###### SCHOOL DISTRICT

###### CONTRACTING - BID LAWS

**LEGAL COMPLIANCE AUDIT GUIDE**

**CONTRACTING - BID LAWS**

Introduction

A school district 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 school district 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 school districts 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.

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.

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| **Part I. Uniform Municipal and Contracting Law - Applies to All Municipalities** |
|  | A. | Generally, for all school districts: |  |  |  |
| § 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 school districts. |  |  |  |
|  |  | 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.§§ 123B.52,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.§§ 123B.52,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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| 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? |  |  |  |
|  |  |  |  | (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.§§ 123B.52,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.§§ 123B.52,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). |  |  |  |
|  |  | 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.§§ 123B.52,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.§§ 123B.52,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 school district 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. 7(a) 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 school district 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.03,subd. 3 | D. | Alternative Dissemination of Bids and Requests |  |  |  |
|  |  | If, as an alternative to publishing them in a newspaper, a school district disseminated solicitations of bids, requests for information or requests for proposals by using a Web site or recognized industry trade journals: |  |  |  |
|  |  | 1. | Did the school district 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 school district 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 Web site 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. 15 | E. | If the municipality 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 | F. | For each contract for the purchase of supplies, materials, or equipment over $25,000, did the municipality 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 | G. | 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, subdivision 3 (with the exception of clause (7), as required by Minn. Stat. § 16C.285, subdivision 4? |  |  |  |
|  | H. | Other Considerations |  |  |  |
| § 471.35 |  | 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. |  |  |  |
|  |  | For school district contracts limited to the purchase of a finished tangible product, see note in Part II.D., infra. |  |  |  |
| § 471.6161 | I. | Group Insurance |  |  |  |
|  |  | A school district 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: School districts participating in the public employee insurance program are exempt from the bidding requirements of Minn. Stat. § 471.6161. If this exemption does not apply: |  |  |  |
| § 471.6161,subd. 2 |  | 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? |  |  |  |
| § 471.6161,subd. 3 |  | 4. | Was a written rationale explaining the political subdivision’s decision prepared prior to entering into a contract? |  |  |  |
| § 471.6161,subd. 8 |  | 5. | If the exclusive representative of the largest employment group in the school district did not agree otherwise, was the term of the contract two years or less? |  |  |  |
| § 471.3455 | J. | Public Safety Equipment Purchase or Lease (Applies to statutory or home rule charter cities, counties, towns, special taxing districts or any other political subdivision that acquires public safety equipment.) |  |  |  |
|  |  |  | 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, subdivision 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 | K. | Did each contract between the school district 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)) | L. | 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 school district 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 | M. | 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 school district 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 School Districts** |
| § 123B.52,subd. 1 | A. | School Districts (For contracts awarded by bidding) |  |  |  |
|  |  | 1. | Advertisement for Bids |  |  |  |
|  |  |  | a. | Was two weeks published notice of the request for bids made in the official newspaper? (For alternative methods, see Section I.D., above.) |  |  |  |
|  |  |  | b. | Did the notice state the time and place for submitting bids? |  |  |  |
|  |  |  | c. | Did the notice include a brief description of the subject matter? |  |  |  |
| § 123B.52,subd. 1 |  | 2. | Awarding the Contract |  |  |  |
|  |  |  | a. | Was the contract awarded to the lowest responsible bidder? |  |  |  |
|  |  |  | b. | If the contract was not awarded to the lowest bidder, were reasonable and appropriate reasons documented in the minutes? |  |  |  |
|  |  |  | c. | Was the contract executed in writing? |  |  |  |
|  |  |  | d. | Was a faithful performance bond received from the contractor? |  |  |  |
|  | Note: If the contract is limited to the purchase of a finished tangible product, the board may require, at its discretion, a performance bond in the amount it deems necessary. |  |  |  |
|  |  | 3. | Contract Duration |  |  |  |
|  |  |  | a. | If the contract was a standard requirement price contract awarded on bid, did the term of the contract not exceed two years with an option on the part of the school district to renew for an additional two years? |  |  |  |
|  |  | Note: Food service contracts in compliance with 7 cfr 210.16 may be renewed annually after their initial term for not more than four years. Contracts for the transportation of school children or fuel for heating or transportation must not exceed ten years. |  |  |  |
| § 123B.52,subd. 1 |  | 4. | Are records retained on all bids with: |  |  |  |
|  |  |  | a. | the names of the bidders; |  |  |  |
|  |  |  | b. | the amounts of the bids; |  |  |  |
|  |  |  | c. | an indication as to the successful bidder? |  |  |  |
| § 123B.52,subd. 1a |  | 5. | If a project labor agreement is used to construct or repair a facility: |  |  |  |
|  |  |  | a. | did the school board adopt at a public meeting a written resolution authorizing the project labor agreement? and |  |  |  |
|  |  |  | b. | did the school board publish notice of the meeting in the district’s official newspaper at least 30 days in advance? |  |  |  |
| § 123B.52,subd. 1 |  | 6. | Tie Low Bids or Single Bids |  |  |  |
|  |  |  | a. | In the case of identical low bids from two or more bidders, the board may, at its discretion, utilize negotiated procurement methods with the tied low bidders for that particular transaction, so long as the price paid does not exceed the low tied bid price. |  |  |  |
|  |  |  |  | (1) | If there were any tie low bids, was the ultimate price paid less than or equal to the tie low bid price? |  |  |  |
|  |  |  | b. | In the case where only a single bid is received, the board may, at its discretion, negotiate a mutually agreeable contract with the bidder so long as the price paid does not exceed the original bid. |  |  |  |
|  |  |  |  | (1) | If there were any cases of single bids, was the ultimate price paid less than or equal to the bid? |  |  |  |
| § 123B.52,subds. 1& 3 |  | 7. | Direct Negotiated Contracts |  |  |  |
|  |  |  | a. | Contracts for the purchase of perishable foods. Perishable food items (except milk for school lunches and vocational training programs) in any amount may be made by direct negotiation with two or more quotations received without advertising for bids. Were written quotations received and were they kept on file for at least one year? |  |  |  |
|  |  |  | b. | Contracts for transportation/fuel. A contract for transportation of school children or for the purchase of petroleum heating fuel or fuel for vehicles may be made by direct negotiation by obtaining two or more written quotations when possible or on sealed bids. |  |  |  |
|  |  |  |  | (1) | If a contract was made by direct negotiations, were quotations requested by published notice at least 30 days before the contract was awarded? |  |  |  |
|  |  |  |  | (2) | Were written quotes received and were all quotations kept on file for at least one year? |  |  |  |
| § 123B.52,subd. 6 |  | 8. | School District Surplus Computers Exception |  |  |  |
|  |  |  | If the school district disposed of a surplus school computer and related equipment without complying with the competitive bidding requirements of Minn. Stat. § 471.345, did the district:  |  |  |  |
|  |  |  | Dispose of the surplus computer and related equipment by conveying the property and title to another school district, the State Department of Corrections, the board of trustees of the Minnesota state colleges and universities, the family of a student residing in the district whose total family income meets the federal definition of poverty, or a 501(c)(3) charitable organization registered with the Attorney General’s Office for educational use, or |  |  |  |
|  |  |  | Sell or give the computer/tablet used primarily by students, to a qualified student in accordance with a board resolution made pursuant to Minn. Stat. § 123B.52, subd., 6. Students are eligible to apply for the computer/tablet if they are currently enrolled and intend to enroll the year after receipt of the computer/tablet. If more students apply than available computers/tablets, school must first qualify students from families eligible for free or reduced‑priced meals, then dispose of the remaining computers/tablets by lottery. |  |  |  |

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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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