

Best Practices Review

Contracting and Procurement in the Public Sector



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Preface

Last year we issued our first ever Best Practices Review entitled, *Cooperative Efforts in Public Service Delivery*. The review focused on ways to foster, craft and implement cooperative agreements in the public sector.

The second review, *Contracting and Procurement in the Public Sector*, builds upon what was learned in the first review by providing detailed steps that can help increase accountability, reduce liability, and encourage savings when contracting and procuring in the public sector. We hope that this review will be a tool for local officials as they navigate through the contracting and procurement process.

Overall, a best practices review's purpose is greater than just drawing attention to noteworthy programs; it should also provide useful information that all local governments can use to adapt successful programs to their community.

I would like to thank all of the participants who took part in the interviews and field visits as well as all of the local officials who took the time to fill-out our survey for this review. I would also like to thank the Topic Selection Advisory Committee for recommending this topic.

We hope that this review, as well as future best practices reviews, will help local government officials identify new and innovative ways to deliver government services more efficiently and effectively.



Pat Anderson
State Auditor

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Executive Summary

Starting in 2004, the Legislature gave the Office of the State Auditor responsibility to conduct “best practices reviews” of local government services in Minnesota. Previously, the Office of the Legislative Auditor carried out this responsibility. Building on the success of last year’s review of cooperative efforts in public service delivery, this year State Auditor Anderson has chosen the following topic recommended to her by the advisory committee: *Contracting and Procurement in the Public Sector*.

The goal of this year’s best practices review is to build on our previous review of cooperative efforts throughout the state in offering a comprehensive and practical guide to local government contracting and procurement.

The first part of the report presents background information on the process of contracting services and procuring goods. It describes reasons to contract and barriers that may discourage contracting, collaborative efforts that require contracts, and different types of contracts. It then identifies five key elements of successful contracting and procurement. Keeping these elements in mind while pursuing contracting and procurement ventures will enhance the best practices outlined in the second part of the report.

Recommended Best Practices

The second part of the report outlines steps to provide guidance in completing the contracting or procurement process. It includes examples of how different entities are using these steps to achieve success in their endeavors, and explanations of some issues that can be confusing. The State Auditor believes these steps represent the current best practices for successful contracting and procurement.

The first step involves determining whether or not to contract, and planning the project. This includes:

- Identifying potential services to be contracted
- Conducting a feasibility study
- Identifying support organizations
- Identifying any conflicts of interest

The second step involves soliciting bidders and awarding the contract. This includes:

- Determining the solicitation method needed
- Writing the solicitation document, if necessary
- Advertising or contacting vendors to request quotes, bids or proposals
- Evaluating the quotes, bids, or proposals
- Awarding/negotiating the contract

The third step involves managing the contract and monitoring the project performance, including:

- Assessing the need for training in project management and contract maintenance
- Establishing points of contact between the public entity and the contractor or vendor
- Monitoring the project against pre-established performance measures
- Addressing any disputes or problems

The fourth step involves wrapping up the project and finalizing the project file, including:

- Evaluating the project as a whole against the initial objectives of the project
- Ensuring that the project file is complete for future reference
- Being expedient in completing the summary phase

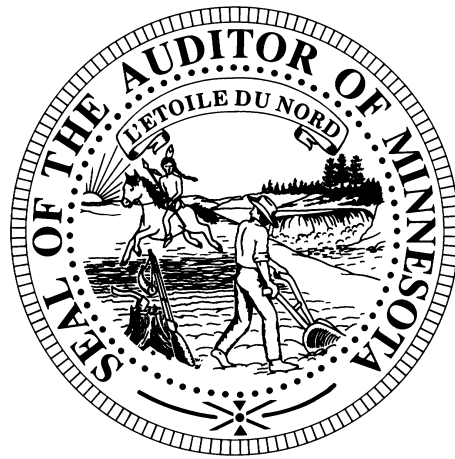
Recommendations

Three opportunities stood out as ways to strengthen the contracting and procurement processes throughout local government. These include:

1. **Project Management Training** - The State Auditor encourages organizations that support local governments to offer training on project management and contract maintenance. Project management and contract maintenance are important elements of the contracting process because they enable the local government to properly monitor and evaluate the vendor performance on contracts. None of the representatives from the organizations with whom we spoke could recall offering training on these concepts. Therefore, we recommend that this training be offered during annual meetings held by supporting organizations.
2. **Joint Membership in the State Purchasing Program** – The State Auditor encourages all counties to join the State’s Cooperative Purchasing Venture at the \$1,500 level so that all townships and fourth-class cities are able to make use of the “state contract” for free. The Auditor believes that many smaller entities could benefit from a membership in the program and that encouraging counties to join at the \$1,500 level will result in savings for many smaller communities.
3. **Road Contract Exemption** – The Auditor encourages the exploration of a limited exemption to current contracting law to allow towns to “piggy-back” on existing competitively bid road construction and maintenance contracts between a vendor and an adjacent local governmental entity without a pre-existing joint powers agreement. The purpose of this recommendation would be to allow towns to save time and money by taking advantage of the costs and terms of an existing contract.

Sample documents and templates of solicitation and contract documents are included in the appendices.

Best Practices Review
Contracting and Procurement
in the Public Sector



Background on Best Practices Reviews

Starting in 2004, the Legislature gave the Office of the State Auditor responsibility to conduct “best practices reviews” of local government services in Minnesota. Previously, the Office of the Legislative Auditor carried out this responsibility. The concept of conducting best practices reviews is inspired by the British Audit Commission, which conducts national studies in England and Wales to find “state of the art” techniques for the delivery of local government services.

Building on the success of last year’s review of cooperative efforts in public service delivery, this year State Auditor Anderson has chosen the following topic recommended to her by the advisory committee: *Contracting and Procurement in the Public Sector*.

Methodology and Approach

Research for the project began with a literature review to obtain background information on the topic and to determine industry standards for contracting and procurement methods in other states.

The State Auditor’s Office then conducted a survey of 3,531 local government entities in Minnesota, including cities, townships, counties, school districts, charter schools, and special districts to ascertain current practice throughout the state. Forty-six percent of the entities responded to the survey.

Table 1 presents the breakdown of survey respondents by type of entity. School districts had the highest percentage of respondents, with 52% of districts responding to the survey. Charter schools had the lowest percentage, with less than a quarter of schools responding. Of those entities that responded to the survey, 83% said that they hold contracts with other public, private, and nonprofit entities.

Table 1. Survey Respondents by Type

Type of Entity	Total Responded	Percent of Responded	Total Entities	Percent of Total Responded	Number with Contracts	Percent with contracts
Charter Schools	27	2%	112	24%	26	96%
Cities	403	25%	853	47%	333	83%
Counties	40	2%	87	46%	40	100%
School Districts	177	11%	343	52%	169	95%
Special Districts	145	9%	346	42%	117	81%
Townships	767	47%	1790	43%	613	80%
Unreported	59	4%			43	73%
Total	1618	100%	3531	46%	1341	83%

Note: The number of Special Districts does not represent the total number of Special Districts in the state (498). Since the State Auditor’s Office did not have contact information for all districts, the number reported includes only those to which a survey was mailed.

Based on the survey responses, staff conducted follow-up phone interviews with thirty entities, representative of each type and geographic region, engaging in identified best practices. In addition, staff met with several supporting organizations to discuss the ways in which they help local government with contracting and procurement. Finally, staff conducted site visits with a handful of entities to gather further information and examples of the contracting and procurement processes in place, and to discuss how those processes could be adapted by other entities to fit similar situations.

The goal of this year's best practices review is to build on our previous review of cooperative efforts throughout the state in offering a comprehensive and practical guide to local government contracting and procurement.

Contracting and Procurement in the Public Sector

All local governments in Minnesota purchase goods and services using some form of contract. When procuring and contracting for goods and services, local governments must follow various state laws that govern procurement, contracting, and bidding in the public sector. In addition to state laws, many local governments have policies in their charters or by-laws that introduce another layer of rules on the procurement and contracting process. While state laws and local rules dictate many elements of this process, local officials still have discretion on a variety of issues concerning contracting.

The most important statute regulating procurement and contracting in Minnesota is the Uniform Municipal Contracting Law (Minn. Stat. § 471.345). This law sets forth a framework to guide local governments on those rules and regulations they must follow when entering into contracts for the purchase of goods and services. It can be argued that the law itself represents a series of best practices in contracting that help reduce liability, prevent fraud, and encourage low costs.

In general, 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, the law dictates that:

1. For contracts estimated to have a value in excess of \$50,000, local governments must use sealed bids¹, solicited by public notice, and awarded to the lowest responsible bidder. Bids should be retained for the period specified in the municipality's records retention schedule.
2. For contracts estimated to be worth between \$10,000 and \$50,000, local governments can either use the sealed bid process or directly negotiate based on quotations. Two or more quotes must be obtained if possible, and the quotations must be kept on file for at least one year.
3. Contracts with estimated values of \$10,000 or less may be made either upon quotation or in the open market. If quotations are used, at least two quotes must be obtained if practicable, and the quotation must be kept on file for at least one year.

Reasons to Contract

Decreasing state aid and a push to streamline government have led local government entities to seek out new ways to maintain or raise service levels while lowering costs. One answer has been to try to make government more efficient by contracting out the delivery of services that were once the sole domain of the local government. Alternatives to providing services directly include contracting with other public, nonprofit, and private

¹ As an alternative, the law now allows electronic reverse auction purchases and electronic sales, if certain conditions are met. See Minn. Stat. § 471.345, subs. 16, 17 (2004).

entities to purchase or provide services, and to procure goods. These partnerships have in many cases resulted in significant savings for local governments.

A League of Minnesota Cities report stated that 275 cities that responded to a recent survey “reported a total of 1,682 unique agreements among cities, between cities and other governments, and between cities and non-governmental organizations.” Some of the most common agreements reported included fire and police services, park and recreation, joint purchasing, planning, and administration agreements.²

In a survey of over 3,500 local government units conducted by the State Auditor’s Office for this report, 83% of the respondents said that they contract with other entities to provide or receive services. Thirty-one percent of respondents listed the ability to provide a service not otherwise available as the primary reason for contracting, followed by a desire to decrease the cost of service delivery.

Contracting for service delivery can result in additional benefits beyond cost savings, such as increased innovation, service quality, and productivity.

Barriers to Contracting

Just as there are reasons why local government units are contracting more services and using joint procurement methods, there are also a number of factors that entities cited in their survey responses as barriers to contracting.

Location. Many entities, especially in rural areas, list two barriers to contracting related to location. First, the distance between local governments has been cited as a frequent barrier to collaboration. Cities or towns that are far apart find it difficult to share resources. Second, rural entities note a lack of available or interested providers to ensure a competitive process or price. They say they often have only one bidder for projects.

Resistance to change. Some entities see no need to engage in contracting. Maintaining the status quo may be better than complicating systems that work by trying something new. In addition, many rural entities have had the same arrangement for some services for years, and are uninterested in changing or complicating the existing relationships.

Political barriers. There are also political reasons that entities choose not to contract for services. An example might be a township that believes entering into joint service delivery with a nearby city may lead to future annexation by the city. Another example might be a city that believes it may be surrendering an integral part of its identity by ceasing to provide a certain service, such as maintaining its own fire department.

² League of Minnesota Cities, *State of the Cities Report 2004*, p. 8.

Cost. Contracting a service may not yield appreciable savings, or it may create new costs due to the amount of monitoring needed to ensure quality. In some instances, it may not be cost-effective to change the method of service delivery.

Accountability. Some entities cite a preference for keeping services local, fearing that quality will suffer from a lack of direct control. The entity contracting the service must remember that it is still accountable to the public for provision of the service regardless of who is delivering the service.

Service Delivery and Purchasing Arrangements Requiring Contracts

There are a variety of types of contracts to which local governments may become a party. The following are some of the more common, though not an exhaustive list, and examples of some of the arrangements that utilize these types of contracts.

Joint Powers Agreements

Cooperative efforts between local governments in Minnesota are generally formalized by joint powers agreements as outlined in Minn. Stat. § 471.59. The joint powers law allows political subdivisions to cooperate in a wide variety of ways. There are three basic structural models: a *consolidated service* approach; a *service contract* approach; or a *mutual aid* approach.

Insurance Trusts

Some of the major service organizations of Minnesota local government, including the League of Minnesota Cities, the Association of Minnesota Counties, the Minnesota School Boards Association, and the Minnesota Association of Townships, manage special joint powers arrangements in the form of insurance trusts.³ These insurance trusts are joint powers entities in which political subdivisions share their power to self-insure. They are exempt from some insurance regulations.⁴ Because of these special provisions, it makes sense to discuss the insurance trusts outside the general discussion of the three main types of joint powers arrangements.

These trusts allow local governments to contribute premiums into a jointly owned fund rather than paying premiums to buy insurance from an insurance company. The money in that fund is then used to pay for members' claims, losses, and expenses. Generally, the trusts offer property/casualty and workers' compensation insurance to members. Other policies include life, disability, and long-term care.

³ See Minn. Stat. § 471.981 and Minn. Stat. § 471.59

⁴ See Minn. Stat. § 471.982, subd. 3

Consolidated Service

Under the consolidated service approach, two or more local governments agree under the joint powers law to create a joint board consisting of one or more representatives from each of the participating local governments. Each entity provides financial support to the joint board that then manages the operations. In some cases, the board employs necessary staff, and owns or leases equipment and buildings. In other cases, one entity supplies the staff and resources necessary.

LOGIS⁵

The Local Government Information Systems Association, or LOGIS, is an example of a consolidated service arrangement. Its membership currently includes 32 local governments that use its array of application development, IT consulting, training, and web-hosting services.

The LOGIS consortium is controlled by its members. LOGIS' Board of Directors is composed of one representative from each agency. All funding decisions are controlled by the members through an annual budget, an annual work plan, and by action of an Executive Committee, acting as officers of the Board. This committee meets monthly and establishes operating policies, sets service charges, and approves expenditures.

Service Contract

Under the service contract approach, one entity maintains and manages the operation and the other entity simply purchases services from the first entity. There are many examples of local governments contracting with another to provide services such as police or fire protection, snow plowing, and computer support services. Typically, the agreement will specify the level and type of service to be provided, performance standards, and so on.

Mutual Aid

Local governments may choose to voluntarily agree to provide a service to a neighbor because doing so makes economic sense and improves the level of service. For example, many police and fire departments in Minnesota have mutual aid agreements with the departments of neighboring communities. These agreements provide that in the event of a large or serious emergency, the departments will assist one another to the extent necessary.

Services Cooperatives

Another type of cooperative contracting among local governments in Minnesota is the service cooperative.

⁵ Information taken from LOGIS website at www.logis.org.

Service cooperatives were established by the Minnesota legislature approximately thirty years ago with the geographic boundaries matching the thirteen economic development regions created by the Regional Development Act of 1969. Some of the regions consolidated leaving ten service cooperatives in the state.

The primary purpose of the cooperatives is to assist with regional planning and meeting the specific needs of its members that are better provided by the cooperative rather than individual entities. Members dictate the priorities for the services that are provided by the cooperative. Many cooperatives offer things such as health insurance pooling, access to training, and group purchasing.

Full membership is limited to public school districts, cities, counties, and other governmental units as defined by statute. Participating members fund the cooperatives, with additional financial assistance from private entities and state and federal governments.

National Joint Powers Alliance

The National Joint Powers Alliance (NJPA), formerly the North Central Service Cooperative (NCSC), is one of Minnesota's member-owned service cooperatives. The alliance was created under the service cooperatives law.⁶ NJPA's members enter into a joint powers agreement with each other, allowing them to purchase off of the alliance's nationally bid contracts without regard to their competitive bidding requirements since the purchase is conducted through a national association's purchasing alliance.

Contracts with Non-Profit and For-Profit Entities

In some cases, the non-profit and private sectors offer excellent opportunities for contracting. Some of the reasons for these contracts include: cost savings, increased responsiveness/better service, access to expertise and technology not available in the public sector.

There are a number of examples in Minnesota today including education cooperatives, roads and other public works construction, social service providers, etc. These contracts work best when services can be easily specified, there is competition among suppliers, and the service includes indirect elements or steps that citizens do not experience.⁷

Some concerns about these contracts are:

- Is there enough competition in the marketplace to ensure the best price or does the private or non-profit entity have a monopoly in the local marketplace?

⁶ See Minn. Stat. § 123A.21.

⁷ League of Minnesota Cities, *State of the Cities Report 2004*, p. 10.

- How can the local government balance the contractor's profit-motive and its own accountability to the taxpayers?
- Can public employees learn the skills to be able to deliver the service in-house in the future if desired?

Joint Purchasing

One type of cooperation that is encouraged in state law is that of joint or cooperative purchasing. In particular, the Uniform Municipal Contracting Law provides exceptions to the competitive bidding requirements if the purchase is 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.⁸ Joint purchasing can also be accomplished through a joint powers agreement.⁹ There are a number of opportunities for local governments to participate in cooperative purchasing alliances in Minnesota. Examples of these include:

Minnesota State Cooperative Purchasing Venture (CPV)¹⁰

The Cooperative Purchasing Venture is a joint powers members-only program that enables participants to purchase goods and services under contract terms established by the State of Minnesota's Department of Administration.

The program offers an easy way for local governments to save both time and money by reducing or eliminating product specification research time; enhancing and simplifying product selection, achieving maximum value; minimizing time spent identifying new vendors; and reducing or eliminating the time and costs to award, process and maintain a contract.

All governmental units are eligible for CPV membership. A "governmental unit" is defined as any city, county, town, school district, other political subdivision of this or any state, another state, and any agency of the state of Minnesota or the United States, and includes any instrumentality of a governmental unit.

Annual membership runs from July 1st to June 30th and carries a fee of \$500. In addition to the individual membership, the program offers two options whereby counties can pay a lump sum on behalf of their smaller local governments. The first such option costs \$900, and pays for membership for all townships within a county's border. The second option costs \$1500, and includes membership for all townships and fourth-class cities within the county. Counties can choose to pass that cost on to towns and cities as they see fit.

⁸ See Minn. Stat. § 471.345 subd. 15.

⁹ See Minn. Stat. § 471.59.

¹⁰ Taken from the Materials Management Division website, <http://www.mmd.admin.state.mn.us/cpv2.htm>

Purchasing through the CPV involves a simple three-step process:

1. Look up the commodity in the index on the website (www.mmd.admin.state.mn.us).
2. Retrieve a copy of the contract release.
3. Place an order directly with the vendor.

A variety of products are available through the program, from large items that cost tens of thousands of dollars to smaller, less expensive items that could be found at the local office supply store. Some of the items available through the program include trucks or other heavy machinery, computers, police and fire equipment, office furniture and paper supplies, among many other things. A full list of the available contracts can be obtained by contacting the Materials Management Division of the Department of Administration.

US Communities Government Purchasing Alliance

This is a national purchasing alliance sponsored by the Association of School Business Officials International (ASBO), the National Association of Counties (NACo), the National Institute of Governmental Purchasing (NIGP), the National League of Cities (NLC), and the United States Conference of Mayors (USCM). This organization has no membership fees.

The program offers competitively solicited government contracts and meets the requirements of Minnesota's Uniform Municipal Contracting Law.¹¹ The purchasing alliance currently has more than 8,000 participating governmental agencies and has a national advisory board of public purchasing professionals.

¹¹ See Minn. Stat. § 471.345 subd. 15.

Local Government Purchasing¹²

Local governments purchase a wide variety of items that range in price from a few dollars to several million dollars. While certain competitive-bidding procedures exist for purchases over a certain threshold, local governments usually only need to strike a balance between quantity, quality, and price. The following section describes various models for purchasing goods in the public sector.

Price Agreements

Local governments often use price agreements to acquire items they frequently purchase in small quantities. A price agreement is a contract between a local government and a merchant. Under the agreement, the merchant agrees to supply all the local government's requirements for the specified commodities during the period of the agreement. The price may be fixed or variable, such as a fixed discount from market price. The entity usually estimates its probable needs even though it is not obligated to purchase any definite quantity. Price agreements expedite delivery, reduce paper work, and generally result in lower prices.

Depending on the commodity and the frequency of purchases, the governing body may or may not require separate requisition forms. The board or council should establish policies and procedures, however, to prevent the local government from overspending its budgetary appropriation.

Central Storage

Some local governments establish a central storehouse of goods. This may help the entity get the lowest possible wholesale prices, but consideration should be made regarding the costs and risks of storage. For many commodities, the price-agreement method may be better and more economical.

Lease-Purchase Agreements

Municipalities may lease real or personal property with an option to buy under a lease-purchase agreement.¹³ For the purpose of the bid requirements, the amount of the contract must include the total of all lease payments for the entire term of the lease. In order to avoid statutory debt requirements, the local government must have the right to terminate a lease-purchase agreement at the end of any fiscal year during its term, and should be certain that any lease-purchase agreement contains language that gives it this right.

¹² This section is adapted from the League of Minnesota Cities' publication, *Handbook for Minnesota Cities* (December 15, 2004 edition). Some material also reflects the Leagues' research memo, *Competitive Bidding Requirements in Cities*.

¹³ See Minn. Stat. § 465.71.

Cooperative Purchasing

Local governments may realize savings from bulk discounts by joining together with one or more other governmental units to make purchases. The joint-powers law authorizes cooperative purchasing.

Under these programs, several governmental units can authorize one government to solicit bids and provide for the purchase at the option of each participating governmental unit. Once the parties involved in the joint powers agreement agree on the specifications of the item, one governmental unit may advertise for bids on behalf of all the entities that are parties to the agreement. Rather than specifying a set number of items, the advertising local government will advertise for “... up to (*number*) of (*item*).” This way, each participating local government can make the final decision on whether to purchase the items from the successful bidder.

Many local governments also purchase a variety of equipment and supplies from a state contract. The Department of Administration and the Department of Transportation operate cooperative-purchasing programs that local governments can join for a small fee. Examples of other cooperative purchasing opportunities in the state include the Hennepin County Purchasing Cooperative and the ten service cooperatives throughout the state. While these cooperative ventures offer potential savings to their members, local governments should make sure that they meet the normal bidding requirements set forth in state law, local charters and rules.

Common Misconceptions of the “State Contract” and Other Cooperative Purchasing Arrangements

As part of marketing, vendors sometimes say a local government can purchase from them without bidding because they are on the “state contract” or they will sell at the state contract price. Local governments should beware of this approach.

The real name of the state contract is the Cooperative Purchasing Venture. It is a members-only, joint powers program operated by the Minnesota Department of Administration. To purchase through it, local governments must join by paying a \$500 annual membership fee. (Counties can also choose one of two options whereby they pay a lump sum for smaller local governments within their borders, as discussed in the above section on the CPV.)

Many other cooperative purchasing arrangements exist besides the CPV. A local government must join and follow the rules of a purchasing cooperative if it wishes to avoid the normal bidding requirements set forth in the Municipal Contracting Law. A local government cannot simply purchase at a cooperative contract price or from a cooperative contract vendor without joining the cooperative.

In addition, local ordinance or charters may have additional requirements or prohibit the government from using cooperative purchasing arrangements to avoid the competitive bidding laws. Also, there is no guarantee that the negotiated price of a cooperative is the lowest price available.

Emergency Purchasing

Although competitive bidding laws require certain contracts to be let using a competitive bidding process, there are some limited exceptions from this requirement if a genuine emergency exists.

During a properly declared emergency, the governing body of a political subdivision may enter into contracts without complying with the bidding laws.¹⁴ Before deciding that an emergency exists, the governing body should consult its legal counsel.

Making Purchases

When not using the competitive bid process or purchasing from the imprest cash funds, all purchases should adhere to the following guidelines.

1. The department or person needing the item should prepare a requisition form. The form should include a description of the product, quantity, applicable specifications, and any similar information. The form should go to either the purchasing agent or the clerk for presentation to the council.
2. The purchasing agent or personnel responsible for making the purchase should see whether the budget has sufficient resources to pay for the purchase. If there is not enough money in the budget, the requisition should be cancelled or the governing board or council should modify the budget to make the funds available.
3. After completing the first two steps, the purchasing official may then proceed to acquire the requested item.
4. If bids are required or the requesting individual does not have the authority to make the purchase, the requisition should go back to the governing body for action.
5. After the local government has received the item and tested compliance with the specifications, the entity may process and pay the bill.

Inspection and testing

Before a local entity pays for purchased items, someone should determine whether the items conform to the local entity's specifications. Normally, the purchasing agency or an employee in the department receiving the item performs this procedure.

Employees can easily test many products by counting, measuring or weighing. In other cases, the local government may need to have an outside agency perform the tests. In many cases, local governments may adopt the specifications of the federal government and then require potential suppliers to state whether their products meet those specifications.

¹⁴ League of Minnesota Cities, Handbook for Minnesota Cities (10th ed.). p24-20, discussing Minn. Stat. § 12.37. Please note that the handbook provides information relevant to cities only. Please check entity-specific sources, as additional provisions may apply to other local government entities.

Specific Contract Types

Once a local government has decided to contract for a service or make a major purchase, it needs to decide what type of contract instrument it should use. The following list provides a brief overview of the possibilities.¹⁵ Local governments should note that not all types of entities are authorized to use all types of contracting methods listed.

Cost-Plus Contracts

Municipalities may not make cost-plus contracts for construction work of any kind. Cost-plus contracts are those in which the governing body agrees to pay the contractor for all costs the contractor incurs on the project plus some additional sum of money. In effect, there is no competition on the costs of labor or materials and no indication of how much work is required or will be done. As a result, there is no basis for comparing the bidders except on the percentage of overhead and profit. The Attorney General has advised that a bid on a cost-plus basis does not meet the statutory provisions for competitive bidding.

Total-Cost Bidding

Traditional bidding on an item of equipment has focused exclusively on the purchase price. This method has the advantage of simplicity and in many cases is adequate to ensure the lowest overall cost.

In making some purchases of equipment, however, lowest purchase price bidding may ignore other important elements of the cost. To take account of these costs, some local governments have used a method known as total-costs bidding. Under this system, the city considers all of the costs of purchasing, owning, operating, maintaining the equipment it will purchase. Specifications require vendors to bid not only the initial price of the equipment, but also a number of minimum after-purchase costs for a specific period, such as maintenance. The bid is generally backed by a bond to provide restitution in case of non-performance by the vendor.

Total-cost bidding is not specifically authorized by statute in Minnesota. As such, arguments have been made that such bidding violates competitive bidding requirements because it restricts competition. The Minnesota Supreme Court has never passed upon the validity of such bidding, although it has held that a council has reasonable discretion in determining who is the lowest responsible bidder.

The Attorney General has issued mixed opinions regarding total-cost bidding. It was upheld in a situation where bidders were required to include both a provision for a guaranteed minimum repurchase price and for a guaranteed maximum repair cost. The reason behind this conclusion was that such specifications were reasonably designed to

¹⁵ This section is adapted from the League of Minnesota Cities' publication, *Handbook for Minnesota Cities* (December 15, 2004 edition). Some material also reflects the League's research memo, *Competitive Bidding Requirements in Cities*.

give all contractors an equal opportunity to bid. In addition, the specifications seemed to ensure taxpayers would get the best bargain for the least money.

Design/Bid/Build Contracts

The design/bid/build contract procedure is the most traditional type used for building construction, public works, and engineering projects. In this method, an entity contracts with an architect who designs the building. The architect's drawings are then used as the specifications to advertise for bids on the construction of the building. The entity contracts with the winning bidder to build the building.

The strength of this type of contract is that it allows the local government to plan the entire building before the construction begins. It also allows for some follow-up between the contractor and the architect.

The weakness of this type of contract is that disagreements can arise between the local government, the architect, and the general contractor because of competing interests. For example, the architect may not be aware of the most current costs of materials and procedures, or the costs could change significantly between the time the building was designed and the time the construction begins. This procedure is slow because the project must be entirely planned out and bid before the construction costs can be fixed.

Construction Manager

In this type of contract, the local government retains a construction manager who is responsible for overseeing the contractor or advising the local government if the local government is acting as the general contractor. Often, the local government will take the responsibility for purchasing the construction materials.

The strengths of a construction manager contract are that the municipality can avoid contractor mark-ups on the cost of materials, and the local government can have additional supervision and feedback on the architectural design and construction.

The weakness of a construction manager contract includes the possibility of higher administrative costs for the local government and possible delays because the contractor is not responsible for purchasing materials. There also can be more opportunities for disagreements among the parties.

Design/Build

In a design/build contract, the municipality hires a firm whose architect and contractor design and construct the building. The use of an architect or designer does not exempt these contracts from competitive bidding requirements. The Minnesota Court of Appeals found that a design/build contract for a municipal liquor store was a contract that was

subject to competitive bidding requirements.¹⁶ The Legislature also refused to approve a bill that would have exempted design/build contracts from competitive bidding.

The strengths of the design/build contract are that the construction and design costs are established early and the responsibility for the entire project is with one firm; thus, the architect and the contractor work together on the project. This type of procedure may also be faster because the construction can begin while the final design is still being finished.

The weaknesses of this type of contract are that the project may not be completely planned in advance, and the municipality may have less access to and control over the architect. Additionally, there is often little opportunity for outside checks and balances by other professionals because the responsibility for the project rests with one organization.

Lease-Purchase Agreements

Municipalities may lease real or personal property with an option to buy under a lease-purchase agreement. For the purpose of the bid requirements, the amount of the contract must include the total of all lease payments for the entire term of the lease. To avoid debt restrictions, the entity must have the right to terminate a lease-purchase agreement at the end of any fiscal year during its term, and should be certain that any lease-purchase agreement contains language that gives it this right.¹⁷

This type of arrangement can be attractive because the financing is considered a current expense and therefore does not count toward the overall debt limit of the entity. Another advantage is that a local government may get out of a lease if they are not happy with the quality or performance of the product.

A disadvantage of this type of arrangement is that the total cost of a lease may be greater than what it would be to purchase the item outright. This type of arrangement may also circumvent citizen input that would be necessary if bonds were issued for the purchase of a large item.

¹⁶ *W.V. Nelson Constr. Co. v. City of Lindstrom*, 525 N.W.2d 434 (Minn. Ct. App. 1997).

¹⁷ See Minn. Stat. § 465.71.

Contracting for Performance

Performance contracts clearly spell out the desired end-result expected of the contractor, but the manner in which the work is to be performed is left to the contractor's discretion. Contractors are given as much freedom as possible in figuring out how to best meet the government's performance objective. This type of contract is an output and outcome-based approach to contracting rather than an input based.

Performance-based contracting requires that government determine exactly what it needs to accomplish and to establish standards of performance and quality that become part of the contract. With those expectations clearly spelled out, the competition between multiple vendors assures that the government can demand and achieve the quality of services it desires. Many times, the process of defining performance expectations for a bid invitation or Request For Proposal leads to improved service quality even if local governments opt not to contract for the service.

Performance-based contracting can encourage good management by:

- Requiring an analysis of the purpose, process, and performance of a service.
- Providing incentives and opportunities for change, where change is needed. Management and labor practices grown stale and outdated often require some driving force to provide the impetus for change. Considering contracting out a service, or introducing competition and performance measures, provides just such an impetus.
- Demanding that performance standards be created and often introducing performance measures where none existed previously. Introducing these accountability mechanisms improves communication of expectations to persons doing the work, while also forcing decision makers to decide precisely what they want a program or service to accomplish.

Case Study: Chisago County

In Chisago County, an effort is underway to use the principles of outcome or performance-based contracting in the provision of social services. The primary goal of the effort is to develop performance measures that will allow the county to evaluate the effectiveness of programs and vendors. They see the process as a way to identify programs that are effective, improve program operations, help decide where to budget resources, and to judge objectively the work of vendors.

The county's health and human services staff have developed a framework that ensures that all service contracts that are let include outcome measures that can be used to evaluate the quality of the service. The county's procedure for writing vendor contracts involves work teams composed of those who operate and manage programs and activities. The job of these teams is to:

1. Identify the activities and resources that define the program;
2. Specify the outputs and outcomes expected to result from program operations; and,
3. Develop the methodology for collecting, analyzing, and reporting of information for use in making decisions.

The way this process is formalized in the actual writing of contracts is to create a matrix (see the example below) that is completed by answering the following series of questions:

- *The people we especially want to serve within this program area are ...? [inputs]*
- *What we want to see different or changed most for these individuals is that ...? [outputs]*
- *We will know this changes has occurred when...? [outcomes]*
- *We will get the information we need to know about these changes from...?*
- *We will take the following steps to accomplish this change...?*

According to those involved with the process, the keys to the success of the program are:

1. **Non-adversarial relationships with vendors.** The relationships should be business-like, but cordial. The goal of both the county and the vendor should be to improve the well being of the clients they are serving by regularly monitoring the progress being made toward achieving the outcomes agreed upon by both the vendor and the county.
2. **Avoiding top-down goal setting.** The language in the contract should be the result of a collaborative process involving the program managers of the county and the vendors who will be providing the service. By using a collaborative approach, the expectations and performance measures are clear to both the vendors and those who manage the contract.

Example of a Performance-Based Contracting Matrix

INPUTS	ACTIVITIES	OUTPUTS	OUTCOMES
<i>Resources dedicated to or consumed by the program</i>	<i>What the program does with the inputs to fulfill its mission</i>	<i>The direct products of program activities</i>	<i>Benefits for participants during and after program activities</i>
e.g. <ul style="list-style-type: none"> • Money • Staff and staff time • Facilities • Equipment and supplies 	e.g. <ul style="list-style-type: none"> • Provide job training • Provide apartment 	e.g. <ul style="list-style-type: none"> • Number served • Total hours • Number employed • Average wage 	e.g. <ul style="list-style-type: none"> • Improved employment situation • Living independently • Improved condition
Source: Chisago County Human Services Planning & Evaluation Staff.			

Key Elements of Successful Contracting and Procurement

As part of the best practices review, staff conducted interviews with several local government entities that appear to be achieving a high level of success in their contracting and procurement pursuits. Throughout the interview process, several elements surfaced as key pieces to the puzzle of successful contracting and procurement. Many of the barriers to contracting cited by rural entities can be addressed by adapting the following elements of successful contracting to their situations.

Clear and Consistent Methodology

One of the biggest struggles resulting from the growing trend toward contracting is that between centralized decision making and localized service delivery or product usage. While centralized planning creates a more efficient record keeping process, it can seem cumbersome to the end-user or site manager. Maintaining the balance between centralized purchasing and localized service provision necessitates a common understanding of the contracting or purchasing process from start to finish.

Especially in larger entities, it is important that all divisions operate under the same rules so that inconsistencies do not create future problems. For example, requirements upheld by one division or department and not by another could lead to inconsistent record keeping and confusion at minimum and fiscal mismanagement at the extreme.

To address the issue, Hennepin County's Purchasing Department engages in a shared contracting and procurement process. The department in need of the service or product contacts the Purchasing Department and the two work together to write the specifications that will be used to solicit bids. The Purchasing Department conducts the bidding process. Both departments evaluate the bids and the department in need makes a final recommendation of the chosen vendor to the Purchasing Department. Both departments play a role in the project and contract management. Working together, the departments ensure that the services contracted or goods purchased are meeting expectations both in terms of the schedule and budget, and in terms of the end-user satisfaction.

Well-trained, Dedicated Staff

The growing trend toward contracting for services means a switch from service delivery to project management for many employees of local governments. The two activities call for vastly different sets of skills in many cases. It should not be assumed that one could jump easily from one activity to the other. It should also not be assumed that one could engage in both activities concurrently. Where possible, employees whose duties include contracting should be dedicated to that role. Those duties should not be added on to an existing position. In order to ensure the best service delivery, all employees engaged in contracting should receive training in project and contract management.

Likewise, staff should be allowed ample time to sufficiently manage projects and contracts. Successful projects require good management. The City of Carlton, with a

full-time staff of five, determined that in order to successfully manage the growing number of projects and contracts, the City Clerk needed to dedicate more of her time to those efforts. The City hired a part-time office worker to handle some of the more routine clerical duties so that the Clerk was free to concentrate on the larger, more important contracting ventures.

Good Vendor Relationships¹⁸

The key to a good contracting experience is a good relationship with the vendor or contractor. A good vendor relationship contains integrity, trust, honesty, openness, fairness, and reliability on the parts of both parties.

Relationships containing these elements can bring about many benefits for local governments. First, developing strong vendor relationships leads to increased knowledge of vendor resources and skills, which can make their performance more predictable and assist in planning future projects. Second, strong relationships can ease dispute resolution and negotiations where integrity and trust have already been established. Third, vendor knowledge and mutual trust allow for streamlined implementation when the need for services is urgent. Finally, strong vendor relationships provide insight into where to put monitoring efforts.

The Human Services Department of Chisago County has achieved many of these benefits through their relationships with some of the contractors who provide services for youth mental health in the county. Through open communication and flexibility, their ongoing relationships have led them to find ways to deliver services more efficiently and with better results.

A word of caution: How friendly is too friendly?

Though a vendor relationship should be friendly, it should be approached as a business relationship first and foremost. The interests of the local government should always supersede any personal interests. As stated in Minn. Stat. § 471.87, it is generally a gross misdemeanor for a public officer authorized to make a contract to have a personal financial interest in the contract. A local government employee should not accept personal gifts from vendors or contractors.

To assist contracting and purchasing staff in dealing with vendors and contractors, it may be beneficial to create an ethics policy specific to the entity that expressly prohibits accepting of personal gifts, and provides guidelines for handling different situations.

Note: City and County officials are subject to Minn. Stat. § 471.895 banning gifts except “a trinket or memento costing \$5.00 or less.”

¹⁸ As presented in the training “Lessons Learned from Hennepin County’s Service Contracting,” delivered in Las Vegas, Nevada on April 18, 2002 by Jill Alverson and John Baron.

Thorough Documentation

Keeping thorough records of the contracting process is essential. In the event of a problem or a lawsuit, there is no way for the local government to defend its point of view if the process was not properly documented. Even if the standing handshake agreement has been in place for 25 years with no prior problems, it is better to be prepared in case a problem arises than to learn the hard way after a costly legal battle.

Even in the event that there are no problems, a good record of past projects will make the next round of contracting that much easier. All the necessary information about the project should be kept in one well-marked place. A project file should include a record of the initial decision making process, any bids or quotes, project management tools (progress reports, timelines, etc.), any communications between the contractor and the entity, all financial records for the project, and a final evaluation of the project and the contractor.

Records do not have to be complex. They can be officially submitted, typed and bound progress reports by the contractor, or they can be hand-written notes in the margins of a document. The important point is that there is a paper trail of the project that can be consulted in the future.

Project Management Based on Risk Assessment

All contracts should be regularly monitored against pre-established performance measures to ensure quality. Not all contracts, however, require the same level of monitoring. Given that each entity has different priorities, and that each contract has a different level of importance to the entity, contracts should be monitored as necessary to meet performance goals. The following are factors that can help determine the level of monitoring necessary for each contract:¹⁹

- Dollar amount
- Complexity of the contract
- Political or social importance of the contract
- Media or community interest
- Vendor experience
- History of problems

Evaluating the risk of a contract based on the above factors, each entity should do what makes sense for the entity and the contract. It doesn't make sense to contract out a project and then spend as much time and money as is saved on the contract letting and management. A good rule of thumb might be, after taking into account satisfying all statutory requirements, to maintain records such that someone else could open the contract files and understand how the project was contracted and where it now stands. The level of detail will be much less, for example, in a contract for applying gravel to five miles of road than it will be for building a new City Hall.

¹⁹ As presented in the training "Lessons Learned from Hennepin County's Service Contracting," delivered in Las Vegas, Nevada on April 18, 2002 by Jill Alverson and John Baron.

Best Practices: Steps to Contracting and Procurement

All local government entities, from the smallest to the largest, contract for services and procure goods. Some entities have a whole department devoted to contracting and purchasing, while others have only one staff person or are run entirely by volunteers. The contracting process can be confusing and overwhelming at times for many local governments. However, there are steps that can be taken to make the process work more smoothly and to ensure that any legal considerations have been met.

The following steps should serve to provide guidance when planning, implementing, and evaluating contracts or procuring goods. In addition to these steps, the information in the appendices of this report provides examples and sample documents that can be used as guides to creating new documents.

Step I: Determining Whether to Contract or Not

- Identify potential services to be contracted. Determine the services most likely to be successfully contracted.
- Conduct a feasibility study including a thorough cost analysis of current and potential service delivery.
- Identify support organizations that can help answer questions or provide sample materials.
- Identify any conflicts of interest and the appropriate procedures for handling such conflicts.

Identify Potential Contracting Opportunities

There are many ways to determine which services to contract for and which services to deliver in-house. For some entities, contracting for a particular service may be the only option, as they may not have the resources to deliver the service themselves. Thirty-one percent of the entities that responded to our survey said this was the primary reason for their contracting. For other entities, the decision may be a bit more complicated – a matter of evaluating potential cost savings, service quality, and the feelings of the general public, among other factors.

There are three basic steps that an entity must complete in determining which services to contract. The first step is to identify all services currently being delivered in-house. The second step is to create some scoring or analytical tool that can be used to rank the most likely candidates for contracting. The third step is to explore the feasibility of each service being considered. This process should be completed regularly to ensure the most effective form of service delivery.

The following is a list of the services most commonly contracted:²⁰

- Professional Services (e.g., Lawyers, Compensation Analysts, Graphic Designers, Engineers, or Auditors)
- Information Technology: support and systems development, software customization and installation
- Collection Services (e.g., Taxes or Child Support Enforcement)
- Employment Training or Retraining
- Management of Public Facilities (e.g., campgrounds or convention centers)
- Property Management
- Surveys and Forecasts
- Transit System Operation and Maintenance
- Janitorial Services
- Drug/Alcohol Abuse Treatment Centers
- Solid Waste Collection and Disposal
- Street Repair, Roadway and Bridge Maintenance and Construction
- Security Services
- Worker's Compensation Claims Management
- Fleet Management/Vehicle Maintenance
- Food Services (e.g., in Parks, Prisons, or Museums)
- Groundskeeping and Snow Removal
- Laundry Services
- Community-Based Counseling and Family Violence Shelters
- Pest Control
- Effluent Removal
- Office Equipment Maintenance
- Prison Construction and Management

Another consideration in the contracting process is who should determine what to contract. Entities should include various groups of stakeholders in the process. Stakeholders include public officials who oversee the entities and managers who determine annual planning and budgeting goals. Stakeholders also include current employees who have the best insight into the current method of service delivery and constituents who may be most impacted by a change in service delivery.

In an article for the National Association of Counties, Carl Neu, a national consultant on local governance and former city councilman in Colorado, states that in response to a growing disconnect between citizens and local governments that are viewed as wasteful and redundant, "Local governments have to institute processes that engage their constituencies and curry their support for what local governments are doing for them. They must also be seen as providing value, real value, in service delivery and performance."²¹

²⁰ As listed in the Government of Alberta's "Contracting for Performance," p. 4.

²¹ Five Mega-trends Redefining the Future of County Government

By Carl Neu, http://www.naco.org/Content/ContentGroups/Publications1/County_News1/20043/2-2-04/Other_Views.htm.

Case Study: Mankato School District

The Mankato School District demonstrates this type of constituent involvement in the formation and maintenance of their Quality Control teams. These teams consist of stakeholders from different areas of the schools. They generally range in size from about eight to twelve people. The function of these teams is to evaluate the areas in which they work, and to propose ideas for making their areas work more efficiently. The teams make recommendations, which are passed on to the Superintendent and then on to the School Board for approval.

Teams meet on a regular basis to discuss issues that demand attention. Items are included on an agenda for each meeting and addressed in order. Actions, or next steps, are determined and assigned to a team member. Items from past meetings are revisited. The team meetings result in progress reports that serve as visual representations of issues being addressed and actions being taken. As a result of these quality control teams, district employees express that they feel their opinions are considered and their experience is valued.

One such Quality Control team recently focused on the purchasing of cleaning supplies for the district. In the past, each school had purchased its own supplies based on individual preferences for specific products. In an effort to cut costs, a team was formed to consider centralized purchasing of supplies for all schools in the district. The first meeting of the team included all custodial staff, who broke up into small groups to discuss the merits of each product. Each group then ranked their top three choices for products in each category. The large group reassembled and each group reported their choices. The facilitator tallied the votes for each product and determined which products the district would buy in each category.

The new process has meant considerable savings for the district. As a result of the meeting, all schools receive a list of supplies and are asked to indicate quantities of specified goods needed for the entire year. The entire list is then bid out to several vendors to obtain the best prices for each product. Buying in larger quantities and engaging in a competitive process has saved the district money, while engaging the staff in the process has ensured the highest quality products are purchased and given staff a sense of importance in the decision making process.

The custodial team serves two functions as it continues to meet. First, it is constantly evaluating the effectiveness of the products purchased and considering new products. Second, it functions as an entry point for discussion for the rest of the staff, and for potential new vendors. Staff members are encouraged to bring any complaints to the team for discussion. Vendors are encouraged to approach the team to discuss new products for trial instead of going directly to the individual schools.

Determine current costs/establish service benchmarks

The first step in conducting a feasibility study of potential contracting opportunities is to determine the starting point, or to establish benchmarks. These benchmarks should consist of both costs associated with the current service delivery method and the current level of service.

For services that can be easily quantified, such as trash removal, the process is simply to determine how many homes are served, at what frequency, and at what cost.

For services that cannot easily be quantified, as in park maintenance, entities may choose to conduct a survey of customers to determine current satisfaction levels. Another method is to devise an indicator for the level of service, such as using response time to determine a level of service for ambulance or fire services.

Though the process of establishing benchmarks does not seem complex or time consuming, over half of the respondents to the Auditor's survey said that they do not complete this valuable step.

In determining the costs associated with the delivery of a service, it is important to include the full costs associated with the delivery of the service. Entities should include monitoring and evaluation of the contract, and training costs in considering possible savings. Complex contracts may require a considerable amount of monitoring to ensure the same level of quality.

Entities should also consider the cost involved in establishing the contract and the new system of delivery as well as additional costs that may be encountered if any changes in service levels are necessary once the contract is set.

Finally, entities should consider the cost and time involved in taking over service delivery if the contract is discontinued (particularly if the private company does not deliver satisfactory service or leaves the locale).

The following worksheet provides a list of costs that should be included in determining the full cost of in-house service delivery.

Analysis of In-house Costs	
<u>Cost Factors</u>	<u>Amount</u>
Salaries of dept. personnel (including taxes, unemployment insurance, pension costs, and other fringe benefits)	_____
Other direct costs (travel, utilities, materials and supplies, printing)	_____
Equipment (rental, capital outlay, interest costs, maintenance)	_____
Operation and maintenance of buildings	_____
Insurance premiums (or claims paid if self-insured)	_____
Allocated administrative costs	_____
Allocated overhead cost of other executive and staff agencies	_____
Management/supervision/oversight	_____
Other cost factors	_____
TOTAL IN-HOUSE COST =	_____
 Source: <i>Contracting for Performance</i> (Government of Alberta), p. 7 adapted from <i>Privatization Assessment Workbook</i> (Denver, CO: Office of State Auditor, 1989), p. 25.	

Determine cost savings/gains in service quantity/quality

Once the cost of the current service delivery is calculated, it is necessary to calculate the cost of contracting the service to determine whether there is a cost savings or not. Where the service is currently not available, the step involving current costs does not apply, in which case the cost of contracting the service will be evaluated on the basis of whether or not the service merits the costs involved.

There are several ways to gather information on the cost involved in contracting for services. Entities can do some market research to get a general idea of the costs involved in their proposed project. Entities can also compare the current proposed project to a

similar past project to get an idea of the costs involved. Local governments can gather information on costs by asking other entities with similar contracts. Finally, entities may obtain preliminary quotes from vendors to assist in their analysis.

The following worksheet includes a list of costs associated with the contracting of services. Note that any new revenue gained by the delivery of the service may offset contracting costs. The total contracting cost would then be the total of the cost factors minus any new revenues.

Analysis of Contracting Costs	
<u>Cost Factors</u>	<u>Amount</u>
Start-up Costs	_____
Primary Contracting Costs	_____
Contract Oversight Costs	_____
Contract Support Costs (space, equipment, or other support provided)	_____
Subtotal =	_____
Minus New Revenues (taxes, fees, disposal of assets)	_____
TOTAL CONTRACTING COST =	_____
 Source: <i>Contracting for Performance</i> (Government of Alberta), p. 8 adapted from <i>Privatization Assessment Workbook</i> (Denver, CO: Office of State Auditor, 1989), pp. 27-29.	

In addition to evaluating the merit of contracting based on cost alone, entities may also wish to consider an increase in the level of service that may occur as a result of contracting, either in terms of quantity or quality of the service. Other factors that may be considered are the stability of the service and the ability of the local government to control the quality of the service.

Identify Support Organizations

There are several organizations that offer assistance to their members with regard to contracting and procurement planning, implementation and evaluation. In addition to supporting organizations, local governments can gather information on the processes and documentation necessary for successful contracting and procurement through internet

research, other associations, or by contacting other entities. In all cases, however, it is a good idea to consult legal counsel to determine any regulations specific to a particular entity or agreement.

League of Minnesota Cities (LMC). The League of Minnesota Cities offers a broad range of documentation on contracting and procurement procedures specific to cities, and several examples and templates of contracts and solicitation documents, in their online library. The Handbook for Minnesota Cities provides an extensive guide to managing city government, and the statutes that pertain to requirements specific to cities.

The League offers many different types of training opportunities. It has an annual conference, open to its roughly 800 member cities, where participants share information and tools for effective city government management. It also offers training sessions on topics relevant to city governance. One series in particular is called Issues in Focus where presenters consider different issues of interest each year. In addition, they conduct annual loss control workshops for city administrators. These training sessions are offered at multiple locations throughout the state. The schedule of training sessions can be found online. Representatives of the league said they do not currently offer any training on contract or project management.

The league will provide individual assistance to members if needed. Loss control attorneys will review contracts, and staff will work to address any further needs of their members on an individual basis. The League of Minnesota Cities can be reached at 651-281-1200 or found online at www.lmnc.org.

Minnesota Association of Townships (MAT). The MAT provides a number of useful materials regarding contracting and procurement in their growing online information library. The library contains templates of contracts that can be completed for many of the services commonly contracted by townships. It also contains documents explaining processes and requirements specific to townships.

The association offers multiple training opportunities. It offers training sessions on contracting and procurement at their annual spring and summer Short Courses throughout the state. It also offers a legal training seminar specifically for township officials. It hosts an annual conference, for its nearly 1800 members, which also has a training component. In addition, the association has offered to conduct special trainings if there is enough interest in a particular topic. Finally, it publishes opportunities for training through other organizations that may be of interest to its membership on its website. To date, there have been no trainings on contract or project management.

Though the association does not have the staff to review contracts, staff said they would answer questions regarding processes or contract language, though any advice they give should not be considered legal advice. They stressed the importance of consulting an attorney before entering into contracts. The Minnesota Association of Townships can be reached (763) 497-2330 or (800) 228-0296, or found online at www.mntownships.org.

Association of Minnesota Counties (AMC). The AMC has a fledgling project called the Minnesota County Futures Project that convenes a workgroup made up of county personnel to discuss possible future collaborative efforts. The AMC's role is that of facilitator of the discussion.

In addition, the AMC hosts an annual conference, which contains a vendor fair and a workshop component that focuses on different topics of discussion each year. The association does not offer training or direct services regarding contracting and procurement to its membership. Their website contains a link to county Requests for Proposals, but there are none currently listed. The website can be found at www.mncounties.org.

Minnesota Department of Administration - Materials Management Division (MMD). The MMD hosts the state's Cooperative Purchasing Venture. Local government members can access state contracts without having to go through their own bidding process. A review of the CPV is contained in the section on local government purchasing earlier in the report.

In addition to the CPV, the division maintains a listing of Requests for Proposals (RFPs) on its website, and will post members requests on the website. More information on the CPV or about posting an RFP can be found by contacting the division at (651) 296-2600 or online at www.mmd.admin.state.mn.us.

Minnesota School Boards Association (MSBA). The MSBA does not offer any contracting and procurement training or assistance to its members. The MSBA maintains a vendor directory on its website, located at www.mnmsba.org.

Minnesota Association of School Administrators (MASA). MASA has not produced specific training regarding Contracting and Procurement, but they provide/collaborate to provide a number of resources to their members, including access to model policies and one-on-one consultation. They encourage members to access MASA and their collegial network for support around these issues.

MASA also has a program for administrators to obtain Procurement cards, or "P-cards." These are specialized credit cards issued to school district employees who are responsible for purchasing materials and services. Card use can be restricted individually, based on the level of access necessary for each purchaser, and can help alleviate much of the time and paperwork involved in procuring many everyday items. More information about the procurement card program can be found on the MASA website, located at www.mnasa.org.

Minnesota Association Charter Schools (MACS). The MACS also maintains a website containing vendor list, located at www.mncharterschools.org. While the association does not endorse any of the vendors on the list, it promises coming features to assist charter schools in evaluating, selecting, and contracting with vendors and consultants.

Identify Conflicts of Interest

Minn. Stat. § 471.87 states that “Except as authorized in section 471.88, a public officer who is authorized to take part in any manner in making any sale, lease, or contract in official capacity shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially therefrom. Every public officer who violates this provision is guilty of a gross misdemeanor.”

The statute includes both direct and indirect interests.²² A direct interest usually involves payment or other consideration given directly to the interested official. Examples of indirect interests include contracts with family members when there are shared finances, or contracts with the official’s employer if he or she receives a bonus based on increased business.

The law provides an extensive list of exemptions from the conflicts-of-interest prohibition.²³ In order to use any of the exceptions, however, the specific requirements of the exception must be met and the governing body must authorize the contract by unanimous vote.

Pursuant to one of the exceptions, a governing body may contract with an interested officer if competitive bids are not required for the contract.²⁴ However, this exception may only be used if two additional requirements are met. First, the governing body must authorize the contract in advance by adopting a resolution that sets out the essential facts and determines that the contract price is as low or lower than the price at which the commodity or services could be obtained elsewhere.²⁵ Second, before a claim on the contract is paid, the interested officer must file an affidavit containing specified information, including a statement that the contract price is as low as, or lower than, the price at which the commodity or services could be obtained from other sources.²⁶ If these requirements are not followed, the contract is void.

The interested official should refrain from participating in the any part of the decision-making process.

²² As discussed in the document “Contracts and RFPs” written by Kent Selum for the Minnesota Association of Townships.

²³ See Minn. Stat. § 471.88.

²⁴ See Minn. Stat. § 471.88, subd. 5.

²⁵ See Minn. Stat. § 471.89, subd. 2.

²⁶ See Minn. Stat. § 471.89, subd. 3.

Step II: The Solicitation Process

- Determine the solicitation method needed.
- Write the solicitation document, if necessary.
- Advertise or contact vendors to request quotes, bids or proposals.
- Evaluate the quotes, bids, or proposals to determine the best vendor for the project or product.
- Award/negotiate the contract.

Contracts that fall under the municipal contracting law estimated to be worth more than \$50,000 must be awarded through the use of sealed bids, solicited by public notice, and awarded to the lowest responsible bidder. In this competitively bid process, the winning bid essentially represents the contract. With this type of process, there is no negotiation once the contract has been awarded. Therefore, it is extremely important to craft the solicitation document with performance measures and highly specific details to minimize conflict once a purchase is made or work on a contract starts. However, bids for supplies or equipment must not exclude all but one type or kind, but must generally include competitive supplies or equipment.²⁷

For those contracts with an estimated value of between \$10,000 and \$50,000, local governments must solicit at least two quotes for negotiation. For contracts below the \$10,000 threshold, municipalities should try to obtain at least two quotations where possible. In these cases, the local government is in a position to negotiate. A local government can obtain a number of quotes and then use the competition between vendors to negotiate the lowest prices and other conditions it might want to set.

Types of Solicitation Documents

The type of contract needed and the cost of the project or goods will determine the type of solicitation document used. All documents, however, contain essentially the same information: an explanation of the project, product, or service, directions for the vendor in creating a proposal document, information regarding where and when documents are due, and how and when a decision will be made.

The three most common types of solicitation documents are as follows:

Invitations to Bid (ITB), also called a Request for Bid (RFB). These are usually sent out or advertised as such in a competitive, or “closed” bidding process. The specifications are very precise, and essentially make up the final contract. As such, creating the specifications requires a lot of technical knowledge since vendors are not expected to offer alternative methods for completing projects. The resulting bids are sealed, to be opened and evaluated at a predetermined time and place.

²⁷ Minn. Stat. § 471.35; *see* Minn. Stat. § 471.36.

This type of document is usually used for projects that are easily quantifiable, have a clear start and end date, and have large economies of scale. Invitations for bids are most commonly used for building or road construction projects, and services such as transportation, waste management, or public utilities.

Request for Proposals (RFP). These documents are generally used as a starting point for negotiating a contract. This type of solicitation is more useful if technical knowledge is lacking since the specifications do not need to be as technical. The specifications must still be comprehensive, however, in order to adequately express the desired outcomes and the level of service expected.

RFPs are usually used for professional services where there is a level of expertise needed to complete a project, and where the Municipal Contracting law does not apply. This process leaves more room for vendors to present different ways a project may be approached. As a result, there is likely to be more variation among proposals.

Request for Quotes (RFQ). These documents do not necessarily result in a binding agreement. They can be used to solicit information during the planning phase of a project or in soliciting procurement contracts on a unit basis. According to Municipal Contracting law, purchasing goods and services valued between \$10,000 and \$50,000 requires obtaining quotes from at least two vendors, and keeping them on file for at least one year.

While quotes may be obtained over the phone if necessary, all such quotes should be written up and kept on file for the required period.

Writing the solicitation document

There are three main parts to a solicitation document: the introduction, the scope of work, or project specifications, and directions to bidders. The introduction should give the bidder enough information about the entity and the project to be able to get a feel for both. The scope of work should outline the expectations of the project so that the bidder can appropriately bid the project. It should include as much detail as possible, so that the bids or proposals can be more easily compared. The directions for bidders section should include information regarding where, when, how, and what to submit.

The most important part of the document is the section containing the project specifications. A correctly specified solicitation document will simplify both the contract drafting process as well as the project management and evaluation processes. In fact, it has been said, “a well-written scope of work can do more for the success of a contract than any other part of the contracting process.”²⁸ The document should clearly state the

²⁸ Donald Harney, *Service Contracting: A Local Government Guide*. Washington, DC: ICMA, 1992, p. 45. as cited in Alberta Finance, Results Oriented Government, Module 6: *Contracting for Performance*, Released September, 1998, p.10.

expectations of the local government in terms of both the work to be completed and the level of service to be delivered.

In creating specifications, it is important to keep the following in mind:

- List the desired outcomes instead of the process or the inputs. For example, one might specify for a lawn-mowing contract that the grass be kept less than six inches long instead of specifying that the contractor must cut the grass twice every month. The former is more easily monitored since it can be done randomly as opposed to trying to catch the contractor in the act of performing the service.
- Consult an “industry expert” to help create technical specifications if the committee lacks that knowledge. Do not allow the “expert” to craft the specifications such that it gives his/her entity an unfair advantage in the final bidding process. Likewise, no person who has a financial or other interest in the awarding of the contract should be involved in the creation of the specifications.
- Specific evaluation criteria to determine qualified bidders may be included in the bid specifications.²⁹
- Do not write specifications such that they exclude all but one type of supply or equipment or vendor. Specifications, however, must be sufficient to allow decision makers to determine which bidder to choose. For example, a government unit should not specify that they wish to purchase a model X Dell computer, but they should include details such as amount of memory, size of hard drive, or any details that make the new computer compatible with an already existing system.
- Determine which specifications are required and which are preferred. Vendors will be judged non-responsive if they do not meet all required specifications, where they may be allowed to present alternatives for specifications that are deemed preferred.
- Assign points to different areas based on the importance of that area for the satisfactory completion of the project. The local government should also determine benchmarks for assigning points, i.e. what deserves full points, half, less.

In addition to the above project specifications, solicitation documents should include:³⁰

- A timeline and budget for the project
- Qualification information, including references, approach, proposed personnel and their qualifications, equipment and its condition

²⁹ *Westra Constr. Co. v. City of Minnetonka*, 2003 W.L. 23023938 (Minn. App.)

³⁰ Adapted from Alberta Finance, Results Oriented Government, Module 6: *Contracting for Performance*, Released September, 1998, p.11.

- Special requests for information on certain key issues (e.g., plan for minimizing displacement of current public employees)
- Reporting and monitoring requirements
- Where, when, and how bids/proposals are to be submitted
- Format for bid or proposal response
- Procedures for handling inquiries
- Type and amount of any required bid guarantees
- The standard of award (e.g., lowest responsible bidder) or, for requests for proposals, evaluation criteria and the scoring process
- Anticipated schedule for contract award and notification
- Information on payments, audits, termination, dispute resolution, penalties, bonding, and insurance requirements
- Status of submitted documents vis-à-vis freedom of information legislation

According to the results of the survey, Requests for Proposals (RFPs) are the most widely used solicitation document, with fifty-seven percent of local governments responding as such. This may be true either because of the types of projects or because of the dollar amounts of the projects. The necessity of having the specifications absolutely correct is diminished in this case because a vendor or contractor is free to propose the manner in which they intend to complete the project. The entity then has a chance to negotiate the terms instead of either accepting or rejecting the bid outright.

Many of the local governments said that an engineer or architect was responsible for writing the specifications for construction projects that require the full bidding process because of the technical knowledge necessary to correctly specify the project.

Local governments appear to be doing a good job communicating their expectations to vendors. Sixty-two percent of survey respondents said they include the criteria by which the bid will be evaluated in the specifications of the solicitation documents. Sixty-three percent of respondents said that they include performance expectations in the documents.

A sample outline for a Request for Proposal can be found in Appendix B. A sample Request for Proposal for technology services can be found in Appendix C.³¹ More examples of solicitation documents can be found on the State Auditor's website at www.auditor.state.mn.us.

Advertising for bids

The Uniform Municipal Contracting law does not provide guidelines for the advertising of bids or proposals. Other statutes provide guidance for specific entities or for specific types of projects. For example, Minnesota Statutes § 375.21, § 412.311, and § 365.37 discuss publishing advertisements for competitive bids for counties, cities, and towns,

³¹ This example from Bellevue, Washington is for demonstrative purposes only. It should not be used as a template for a RFP in Minnesota.

respectively. Minnesota Statutes § 429.041 discusses the requirements for local-improvement projects utilizing special assessments.

Because advertising guidelines vary from project to project, the best suggestion is to research the requirements for each project. Understandably, however, the more advertising there is for a project, the better the competition is likely to be, and thus, the better the price.

Sample advertisements for bids can be found in Appendix D.

Increasing Competition

In addition to the required advertising guidelines, entities can take steps to increase the number of respondents, resulting in a better price for the local government entity. Some ideas include:

- Increasing the number of advertisements or length of time the advertisements are listed to attract additional vendors
- Creating a vendor list to whom requests are directly sent
- Listing the request on local and state websites. The League of Minnesota Cities and the Materials Management Division of the Department of Administration offer these services to members
- Cooperating with nearby entities to create joint projects that might attract more vendors
- Allowing employees to propose how they might restructure the delivery of any service that by outsourcing may displace them

Note: These additional options do not supplant the regular requirements for posting notification. Local governments should refer directly to applicable statutes for the advertising guidelines for each project.

Evaluating Bids

Bids are evaluated based on the criteria listed in the initial solicitation. If specifications are well written, the evaluation process should be fairly straightforward. The evaluation process is also more or less complex based on the type of bidding process.

In the case of a closed bidding process, the bids are opened on a pre-specified day and time. The lowest bid is examined. If the bid is determined responsive, i.e. all required specifications have been met, the vendor has provided all necessary insurance and

bonding documentation and meets qualified bidder criteria, if any, and there is no reason to believe the vendor will not be able to complete the project as specified, the contract is awarded to that bidder. If there exists some reason to believe that the vendor will not attempt to, or be able to, satisfactorily complete the project, the vendor can be judged *non-responsive*, in which case the reason is noted, and the next lowest bid is considered.

In some cases, local governments may require a few days to thoroughly review and discuss bids once they are opened in order to determine the lowest responsible bidder.

What is the Lowest Responsible Bidder?

Minnesota statutes recognize that the lowest bidder is not always the best fit for every job. Entities are therefore given the ability to choose the lowest *responsible* bidder. In this sense the lowest responsible bidder is defined as having both the lowest bid and possessing the capability to satisfactorily complete the project. Bidders can be excluded as either non-responsive or non-responsible based on several criteria. Some examples include:

- Lack of equipment to properly complete the project
- Failure to produce a certificate of insurance or proper exemption (for worker's compensation insurance)
- Failure to address all required specifications in the solicitation document
- Materials/service proposed does not meet specifications
- Lack of financial resources or organizational capacity to complete the project
- Poor performance on a prior contract

The distinction between non-responsive vs. non-responsible:

Non-responsive refers to the bid's failure to meet the specifications of the project. A bid that does not include specified equipment, insurance, or bid bonds, or that fails to respond to the specifications in all material respects can be rejected on the grounds of being non-responsive.

Non-responsible refers to the likelihood that the vendor will not be able to, or will not make a good faith effort to, satisfactorily complete the project. A vendor who has been shown to have a history, through the local government's records or through a vendor's references, of failure to complete projects could be deemed non-responsible. If the vendor is deemed non-responsible, the reason should be documented and kept in the project file.

Note: It may be necessary to seek legal guidance before deeming a vendor non-responsible due to the subjective nature of these decisions. If such a course of action is necessary, the decision should be delayed until legal guidance can be obtained.

Awarding a contract based on a RFP process is more complex because it is more subjective. As such, it is important to maintain a high level of transparency in this process, consistent with applicable laws classifying government data.³² The best way to ensure fairness is to create evaluation criteria, and to weight those criteria according to the importance of each in making the final decision. Table 2 provides an example of a hypothetical weighting system for the evaluation of a proposal. Evaluators discuss the proposal and assign each criterion a score from 1 to 5. That score is then multiplied by the weight given each criterion based on its importance for the satisfactory completion of the project. The weighted scores are added and totaled. The proposals are then ranked according to their total scores.

Table 2. Hypothetical RFP Weighting System

Criteria	Score	Weight	Weighted Score
Contractor Qualification			
Experience	1	20%	.20
Employees to be Assigned	3	20%	.60
Technical Value of Proposal	5	35%	1.75
Fee	5	25%	1.25
Total		100%	3.80

Note: 1= low, 5= high

Source: Reason Foundation, Contract Monitoring Systems

Because quotes provide the most flexible means of negotiating contracts, they can also invite the most criticism for being unfairly decided. Therefore, it is of the utmost importance that the entire decision process is well documented to ensure transparency.

After evaluating all the bids or quotes, the entity can decide to award the contract to the lowest responsible bidder, or it can decide to reject all the bids or quotes and begin the process over. If no bids were received, the entity must re-advertise. The process would probably benefit in that case from additional advertising methods or altering the specifications somewhat.

Contract Negotiation

There is very little contract negotiation in competitively bid contracts. The bid, once accepted, becomes the contract. For that reason, it is essential that the initial solicitation document is specific enough to allow for comprehensive bids.

³² See e.g., Minn. Stat. § 13.591, subd. 3; Minn. Stat. § 471A.03.

Identifying Indemnity, Insurance, and Bond Requirements

Failure to provide proper proof of insurance and/or required bonds is grounds for the dismissal of a bid. State statute requires that contractors provide acceptable evidence of compliance with the workers' compensation insurance requirement. In addition, it is recommended that contractors carry liability insurance coverage in the amount of \$1,000,000, which is equal to the current tort cap for municipalities. The amount can be lessened depending upon the size of the contract. Entities should also include statements in contracts limiting their liability in cases of injury.

Negotiated contracts, those established through RFP and quote processes, are open to the negotiation of both price and specifications. Beginning with the highest-ranked bidder, the local government should enter into negotiations and attempt to clarify the expectations of the project. If an agreement is reached, the contract can then be awarded. If not, the process moves on to the next highest-ranked bidder.

The negotiation process should be used to create a mutual understanding of the expectations of both parties with regard to the project. Items to discuss should include the project schedule, areas of responsibility, performance standards, and compensation. It is important that each area is explored completely and any assumptions are stated outright. In addition to assigning responsibilities, the negotiation process is intended to minimize misunderstandings throughout the project.

The discussion can also help establish a relationship that can ease any future problems by creating clear points of contact for both parties. If a question arises in the future, both entities know whom to contact for an answer before the question becomes a problem.

Avoiding Contractor Problems

- Entities can avoid potential problems with contractors by including sufficient detail in the specifications regarding the performance standards and general expectations of the contractor and the service provided or the goods purchased.
- Entities can also help avoid future problems with vendors by strengthening the contractor-vendor relationship with a post-award conference to discuss the expectations of each party in the completion of the project. Creating a point of contact helps to open the lines of communication so that any potential questions do not become future problems.
- Another possible method for avoiding problems with the contractor is to make partial payments based upon a prearranged schedule where payments are made when specific milestones are reached or at pre-specified intervals after work has been verified.

Compensation may present the biggest obstacle in this phase of the project. The amount allotted for the project may or may not already be known to both parties. Decisions must be made about whether to pay for the service or product on a lump sum or fixed fee basis, or on a unit price basis. In addition, decisions should be made about what costs are and are not included if a fixed fee method is used. The parties should also discuss the process for making changes or additions to the contract that could result in higher costs.

Preparing for Contract Negotiations

- Determine your budget and price range.
- Gather information for comparable products or services.
- Gather information on the selected vendor.
- Determine who should be involved in the negotiations.
- Determine the process for taking a recommendation to management for approval.
- Determine what management needs to make a decision for approval.
- Anticipate Problems that may affect the Project.
- Anticipate problems that may occur and ensure that the contract is written to provide what would happen if that problem did take place.
- Ensure that there is contractual language that will protect the entity's interests if there is a breach of duty by the vendor, or where the vendor cannot perform.

Source: "Lessons Learned from Hennepin County's Service Contracting," a training delivered in Las Vegas, Nevada on April 18, 2002 by Jill Alverson and John Baron.

Step III: Project Management

- Assess the need for training in project management and contract maintenance.
- Establish points of contact between the local government and the contractor or vendor for any necessary explanation or clarification.
- Monitor the project against pre-established performance measures to ensure quality using regular progress reports, inspections, financial documents, and client/citizen input.
- Address any disputes or problems according to a process agreed upon during contract negotiation. Use documentation to reinforce the local government viewpoint with regard to any disputes.

The survey conducted by the Auditor's office for this report found that respondents are generally satisfied with their contracting and procurement experiences. Most of the causes of dissatisfaction listed concerned lack of quality or service on the part of the contractor. Many respondents listed frequent cost or time overruns as a source of displeasure. Better project management on the part of the local government could help alleviate many of these types of problems.

Forty percent of respondents said that projects are managed by members of the governing body, i.e. city council members, township supervisors, school board members, instead of assigning the duty to a single point of contact. Moreover, two thirds of respondents said that those managing projects had never received any training in project management; and one third of those who had received training listed on-the-job training or previous experience as the source of their training.

Administering and evaluating contracts

Assess necessary project management skills. As local governments increasingly switch from in-house service delivery to contracting for services, employees' roles change from that of service provider to project or contract manager. Recognizing that the skill sets required for the two roles differ greatly, it is then increasingly necessary to determine whether staff have the skills to administer contracts and monitor service provisions, and to determine what types of training are needed for those skills found lacking. Contract managers should receive sufficient project management training to ensure quality service provision.

Establish monitoring procedures. The best way to ensure the smoothest implementation of a project or purchase is to create a mutual understanding of the expectations and responsibilities of all parties involved up front. During the planning phase or the contract negotiation phase, local governments should create a monitoring plan based on the performance standards for the project.

The monitoring plan should establish points of contact between the entities for any necessary explanation or clarification. It should include monitoring methods and

responsibilities, reporting requirements, regular meetings or communication methods, complaint procedures, and access to contractor's records if necessary.

Regularly evaluate projects and contracts. The majority of the survey respondents said that they only "occasionally" or "usually" use project management tools. Of the tools listed in the survey, the most commonly used tool was a project timeline. Twenty-four percent of respondents said they usually create a timeline for projects, while thirty-six percent said they occasionally or never use them.

Regarding the frequency of evaluation of contracts, thirty percent of survey respondents said they only evaluate contracts once, after the contract is completed. A surprising eleven percent of respondents said that they never evaluate contracts.

Contracts should be monitored and evaluated on an ongoing basis throughout the life of the contract. Frequent evaluation will minimize occurrences of unforeseen cost and time overruns, as they will be able to be detected and acted upon promptly. Different projects require different monitoring levels and methods based on the assessment of risk involved in the project. Some factors that determine the level of monitoring necessary include: cost, complexity, political interest, level of visibility/public impact, vendor experience and reliability.

The best way to ensure quality is to use several different monitoring tools.

Monitoring tools include:³³

1. *Periodic contractor reports.* Reports submitted by the contractor should be verified by the local government for accuracy, then reviewed for contract compliance and adherence to the project schedule.
2. *Inspections.* Inspections may include a random sample of completed work (e.g., the cleanliness of curb miles of street); on-site observation of work in progress; or inspection of equipment for safety. In some cases, it may be appropriate to obtain samples for laboratory testing.
2. *Review and analysis of complaints.* Some communities maintain a central hotline for citizen complaints, enabling them to monitor the type and volume of complaints. Others require contractors to report on citizen complaints on a periodic basis. In either case, it is important to monitor how the contractor resolves any complaints.
4. *Client and/or citizen surveys or interviews.* Surveys or interviews can help you obtain information about customer satisfaction with contracted services.

³³ Alberta Finance, Results Oriented Government, Module 6: *Contracting for Performance*, Released September, 1998, p.17-18.

Holding vendors accountable

The relationship between the local government and the vendor or contractor must be built on trust and an overall goal of meeting both parties' expectations with regard to the outcome of the project or product. While the local government's aim is to deliver a service or purchase a product, the contractor or vendor's aim is, in many cases, to make money. When the vendor or contractor is a private entity, the local government must take care to ensure that the needs of the project are not outweighed by the contractor's profit motivation.

Establishing a good relationship with the contractor makes it much easier to ensure accountability. A relationship in which the expectations are clearly defined and where there is frequent communication will yield the most satisfaction for both parties.

In order to make it easier for the local government to enforce performance standards and to ensure vendor accountability, the contract may include provisions such as offering partial payments at predetermined and agreed upon milestones. In addition, for many projects, a final report or affidavit is required before the final payment can be made.

Resolving disputes/problems

Local governments and vendors should establish a plan to deal with any disputes at the time of contract signing or negotiation. The plan should include clearly defined escalation procedures, (for example, project manager to city administrator to city council chairperson). Both parties should be engaged in the creation of the document, agree to the procedures, and sign the document.

In addition to the dispute resolution plan, local governments may wish to include a provision for dispute resolution in the contract that involves alternative techniques such as facilitation or mediation instead of resorting to litigation.

In the event that a dispute arises, documentation is the key to efficient and effective resolution. Without a complete record of the standards and deviations agreed to by both parties, local governments have no basis from which to plead a case. For that reason, any and all changes from the signed contract should be well documented and kept in the project folder.

Case Study: City of Carlton

The City of Carlton generally has a very good project management system, and that system proved very useful when they encountered a problem with a contractor on a recent construction project.

As contracting becomes more complex, certain projects call for contracting with multiple contractors. Often on construction projects, where technical knowledge is needed, smaller local governments with no engineer on staff find themselves working with multiple vendors (for example, an architect or engineer for professional services and a construction company for project completion). That was the case for the City of Carlton when they completed a public works project recently.

The project management procedures of Carlton City's Clerk's Office are exemplary. Even with a small full-time staff of five, the office manages to use a variety of methods that keep everyone well informed. They include weekly progress reports from the contractor, a monthly synopsis of progress for the city council, weekly meetings with all parties involved, and in some cases weekly meetings with the community.

The project files are thorough and well organized. Each project has its own expandable file folder, and each type of record has its own folder within. This thorough documentation allows for a clear picture of each project from beginning to end.

When problems occurred on the project, city staff were easily able to document problems caused by omissions in the initial specifications submitted for the project by the architect among other things. They were also able to produce documentation of his lack of response to complaints when they finally took the matter to his supervisor. The city documented the costs of rectifying the problems, and so was able to recover much of the cost. The project was ultimately assigned another architect, who helped to finish it.

Step IV: Project Wrap-up

- Evaluate the project as a whole against the initial objectives of the project.
- Ensure that the project file is complete in case it must be referred to later.
- Be expedient in completing the summary phase.

Measure success/failure against initial objectives. For construction projects or purchases, evaluation against the initial objectives is fairly straightforward. There is now a building or road where there was not. The school or office has new furniture. For projects that involve service delivery, the evaluation process will be determined by the method by which the initial benchmarks were set. In some cases, evaluation may involve a client or citizen survey. In others, it could involve measuring the response time after changes in service.

The final results should then be compared to the initial benchmarks to determine whether or not the objectives of the project were met.

Complete the project file. Review the project file to ensure that it contains sufficient documentation to answer any questions that may arise, or to provide guidance on any similar projects that may be completed in the future. The project file should contain the following:

- Copy of the signed contract
- Project plan
- Contractor information
- Project financials
- Project management documentation
- Final assessment of the project as a whole, including an assessment of the contractor's performance in case the local government is asked for a reference later.

Do not take more time than necessary. As with the management of the project, the final assessment should be sufficient to create an overall picture of the project, but should not take more time than the size or importance of the project warrants. Any time spent wrapping up the finished project takes time away from the management of current projects.

Recommendations

Generally, the purpose of a best practice review is to encourage the use, or adaptation, of particular techniques, methods or processes. However, based on the information and feedback obtained through the review process, the State Auditor is making three specific recommendations.

- 1. The State Auditor encourages associations of local governments such as the League of Minnesota Cities, Minnesota Association of Townships, the Association of Minnesota Counties, the Minnesota School Boards Association, and the Minnesota Association of School Administrators to offer training on project management and contract maintenance.**

Project management and contract maintenance functions are important parts of the contracting process. Unfortunately, according to the results of the survey conducted for this study, only one-third of the individuals who oversee contract administration had received any training in this area. In addition, of the individuals who had received training, one-third indicated that it was on-the-job training or experience from a prior position.

Project management and contract maintenance are important elements of the contracting process because they enable the local government to properly monitor and evaluate the vendor's performance on contracts. Some common tools that can be used for project management include project plans (a document that includes a schedule, budget, and specifications), communications plans (a document that tells how often project updates will be received), project schedules/timelines (explains when and who will complete project steps), and cost variance reports (explains differences between budgeted and actual costs).

In our discussions with local government support organizations, we specifically asked whether they had offered training in these areas. None of the representatives from these organizations with whom we spoke could recall offering training on these concepts. Therefore, we recommend that this training be offered by supporting organizations as their annual schedules allow.

- 2. The Auditor encourages all counties to join the State's Cooperative Purchasing Venture at the \$1,500 level so that all townships and fourth-class cities are able to make use of the "state contract" for free.**

As outlined in this report, the Cooperative Purchasing Venture (CPV) is a members-only program that enables participants to purchase goods and services under contract terms established by the state of Minnesota. All governmental units are eligible for CPV membership. If a township or city wants to join the CPV individually, it costs \$500. However, if a county pays \$1,500, all the townships and fourth class cities that lie within the county's boundaries become members of the CPV for free. This represents, for example, a \$44,500 value for townships and fourth-class cities in St. Louis County alone.

While \$500 is immaterial for large local governments, it is enough of a burden on many smaller entities to dissuade them from joining the CPV. The Auditor's Office believes that many smaller entities could benefit from a membership in the program and that encouraging counties to join at the \$1,500 level will result in savings for many smaller communities.

3. The Auditor encourages the exploration of a limited exemption to current contracting law to allow towns to “piggy-back” on existing competitively bid road construction and maintenance contracts between a vendor and an adjacent local governmental entity without a pre-existing joint powers agreement.

Local governments are currently prohibited from using a contract that was competitively bid by another entity in place of bidding out their own contract without a previously signed joint powers agreement.

To illustrate this issue, consider a competitively bid county road project. During the project, the contractor approaches the town board and proposes paving a town road that abuts the section currently being paved at the county's price. If paving the road is estimated to cost over \$50,000, the town is prohibited from piggybacking on the county contract, and instead must have the project competitively bid separately. This may waste time. In addition, if the original county contract was much larger than the town project, it may increase cost because the town would miss out on any savings that could have been achieved by the economies of scale of using the county price.

The purpose of this recommendation would be to allow local governments to save time and money by taking advantage of the costs and terms of an existing contract.

Appendices

Appendix A

Contracting and Bid Laws Section of the Minnesota Legal Compliance Audit Guide for Local Government

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 (2004).

Generally, the following rules apply:

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).

In 2004, the Legislature enacted authority for contracting in new ways. Since May 30, 2004, municipalities may:

1. Contract to purchase supplies, materials, and equipment using an electronic reverse auction process; and
2. Contract to sell supplies, materials, and equipment, which are surplus, obsolete, or unused using an electronic selling process.

See Minn. Stat. § 471,345, subs. 16 and 17 (2004 Minn. Laws, ch. 278, §§ 12 and 13).

Minn. Stat. Section	CONTRACTING – BID LAWS	Yes	No	Workpaper Reference
	Part I. Uniform Laws - 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 \$50,000			
§ 471.345, subd. 3	a. Have all contracts estimated to exceed \$50,000 been let on sealed bids?			
	b. Have the bids been solicited by public notice?			
	c. Are the bids on file? (See Introduction section entitled “Destruction of Records,” pages iii through iv.)			
§ 471.345, subd. 4	2. Contracts from \$10,000 to \$50,000 can be made on sealed bids or by direct negotiation based on quotations.			
	a. Have all contracts estimated to exceed \$10,000 but not to exceed \$50,000 been let on sealed bids or negotiated quotes?			
	b. If sealed bids were used, were the requirements of B.1. met?			
	c. If quotations were used and obtaining two or more quotes was possible, were two or more quotes obtained?			
	d. If quotations were used, were the quotations kept on file for at least one year?			
§ 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?			
	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 <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:			

Minn. Stat. Section	CONTRACTING – BID LAWS	Yes	No	Workpaper Reference
	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 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?			
	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, and solid waste contracts. If a contract you audit falls into one of these categories, review the			

Minn. Stat. Section	CONTRACTING – BID LAWS	Yes	No	Workpaper Reference
	relevant exceptions to see if its criteria are met. <i>See</i> Minn. Stat. §§ 471.345, subs. 5b, 8, 10, 11, 12, and 13; and 400.04.			
§ 471.35	G. 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?			
	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	H. 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?			
	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?			

Minn. Stat. Section	CONTRACTING – BID LAWS	Yes	No	Workpaper Reference
	Part II. Laws Relating to Specific Municipalities			
§ 375.21; for Road Construction Contracts, see also § 160.17	A. Counties			
	1. Advertisement for Bids. (For sales of personal property, <u>see</u> 2, below.)			
	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:			
	(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	3. Awarding the Contract. (For contracts required to be awarded by bidding.)			

Minn. Stat. Section	CONTRACTING – BID LAWS	Yes	No	Workpaper Reference
	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?			
See also § 574.26	e. If the contract involved work and labor for the construction or repair of roads, bridges, or buildings, was a faithful performance bond received from the contractor?			
§ 375.21	4. Emergency Exceptions.			
	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.			
	If the county sold real property:			
	a. Were bids advertised for in the official newspaper of the county for three consecutive weeks? (For alternative methods, see section I, D, above.)			
	b. Were bids advertised at least once in a newspaper of general circulation in the area where the property is located?			
	c. Did the notice contain the time and place for considering proposals as well as a legal description of the real property involved?			
	d. Was the real property sold to the highest bidder?			
	(1) If no, were reasons documented in the minutes and were			

Minn. Stat. Section	CONTRACTING – BID LAWS	Yes	No	Workpaper Reference
	the reasons stated reasonable and appropriate?			
§ 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 \$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. 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?			
	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, 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? (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			
	1. Advertisement for Bids			

Minn. Stat. Section	CONTRACTING – BID LAWS	Yes	No	Workpaper Reference
	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.			
§ 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?			
	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.			

Minn. Stat. Section	CONTRACTING – BID LAWS	Yes	No	Workpaper Reference
	(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?			
§ 123B.52, subd. 6	7. School District Surplus Computers			
	a. 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?			

Appendix B³⁴

Outline of a Request for Proposal (RFP)

I. Introduction

The city of _____ is seeking proposals from qualified firms interested in providing _____ services to the city.

II. Scope of services

(This section can contain a detailed description of the service that is being sought.)

III. Instructions to Proposers

Proposals must be in writing and must be received by *(time)* on *(date)*, *(year)*. All proposals, questions and correspondence should be directed to: *(name of city staff and address of office)*. In order to ensure a fair review and selection process, firms submitting proposals are prohibited from contacting any other city staff or council-members regarding these proposals.

IV. Statement of content of RFP

- A. Title page *(name, address, phone, contact person, date)*
- B. Table of contents
- C. Statement of the proposal *(work, timetable, availability)*
- D. Consultant's/firm's profile/history/experience *(client references)*
- E. Fees and method of payment

V. Proposal evaluations

(This section can outline the criteria that the council will use to evaluate the proposals.)

VI. Agreement terms

(This section can outline the negotiation procedures, any ethics policies and other terms that the proposals must meet.)

VII. City's timetable

(This section can address such things as the day that the proposals will be opened, when interviews will be scheduled, and when the selection will be made.)

VIII. Other information

(This section can cover background information on the city, claims-- record information for insurance, or other information that might be important for firms to know when submitting their proposals.)

³⁴ As published in the Online Library of the League of Minnesota Cities website: www.lmnc.org.

Appendix C

SAMPLE: REQUEST FOR PROPOSALS

CITY OF BELLEVUE, WA

Information Technology Strategic Planning Consultant Services

Table of Contents

Page 1	Section 1	General Information
Page 4	Section 2	General Terms and Conditions
Page 6	Section 3	Scope of Work
Page 8	Section 4	Required Format for Proposals
Appendix A		Insurance Requirements
Appendix B		Proposal Checklist
		Non-Collusion Certificate
		Affirmative Action Requirements
		Affidavit of Affirmative Action Compliance
Appendix C		Citywide IT Strategic Planning Model
		Roles and Responsibilities

CITY OF BELLEVUE REQUEST FOR PROPOSALS

Information Technology Strategic Planning Consultant Services

Section 1 - General Information

1.1 Time and Place for Submission of Proposals

Ten (10) copies of each proposal and at least one set of attachments must be submitted no later than 4 p.m. local time on June 2, 1997, to the Purchasing & Graphics Services Division of the City of Bellevue, located at 301 - 116th Avenue SE, Suite 420, Bellevue, Washington 98004, for the purpose of providing Information Technology Strategic Planning Consultant Services. Proposals received after 4 p.m. will not be accepted. Consultants accept all risks of late delivery of mailed proposals regardless of fault.

1.2 Definitions

For ease of reference, the following definitions shall apply to this Request for Proposal:

City	The City of Bellevue, Washington
Contract	The agreement to be entered into for Information Technology Strategic Planning Consultant Services between the City and the Consultant who submits the proposal accepted by the City.
RCW	Revised Code of Washington
RFP	Request for Proposal
Consultant	The person or firm submitting the proposal and/or the person or firm awarded the contract

1.3 Preliminary Schedule

Request for Proposal Released: May 14, 1997

Proposals Due: June 2, 1997

Selection: June 12, 1997

City Council Approval: June 23, 1997

1.4 Evaluation Process

Proposals will be evaluated by a committee of City staff. Evaluations will be based on criteria outlined herein which may be weighted by the City in a manner it deems appropriate. All proposals will be evaluated using the same criteria and weighting. The criteria used will be:

1.41 Responsiveness to RFP

The City will consider all the material submitted to determine whether the Consultant's offering is in compliance with the RFP documents.

1.42 Capability to Perform Required Services

The City will consider all the material submitted by each Consultant, and other relevant material it may otherwise obtain, to determine whether the Consultant is capable of and has a history of successfully completing contracts of this type. The following elements may be given consideration by the City in determining whether a Consultant is "capable":

- a. The ability, capacity and skill of the Consultant to perform the Contract or provide the service required;
- b. Whether the Consultant can perform the Contract within the time specified;
- c. The quality of performances by the Consultant of previous and similar Contracts; and
- d. Such other information as may be secured having a bearing on the decision to award the Contract.

Consultants shall furnish acceptable evidence of their ability to perform, such as expertise/experience, equipment, facilities and personnel qualified to perform requested duties. Refusal to provide such information upon request may cause the proposal to be rejected.

1.43 Types of Information Technology Strategic Plans previously produced and models used for data gathering and analysis.

1.5 Proposal Modification, Clarification and Selection

The City will not reimburse Consultants for any costs involved in the preparation and submission of responses to this RFP or in the preparation for and attendance at subsequent interviews. Furthermore, this RFP does not obligate the City to accept or contract for any expressed or implied services. The City reserves the right to

request any Consultant to clarify its proposal or to supply any additional material deemed necessary to assist in the evaluation of the Consultant, and to modify or alter any or all of the requirements herein. In the event of a material modification, Consultants will be given an opportunity to modify their proposal in the specific areas that are affected by the modification.

1.6 Notification of withdrawal

Proposals may be modified or withdrawn prior to the date and time specified for proposal submission by an authorized representative of the proposer, or by formal written notice.

1.7 Information

Questions regarding this RFP should be directed to Dianah Neff, CIO, City of Bellevue, Washington 98009 (206) 452-4460. The City's records are open for examination should a Vendor wish to review the condition of the records prior to submitting a proposal.

Section 2 - General Terms and Conditions

2.1 Proposal Guarantee

15% of the contracted amount for services will be withheld until the Information Technology Strategic Plan and the Governance Process have been delivered and approved by the Information Technology Governance Committee and the City's Leadership Team.

2.2 Performance Bond

No performance bond will be required.

2.3 Insurance Requirements

The City will require the Consultant, selected in this RFP process, to comply with the insurance requirements detailed in Appendix A.

2.4 Proposal Expiration

Proposals must state the period of time for which they are valid and may be accepted by the City. A proposal offering less than ninety (90) calendar days for acceptance from the date proposals are due may be considered non-responsive and may be rejected.

2.5 Year 2000 Compliancy

Any computer applications used or delivered by the Consultant in the course of work must be deemed year-2000 compliant. Year-2000 compliancy means an application or system's products, programs, files, databases, and functionality neither have nor create any logical or mathematical inconsistencies when dealing with any date before, during, or after January 1, 2000.

2.6 Use of Recycled Products

Paper used in the production of the strategic plan must be a minimum of 50% recycled with 15% post consumer content.

2.7 Affirmative Action Requirement

The City of Bellevue Affirmative Action requirements will be imposed upon the Consultant awarded the Contract. The City of Bellevue is committed to a program of equal employment opportunity regardless of race, color, creed, sex, age, nationality, or disability. Minority and women owned businesses are encouraged to respond to this RFP.

2.8 City Taxation

Consultant awarded the Contract will be subject to City of Bellevue Business Registration and Business Taxation as required pursuant to Chapters 4.02 and 4.08 of the Bellevue City Code.

2.9 Rights to Pertinent Materials

All proposals, responses, inquiries, and correspondence relating to the RFP and all reports, charts, displays, schedules, exhibits, and other documentation produced by the Consultant that are submitted as part of the proposal shall become the property of the City. Should the Consultant submit proprietary information in their proposal, the Consultant should clearly mark these sections.

2.10 Right of City to Reject Proposals

The City retains the right to reject any or all proposals, or any part of proposals, to waive minor defects or technicalities or to solicit new proposals on the same project or a modified project which may include portions of the originally proposed project as the City may deem necessary in its interest.

2.11 Performance (Penalties)

The City reserves the right to provide Consultant, at any point in the process, with a 30-day notice to perform as contracted or terminate the contract.

Section 3 - Scope of Work

3.1 Objectives

The City of Bellevue has two objectives to accomplish:

- Develop an Information Technology Strategic Plan that describes a vision and direction for IT investments and the delivery structures for sustained planning, support and training; and
- Design a Governance Process it can employ to periodically update the IT Strategic Plan and defines the management practices to govern IT investment decision making.

3.2 City Provided Resources

City staff resources will be dedicated to the development of the IT Strategic Plan and Governance Process design. The diagram in Appendix C describes the relationship of the various committees and teams. These staff have been tasked to work with the City's Chief Information Officer (CIO) to identify and analyze issues, evaluate data, develop concepts and direction, design delivery structures, and develop a master work plan for the City's use of information technology. Committee meetings are planned to occur twice a month to go over material, discuss, and reach consensus on elements of the Strategic Plan and Governance Process. Using this approach the City hopes to gain a grounding in IT planning for these appointees as well as consensus and buy-in from them as they represent different departmental perspectives and needs.

3.3 Consultant Role and Responsibility

The role and responsibilities of the Consultant will include providing information technology planning methodology, models and tools, conducting data collection, facilitating the IT Governance Committee's and Technical Teams' evaluation processes, and producing a written IT Strategic Business Plan expressing and reflecting the evaluation and recommendations of the IT Governance Committee. The Consultant will also facilitate the design and produce a documented Governance Process for the City. When work has been completed, the Consultant will assist the CIO and Information Technology Governance Committee in presenting the strategic plan and governance process to the City's Leadership Team for their review and approval.

3.4 Deliverables

Tangible deliverables include a written City of Bellevue Information Technology Business Plan and a written document describing the Governance Process. The

Consultant is also to assure effective facilitation of the Governance Committee toward accomplishing the City's objectives within the desired time frame.

3.5 Time Frame

The time frame expected for the development and production of the deliverables is between 4 and 6 months.

Section 4 - Required Format for Proposals

4.1 Checklist

The Proposal must include a completed and signed checklist and all specified attachments. The checklist and required forms appear in Appendix B.

4.2 Qualifications

The Proposal must provide a summary of the firm's qualifications to perform the duties outlined in the scope of work, including: 1) summary of the firm's experience relevant to the scope of work detailed above; 2) a description of the firm's organizational structure and the last organizational annual report or the current financial structure; 3) list of the individuals who would be assigned, the projects related to strategic planning and their roles; 4) a relevant recent example of past work in strategic planning and governance modeling; and 5) a list of references from current and past customers for the last three years, of comparable size and scope, who can attest to the Consultant's experience and qualifications as it relates to the scope of work described above.

4.3 Method

The Proposal must describe how the Consultant proposes to conduct the development of the Information Technology Strategic Plan and the Governance Process. Section 3 and Appendix C contain materials describing the City's intended resources commitment. Provide an example work plan and time line.

4.4 Time Commitment and Cost

The Proposal must describe the time commitment and expected cost details for the project.

4.5 Payment Terms and Conditions

The Proposal must contain a fee schedule that includes estimated hours, rates, and overall price.

4.6 Exceptions

If any of the requirements in this section are omitted, explain the reasons.

4.7 Proposal Size

The size of the proposal shall be limited to a maximum of twenty (20) pages. All other material should be included as attachments.

4.8 Other Information

The Proposal may include any other information, such as services or capability not identified in this RFP, that would qualify the Consultant or contribute to the City's objectives.

Appendix A **INSURANCE REQUIREMENTS**

The Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by the Consultant. Insurance shall meet or exceed the following unless otherwise approved by the City. Questions regarding insurance requirements can be discussed with the City's Risk Management Office, 637-6108.

A. Minimum Scope of Insurance

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001) (Ed.10/1/93), or, Insurance Services Office form number GL 0002 (Ed. 1/73) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 (Ed. 1/81) covering Broad Form Comprehensive General Liability.

B. Minimum Levels of Insurance

1. Comprehensive or Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. In the event the deductibles or self-insured retentions are not acceptable to the City, the City reserves the right to negotiate with the Consultant for changes in coverage deductibles or self-insured retentions; or alternatively, require the Consultant to provide evidence of other security guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Provisions

Wherever possible, the policies are to contain, or be endorsed to contain, the following provisions:

1. General or Commercial Liability and Automobile Liability Coverages
 - a. The City, its officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, leased or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The

coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

- b. The Consultant's insurance shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees or volunteers.
- d. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this clause shall state that coverage shall not be canceled by either party except after thirty (30) days prior written notice has been given to the City.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a current Bests' rating of A:XII, or with an insurer acceptable to the City.

F. Verification of Coverage

Consultant shall furnish the City with certificates of insurance affecting coverage required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf and shall name the City as an "additional insured." The certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

G. Subcontractors

Consultant shall include all subcontractors as insureds under its policies or shall require subcontractors to provide their own coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein.

Appendix B

Proposal Checklist

I have read and understand *Section 1 - General Information*

I have read and understand *Section 2 - Terms and Conditions*

The following documents are completed and attached to the Proposal:

Non-Collusion Certificate

Affidavit of Affirmative Action Compliance

Signature: _____ Date: _____
(title)

Proposal Expires: _____
(date)

NONCOLLUSION CERTIFICATE

STATE OF _____)
) ss.
COUNTY OF _____)

The undersigned, being duly sworn, deposes and says that the person, firm, association, co-partnership or corporation herein named, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in the preparation and submission of a proposal to the City of Bellevue for consideration in the award of a contract on the improvement described as follows:

Information Technology Strategic Planning Consultant Services

(Name of Firm)

By: _____
(Authorized Signature)

Title: _____

Sworn to before me this day _____ of _____, 19____.

Notary Public

CORPORATE SEAL:

GENERAL INSTRUCTIONS

AFFIRMATIVE ACTION REQUIREMENTS

Applications: The following materials pertain to the Affirmative Action Requirements of the City of Bellevue as set forth in Chapter 4.28.143 of the Bellevue City Code. These requirements are imposed upon all contractors, subcontractors, consultants, vendors and suppliers who contract with the City in a total amount of thirty-five thousand or more within any given year.

Affidavit: Before being considered for a contract of the magnitude listed above, all contractors, etc. will be required to submit the "Affidavit of Affirmative Action Compliance" as part of their proposal or upon the request of the Purchasing Manager.

Compliance: The City of Bellevue reserves the right to randomly select contractors, subcontractors, consultants, vendors or suppliers to be audited for compliance of the requirements listed. During this audit, the contractors, etc. will be asked for a specific demonstration of compliance with the requirements.

Non-compliance: A finding of non-compliance may be considered a breach of contract and suspension or termination of the contract may follow.

City contact: The City's Compliance Officer is the Purchasing Manager, and specific questions pertaining to this section may be directed to the Purchasing Division at (425) 455-6894.

AFFIRMATIVE ACTION REQUIREMENTS

Section 4.28.143 of the Bellevue City Code dictates the requirements for all contractual service providers:

"All contractors, subcontractors, consultants, vendors and suppliers who contract with the City of Bellevue in a total amount of thirty-five thousand or more within any given year are required to take affirmative action and comply with the following requirements of this section. There shall be included in any contract between such contractual services provider and the City of Bellevue the following provisions:

1. Contractor shall make specific and constant recruitment efforts with minority and women's organizations, schools, and training institutions. This shall be done by notifying relevant minority and women's organizations.
2. Contractor shall seek out eligible minority and women contractors to receive subcontract awards. Appropriate minority and women contractors shall be notified in writing of any bids advertised for subcontract work.
3. Contractor shall provide a written statement to all new employees and subcontractors indicating commitment as an equal opportunity employer and the steps taken to equal treatment of all persons.
4. Contractor shall actively consider for promotion and advancement available minorities and women.
5. Contractor is encouraged to make specific efforts to encourage present minority and women employees to help recruit qualified members of protected groups.
6. Contractor is encouraged to provide traditional and nontraditional employment opportunities to female and minority youth through after school and summer employment.
7. Contractor is encouraged to assist in developing the skills of minorities and women by providing or sponsoring training programs.

Willful disregard of the City's non-discrimination and affirmative action requirements shall be considered breach of contract and suspension or termination of all or part of the contract may follow.

All contractors, subcontractors, vendors, consultants or suppliers of the City required to take affirmative action must sign the affidavit of compliance and submit with the bid proposal or upon the request of the Purchasing Manager. All documents related to compliance steps listed above shall be presented upon the request of the Purchasing Manager. The Purchasing Manager shall serve as the compliance officer for the city and is authorized to develop and issue procedures for the administration of this section.”

March 1, 1996

In order to more readily determine compliance with BCC 4.28.143, the following interpretations are provided:

- Requirement 1. When a contractor needs to recruit, they must notify minority and women's organizations, schools and training institutions. Such "notification" can be in the form of an advertisement in newspapers or trade journals of general circulation in the metropolitan Seattle area.
- When the contractor hires through a union hiring hall, the contractor must be able to provide confirmation, upon request by the City, that the hiring hall has an anti-discrimination policy in effect and that it affirmatively encourages the participation of minorities in its hiring program.
- Requirement 2. When a contractor intends to subcontract out any work they shall seek out minority and women contractors for the subcontract work. The requirements to notify minority and women contractors of any bids can be satisfied by advertising in newspapers or trade journals that are of general circulation in the metropolitan Seattle area.
- Requirement 3. If and when a contractor hires new employees or contracts with subcontractors, the contractor must alert such employees and subcontractors to the contractor's commitment as an equal opportunity employer, etc. This requirement may be compiled with by posting a notice of equal opportunity commitment at the job shack, or by the time clock.
- Requirement 4. If and when a contractor promotes or advances employees, the contractor must consider ALL eligible employees.

The guidelines above shall apply to all audits of compliance with the requirements set forth in BCC 4.28.143.

May 1, 1994

AFFIDAVIT OF AFFIRMATIVE ACTION COMPLIANCE

_____ certifies that:
Bidder

1. If necessary to recruit additional employees, it has:
 - a. Notified relevant minority and women's organizations, or
 - b. Hired through a union hall with an anti-discrimination policy.

2. It intends to use the following listed construction trades in the work under the contract:
 - _____
 - _____
 - _____
 - _____

3. In sourcing sub-contract work for trades listed above, it has notified in writing appropriate minority and women contractors of bids for sub-contract work.

4. It will obtain from its sub-contractors and submit upon request, an Affidavit of Affirmative Action Compliance as required by these bid documents.

5. It has provided a written statement to all new employees or sub-contractors indicating its commitment as an equal opportunity employer.

6. It has considered all eligible employees for promotion or advancement when promotion or advancement opportunities have existed.

By: _____
(authorized signature)

Title: _____

Date:

Appendix C

Consultant's Role: Consultant responsibilities will include data collection, provision of information technology planning models and tools, facilitation of the IT Governance Committee's and Technical Teams, evaluation processes, and the production of a written IT Strategic Business Plan expressing and reflecting the evaluation and recommendations of the IT Governance Committee. The Consultant will also facilitate the development and production of a written Governance Process for the City and assist the CIO with presentation of the plan and governance process to the Leadership Team for their review.

Leadership Team's Role: The LT will provide the mission, policy direction, and final review and approval of the IT Strategic Plan and Governance Process.

IT Governance Committee's Role: The Committee will be the architects of the City's IT Strategic Business Plan. They will analyze and evaluate data using models provided by the Consultant, develop concepts, directions, delivery structure, and a master work plan. Additionally, the Committee, with the assistance of the Consultant and IS staff, will develop a Governance Process for the City. The Governance Committee should plan to meet, on average, 3 hours every other week.

Technical Teams' Role: Departments will be asked to provide knowledgeable staff to serve on Technical Teams that will, under the direction of the IT Governance Committee and with the assistance of the Consultant and IS staff, analyze, evaluate, and make recommendations to the IT Governance Committee on specific issues e.g., data sharing, networks, system standards, etc.

Information Service's Role: IS will act as a staff resource for the Governance Committee and the Technical Teams providing IT knowledge and expertise.

Appendix D³⁵

Sample Advertisement For Bids

NOTICE TO BIDDERS REPAIR OF WELL NO. 4 PROJECT NO. 290

Sealed bids will be received and publicly opened by the City of Fridley, Anoka County, Minnesota, at the office of the Public Works Director, 6431 University Ave. NE, Fridley Minnesota 55432 (Tel. 612-572- 3553) on **Tuesday, the 16th of January 1996 at 11:00 A.M.** for the furnishing of work and materials for the **Repair of Well No. 4.**

Plans and specifications may be examined at the office of the Public Works Director and copies may be obtained for the contractor's individual use by applying to the Public Works Director.

Bids must be made on the basis of cash payment for work and accompanied by a cash deposit, certified check (on a responsible bank in the State of Minnesota) or a bidder's bond made payable without conditions to the City of Fridley, MN, in an amount of not less than 5% of the total amount of the bid.

The City Council reserves the right to reject any and all bids and to waive any bids received without explanation. No bid may be withdrawn for a period of thirty (30) days.

By the order of the City Council of the City of Fridley, Minnesota

Sample Advertisement For Purchases

To Whom it May Concern:

The Council of the City of _____ will receive bids at the office of the City Clerk until *(time)*, on *(date)*, *(year)* for the purchase of the following: *(merchandise, materials, equipment, etc.)*.

The specifications are on file in the City Clerk's office. A copy of the specifications will be furnished to any prospective bidder upon a deposit of _____ dollars to guarantee their safe return. Bids must be made on the basis of cash payment for the property. All bids must be accompanied by a cash deposit, bid bond, certified bank letter of credit, or certified check made payable to the city for at least ____ percent of the bid amount. Bids must be directed to the City Clerk and must be securely sealed with a statement on the outside wrapper describing the item for which the bid is being submitted. Bids will be opened and considered by the City Council at *(time)* in the council chambers on *(day and date)*, *(year)*. The City Council reserves the right to reject all bids.

Published in *(name of newspaper or other publication)* on *(date)*, *(year)*.

Clerk

³⁵ As published in the Online Library of the League of Minnesota Cities website: www.lmnc.org.

Appendix E³⁶

LMCIT Risk Management Information
145 University Avenue West, St. Paul, MN 55103
Phone: (651) 281-1200 • (800) 925-1122
Fax: (651) 281-1298, www.lmcit.lmnc.org

LMCIT MODEL MUTUAL AID AGREEMENT

The League of Minnesota Cities Insurance Trust has developed a Model Mutual Aid Agreement for cities to consider when they are working with other local governments. It provides a system to address liability, worker's compensation and equipment damage in mutual aid incidents. Generally, the basic elements of the model agreement are:

- **Worker's Compensation** – Each city retains the financial responsibility for workers' compensation benefits for its own employees, for any injuries that occur in mutual aid situations. If the Worker's Compensation Reinsurance Association approves, cities can also agree not to bring claims against the other cities to recover the cost of workers' compensation benefits to its employees.
- **Equipment** – Each city retains the financial responsibility for damage to or loss of its own equipment that may occur in a mutual aid situation.
- **Responding Party as Employees of Requesting Party** – The Responding Party's employees will be considered to be employees of the Requesting Party for the purposes of the Minnesota Municipal Tort Liability Act.
- **Indemnification** – The city receiving the assistance agrees to defend and indemnify the city(s) providing the assistance, for any liability claims by third parties that may arise from the mutual aid situation, to the extent of the city's statutory liability limits.
- **Command** – The personnel providing assistance act under the command of the requesting city's officer in charge at the scene. Thus the receiving city, which bears the liability risk, is also in a position to control that risk.

Why does LMCIT suggest handling liability this way?

These provisions eliminate the potential for conflicts and litigation between the cities about who is liable for what. The basic idea is that there are better ways for the cities and LMCIT to use the taxpayers' money than to spend it suing each other. Incidentally, the 1998 law authorizing interlocal disaster assistance, Minnesota Statute 12.331, sets out a very similar scheme for handling liability, workers compensation, and equipment damage.

³⁶ LMCIT is the insurance trust of the League of Minnesota Cities. This document is available in the League's online library at www.lmnc.org/lmcit/memos.cfm.

Worker's Compensation

This provision helps to eliminate conflicts between the local governments for injuries to each other's employees. Each government pays the worker's compensation coverage on its own employees so it makes sense that that government would be responsible for injuries to its own employees. By waiving the right to recover any damages from the other parties to the mutual aid agreement, you avoid having the parties suing each other. Note that the worker's compensation reinsurer, the Worker's Compensation Reinsurance Association, must approve this waiver.

Equipment

Similarly, each party pays for property coverage for its own equipment so it would make it simpler for each party to be responsible for any damages or loss of its own equipment. So even if another party causes damage to another party's equipment, with this waiver of subrogation, the parties agree that they will not sue for that loss. Again, it eliminates conflicts between the local governments.

Responding Party as Employees of Requesting Party

The provision that states that an employee of the Responding Party will be considered to be an employee of the Requesting Party for liability purposes will help to reduce the costs for defending the actions by allowing one attorney to defend the action. This method would also ensure that there would be only one liability limit at stake. Minnesota Statutes 12.331 and 626.77 both use this method so it is clear that the legislature can do this through legislation. It is not clear if local governments can also establish this type of system through an agreement.

Indemnification

The defense and indemnification provisions for liability claims are intended to make it possible to appoint a single defense attorney to defend all of the parties that might be the target of tort liability claims arising from a mutual aid situation. That attorney can then provide a unified defense of all of the parties, since the liability is covered under the receiving city's coverage. It doesn't matter which city or individual employee is ultimately determined to have been negligent.

If the agreement instead made each city responsible for its own employees' negligence, defending potential liability claims is more complicated and expensive. If several cities were all sued for something that occurred in a mutual aid situation, each of those cities would need to have its own defense attorney. And because "who pays" depends on "whose fault was it", all those multiple defense attorneys are automatically in conflict with each other, each trying to make sure that if anyone is held liable, it's one of the other defendants.

In short, with the defense and indemnification provisions that the model agreement incorporates, defending liability claims is simpler and less expensive. We are only paying one attorney to defend the claim, rather than paying several attorneys to both defend the claim and fight with each other.

Though taking on the liability damages of other cities, LMCIT members would all benefit from the reduced amount for attorneys' fees. For example, in five of the last seven years, LMCIT's expenses for attorney's fees in police liability claims were significantly more than the liability damages. LMCIT member cities are assessed both the damages and the attorneys' fees in determining their liability claims experience.

Some cities do not like the idea of taking on another city's negligence. They are uncomfortable with how some employees from other cities may act or whether the employees have had adequate training. Therefore, it is important for cities to discuss these concerns. In order for Mutual Aid to be beneficial, cities shouldn't have to worry if the response from the other city is going to be appropriate.

Command

The model agreement addresses these concerns by making it clear that the Requesting Party that is taking on the liability for the Responding Party is in command of the mutual aid scene. It places the Requesting Party in a position to help control the potential risks by being the party that decides how to handle the emergency site and what equipment to use.

Coverage issues

Each city's LMCIT liability coverage covers liability that the city assumes by contract. Therefore, the city's LMCIT liability coverage picks up the duty to defend and indemnify which the city would assume under the mutual aid agreement. Note also that the city's duty to defend and indemnify the other parties is limited to the amount of the statutory liability limits for one city.

Charges

Traditionally, local governments do not charge for services to each other in a mutual aid situation. However, the provision in the Model Agreement for charges after 48 hours is established to comply with a Federal Emergency Management Association's (FEMA) rule. The rule states that if local governments do not have a written agreement that provides for charges to be paid to the Responding Party, FEMA will not reimburse the Responding Party for those costs.

The rule allows short-term assistance to be given for no charge. The 48-hour figure is suggested as an example but it is something that can be negotiated on by the parties.

Other questions

Before adopting the language from the Model Mutual Aid Agreement, it is important that city officials understand the effect of these provisions, the reasons for them, and how their LMCIT coverage would apply. If anyone has further questions, please call Ellen Longfellow LMCIT Loss Control Attorney, Peter Tritz LMCIT Administrator, or Tom Grundhoefer LMCIT General Counsel at the League offices.

LMCIT MODEL MUTUAL AID AGREEMENT

Purpose

This agreement is made pursuant to Minnesota Statutes 471.59 which authorizes the joint and cooperative exercise of powers common to contracting parties. The intent of this agreement is to make equipment, personnel and other resources available to political subdivisions from other political subdivisions.

Definitions

1. "Party" means a political subdivision.
2. "Requesting Official" means the person designated by a Party who is responsible for requesting Assistance from other Parties.
3. "Requesting Party" means a party that requests assistance from other parties.
4. "Responding Official" means the person designated by a party who is responsible to determine whether and to what extent that party should provide assistance to a Requesting Party.
5. "Responding Party" means a party that provides assistance to a Requesting Party.
6. "Assistance" means (Check the type of assistance that will be provided):
 - a. Public Works personnel and equipment _____
 - b. Fire and/or emergency medical services
personnel and equipment _____
 - c. Law enforcement personnel and equipment _____
 - d. Utility personnel and equipment _____
 - e. Other personnel and equipment
as listed below:

Procedure

1. **Request for assistance.** Whenever, in the opinion of a Requesting Official, there is a need for assistance from other parties, the Requesting Official may call upon the Responding Official of any other party to furnish assistance.
2. **Response to request.** Upon the request for assistance from a Requesting Party, the Responding Official may authorize and direct his/her party's personnel to provide assistance to the Requesting Party. This decision will be made after considering the needs of the responding party and the availability of resources.
3. **Recall of Assistance.** The Responding Official may at any time recall such assistance when in his or her best judgment or by an order from the governing body of the

Responding Party, it is considered to be in the best interests of the Responding Party to do so.

4. **Command of Scene.** The Requesting Party shall be in command of the mutual aid scene. The personnel and equipment of the Responding Party shall be under the direction and control of the Requesting Party until the Responding Official withdraws assistance.

Workers' compensation

Each party shall be responsible for injuries or death of its own personnel. Each party will maintain workers' compensation insurance or self- insurance coverage, covering its own personnel while they are providing assistance pursuant to this agreement. Each party waives the right to sue any other party for any workers' compensation benefits paid to its own employee or volunteer or their dependants, even if the injuries were caused wholly or partially by the negligence of any other party or its officers, employees, or volunteers. (Note that the Worker's Compensation Reinsurance Association must grant permission for this waiver.)

Damage to equipment

Each party shall be responsible for damages to or loss of its own equipment. Each party waives the right to sue any other party for any damages to or loss of its equipment, even if the damages or losses were caused wholly or partially by the negligence of any other party or its officers, employees, or volunteers.

Liability

1. For the purposes of the Minnesota Municipal Tort Liability Act (Minn. Stat. 466), the employees and officers of the Responding Party are deemed to be employees (as defined in Minn. Stat. 466.01, subdivision 6) of the Requesting Party.
2. The Requesting Party agrees to defend and indemnify the Responding Party against any claims brought or actions filed against the Responding Party or any officer, employee, or volunteer of the Responding Party for injury to, death of, or damage to the property of any third person or persons, arising from the performance and provision of assistance in responding to a request for assistance by the Requesting Party pursuant to this agreement.

Under no circumstances, however, shall a party be required to pay on behalf of itself and other parties, any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one party. The limits of liability for some or all of the parties may not be added together to determine the maximum amount of liability for any party.

The intent of this subdivision is to impose on each Requesting Party a limited duty to defend and indemnify a Responding Party for claims arising within the Requesting Party's jurisdiction subject to the limits of liability under Minnesota Statutes Chapter 466. The purpose of creating this duty to defend and indemnify is to simplify the defense of claims by eliminating conflicts among defendants, and to permit liability

claims against multiple defendants from a single occurrence to be defended by a single attorney.

- 3. No party to this agreement nor any officer of any Party shall be liable to any other Party or to any other person for failure of any party to furnish assistance to any other party, or for recalling assistance, both as described in this agreement.

Charges to the Requesting Party

Subd. 1 No charges will be levied by a Responding Party to this agreement for assistance rendered to a Requesting Party under the terms of this agreement unless that assistance continues for a period of more than 48 hours. If assistance provided under this agreement continues for more than 48 hours, the Responding Party will submit to the Requesting Party an itemized bill for the actual cost of any assistance provided after the initial 48 hour period, including salaries, overtime, materials and supplies and other necessary expenses; and the Requesting Party will reimburse the party providing the assistance for that amount.

Subd. 2 Such charges are not contingent upon the availability of federal or state government funds.

Duration

This agreement will be in force for a period of _____ years from the date of execution. Any party may withdraw from this agreement upon thirty (30) days written notice to the other party or parties to the agreement.

Execution

Each party hereto has read, agreed to and executed this Mutual Aid Agreement on the date indicated.

Date _____ Entity _____
 By _____
 Title _____

Date _____ Entity _____
 By _____
 Title _____

Appendix F³⁷

TOWN MOWING SERVICES CONTRACT TEMPLATE

This agreement (“Agreement”) is dated _____ and is by and between _____ Township, _____ County, Minnesota, [address] _____ (“Town”), and [business name] _____, [address] _____ (“Contractor”). In consideration of the mutual promises and agreements hereinafter set forth, and intending to be legally bound, the parties do hereby agree as follows:

1. **Mowing Services.** Contractor will mow and trim the lawn at the above address once each week starting the week of _____, 20__ and ending this fall upon a one week notification by Town to Contractor. Contractor is solely responsible for providing all necessary personnel and for providing and maintaining the equipment necessary to perform the mowing and trimming services. Contractor will perform such services in a timely and competent fashion and will take all steps necessary to protect the public from injury arising from Contractor’s performance under this Agreement.
2. **Payment.** Town will pay Contractor monthly at a rate of \$_____ per mowing. This rate is all inclusive and covers payment for services, salary, wages, and other personnel costs, sales and other taxes, equipment costs, and any and all other costs and expenses. Contractor must submit a claim for payment on the claim form provided by Town in time for consideration at Town’s monthly board meeting.

Failure to submit a completed claim form to the Town clerk at least 48 hours before the meeting may delay consideration of the claim until the following monthly meeting.
3. **Independent Contractor.** Contractor agrees it is an independent contractor for all purposes and nothing herein shall be construed as creating an employment relationship. Contractor, and its agents, officers, and employees are not eligible to receive workers’ compensation, unemployment insurance, or any other benefit or compensation from Town. Contractor is responsible for withholding, reporting, and paying any taxes on the payments it receives from Town.
4. **Insurance.** Contractor shall maintain during the entire term of this Agreement insurance policies providing at least \$300,000 of general liability coverage applicable to the services provided under this Agreement. Contractor shall also carry workers’ compensation insurance at least in the amounts and to the extent required by law.

³⁷ Minnesota Association of Townships Document Number: C5200 Information Library, Revised: July 29, 2005, Sample by: Troy Gilchrist, Dan Greensweig.

Contractor must provide Town a current certificate of insurance showing such coverage before starting to provide services under this Agreement. If Contractor is exempt under Minnesota law from having to carry workers' compensation insurance, Contractor may submit a statement of exemption in place of a certificate of insurance. Town may require Contractor to provide a written statement from its insurer or agent expressing coverage for the services provided Town.

- 5. Termination.** Town may terminate this Agreement, with or without cause, upon 14 days written notice to Contractor. Without limitation of the foregoing, upon breach of this Agreement by Contractor, Town may immediately terminate this Agreement or may pursue any other available remedies at law or in equity that are necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of this Agreement.
- 6. Subcontracting & Assignment.** Contractor shall not subcontract or assign any portion of this Agreement without prior written permission of Town.
- 7. Miscellaneous.**
 - a.** In accordance with Minnesota Statutes, Section 16C.05, subdivision 5, Contractor's books, records, documents and accounting procedures and practices relevant to this Agreement are subject to examination by Town and the Minnesota State Auditor for a minimum of six years from the expiration date of this Agreement.
 - b.** This Agreement has been made, and its validity, performance, and effect shall be determined in accordance with the internal laws of the State of Minnesota without regard to conflict of law provisions. Any dispute arising out of this Agreement shall be heard in the state or federal courts of Minnesota and the parties hereto waive any objection of such courts, jurisdictional or otherwise, and whether based on convenience or any other grounds.
 - c.** The waiver by any party of a breach or violation of, or failure of any party to enforce, any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation or as a relinquishment of any rights hereunder.
 - d.** If any part of this Agreement is invalid or unenforceable under applicable law, that part shall be ineffective only to the extent of such invalidity or unenforceability without in any way affecting the remaining parts of the provision or this Agreement.
 - e.** The parties acknowledge that they participated equally in the negotiation and drafting of this Agreement and that, accordingly, no court shall construe this Agreement more stringently against one party than the other.

- f. This writing represents the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any and all previous agreements of whatever nature between the parties with respect to the subject matter. This Agreement may not be altered or amended except by an agreement in writing signed by the parties. Without limitation of the foregoing, no claim for extra work done or materials furnished by Contractor will be made by Contractor or allowed by Town, nor shall Contractor do any work or furnish any materials not covered by this Agreement, unless such work or materials is ordered in writing by Town.
- g. Notwithstanding anything to the contrary herein, nothing in this Agreement shall constitute a waiver of any immunity from or limitation on liability to which Town is entitled, under Minnesota Statutes, Chapter 466 or otherwise.
- h. Contractor will maintain all necessary licenses and permits and will comply with all federal, state, and local laws, rules, and regulations pertaining to Contractor’s performance under this Agreement.
- i. Contractor will defend, indemnify, protect and hold harmless Town and its employees, officers, and agents from any and all claims or causes of action, including attorney’s fees incurred by Town or its insurers, arising from any negligent or otherwise wrongful act, or omission in the performance of this Contract by Contractor or Contractor's agents or employees.

This agreement is executed as of the date stated in the introductory clause above.

Town

Contractor

_____ Township

By: _____
Print Name and Title

By: _____
Chairperson Signature

Attest: _____
Town Clerk

Appendix G

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Appendix H

Further Background on Best Practices Reviews

Mission

A “best practices review” is a systematic study of variations in service level and design, work processes, and products among similar organizations in order to identify practices that are cost-effective and might be adopted, or adapted, by other organizations.

Each review will examine a local governmental service, develop a list of cost-effective and innovative practices, and provide forums for the exchange of information about best practices.

In contrast with traditional auditing which seeks out organizational and performance deficiencies, best practices reviews collect and highlight evidence of success in the design and delivery of services. Success is defined as achieving a high level of service delivery efficiency in a manner that is most cost effective.

As well as promoting communication among professionals working in a given service delivery area, best practices reviews will help foster communication among different types of local government where commonality of service delivery areas exist. Reviews involve broad surveys of service delivery personnel and a small number of case studies.

The purpose of each review is not simply to produce a report, but to spread useful information. Some best practices reviews will also provide a basis for comparing the performance of local governments in Minnesota.

Finally, best practices reviews include an effort to develop a framework for ongoing performance reporting in the service delivery area studied. Each review attempts to identify a common set of appropriate performance measures for the service area. Although local governments are not obligated to adopt these measures or report on them in the future, the best practices review may offer compelling rationales for their adoption.

Topic Selection Criteria

The selection criteria³⁸ below provide a framework for recommending possible topics for best practices reviews. In general, recommended topics should meet most (but not necessarily all) of these criteria.

³⁸ The Office of the Legislative Auditor originally developed the topic selection criteria.

1. Importance of the service delivery area. *Is the service considered important to the public?*
2. Potential for service delivery improvement. *Is there a high potential for improving the effectiveness of service delivery?*
3. Potential for cost savings. *Is there a high potential for saving public money?*
4. Number of jurisdictions and transferability. *Are there a large number of jurisdictions delivering the service? Will the information in the review be transferable between different types of local government?*
5. Availability of data. *Are there adequate data available to conduct a useful study?*
6. Research feasibility. *Is the service area amenable to research and measurement, given available staff and research methodologies?*
7. Balance among topics. *Among all topics chosen, is there a balance between county and municipal issues and a balance across functional areas of local government?*
8. Timeliness. *Is this a good time for a study of this topic?*

Members of the Topic Selection Advisory Committee

League of Minnesota Cities

Kevin Carroll, Director of Community Development, City of Farmington
Mark Schiffman, Council member, City of Waconia
Rodney Otterness, City Administrator, City of International Falls
Tom Kelly, Finance Officer, White Bear Township

Minnesota Association of Townships

Lothar Wolter, Jr., MAT District 4 Director, Clerk, Young America Township

Association of Minnesota Counties

Scott Arneson, Aitkin County Administrator

Association of Metropolitan Municipalities

Craig Waldron, Administrator, City of Oakdale

Minnesota Association of School Administrators

Dan Brooks, Superintendent, ISD 743, Sauk Centre

Minnesota Municipal Utilities Association

Mike Nitchals, General Manager, Willmar Municipal Utilities

Previous Best Practice Reviews

Reviews Conducted by the Office of the State Auditor

2004 - Cooperative Efforts in Public Service Delivery

Reviews Conducted by the Office of the Legislative Auditor

2002 – Preserving Existing Housing Stock
2001 – Managing Local Computer Systems
2000 – Preventive Maintenance for Local Government Buildings
1999 – Fire Services
1998 – 911 Dispatching
1997 – Non-felony Prosecution
1996 – Property Assessments: Structure and Appeals
1995 – Snow and Ice Control

For more information about the reviews conducted by the Office of the Legislative Auditor, please contact the Legislative Auditor at:

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Statutory Citation for Best Practices Reviews

6.78 Best practices reviews.

The state auditor shall conduct best practices reviews that examine the procedures and practices used to deliver local government services, determine the methods of local government service delivery, identify variations in cost and effectiveness, and identify practices to save money or provide more effective service delivery. The state auditor shall recommend to local governments service delivery methods and practices to improve the cost-effectiveness of services. The state auditor shall determine the local government services to be reviewed in consultation with representatives of the Association of Minnesota Counties, the League of Minnesota Cities, the Association of Metropolitan Municipalities, the Minnesota Association of Townships, the Minnesota Municipal Utilities Association, and the Minnesota Association of School Administrators.