

CONTRACTING - BID LAWS

LEGAL COMPLIANCE MANUAL

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. Beginning August 1, 2000, the statute sets the basic requirements for governmental subdivisions as set forth below. (For pre-August 1, 2000, contracts, apply Section 4 from the 1999 Legal Compliance Audit Guide.)

A. For Municipalities of Less Than 2,500 Population.

1. For contracts over \$35,000--sealed bids, solicited by public notice and subject to the particular requirements of the governmental subdivision.
2. For contracts from \$10,000 to \$35,000--sealed bids or direct negotiation, with two quotations whenever possible.
3. For contracts of \$10,000 or less--open market or quotations (with at least two contract quotations, if practicable).

B. For All Other Municipalities.

1. For contracts over \$50,000--sealed bids, solicited by public notice and subject to the particular requirements of the governmental subdivision.
2. For contracts from \$10,000 to \$50,000--sealed bids or direct negotiation, with two quotations whenever possible.
3. For contracts of \$10,000 or less--open market or quotations (with at least two contract quotations, if practicable).

Minn. Stat. Section	CONTRACTING - BID LAWS	Yes	No	Workpaper Reference
Part I. Uniform Laws - Applies to All Municipalities				
(Note: For pre-August 1, 2000, contracts, apply Section 4 from the 1999 Legal Compliance Audit Guide.)				
§ 471.345, subd. 3	<p>A. For municipalities of less than 2,500 population</p> <p>The estimated contract amount determines whether sealed bids or quotations are required.</p> <p>1. Contracts over \$35,000</p> <p>a. Have all contracts estimated to exceed \$35,000 been let on sealed bids?</p> <p>b. Have the bids been solicited by public notice?</p> <p>c. Are the bids on file? (<u>See</u> Introduction section entitled "Destruction of Records," pages iii through iv.)</p>	_____	_____	_____
§ 471.345, subd. 4	<p>2. Contracts from \$10,000 to \$35,000 can be made on sealed bids or by direct negotiation based on quotations.</p> <p>a. Have all contracts estimated to exceed \$10,000 but not to exceed \$35,000 been let on sealed bids or negotiated quotes?</p> <p>b. If sealed bids were used, were the requirements of A.1. met?</p> <p>c. If quotations were used and obtaining two or more quotes was possible, were two or more quotes obtained?</p> <p>d. If quotations were used, were the quotations kept on file for at least one year?</p>	_____	_____	_____
§ 471.345, subd. 5	<p>3. Contracts estimated to be \$10,000 or less may be made either upon quotation or in the open market. If quotations were used, are they on file?</p>	_____	_____	_____
§ 471.345, subd. 3	<p>B. For all other municipalities</p> <p>The estimated contract amount determines whether sealed bids or quotations are required.</p> <p>1. Contracts over \$50,000</p> <p>a. Have all contracts estimated to exceed \$50,000 been let on sealed bids?</p> <p>b. Have the bids been solicited by public notice?</p> <p>c. Are the bids on file? (<u>See</u> Introduction section entitled "Destruction of Records," pages iii through iv.)</p>	_____	_____	_____

Minn. Stat. Section	CONTRACTING - BID LAWS	Yes	No	Workpaper Reference
	<p>Part I. Uniform Laws - Applies to All Municipalities (Continued)</p> <p>2. Contracts from \$10,000 to \$50,000 can be made on sealed bids or by direct negotiation based on quotations.</p> <p>a. Have all contracts estimated to exceed \$10,000 but not to exceed \$50,000 been let on sealed bids or negotiated quotes?</p> <p>b. If sealed bids were used, were the requirements of B.1. met?</p> <p>c. If quotations were used and obtaining two or more quotes was possible, were two or more quotes obtained?</p> <p>d. If quotations were used, were the quotations kept on file for at least one year?</p>			
§ 471.345, subd. 5	3. Contracts estimated to be \$10,000 or less may be made either upon quotation or in the open market. If quotations were used, are they on file?			
§ 471.345, subd. 5a	C. 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	D. If the municipality contracted for the purchase of supplies, materials, or equipment without regard to competitive bidding requirements, was the purchase through 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?			
§ 471.35	E. Other Considerations			
	1. Specifications on contracts. Were the specifications written so as not to exclude all but one type or kind of supplies or equipment?			
§ 574.26	2. Interest in contract. (<u>See</u> Conflicts of Interest Section, page 2-1.)			
	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.			

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	<p>Part II. Laws Relating to Specific Municipalities (Continued)</p> <p>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?</p> <p>d. Did the published notice include the time and place of awarding the contract?</p> <p>e. Did the published notice include a brief description of the work?</p> <p>2. Awarding the Contract</p> <p>a. Was the contract awarded to the lowest responsible bidder?</p> <p>b. If the contract was not awarded to the lowest bidder, were reasonable and appropriate reasons documented in the minutes?</p> <p>c. Were the names of the bidders and the amount of the bids put on record?</p> <p>d. Was the contract executed in writing?</p> <p>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?</p> <p>3. Emergency Exceptions</p> <p>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.</p> <p>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.</p>			
<p><u>See also</u> § 574.26</p>				
<p>§ 375.21</p>				
<p>§ 375.22</p>				

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	<p align="center">Part II. Laws Relating to Specific Municipalities (Continued)</p> <p data-bbox="370 235 1120 331">c. If any emergency exceptions were taken by the county, were the required board actions recorded in the official proceedings?</p> <p data-bbox="311 369 630 399">4. Sale of Real Property</p> <p data-bbox="370 432 760 462">If the county sold real property:</p> <p data-bbox="370 495 1130 558">a. Were bids advertised for in the official newspaper of the county for three consecutive weeks?</p> <p data-bbox="370 592 1091 688">b. Were bids advertised at least once in a newspaper of general circulation in the area where the property is located?</p> <p data-bbox="370 722 1097 819">c. Did the notice contain the time and place for considering proposals as well as a legal description of the real property involved?</p> <p data-bbox="370 852 1039 882">d. Was the real property sold to the highest bidder?</p> <p data-bbox="428 915 1130 1012">(1) If no, were reasons documented in the minutes and were the reasons stated reasonable and appropriate?</p>			
§ 373.01, subd. 1				
§ 103E.705, subd. 5	<p data-bbox="311 1054 594 1083">5. Drainage Systems</p> <p data-bbox="370 1117 1123 1306">a. If the estimated cost of repairs and maintenance of one drainage system for one year will be less than the greater of \$50,000, 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.</p>			
§ 412.311	<p data-bbox="253 1348 506 1377">B. Statutory Cities</p> <p data-bbox="311 1411 652 1440">1. Advertisement for Bids</p> <p data-bbox="370 1474 1110 1537">a. Was the request for bids published at least once in the official newspaper?</p> <p data-bbox="370 1570 1101 1633">b. Was the notice published at least ten days in advance of the last date for submission of bids?</p> <p data-bbox="311 1667 1117 1696">2. Was the contract awarded to the lowest responsible bidder?</p> <p data-bbox="311 1730 1110 1827">3. If the contract was not awarded to the lowest bidder, were reasonable and appropriate reasons documented in the minutes?</p>			

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Part II. Laws Relating to Specific Municipalities (Continued)					
§ 365.37; for Road Construction Contracts, see also § 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?	_____	_____	_____
		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				
		1. Advertisement for Bids			
		a. Was two weeks published notice of the request for bids made in the official newspaper?	_____	_____	_____
		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.					

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§ 123B.52, subd. 1	<p>Part II. Laws Relating to Specific Municipalities (Continued)</p> <p>3. Are records retained on all bids with:</p> <ul style="list-style-type: none"> a. the names of the bidders; b. the amounts of the bids; c. an indication as to the successful bidder? <p>4. Tie Low Bids or Single Bids</p> <ul style="list-style-type: none"> 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. <ul style="list-style-type: none"> (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. <ul style="list-style-type: none"> (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	<p>5. Direct Negotiated Contracts</p> <ul style="list-style-type: none"> 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. <ul style="list-style-type: none"> (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? 			

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§ 123B.52, subd. 6	<p align="center">Part II. Laws Relating to Specific Municipalities (Continued)</p> <p>6. School District Surplus Computers</p> <p>Did the school district dispose of 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?</p>	_____	_____	_____

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: _____
