



REBECCA OTTO
STATE AUDITOR

STATE OF MINNESOTA

OFFICE OF THE STATE AUDITOR

SUITE 500
525 PARK STREET
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)
(651) 296-4755 (Fax)
state.auditor@osa.state.mn.us (E-mail)
1-800-627-3529 (Relay Service)

Statement of Position County Bidding and Contract Requirements

In addition to finding the right products at the right prices, county officials and employees must follow various State laws that govern the bidding and contracting process. This Statement of Position provides general information on bidding and contract requirements.

I. Uniform Municipal Contracting Law

The Uniform Municipal Contracting Law sets out procedures that counties and certain other local units of government must follow for contracts to sell, purchase or rent supplies, materials, or equipment, or to construct, alter, repair or maintain real or personal property.¹ The procedures to follow depend on the estimated amount of the contract. Of course, estimates should be reasonable. For example, if a county asks for quotations because it estimates the value of a contract will be below the bid threshold but all of the quotations are substantially over the threshold, the county should solicit formal bids.

Contracts estimated to have a value over \$175,000 must be made by sealed bids, solicited by public notice, and awarded to the lowest responsible bidder.² Bids should be retained for the period specified in a validly adopted records retention schedule.³ A contract should be executed in writing.

The requirement that the successful bidder be “responsible” protects counties from having to choose unqualified or unscrupulous low bidders. It allows a county board to consider factors such as the bidder’s financial responsibility, integrity, skill and ability, and the likelihood that the bidder will do satisfactory work. A county can even include evaluation criteria for “responsible” bidders in the bid specifications.

Contracts estimated to be worth more than \$25,000, but not to exceed \$175,000, can be

¹ The Act includes “county” in the definition of “municipality.” Minn. Stat. § 471.345, subd. 1.

² Minn. Stat. §§ 471.345, subd. 3, and 375.21, subd. 1. The \$175,000 threshold took effect on August 1, 2018, for contracts entered into on or after that date. 2018 Minn. Laws, ch. 107. The prior threshold was \$100,000. *Id.* As an alternative to the bidding process, the law allows electronic reverse auction purchases and electronic sales if certain conditions are met. *See* Minn. Stat. § 471.345, subs. 16, 17.

³ *See* Minn. Stat. §§ 15.17, and 138.17, subd. 7. Accepted and rejected bids should both be kept for at least the period during which a disappointed bidder could challenge the county board’s contract award.

Reviewed: August 2018
Revised: August 2018

2010-1001

This Statement of Position is not legal advice and is subject to revision.

An Equal Opportunity Employer

made either by sealed bids or by direct negotiation based on quotations.⁴ Two or more quotes must be obtained if possible, and the quotations must be kept on file for at least one year.

Contracts with estimated values of \$25,000 or less may be made either upon quotation or in the open market.⁵ The choice is within the discretion of the county board. If quotations are used, at least two quotations must be obtained, if practicable, and the quotations must be kept on file for at least one year.

II. “Best Value” Procurement Alternative

As an alternative, counties and other governmental entities may use a “best value” procurement process for “construction, building, alteration, improvement, or repair [and maintenance] work.”⁶

Best value procurement is a process based on competitive proposals that awards the contract to “the vendor or contractor offering the best value, taking into account the specifications of the request for proposals, the price and [specific] performance criteria.”⁷

The price and performance criteria may include, but are not limited to:

- (1) The quality of the vendor's or contractor's performance on previous projects;
- (2) The timeliness of the vendor's or contractor's performance on previous projects;
- (3) The level of customer satisfaction with the vendor's or contractor's performance on previous projects;
- (4) The vendor's or contractor's record of performing previous projects on budget and ability to minimize cost overruns;
- (5) The vendor's or contractor's ability to minimize change orders;
- (6) The vendor's or contractor's ability to prepare appropriate project plans;
- (7) The vendor's or contractor's technical capacities;
- (8) The individual qualifications of the contractor's key personnel; or
- (9) The vendor's or contractor's ability to assess and minimize risks.⁸

The solicitation document must state the relative weight of price and other selection criteria. The award must be made to the vendor or contractor offering the best value applying the weighted selection criteria. If an interview of the vendor’s or contractor’s personnel is one of the selection criteria, the relative weight of the interview must be stated in the solicitation document and applied accordingly.⁹

⁴ Minn. Stat. § 471.345, subd. 4.

⁵ Minn. Stat. § 471.345, subd. 5.

⁶ Minn. Stat. §§ 375.21, subd. 1(b), and 471.345, subs. 3a, 4a, and 5. *See generally* 2007 Minn. Laws, ch. 148, art. 3.

⁷ Minn. Stat. § 16C.28, subd. 1(a)(2).

⁸ Minn. Stat. § 16C.02, subd. 4a.

⁹ Minn. Stat. § 16C.28, subd. 1(c).

Personnel administering best value procurement procedures must be trained in RFP process for best value contracting for construction projects.¹⁰

III. Advertising for Bids

A county can make a contract only after advertising for bids by placing a notice in a qualified legal newspaper of the county. The notice shall state the time and place of the awarding of the contract and contain a brief description of the work. For the purchase of property and for work and labor, a two-week notice shall be given. For construction and repair of roads, bridges or buildings, a notice must be published for three weeks.¹¹

As an alternative to publishing the notice in a newspaper, a county may post the notice on its website or in a recognized industry trade journal if certain steps (described below) are followed.

IV. Alternative Publishing of Bids and Requests for Proposals (RFPs)

As an alternative to publishing them in a newspaper, a county may post solicitations of bids, requests for information or requests for proposals by using a website or recognized industry trade journals. Printed and digital publications and websites that contain building and construction news of interest to contractors in Minnesota or that publish project advertisements or bids for review by contractors or potential bidders in the regular course of business are “recognized industry trade journals.”¹² The county must simultaneously publish, either in minutes or separately in a notice published in the official newspaper, a description of all solicitations or requests so distributed, along with the means by which the publication occurred. The publication by alternative means must be in substantially the same format and for the same period of time as a publication in a qualified newspaper.

For the first six months after the political subdivision designates an alternative means of publication, it must continue to publish solicitations of bids, requests for information, and requests for proposals in the official newspaper in addition to the alternative method. The publication in the official newspaper must indicate where to find the designated alternative methods.¹³

If, in the normal course of its business, a qualified newspaper maintains a web site, then as a condition of accepting and publishing public notices, the newspaper must agree to post all the notices on its web site during the notice’s full publication period.¹⁴

¹⁰ Minn. Stat. § 16C.03, subd. 19.

¹¹ Minn. Stat. § 375.21, subd. 1.

¹² Minn. Stat. § 331A.01, subd. 11.

¹³ Minn. Stat. § 331A.03, subd. 3.

¹⁴ Minn. Stat. § 331A.02, subd. 5.

V. Electronic Bidding

A county has authority to use the following procedures related to purchases and sales:

A. Reverse Auction Purchases—Minn. Stat. § 471.345, subd. 16

A county may contract to purchase supplies, materials and equipment, using an electronic purchasing process in which vendors compete to provide the supplies, materials, or equipment at the lowest price in an open and interactive environment.

B. Electronic Sales—Minn. Stat. § 471.345, subd. 17

A county may contract to sell supplies, materials, and equipment which is surplus, obsolete, or used, using an electronic selling process in which purchasers compete to purchase the supplies, materials, or equipment at the highest purchase price in an open and interactive environment.

VI. The Cooperative Purchasing Venture (“State Contract” or “CPV”)

Minnesota law requires municipalities to consider the Cooperative Purchasing Venture (CPV) for purchase contracts estimated to exceed \$25,000. For those contracts, a county must “consider the availability, price and quantity of supplies, materials, or equipment available through the state’s cooperative purchasing venture before purchasing through another source.”¹⁵

Vendors sometimes say counties can purchase from them without bidding because they are on the “state contract” or they will sell at the state contract price. Counties should beware of this approach. Counties cannot avoid the normal bidding requirements by simply purchasing at the state contract price or from a state contract vendor without joining the program and following its requirements.

The formal 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, Materials Management Division.¹⁶ The CPV allows members to purchase goods and services under contract terms established by the state of Minnesota. To purchase through it, counties must join. There is currently no fee to join.

For additional information, visit the Cooperative Purchasing Venture website at <http://www.mmd.admin.state.mn.us/cpv2.htm>.

¹⁵ Minn. Stat. § 471.345, subd. 15.

¹⁶ See Minn. Stat. § 16C.03, subd. 10.

VII. Cooperative Purchasing

A county may contract for the purchase of supplies, materials, or equipment without regard to the competitive bidding requirements of the Uniform Municipal Contracting Law 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.¹⁷

VIII. Purchase or Lease of Used Public Safety Equipment

The Minnesota Legislature has granted counties and other local governments authority to lease or purchase used public safety equipment without bidding in certain specified circumstances. The statute provides that a county may acquire by purchase or lease used public safety equipment without competitive bidding or proposals "if the equipment is clearly and legitimately limited to a single source of supply, and the contract price may be best established by direct negotiation."¹⁸

The term "public safety equipment" is defined to mean "vehicles and specialized equipment used by a fire department . . . in firefighting, ambulance and emergency medical treatment services, rescue, and hazardous materials response."¹⁹

IX. Responsible Contractor Minimum Requirements

The Responsible Contractor Requirements apply to construction contracts over \$50,000 that are awarded on the basis of bidding or "best value."²⁰ The threshold for formal bidding is \$175,000 and the best value alternative is available for contracts over \$25,000. Between \$50,000 and \$175,000 counties do not have to use the formal bidding process, however if they do use formal bidding or "best value" procurement for these contracts they will have to comply with the Responsible Contractor Requirements.

The statute sets forth "minimum criteria" for contractors which include such things as compliance with state workers compensation laws and unemployment insurance laws, federal tax I.D number, authority to transact business in Minnesota, compliance with Federal Wage and Hour requirements, etc.²¹

A contractor responding to the county's contract solicitation must submit a signed statement under oath of compliance with the minimum criteria identified in this statute.

¹⁷ Minn. Stat. § 471.345, subd. 15.

¹⁸ Minn. Stat. § 471.3455.

¹⁹ Another provision of the law allows counties to issue certificates of indebtedness or capital notes to acquire new or used public safety equipment by lease for a term of up to 15 years. The long-term lease agreement obligation does not constitute debt under other statutes, and no election is required in connection with the execution of a lease agreement authorized by the new provision. *See* Minn. Stat. § 471.3455, subd. 3 (2011).

²⁰ Minn. Stat. § 16C.285.

²¹ *See* Minn. Stat. § 16C.285, subd. 3 for the entire list of minimum criteria.

If that contractor is awarded the contract, then a supplemental verification under oath must be presented to the county that the contractor has received from all subcontractors statements under oath that they also meet the minimum requirements under this statute.

X. Exceptions to Contract Bidding Requirements

Exceptions to the competitive bidding requirements of Minn. Stat. § 471.345 exist for water tank service contracts, procurement from economically disadvantaged persons, shared hospital or ambulance service purchasing, fuel contracts for generation of municipal power, procurement from rehabilitation facilities, energy efficient projects, solid waste contracts, and small business enterprises and veteran-owned small businesses.²²

XI. Prompt Payment to Subcontractors

County contracts that involve a prime contractor must require the prime contractor to pay subcontractors within ten days of the prime contractor's receipt of payment from the county for undisputed services provided by the subcontractor.²³ The contract must require the prime contractor to pay interest of 1.5 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time.

XII. Performance and Payment Bonds

For contracts over \$100,000 for the performance of public work, counties must require contractors to provide a performance bond and a payment bond. The required performance bond benefits the county by ensuring that the work is completed according to the terms of the contract, and the required payment bond benefits subcontractors and people who provide labor and materials, by ensuring that their claims for labor and materials are paid.²⁴

XIII. Withholding Certificates

Before a county makes the final payment to a contractor under a contract requiring employment for wages, it must make sure the contractor and any subcontractors have complied with withholding tax laws.²⁵ Contractors and subcontractors show compliance by submitting a withholding affidavit to the Minnesota Department of Revenue. Submission can be completed electronically or by mailing a completed Form IC134, "Withholding Affidavit for Contractors." If a contractor or subcontractor has withheld taxes as required, the Department of Revenue will return an electronic confirmation or sign and return the Form IC134, certifying compliance.

²² See Minn. Stat. §§ 471.345, subs. 5b, 8, 10, 11, 12, 13, and 20; and 400.04.

²³ Minn. Stat. § 471.425, subd. 4a.

²⁴ See Public Contractors' Performance and Payment Bond Act, Minn. Stat. § 574.26 to 574.32.

²⁵ Minn. Stat. § 270C.66.

XIV. Large Sale of Personal Property

A sale of personal property with a value estimated to be \$15,000 or more may be made only after advertising for bids or proposals in the county's official newspaper, on the county's website, or in a recognized industry trade journal.²⁶ At the same time it posts on its website or publishes in a trade journal, the county must also publish a summary of all requests for bids or proposals in the official newspaper. The summary may be published as part of the minutes of a regular meeting of the county board or in a separate notice. After publication, bids or proposals may be solicited and accepted using the electronic selling process authorized in Minnesota Statutes, section 471.345, subd. 17.

A sale of personal property with a value estimated to be less than \$15,000 may be made either on competitive bids or in the open market, at the discretion of the county board.

XV. Sale of Real Estate

The county must advertise for bids or proposals any sale, lease, or conveyance of real estate owned by the county.²⁷ The advertisement must run in the official newspaper of the county for three consecutive weeks and once in a newspaper of general circulation in the area where the property is located. With the exception of a lease of a residence acquired by the county as part of an approved capital improvement project, any sale, lease, or conveyance that has not first been advertised as required is invalid.

The notice must state the time and place of considering the proposals, and contain a legal description of any real estate and a brief description of any personal property. Leases that are less than \$15,000 in any one year may be negotiated and are not subject to the competitive bid procedures of this section. All proposals estimated to be more than \$15,000 will be considered at the time set for the bid opening, and the bid most favorable to the county will be accepted. However, the county board may, in the interest of the county, reject any or all proposals.

XVI. Exchange of Real Property

A county may exchange parcels of real property of substantially similar or equal value without advertising for bids. When acquiring real property for county highway right-of-ways, the estimated values for these parcels shall be determined by the county assessor.²⁸

When acquiring real property for purposes other than county highway right-of-ways, the county may exchange similarly valued parcels and the estimated values for these parcels must be determined by the county assessor or a private appraisal performed by a licensed Minnesota real estate appraiser. In addition, before giving final approval to an exchange of land, the county board shall hold a public hearing on the exchange. At least two weeks

²⁶ Minn. Stat. § 373.01, subd. 1 (c).

²⁷ Minn. Stat. § 373.01, subd. 1 (b).

²⁸ Minn. Stat. § 373.01, subd. 1 (d).

before the hearing, the county auditor shall post a notice in the auditor's office and the official newspaper of the county of the hearing that contains a description of the lands affected.²⁹

For more detailed information, please refer to the statutes cited or to the [Office of the State Auditor's Minnesota Legal Compliance Guide](#).

²⁹ Minn. Stat. § 373.01, subd. 1 (e). *See* 2011 Minn. Laws, 1st Spec. Sess. ch. 14, § 15.