

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 beginning August 1, 2008:

1. For contracts over \$100,000 – sealed bids, solicited by public notice and subject to the particular requirements of the governmental subdivision. [Prior to August 1, 2008, this threshold applied to contracts over \$50,000.*]
2. For contracts from \$25,000 to \$100,000 – sealed bids or direct negotiation, with two quotations whenever possible. [Prior to August 1, 2008, this threshold applied to contracts from \$10,000 to \$50,000.*]
3. For contracts of \$25,000 or less – open market or quotations (with at least two contract quotations, if practicable). [Prior to August 1, 2008, this threshold applied to contracts of \$10,000 or less.*]

In addition, Minn. Stat. § 471.345, subs. 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 Phases -- Minn. Stat. §16C.28, subd. 1a

Political Subdivisions became eligible to choose best value procurement in the following phases:

- I. July 1, 2007 – counties, cities, and the largest 25 percent of Minnesota school districts based on enrollment;
- II. July 1, 2009 – add school districts with the highest 50 percent enrollment of students in the state; and
- III. July 1, 2010 – add all other townships, school districts, and political subdivisions in the state.

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.03, subd. 19.

Minn. Stat. Section	CONTRACTING - BID LAWS	Yes	No	Workpaper Reference
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Part I. Uniform Municipal and Contracting Law - Applies to All Municipalities
 (Note: For pre-August 1, 2008, contracts, apply Chapter 4 from the 2007 Legal Compliance Audit Guide.)

	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 \$100,000 (sealed bids or best value procurement)				
	a. Sealed bids				
§ 471.345, subd. 3	(1)	Have all contracts estimated to exceed \$100,000 been let on sealed bids?			
	(2)	Have the bids been solicited by public notice?			
	(3)	Are the bids on file? (See Introduction section entitled "Destruction of Records," pages iii through iv.)			
Minn. Stat. §§ 123B.52, subd. 1b; 375.21, subd. 1b; 412.311, subd. 2, and 471.345, subds. 3a, 4a, and 5	b. Best value procurement alternative				
§ 16C.28, sub. 1a	If a best value procurement procedure was used as an alternative:				
	(1)	Was the political subdivision eligible to choose the best value contracting system based on the Minn. Stat. § 16C.28, subd. 1a phases [see page 4-1]?			
Minn. Stat. §§ 123B.52, subd. 1b; 375.21, subd. 1b; 412.311, subd. 2, and 471.345, subds. 3a, 4a, and 5	(2)	Was the contract a contract for construction, building, alteration, improvement, repair or maintenance?			
§ 16C.28, subd. 1c	(3)	Did the solicitation document state the relative weight of price and other selection criteria?			
	(4)	Was the award made to the vendor or contractor offering the best value applying the weighted selection criteria?			

Minn. Stat. Section	CONTRACTING - BID LAWS		Yes	No	Workpaper Reference
	(5)	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).			
	2.	Contracts from \$25,000 to \$100,000 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 \$100,000 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; 375.21, subd. 1b; 412.311, subd. 2, and 471.345, subds. 3a, 4a, and 5	b.	Best value procurement alternative			
§ 16C.28, sub. 1a		If a best value procurement procedure was used as an alternative:			
	(1)	Was the political subdivision eligible to choose the best value contracting system based on the Minn. Stat. § 16C.28, subd. 1a phases [see page 4-1]?			
Minn. Stat. §§ 123B.52, subd. 1b; 375.21, subd. 1b; 412.311, subd. 2, and 471.345, subds. 3a, 4a, and 5	(2)	Was the contract a contract for construction, building, alteration, improvement, repair or maintenance?			
§ 16C.28, subd. 1c	(3)	Did the solicitation document state the relative weight of price and other selection criteria?			
	(4)	Was the award made to the vendor or contractor offering the best value applying the weighted selection criteria?			

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	(5)	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; 375.21, subd. 1b; 412.311, subd. 2, and 471.345, subs. 3a, 4a, and 5	b.	Best value procurement alternative			
§ 16C.28, sub. 1a	If a best value procurement procedure was used as an alternative:				
	(1)	Was the political subdivision eligible to choose the best value contracting system based on the Minn. Stat. § 16C.28, subd. 1a phases [see page 4-1]?			
Minn. Stat. §§ 123B.52, subd. 1b; 375.21, subd. 1b; 412.311, subd. 2, and 471.345, subs. 3a, 4a, and 5	(2)	Was the contract a contract for construction, building, alteration, improvement, repair or maintenance?			
§ 16C.28, subd. 1c	(3)	Did the solicitation document state the relative weight of price and other selection criteria?			
	(4)	Was the award made to the vendor or contractor offering the best value applying the weighted selection criteria?			
	(5)	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:				

Minn. Stat. Section	CONTRACTING - BID LAWS	Yes	No	Workpaper Reference
	1. Was the purchase a purchase of supplies, materials, or equipment, and <u>not</u> 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.03, subd. 3	D. Alternative Dissemination of Bids and Requests			
	If, as an alternative to publishing them in a newspaper, a political subdivision disseminated solicitations of bids, requests for information or requests for proposals by using a Web site or recognized industry trade journals:			
	1. Did the political subdivision 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 political subdivision 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?			
§ 471.345, subd. 5a	E. 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	F. 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?			

Minn. Stat. Section	CONTRACTING - BID LAWS			Yes	No	Workpaper Reference
§ 471.345, Subd. 15	G. 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. <u>See</u> Minn. Stat. §§ 471.345, subsd. 5b, 8, 10, 11, 12, 13, and 19; and 400.04.					
§ 471.35	H. 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. (<u>See</u> 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 \$75,000.					
	a. Were bonds received for all contracts greater than \$75,000?					
	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.					
	For school district contracts limited to the purchase of a finished tangible product, <u>see</u> note in Part II.D., <u>infra</u> .					
§ 471.6161	I. Group Insurance					
	Any political subdivision that provides group insurance for 25 or more employees must comply with certain bidding requirements in contracting for or renewing said insurance.					
	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?					

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	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	J.	Public Safety Equipment Purchase or Lease (for 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 <u>used, and</u>				
	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, <u>and</u>				
	3.	was the equipment clearly and legitimately limited to a single source of supply?				
Part II. Laws Relating to Specific Municipalities						
§ 375.21, subd. 1; for Road Construction Contracts, <u>see also</u> § 160.17	A.	Counties				
	1.	Advertisement for Bids. (For sales of personal property, <u>see</u> 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, <u>see</u> 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?				
	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:				

Minn. Stat. Section	CONTRACTING - BID LAWS	Yes	No	Workpaper Reference
	(1) Were bids or proposals advertised in the county's official newspaper, on the county's Web site, or in a recognized industry trade journal?			
	(2) If the County posted on its Web site 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 Web site or in the trade journal?			
	(3) Did the county publish in the official newspaper, on the Web site 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?			
	b. If the contract was not awarded to the lowest bidder, were reasonable and appropriate reasons documented in the minutes?			
	c. Were the names of the bidders and the amount of the bids put on record?			
	d. Was the contract executed in writing?			
<u>See also</u> § 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?			
§ 375.21	4. Emergency Exceptions to bidding.			
	a. In case of an emergency arising from the destruction or impassability of road 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.			
§ 375.22	b. In 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:			

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	(1) Were bids advertised for in the official newspaper of the county for three consecutive weeks? (For alternative methods, <u>see</u> 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?			
	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 ordinances regarding minimum area, shape, frontage, or access?			
	(2) Were all owners of adjoining land given written notice at least 30 days before the sale?			
§ 103E.705, subd. 5	6. Drainage Systems.			
	a. If the estimated cost of repairs and maintenance of one drainage system for one year will be less than the greater of \$100,000, or \$1,000 per mile of open ditch in the ditch system, the drainage authority may have such work done without advertising for bids or entering into a contract. Were these conditions met?			
§ 412.311	B. Statutory Cities			
	1. Advertisement for Bids.			
	a. Was the request for bids published at least once in the official newspaper? (For alternative methods, <u>see</u> section I.D., above.)			
	b. Was the notice published at least ten days in advance of the last date for submission of bids?			

Minn. Stat. Section	CONTRACTING - BID LAWS	Yes	No	Workpaper Reference
	2. Was the contract awarded to the lowest responsible bidder?			
	3. If the contract was not awarded to the lowest bidder, were reasonable and appropriate reasons documented in the minutes?			
§ 365.37; for Road Construction Contracts, <u>see also</u> § 160.17	C. Towns			
	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, <u>see</u> 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?			
	4. If the contract was not awarded to the lowest bidder, were reasonable and appropriate reasons documented in the minutes?			
§ 123B.52, subd. 1	D. Schools (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, <u>see</u> 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.			

Minn. Stat. Section	CONTRACTING - BID LAWS	Yes	No	Workpaper Reference
§ 123B.52, subd. 1	3. 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	4. 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	5. 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	6. 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?			

Minn. Stat. Section	CONTRACTING - BID LAWS	Yes	No	Workpaper Reference
§ 123B.52, subd. 6	7. 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 school 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, or the family of a student residing in the district whose total family income meets the federal definition of poverty?			

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Part III. Audit Conclusion
<p>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.</p> <p>Conclusion:</p>