**

Introduction

A municipality 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.”

A municipality, for the purpose of this section, is a county, town, city, school district, or other municipal corporation or political subdivision of the state authorized by law to enter into contracts. Each contract must be approved by the appropriate authority, as authorized by statute or charter, within the municipality.

If the audited governmental unit is one of the listed types of municipalities and it has the power to contract, complete the questionnaire to determine if the municipality conformed to the contracting and bidding statutes.

Minn. Stat. § 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 municipalities 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.02, subd. 4a] 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.

Another alternative to bidding is the “construction manager at risk” contract available for contracts for construction, alteration, repair, or maintenance work. The process of selection of a construction manager at risk as well as the requirements of a construction manager at risk contract are set forth in Minn. Stat. § 471.463.

Minnesota Statutes § 471.3457 authorizes local governments 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 - Applies to All Municipalities** | | | | | | | | | | |
|  | 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 entity’s records retention schedule.) | |  |  |  |
| Minn. Stat.  § 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.  § 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). | |  |  |  |
| Minn. Stat. § 471.35, subd. 2 |  |  | c. | Construction manager at risk alternative. | | |  |  |  |
| Minn. Stat. § 471.463 |  |  |  | If a construction manager at risk procurement procedure was used as an alternative: | | |  |  |  |
|  |  |  |  | (1) | Was the contract for the construction, alteration, repair, or maintenance work in excess of $175,000? | |  |  |  |
|  |  |  |  | (2) | Was a solicitation of qualifications prepared for each construction manager that contained at least the following: | |  |  |  |
|  |  |  |  |  | (a) | procedures for submitting qualifications, the criteria and subcriteria for evaluating the qualifications and the relative weight for each criteria and subcriteria, and the procedures for making awards in an open, competitive, and objective manner, applying a scoring or trade-off evaluation method, including a reference to the requirements of this section; |  |  |  |
|  |  |  |  |  | (b) | the proposed terms and conditions for the contract; |  |  |  |
|  |  |  |  |  | (c) | the desired qualifications of the construction manager at risk; |  |  |  |
|  |  |  |  |  | (d) | the schedule for commencement and completion of the project; |  |  |  |
|  |  |  |  |  | (e) | any applicable budget limits for the project; |  |  |  |
|  |  |  |  |  | (f) | the requirements for insurance and statutorily required performance and payment bonds; and |  |  |  |
|  |  |  |  |  | (g) | the identification and location of any other information in the possession or control of a municipality that the municipality determines is material, including surveys, soil reports, drawings or models of existing structures, environmental studies, photographs, or references to public records. |  |  |  |
|  |  |  |  | (3) | Was the Notice of requests for qualifications advertised in a manner designated by the municipality? | |  |  |  |
|  |  |  |  | (4) | Did the municipality create a selection committee composed of at least three persons, at least one of whom has construction industry expertise? | |  |  |  |
|  |  |  |  | (5) | Did the selection committee review the qualification of each proposer and create a short list of two to five proposers? | |  |  |  |
|  |  |  |  | (6) | If the municipality did not receive at least two proposals from the construction managers, did it: | |  |  |  |
|  |  |  |  |  | (a) | solicit new proposals, |  |  |  |
|  |  |  |  |  | (b) | revise the request for qualifications, and then solicit new proposals using the revised request for qualifications, |  |  |  |
|  |  |  |  |  | (c) | select another procurement method, or |  |  |  |
|  |  |  |  |  | (d) | reject all proposals? |  |  |  |

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|  |  |  |  | (7) | Did the municipality then issue a request for proposals requiring cost and other information from the short-listed proposers? |  |  |  |
|  |  |  |  | (8) | Did the municipality enter into a guaranteed maximum price contract with the construction manager at risk? |  |  |  |
|  |  | 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.  § 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.  § 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). |  |  |  |
|  |  | 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. § 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.  § 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). |  |  |  |
| § 471.345,  subd. 16 | B. | Reverse Auction Purchase | | | |  |  |  |
|  |  | If the municipality 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? | | |  |  |  |
| § 471.345,  subd. 17 | C. | Electronic Sale | | | |  |  |  |
|  |  | If the municipality 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.] | | | |  |  |  |

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|  | If publication on the website was used in place of other required forms of publication: | | | | |  |  |  |
|  |  | 1. | | Did the Town designate this manner of publication (on the political subdivision’s website) at the meeting at which it designated its official newspaper? | |  |  |  |
|  |  | 2. | | Had the Town 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 Town 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 Town 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 town disseminated solicitations of bids, requests for information or requests for proposals by using a website or recognized industry trade journals: | | | |  |  |  |
|  |  | 1. | Did the Town 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 Town 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 | 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 Town 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 Town 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, solid waste contracts, and town road construction or maintenance contracts based on terms of county contracts for adjoining roads. 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, and 19; and 400.04. | | | |  |  |  |
| § 16C.285 | I. | Responsible Contractor Requirement  For 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, subdivision 3 (with the exception of clause (7), as required by Minn. Stat. § 16C.285, subdivision 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.) | | |  |  |  |
| § 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? |  |  |  |
|  |  |  | Note: The contractor’s performance and payment bond requirement does not apply to contracts for snow removal, ice removal, grading, or other similar routine road maintenance on town roads. | | |  |  |  |
| § 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 town 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: Towns 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 political subdivision’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 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 Town 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. | Retainage  For 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 completion 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 town 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/Certificate1 | | | |  |  |  |
|  |  | 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 entity 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 Towns | | | | | | | |
|  | A. | Road Construction Contracts | | |  |  |  |
| § 365.37;  for Road  Construction  Contracts,  see also  § 160.17 |  | 1. | Advertisement for Bids. | |  |  |  |
|  |  |  | a. | Was a public notice of the time and place to submit bids posted in the three most public places in the town for ten days or published for two weeks in a newspaper generally circulated in the town? (For alternative methods, see section I.D., above.) |  |  |  |
|  |  | 2. | If there was no notice given or sealed bids solicited, did a special emergency exist?  (A special emergency is a situation requiring immediate action essential to the health, safety, or welfare of the town.) | |  |  |  |
| § 365.37 |  | 3. | Was the contract awarded to the lowest responsible bidder? | |  |  |  |
| § 15.17 |  | 4. | If the contract was not awarded to the lowest bidder, were reasonable and appropriate reasons documented in the minutes? | |  |  |  |

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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 client has complied with the legal provisions reviewed relating to contracting and bidding. | | | | | | | | |
| Conclusion: |  |  |  |  |  |  |  |  |
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