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Town Bidding and Contract Basics

By Rebecca Otto, Minnesota State Auditor

Town officials and employees often face difficult decisions related to town contracts. In addition to finding the right products at the right prices, they must follow various state laws that govern the bidding and contracting process. The Office of the State Auditor has found that confusion exists about some of the required procedures and other legal requirements applicable to town contracts. This article provides general information on bidding and contract requirements.

I. Uniform Municipal Contracting Law

Most town officials and employees recognize that some contracts must be awarded based on formally solicited bids. The Uniform Municipal Contracting Law sets out procedures that towns must follow for contracts to sell, purchase or rent supplies, materials, or equipment, or to construct, alter, repair or maintain real or personal property. The procedures to follow depend on the estimated amount of the contract. Of course, estimates should be reasonable. For example, if a town 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 town should solicit formal bids.

A. Contracting Procedures

Contracts estimated to have a value over \$50,000 must be made by sealed bids, solicited by public notice, and awarded to the lowest responsible bidder. Minn. Stat. §§ 471.345, subd. 3, 365.37 (2006).

The requirement that the successful bidder be “responsible” protects towns from having to choose unqualified or unscrupulous low bidders. It allows a town 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 town can even include evaluation criteria for “responsible” bidders in the bid specifications.

Contracts estimated to be worth more than \$10,000, up to \$50,000, can be made either by sealed bids or by direct negotiation 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.

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 quotations must be obtained if practicable, and the quotations must be kept on file for at least one year.

B. Town Road Construction and Maintenance.

Notwithstanding the procedures discussed above, a town may contract for the construction or maintenance of a town road by agreeing to the terms of an existing contract between a vendor and a county for road construction or maintenance on an adjoining road if the existing county contract was made in conformance with all applicable procedural requirements. Minn. Stat. § 471.345, subd. 19 (2006). All quotations shall be kept on file for a period of at least one year after their receipt.

In addition, if a town or county contract “for the rental of equipment is estimated to be \$60,000 or less, the contract may, in the discretion of the county or town board, be made by direct negotiation by obtaining two or more quotations for the rental when possible and without advertising for bids or otherwise complying with the requirements of competitive bidding.” Minn. Stat. § 471.345, subd. 5a (2006).

C. Notice of Solicitation of Bids

Before a contract is let on bid, ten days' public notice of the time and place of receiving bids must be given. The notice must be posted in the three most public places in the town or published for two weeks in a newspaper generally circulated in the town. Minn. Stat. § 365.37, subd. 3 (2006).

D. Alternative Dissemination of Bids and Requests for Proposals

A political subdivision may use its web site or a recognized industry trade journal as an alternative method to disseminate solicitations of bids, requests for information, and requests for proposals. Minn. Stat. § 331A.03, subd. 3.

1. If a political subdivision designates an alternative method to newspaper notice:
 - i. The political subdivision must continue to publish solicitations and requests in the newspaper for six months in addition to the alternative method.
 - ii. The publication in the newspaper must indicate where to find the designated alternative method.
 - iii. Alternative methods of publication must be in substantially the same format and for the same time period as is required for newspaper

publication.

2. 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. Minn. Stat. § 331A.02, subd. 5.

II. Electronic Purchasing/Selling

As an alternative to the normal bidding procedures, municipalities, including towns, may contract to purchase supplies, materials and equipment (but not services), 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. Minn. Stat. § 471.345, subd. 16 (2006).

Similarly, municipalities, including towns, may contract to sell supplies, materials, and equipment which is surplus, obsolete, or used through 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. Minn. Stat. § 471.345, subd. 17 (2006).

III. The Cooperative Purchasing Venture (“State Contract”)

As part of marketing, vendors sometimes assert that local governments 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 and pay a \$500 annual membership fee. Towns 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. For additional information, visit the Cooperative Purchasing Venture website at <http://www.mmd.admin.state.mn.us/cpv2.htm>.

IV. National Municipal Purchasing Alliance or Cooperative

Another way to purchase cooperatively is through a national municipal purchasing alliance or cooperative. A municipality, including a town, may contract for the purchase of supplies, materials, or equipment without regard to the competitive bidding requirements of this section 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. Minn. Stat. § 471.345, subd. 15 (2006).

V. Prompt Payment to Subcontractors

Town 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 town for undisputed services provided by the subcontractor. Minn. Stat. § 471.425, subd. 4a (2006). 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.

VI. Performance and Payment Bonds

For some contracts, towns must require contractors to provide a performance bond and a payment bond. This requirement applies to contracts over \$75,000 for the performance of public work. The required performance bond benefits the town by ensuring that the work is completed according to the terms of the contract, while the required payment bond benefits subcontractors and people who provide labor and materials, by seeing that their claims for labor and materials are paid. Minn. Stat. § 574.26 (2006).

VII. Withholding Certificates

Before a town makes the final payment to a contractor under a contract requiring the employment of employees for wages, it must make sure the contractor and any subcontractors have complied with withholding tax laws. Minn. Stat. § 270.66 (2006). Contractors and subcontractors show compliance by filing a withholding affidavit electronically or by filing Form IC134, “Withholding Affidavit for Contractors,” with the Minnesota Department of Revenue. If a contractor or subcontractor has withheld taxes as required, the Department of Revenue will send an electronic confirmation or sign and return the form IC134, certifying compliance.

For more detailed information, please refer to the cited statutes or the Minnesota Legal Compliance Audit Guide for Local Government, available at the Office of the State Auditor’s website: www.auditor.state.mn.us.