



# PURCHASING RULES AND REGULATIONS



Adopted: November 10, 2015

St. Louis County Board of Commissioners  
Kevin Z. Gray, County Administrator



# **ST. LOUIS COUNTY PURCHASING RULES AND REGULATIONS 2015**

## **AUTHORITY**

Published and promulgated pursuant to the authority of Minn. Stat. § 375.75. Required statutory provisions applicable to these Rules shall apply, as may be amended from year to year.

This document titled "St. Louis County Purchasing Rules and Regulations" was adopted by the St. Louis County Board of Commissioners on November 10, 2015 by County Board Resolution No. 15-685, and by this resolution, rescinds and supersedes all prior resolutions which approved earlier versions of the county's Purchasing Rules and Regulations. Upon adoption, all St. Louis County staff having purchasing responsibility are required to attend training offered through the Human Resources Department - Employee Development Division. This procurement training will be offered annually, or as needed.

## **STATEMENT OF PURCHASING POLICY**

The services and activities of St. Louis County's Purchasing Division will be in accordance with Minnesota Statutes and St. Louis County Purchasing Rules and Regulations, adopted by the County Board. A summary of contract requirements and contract routing procedures are attached in Appendix A, which is incorporated herein.

Purchasing services for other commissions, agencies, or authorities are subject to approval of the County Board and will be subject to the same statutes and rules applicable to the expenditure of all funds under the authority of St. Louis County.

All contracts are subject to prior review by the County Attorney's Office, including final approval as to form and execution. A copy of the final executed contract shall be filed with the County Auditor.

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Deputy County Administrator

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# ST. LOUIS COUNTY PURCHASING RULES AND REGULATIONS 2015

## **I. DUTIES AND RESPONSIBILITIES OF THE ST. LOUIS COUNTY PURCHASING DIVISION**

- A.** Purchase or contract for all supplies, materials, equipment and contractual services required by any department, board, or agency of County government.
- B.** Prepare all specifications for supplies, materials and equipment.
- C.** Transfer to, or between, county departments, boards, and agencies, or sell supplies, materials and equipment which are surplus, obsolete, or unused.
- D.** Submit at a time prescribed by the County Board, an annual report on the work of the Purchasing Division, and from time to time, suggest changes to the Purchasing Rules and Regulations, which the Purchasing Division deems necessary.

## **II. PURCHASING DEFINITIONS** *(Adapted from portions of Minn. Stat. § 16C.02)*

**Award** - "Award" means a written acceptance of a bid or proposal to provide goods, services, construction or utilities, which shall be binding upon contract execution.

**Contract** - "Contract" means any written instrument or electronic document containing the elements of offer, acceptance, and consideration to which the County is a party, including an amendment to or extension of a contract.

**Direct Negotiation** – "Direct Negotiation" means obtaining two or more quotations for a purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding.

**Formal solicitation** - "Formal solicitation" means a solicitation which requires a sealed response. This includes Requests for Bids and Requests for Proposals.

**Informal solicitation** - "Informal solicitation" means a solicitation which does not require a sealed response. This includes Requests for Quotes.

**Open Market** – "Open Market" means a direct solicitation with a specific vendor or individual without requesting or obtaining additional quotes.

**Request for Bid (RFB)** - "Request for Bid" or "RFB" means a formal solicitation in which the terms, conditions, and specifications are described and responses are not subject to negotiation.

**Request for Information (RFI)** - "Request for Information" or RFI" means non-binding input from interested parties for a forthcoming solicitation. RFI is used to obtain comments, feedback or reactions from potential suppliers or vendors prior to the issuing of a solicitation. Contracts are not awarded based on an RFI. Solicitations are produced based on results of an RFI.

**Request for Proposal (RFP)** - "Request for Proposal" or "RFP" means a formal solicitation that may be a single or multi-step process. It is used when it is not advantageous to set forth all the actual, detailed requirements at the time of solicitation. Responses may be negotiated to achieve best value for the county in which price is not always the primary evaluation factor. RFP provides for the negotiation of all terms, including price, prior to contract award and may include a provision for the negotiation of "Best and Final Offers."

**Request for Quotes (RFQ)** - "Request for Quotes" or "RFQ" means an informal solicitation for goods or services in which responses are received by a letter, fax, e-mail or other manner. RFQs are not subject to formal bidding requirements.

**Sealed** - "Sealed" means a method of the solicitation process to prevent the contents from being revealed or known before the deadline for submission of responses.

**Solicitation** - "Solicitation" means the process used to communicate procurement requirements and to request responses from interested vendors.

### ***III. CONTRACT REQUIREMENTS***

#### **A. GENERAL REQUIREMENTS FOR ALL CONTRACTS**

1. The County Attorney's Office must approve the form and execution of all county contracts. All contracts must be reviewed and signed by the County Attorney after the required county signatures have been obtained. Departments should consult the Purchasing Division for a list of contract forms that can be used for recurring and frequent contracts. Contracts generated with these forms must also be reviewed and signed in the same manner as all other county contracts.
2. The "Contract Requirements" form found in Appendix A, identifying procedures, solicitation requirements, and approval and execution requirements, is incorporated herein, as part of these Purchasing Rules and Regulations. Professional services agreements and architectural and engineering contracts greater than \$40,000, and all other contracts over \$85,000, must be approved by the County Board.
3. The "Contract Routing" form, found in Appendix A, must be attached to every contract, with relevant information provided, when circulated for review and execution.
4. All contracts approved by the County Board must be signed by the Chair of the Board and the County Auditor.
5. Except in an emergency, or when the county makes use of Purchasing Cards, no valid order for delivery on a contract or open market purchase shall be issued until the County Auditor has certified that the unencumbered fund balance is sufficient to defray the amount of such order.
6. The purchase or contract for any supplies, material, or contractual service by any county office, department or agency, or the sale of surplus, obsolete, or unusable supplies, material, or equipment by any county office, department or agency

contrary to Minn. Stat. Sections 375.72 to 375.76 is voidable. The head of such department, board, commission or agency shall be personally liable for the costs of such order or contract, and if already paid for out of county funds, the amount may be recovered in the name of the county in an appropriate legal action. Property sold, or the reasonable value of the property, may be recovered in the name of the county in a similar manner.

**B. SOLICITATION EXPENDITURE REQUIREMENTS**

*(Uniform Municipal Contracting Law, Minn. Stat. § 471.345)*

1. Purchases greater than \$50,000 must go through the Purchasing Division, with the exception of Public Works Road & Bridge projects.
2. Contracts estimated to be over \$100,000 can be awarded based on sealed bids or best value.
  - a. **Sealed bids.** Sealed bids shall be solicited by public notice in the manner and subject to the laws and policy governing county contracts. *(With regard to repairs and maintenance of ditches, the specific provisions found in Minn. Stat. 383C.094 apply.)*
  - b. **Best value alternative.** At the discretion of the County Board, as an alternative to sealed bids, the county may award a contract for construction, alteration, repair, or maintenance work to the contractor offering the best value under a request for proposals. *(Minn. Stat. § 375.21, Subd. 1b., Minn. Stat. Section 16C.28)*
3. Contracts exceeding \$25,000 but not exceeding \$100,000, can be awarded based on sealed bids, direct negotiation, or best value.
  - a. **Sealed bids.** Sealed bids shall be solicited by public notice in the manner and subject to the laws and policy governing county contracts. *(With regard to repairs and maintenance of ditches, the specific provisions found in Minn. Stat. 383C.094 apply.)*
  - b. **Direct negotiation.** Direct negotiations may be used by obtaining two or more quotations for the purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof.
  - c. **Best value alternative.** At the discretion of the County Board, as an alternative to sealed bids the county may award a contract for construction, alteration, repair, or maintenance work to the contractor offering the best value under a request for proposals. *(Minn. Stat. § 375.21, Subd. 1b., Minn. Stat. Section 16C.28)*
4. Contracts estimated to be \$25,000 or less may be made either upon direct negotiation or in the open market, at the discretion of the Purchasing Director or designee.

a. If the contract is made upon direct negotiation, it shall be based, so far as practicable, on at least two quotations which shall be kept on file for a period of at least one year after their receipt.

b. Alternatively, the county may award a contract for construction, alteration, repair, or maintenance work to the contractor offering the best value under a request for proposals. (*Minn. Stat. § 375.21, Subd. 1b., Minn. Stat. § 16C.28*)

**C. UNIQUE TYPES OF CONTRACTS**

1. **State Purchasing Contracts.** These are not subject to the solicitation process, however, state contracts must follow all other contract requirements.
2. **Public Works.** The County Board, pursuant to Minnesota Statutes, has delegated authority to the Public Works/Highway Engineer for setting the date for the calling of bids on Public Works projects already approved in the budget for capital improvements, and further requires County Board approval for award of bids received. (*Resolution No. 88-381*)
3. **Environmental Services.** Formal bidding is not required for Environmental Services purchases. However, if formal bidding is used, all rules applicable to formal bidding will apply. (*Minn. Stat. § 400.04, Subd. 4*)
4. **Information Technology.** All software purchases and initial maintenance agreements must be approved by the Department Head and the Information Technology (IT) Department. Renewal maintenance agreements do not require IT approval. If hardware or associated maintenance agreements exceed the approved budget, IT must obtain County Board approval for the purchase. Software licensing/maintenance agreements greater than \$40,000, must also be approved by the County Board.
5. **Public Health and Human Services.** Contracting authority is delegated to the Director of Public Health and Human Services in the following situations: when no county dollars are expended; the Fraud Prevention Investigation Grant; non-financial agreements; cooperative agreements with other county departments and Arrowhead Regional Corrections; and for contracts under \$25,000. (*Resolution No. 04-534*)
6. **Construction Contracts.** Wages paid on all county construction work of any and every kind must be at the prevailing rate for the area where the construction work is being performed. Documentation of wages may be required from any successful bidder and payroll records must be maintained. Prevailing Wage Rates are available at the Minnesota Department of Labor and Industry website. (*Resolution No. 73-141*)

Prevailing wage rates do not apply to a contract, or work under a contract, when: (1) the estimated total cost of completing the project is less than \$2,500 and only one trade or occupation is required to complete it, or (2) the estimated total cost of completing the project is less than \$25,000 and more than one trade or occupation is required to complete it. (*Minn. Stat. § 177.43, Subd. 7*)

For any construction contract estimated to exceed \$50,000, Minn. Stat. § 16C.285 requires the completion of Responsible Contractor Affidavits at the time a proposal is submitted. All construction contracts that exceed \$50,000 must be solicited through the Purchasing Division, with the exception of Public Works Road & Bridge projects.

All building construction projects shall be approved by the Property Management Department prior to solicitation.

All formally bid construction projects require the use of domestically produced steel and iron materials and components. (*Resolution No. 07-65*)

7. **Project Labor Agreements.** A Project Labor Agreement is required on all St. Louis County construction projects in excess of \$150,000, unless otherwise prohibited by law. If a bid is submitted in excess of \$150,000, the bidder must have a fully executed agreement returned to the Purchasing Division at the time the contract, bonds and other required contract documents are returned to the contracting authority. (*Resolution No. 04-255*)
8. **Energy Efficiency Projects.** The county may enter into guaranteed energy-savings contracts that include written guarantees that savings will meet or exceed the cost of energy conservation measures. These contracts are not subject to the competitive bidding requirements. (*Complete requirements for energy efficient contracts can be found in Minn. Stat. § 471.345, Subd. 13.*)
9. **Grant Management.** The county's Grant Management Policy requires that sufficient information be provided to the County Board, financial and other managers to determine the desirability of a grant application. Specific financial and cost information must be provided to the Board prior to applying for and/or accepting a grant. This policy applies only to grants for which the county must make specific application and does not apply to program aids provided to the county as a matter of law. The Grant Approval Form is found in Appendix A.
10. **Rebates.** Any rebates, issued to or received on behalf of the county, must be used for a future county purchase.

#### **D. PROFESSIONAL SERVICES AGREEMENTS**

1. Professional Services Agreements less than or equal to \$40,000 shall be approved and executed by the Department Head. Contracts greater than \$40,000 shall be approved by the County Board.
2. Successive and consecutive agreements with the same vendor for the same project or professional service require County Board approval, if the cumulative total exceeds \$40,000, within any twelve month period.
3. For Architectural and Engineering services over \$40,000, with the exception of Road and Bridge projects, the Department Head, with the consent of the Purchasing Director and the Property Management Director, shall approve selection of a contractor based upon direct negotiation, prior to contract approval by the County Board. The Qualified Based Selection (QBS) method will be the preferred method in selecting architectural and engineering services.

4. Agreements less than or equal to \$5,000 may be attached to a payment voucher and sent directly to the County Auditor's Office for payment, when signed by the Department Head or designee.

#### **IV. BIDDING AND PURCHASING REQUIREMENTS**

##### **A. BIDDING REQUIREMENTS**

1. **Solicitation for Bids and Proposals.** The Purchasing Division shall post solicitations for bids in the Purchasing Division office. According to County Board policy all Requests for Bids and Requests for Proposals (with the exception of road and bridge projects) will only be posted on an electronic bidding service. Bids relating to major facility repairs and construction will also be advertised in the Local Builders Exchanges. Formal bids may be received electronically or by hard copy in the Purchasing Division office. (*Resolution No. 06-24*)
2. **Bid Submission.** A bidder may submit bids electronically through DemandStar or by submitting bids in hard copy to the St. Louis County Purchasing Division, pursuant to the bid specifications.
3. **Electronic Bidding.** Electronic bidding is prescribed for Public Works Department road and bridge projects, with electronic format being the sole allowable form of bid submission. (*Minn. Stat. § 471.345, Subd. 18; Resolution No. 13-347*).
4. **Bidder's Deposit.** The Purchasing Division may require a deposit to accompany a bid, equal to 5% of the total bid amount or a specified amount.
  - a. The deposit shall be in the form of a certified check or bidder's bond and subject to forfeit for failure to contract within ten days after tender.
  - b. Deposits of unsuccessful bidders will be returned upon award of contract.
  - c. The successful bidder's deposit may be retained for sixty (60) days after delivery to ensure compliance with specifications, or until such time as a performance bond and payment bond have been furnished.
  - d. Any bid that requires a performance bond and/or payment bond will also require a bid deposit.
  - e. Failure of a bidder to furnish a deposit, as specified, may be cause for rejection. When it is in the best interest of the county, a bid deposit may be waived or subsequently furnished prior to award of a contract, as determined by the Purchasing Division.
5. **Rejection of Bids.** The Procurement Manager shall have the right to reject any and all bids if the public interest is served by doing so.
  - a. Bid documents which contain alterations to the bid specifications shall be rejected, unless corrected pursuant to the procedure found in Minn. Stat. 16C.28, Subd.2.

**b.** Bids will be rejected for good and sufficient cause; such as, but not limited to faulty specifications, abandonment of the project or requirement, insufficient funds, evidence of unfair competition, non-responsive bids or failure to provide security deposits when required.

**c.** Bids which do not comply with or are not responsive to the provisions and/or specifications of the bid shall be considered non-responsive and shall be rejected.

**d.** In the case of identical low bids from two or more bidders, the Procurement Manager may use direct negotiation methods with the tied low bidders for that particular transaction, so long as the price paid does not exceed the low tied bid price. (*Minn. Stat. 16C.28, Subd.3*)

**e.** It shall be the duty of the Purchasing Division to discourage uniform bidding and to endeavor to obtain full and open competition on all purchases and sales, to the extent possible.

**f.** St. Louis County shall, at its sole discretion, determine when a bidder is not a "responsible bidder," using the definitions provided below.

**6. Responsible Bidder Defined.** In determining the lowest responsible bidder, in addition to the price, St. Louis County's consideration shall include, but not be limited to, the following:

**a.** The ability, capacity and demonstrated skill of the bidder to perform and/or provide the required service;

**b.** Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

**c.** The character, integrity, reputation, judgment, experience and efficiency of the bidder;

**d.** The quality of performance of previous contracts or services;

**e.** The sufficiency of the financial resources and ability of the bidder to perform the contract or services;

**f.** The quality, availability and adaptability of the supplies or contractual services to the particular use required;

**g.** The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.

**7. Award of Bids.** All contracts shall be awarded to the lowest responsive, responsible bidder or highest responsible bidder in the case of sales.

**a.** In a particular bid wherein the unit price and the total price do not agree, the unit price will prevail.

**b.** For all contracts for construction, alteration, repair, or maintenance work, the county may award contracts to the vendor offering the best value, and "best

value" shall be defined as found in Minnesota statute. Alternatively, the county may award all contracts for construction, alteration, repair, or maintenance work to the lowest responsible bidder, reserving the right to reject any or all bids. (*Minn. Stat. § 16C.28, Subd. 1, paragraph (a), clause (2), and paragraph (c), and Section 16C.28, Subd. 1a; Minn. Stat. § 375.21 Subd.1b*)

**c.** Fleet vehicles. When soliciting bids for fleet vehicles, the County Board may award the bid to a St. Louis County vendor if it meets specifications, is the lowest bid, and is not greater than \$350 more than the State contract price. (*Resolution No. 04-127*)

## **B. PURCHASE ORDERS**

### **1. Use of Purchase Orders**

**a.** The department must obtain a Purchasing Division purchase order (P.O.) prior to any purchase over \$5,000. The requirement for P.O. prior to purchase does not apply to emergency purchases or the use of Procurement Cards (P-cards)

**b.** Any electronic purchase of equipment containing a central processing unit (CPU) such as a computer, tablet, iPad, laptop, etc., must have a purchase order regardless of cost, to ensure compatibility with existing county approved technology standards.

### **2. No purchase order is required for the following purchases:**

**a.** Purchases of \$5,000 and less. This amount includes purchases only, excluding freight and/or shipping charges.

**b.** Communications and Utilities. Defined as telephone, cellular, pager and internet services, water, sewer, electrical and gas bills.

**c.** Bonds and Insurance. Defined as elected official bonds, deputy bonds, surety bonds, notary applications and insurance payments.

**d.** Reimbursements. Defined as payments to employees for approved expenses.

**e.** Dues and Membership Fees. Defined as dues and membership fees for professional organizations.

**f.** Publications and Subscriptions. Defined as newspapers, magazines, journals.

**g.** Travel. Defined as advance payment or reimbursement for travel expense - Approved travel form required.

**h.** Tuition and Training. Defined as fees and associated cost for training and tuition.

**i.** Advertisement/Legal Notices. Defined as newspapers advertisements and notices. - (Tear sheet or certified copy of advertisement and notices required.)

**j.** Bank Charges. Defined as stop payments, wiring fees and any miscellaneous charges associated with banking.

**k.** Other Governmental Entities. Defined as payments to Federal, State, and Local government entities.

**l.** Debt Service Payments. Defined as principal and interest on outstanding debt and any associated fees.

**m.** Legal Research Sources

**n.** Procurement Card (P-card) Purchases. P-card purchases are subject to all P-card policies and procedures.

**C. SOLE SOURCE PURCHASING**

Competitive bidding is not required when by reason of a copyright, patent, or exclusive franchise, purchases can be only made at a standard, fixed, or uniform price and no advantage can be secured by advertisement and competitive bidding because of the noncompetitive nature of the item(s) to be purchased.

Circumstances, as determined by the Purchasing Division, which would permit sole source purchasing could include purchases from other governmental bodies, such as the United States, State of Minnesota or other counties and cities. Sole source purchases may also apply to contract services such as technical and professional, or utility services where no competition exists, or where rates are fixed by law or ordinance.

When an item or service is required which is determined to be reasonably available only from a single supplier, the following procedures shall be followed:

1. For purchases of any amount a requisition shall be transmitted to the Purchasing Division indicating that only one source is known to be reasonably capable of meeting St. Louis County's needs.
2. If practical and in the best interest of St. Louis County, efforts should be made by the requesting department to locate any other possible sources, and the names of those contacted, if any, who were unable to supply the required items or services shall be noted in the comment section of the requisition.
3. The Purchasing Division will review the requisition and, if practical and in the best interest of the county, attempt to identify any potential suppliers who are not listed on the requisition. If no other source is found, a purchase order will be issued to the sole supplier who is known to be capable of filling the order.
4. The procedures and requirements for sole source purchasing, as identified in the "St. Louis County Sole Source Procurement Justification" form found in Appendix A, are incorporated herein by reference, as part of these Purchasing Rules and Regulations. This form must be completed and included in any sole source purchasing request submitted to the Purchasing Division. The form is also located on the Purchasing Division website.

**D. EMERGENCY PURCHASING**

1. The Purchasing Director may authorize any department, board, commission or agency of the county to purchase in the open market, before filing a requisition, any supplies, materials, services or equipment for immediate delivery to meet actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation and unanticipated volume of work.
2. Others shall only make emergency purchases when specific authority has been given to an individual, or in the event the Purchasing Director or designee cannot be contacted. Upon notification and documentation, the Purchasing Director or designee will issue an emergency purchase order, unless the emergency purchase was made in violation of the regulations governing same.
3. Emergency repairs or purchases that cannot be delayed for the time required for processing a purchase order or bidding are defined as: destruction or impassability of roads or bridges by floods, rain, snow or other casualty; or from breakage, damage or decay of any property in the county, if the public health, safety or welfare would suffer by delay. In the case of an emergency arising from these factors that cannot wait for the time required to advertise for bids or quotes, contracts for purchases, services or repairs may be made without advertising for bids. (*Minn. Stat. § 375.21*)
4. For emergency repairs over \$85,000 that cannot wait for the time required to advertise for bids or quotes, repairs may be made if the work is authorized by a majority of the Board of County Commissioners. In this case, the Department Head or designee shall individually poll the members of the County Board, by phone, email, text, or in person, to obtain majority approval. The action must then be ratified and recorded in the official proceedings of the County Board at its next regular meeting. (*Minn. Stat. § 375.22*)

**E. YEAR END ENCUMBRANCES**

1. At the end of any given budget year, if funds have been budgeted and levied for the current year, but a project was not able to be started and the vendor has not yet been selected, a department may request in writing to the Purchasing Director, or designee, to allow an encumbrance to be set up under the generic "BEST VENDOR" code.
2. This process will allow the budget for this project to roll forward into the next budget year. Once a vendor is selected, the Purchasing Division will convert the existing "BEST VENDOR" encumbrance to a new purchase order under the correct vendor.

**V. PROPERTY DISPOSAL PROCEDURES**

**A. SURPLUS PROPERTY**

1. The Purchasing Division is authorized to transfer to or between county departments, boards, commissions, and agencies supplies, materials and equipment which are considered to be surplus by one agency, but which may be

needed by another, and for the disposal by sale, after receipt of competitive bids, or by auction, of supplies, materials and equipment which are surplus, obsolete or unused. Any surplus or obsolete property having nominal value and not needed by any county department, board, commission, or agency may be made available to the public at a location and time determined by the Purchasing Division for an appropriate price per item. Purchasers shall execute a "bill of sale" that disposes of the property "as is" and limits the county's liability for damages arising out of the use of the property. The Purchasing Division shall notify the County Board prior to disposing of any equipment estimated to be greater than \$15,000 in the open market. (*Minn. Stat. § 373.01 Subd. 1(c), Resolution No. 00-651*)

2. The County Board must approve the transfer or sale of surplus, obsolete or unused, personal property to another public corporation for public use. (*Minn. Stat. § 471.85, Resolution No. 00-651*)
3. All county departments are authorized to transfer obsolete, surplus and unusable computer components to the Information Technology Department for disposal. (*Resolution No. 98-369*)

#### **B. SALE OR LEASE OF REAL PROPERTY**

1. No sale, lease, or conveyance of real property owned by the county shall be valid without advertising for bids or proposals 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. (*Minn. Stat. § 373.01 Subd. 1(b)*)
2. The Property Management Department shall negotiate leases for all grounds, buildings, office or other space required by all county departments, boards, commissions or agencies and manage the sale of real property.
3. All property leases for one or more years are subject to the Property Acquisition/Leases Policy and must be approved by the County Board. Lease renewals need only be approved and executed by the Department Head and the Property Manager. Leases may be renewed for the length of the original contract only once. Copies of all leases shall be maintained by the Property Management Department.

#### **C. SALE OR RENTAL OF PERSONAL PROPERTY**

1. **Rental.** If the amount of the contract for the rental of equipment is estimated to be \$60,000 or less, the contract may, at the discretion of the Purchasing Director, 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. All quotations shall be kept on file for a period of at least one year after their receipt. (*Minn. Stat. § 471.345, Subd. 5a*)
2. **Lease Purchase.** Any lease purchase agreement or other form of time payment agreement for the acquisition of personal property exceeding \$25,000 must be approved by the County Board as a time payment purchase in its annual budget or specifically approved as a time payment purchase by County Board resolution prior to requisition. All such agreements must specifically limit the seller's remedy against St. Louis County for nonpayment of installments of the purchase price to

recovery of the property that is the subject of the agreement. All such agreements shall be made subject to approval of the County Attorney as to form and execution.

3. **Sale.** The Purchasing Division shall manage the sales of personal property, the value of which is estimated to be \$15,000 or more, which shall 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 trades journal. If the value is estimated to be less than \$15,000, sale may be made either on competitive bids or in the open market in the discretion of the County Board. (*Minn. Stat. § 373.01, Subd. 1(c)*)

## **VI. CONTRACT CHANGES, AMENDMENTS AND TERMINATIONS**

### **A. CHANGE ORDERS AND AMENDMENTS**

1. **Change Orders.** Change orders for construction projects may be approved by the Public Works Director for projects administered by the Public Works Department or the Purchasing Director or designee, for all other projects, with the following limitations (*Resolution No. 91-867*):
  - a. Change orders of up to \$12,500 for construction projects less than \$50,000.
  - b. Change orders up to 25 percent of the project cost, but not exceeding a cumulative total of \$50,000, for all other construction projects. (*This does not require a County Board Resolution or a Board Memo explanation.*) A Board Resolution is required when the change order exceeds the \$50,000 cumulative total, with the exceptions noted in Section VI.A.1.c. and VI.B.
  - c. Any contract change orders over the \$50,000 cumulative amount on any construction project may be approved by the Public Works Director on projects administered by the Public Works Department, or the Purchasing Director for all other projects, if the additional work is required to complete the project, but shall be reported with a detailed explanation to the County Board in the form of a Board Memo within 5 working days after approval. A County Board Resolution is not required if authority to make the payment has already been granted by the Public Works Director or the Purchasing Director. (*Resolution No. 91-867*) Road and bridge projects administered by the Public Works Department shall be treated separately as detailed in Section VI.B.
  - d. The "Project Change Order Approval Requirements Flow Chart," with its procedures and requirements as identified and listed in Appendix A, is incorporated herein by reference, as part of these Purchasing Rules and Regulations.
2. **Scope of Work.** A change to the scope of work of a project (i.e. work desired, but not required to complete the project) is not considered a "Change Order" for the purposes of this section, and must be addressed separately under normal purchasing procedures.

3. **Approval Requirements.** County Board approval is required if the amendment that increases the amount of money spent pursuant to the contract exceeds the original County Board authority, budget, or exceeds the amount that can be spent without Board approval if there was not Board approval for the original contract.

**B. PUBLIC WORKS ROAD AND BRIDGE CONTRACT CHANGES**

1. **Items Required to Complete a Project.** Any contract change orders may be approved by the Highway Engineer/Public Works Director for road and bridge projects if the additional work is required to complete the project, but shall be reported with a detailed explanation to the County Board in the form of a Board Memo within 30 days of the project closeout.
2. **Extra Work.** When in the best interest of the County, on road and bridge projects the Public Works Director/Highway Engineer has the authority to quote out or negotiate extra work valued at less than \$100,000 with contractors already working in the geographic area, provided sufficient funds exist in the Public Works Department budget. The Public Works Director/Highway Engineer will report with a detailed explanation to the County Board in the form of a Board Memo within 30 days of the acceptance of a contractor and price for the extra work. All work shall comply with St. Louis County Public Works Department and Minnesota Department of Transportation rules, procedures and specifications.

**C. CANCELLATION AND TERMINATION OF CONTRACTS**

The purchase or contract for any supplies, materials, equipment or contractual services, or the sale of surplus, obsolete, or unusable supplies, materials or equipment contrary to the provisions of Minn. Stat. § 375.72 to 375.76, or the rules and regulations made there under is voidable.

At the request of a using department or agency, the Purchasing Director or designee may cancel a purchase order or contract for any of the following conditions:

1. Failure of the vendor to perform or breach of contract by the vendor, or any other reason specified in the applicable purchase order or contract.
2. Product(s) or service(s) is no longer required and the contract allows cancellation without penalty.

**D. DEBARMENT**

Suspension and Debarment (Disqualification) of Contractors (*Minn. Stat. § 161.315*)

1. **Purpose.** The purpose of this section is to provide for the suspension and debarment of any person or firm from consideration for awards for St. Louis County contracts. This action shall be based upon certain types of criminal convictions, civil judgments or contract violations, or for any other cause.
2. **Causes for Debarment or Suspension.** The causes for debarment or suspension include, but are not limited to, the following:

- a. Conviction of any person or subsidiary or affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in performance of such contract or subcontract;
- b. Conviction of any person or any subsidiary or affiliate of any person under any statute of the federal government, this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of property.
- c. Conviction of any person or any subsidiary or affiliate of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a St. Louis County contractor;
- d. Conviction or a civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes;
- e. Violations of contract provisions of a character which are deemed to be so serious as to justify debarment action, including, but not limited to, the following:
  - 1) Knowingly failing without good cause to perform in accordance with the specifications or within the time limits provided in;
  - 2) Failure to perform or unsatisfactory performance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

- 3. **Written Determinations.** A written determination to debar or suspend shall be issued and contain:
  - a. The reasons for the action taken;
  - b. The action taken and the effective date and length of time the action shall be in effect;
  - c. Inform any debarred or suspended party involved of their right to administrative appeal.
  - d. A copy of the decision shall be mailed or otherwise furnished to any debarred or suspended party.
  - e. A vendor may apply for re-instatement at any time after the period of debarment has expired.
- 4. **Authority to Debar or Suspend.** The Procurement Manager is delegated authority to debar or suspend a party from participating in county contracts.
- 5. **Period of Debarment.** The period of time for debarment shall not exceed three (3) years from the date of the determination. If debarment is based solely upon debarment by another governmental agency, the period of debarment may run concurrently with the period established by the other debarring agency.

## **E. APPEALS AND REMEDIES**

1. **Protests.** Any actual or prospective bidder or contractor who is aggrieved in connection with the solicitation or award of a contract, may protest to the Procurement Manager. The protest shall be submitted in writing within ten (10) calendar days of bid opening. The Procurement Manager shall have the authority to settle and resolve a protest of an aggrieved bidder or contractor, actual or prospective, concerning the solicitation or award of the contract.
2. **Change Order Decisions.** If a protest is brought pursuant to Subsection A of this Section (Change Orders and Amendments) is not resolved by mutual agreement, the Procurement Manager shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise furnished immediately to the protestant or claimant and any other party intervening. The decision shall state the reasons for the action taken.
3. **Debarment Decisions.** A decision made under Subsection D of this Section (Debarment), shall be final and conclusive, unless within five (5) calendar days from the date of receipt of the decision, the protestant or claimant files a written appeal with the County Administrator.
4. **Contract Claims.** All claims by a contractor against the county relating to a contract shall be submitted in writing to the Procurement Manager. The contractor may request a conference with the Procurement Manager on a submitted claim. Claims include, without limitation, disputes arising under a contract and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

The Procurement Manager, after consulting with the County Attorney, shall have the authority to resolve contract claims, subject to the approval of the Purchasing Director, as applicable, regarding any settlement that will result in a change order or contract modification.

5. **Authority of the County Administrator.** The County Administrator shall have the jurisdiction to review and determine any appeal by an aggrieved party from a determination by the Purchasing Director regarding a protest or contract claim. Such decision shall be final and conclusive.

## APPENDIX A

### St. Louis County "Sole Source" Procurement Justification

Competitive bidding is not required when by reason of a copyright, patent, or exclusive franchise, purchases can be only made at a standard, fixed, or uniform price and no advantage can be secured by advertisement and competitive bidding because of the noncompetitive nature of the item(s) to be purchased.

This form must be approved by the Purchasing Division Procurement Manager for any "sole source" procurement estimated to exceed \$25,000. The purpose of this justification is to demonstrate why it is impractical or impossible to seek competitive bids for this purchase.

Estimated amount of this purchase \$ \_\_\_\_\_ Contract period \_\_\_\_\_

Please answer the following questions on a separate sheet in detail (referencing each question by number):

1. What vendor or business will be providing the item(s) requested to be purchased?  
Include address and other contact information. Please attach the quote received from the vendor.
2. What is it about this purchase that makes it unique? (i.e., patents/copyrights, need compatibility with existing - why?, space constraints, must match equipment with another public jurisdiction, consequences if this were put out for bid, etc.)
3. What steps have you taken to determine this is the only product/service that will meet your particular needs? (i.e., professional opinions/correspondence, trade publications, trade shows, personal visits or correspondence with vendor, other institutions that have installed the same product, other site visitations, etc.)
4. Will this purchase tie St. Louis County to this particular vendor for future purchases? (Either in terms of maintenance that only this vendor will be able to perform and/or if we purchase this item, will we then need more "like" items in the future to match this one?)
5. On your attachment, please affirmatively state, "No other vendor can provide the same or a similar product/service," and enclose any other information which will help make the determination that this is a sole source procurement.

I am aware that Minnesota statutes require procurements to be competitively bid whenever practicable. The preceding statements are complete and accurate, based on my professional judgment and investigations. I also certify that no personal advantage will accrue to me or any member of my immediate family as a result of this procurement.

Department Head (Print): \_\_\_\_\_

Department Head (Signature): \_\_\_\_\_

Procurement Manager (Signature): \_\_\_\_\_

Department contact person and phone: \_\_\_\_\_

Purchasing staff assigned to project: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

## Contract Requirements

Type of Contract	Solicitation Requirements	Approval Required	Signatures Required	Authority
<b>Property Lease</b> • County as LESSOR	Formal Bidding if > \$15,000 a year	County Board Resolution	Chair of Board County Auditor County Attorney	M.S. § 373.01 subd. 1(5)
• County as LESSEE	Open Market	County Board Resolution	Chair of Board County Auditor County Attorney	M.S. § 373.01 subd. 1(5)
• Renewals as LESSOR or LESSEE	N/A	Director of Property Management Department Head	Director of Property Management Department Head County Attorney	Purchasing Rules and Regulations
<b>Insurance</b>	Direct Negotiation	County Board Resolution	Procurement Manager	M.S. § 375.72-76
<b>Emergency Purchases / Repairs</b> • ≤ \$85,000	N/A	Department Head Procurement Manager	Procurement Manager	Purchasing Rules and Regulations
• > \$85,000	N/A	Department Head Procurement Manager County Board Resolution for ratification at next meeting	Procurement Manager	Purchasing Rules and Regulations M.S. § 375.21, .22, .75
<b>A/E Contracts</b> • ≤ \$25,000	Open Market	Department Head Procurement Manager	Department Head County Attorney	Purchasing Rules and Regulations
• > \$25,000 - \$40,000	Direct Negotiation (2 Quotes Minimum)	Department Head Procurement Manager Property Manager	Department Head County Attorney	Purchasing Rules and Regulations
• > \$40,000	Direct Negotiation (2 Quotes Minimum)	County Board Resolution	Chair of Board County Auditor County Attorney	Purchasing Rules and Regulations
<b>Professional Services</b> • ≤ \$40,000	Direct Negotiation (2 Quotes Minimum)	Department Head	Department Head County Attorney	Purchasing Rules and Regulations
• > \$40,000	Direct Negotiation (2 Quotes Minimum)	County Board Resolution	Chair of Board County Auditor County Attorney	Purchasing Rules and Regulations
<b>Software Licensing / Maintenance Agreements</b> • ≤ \$40,000	Direct Negotiation (2 Quotes Minimum)	IT Review Department Head	Department Head County Attorney	Purchasing Rules and Regulations
• > \$40,000	Direct Negotiation (2 Quotes Minimum)	IT Review County Board Resolution	Chair of Board County Auditor County Attorney	Purchasing Rules and Regulations
• Renewals	Direct Negotiation (2 Quotes Minimum)	Department Head	Department Head County Attorney	Purchasing Rules and Regulations
<b>All Other - Including Construction</b> • ≤ \$25,000	Open Market	Department Head	Department Head County Attorney	Purchasing Rules and Regulations; M.S. § 471.345
• > \$25,000 - \$85,000	Direct Negotiation (2 Quotes Minimum)	Department Head Procurement Manager	Department Head County Attorney	Purchasing Rules and Regulations M.S. § 471.345
• > \$85,000 - \$100,000	Direct Negotiation (2 Quotes Minimum)	County Board Resolution	Chair of Board County Auditor County Attorney	Purchasing Rules and Regulations M.S. § 471.345
• > \$100,000 <b>Construction Manager At Risk (CMAR)</b>	Formal Bidding  Request for Proposal	County Board Resolution  County Board Resolution	Chair of Board County Auditor County Attorney	M.S. § 471.345 M.S. § 16C.34, subd. 2,3

**Note: All contracts, except Emergency Purchases/Repairs, are subject to prior review by the County Attorney or designee for approval as to form and execution. A copy shall be filed with the originating department.**

Revised 10/20/15

Contract Routing

Department: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contract With: \_\_\_\_\_

Purpose: \_\_\_\_\_

Type of Contract: \_\_\_\_\_  
(see reverse)

Contact person shall indicate (with X) persons who must review and sign. **COUNTY ATTORNEY MUST BE THE LAST TO SIGN ALL CONTRACTS.**

**I. CONTRACT DRAFT OR PROPOSAL**

<u>Review and Approval</u>		<u>Initial</u>	<u>Date</u>
_____ Purchasing Division	_____ File No.	_____	_____
_____ County Attorney Draft/Review	_____ Damion No.	_____	_____
_____ Department Head Review		_____	_____
County Board Authorization if Applicable	_____ Resolution No.		
	<b>MUST BE ATTACHED</b>		

**II. CONTRACT EXECUTION**

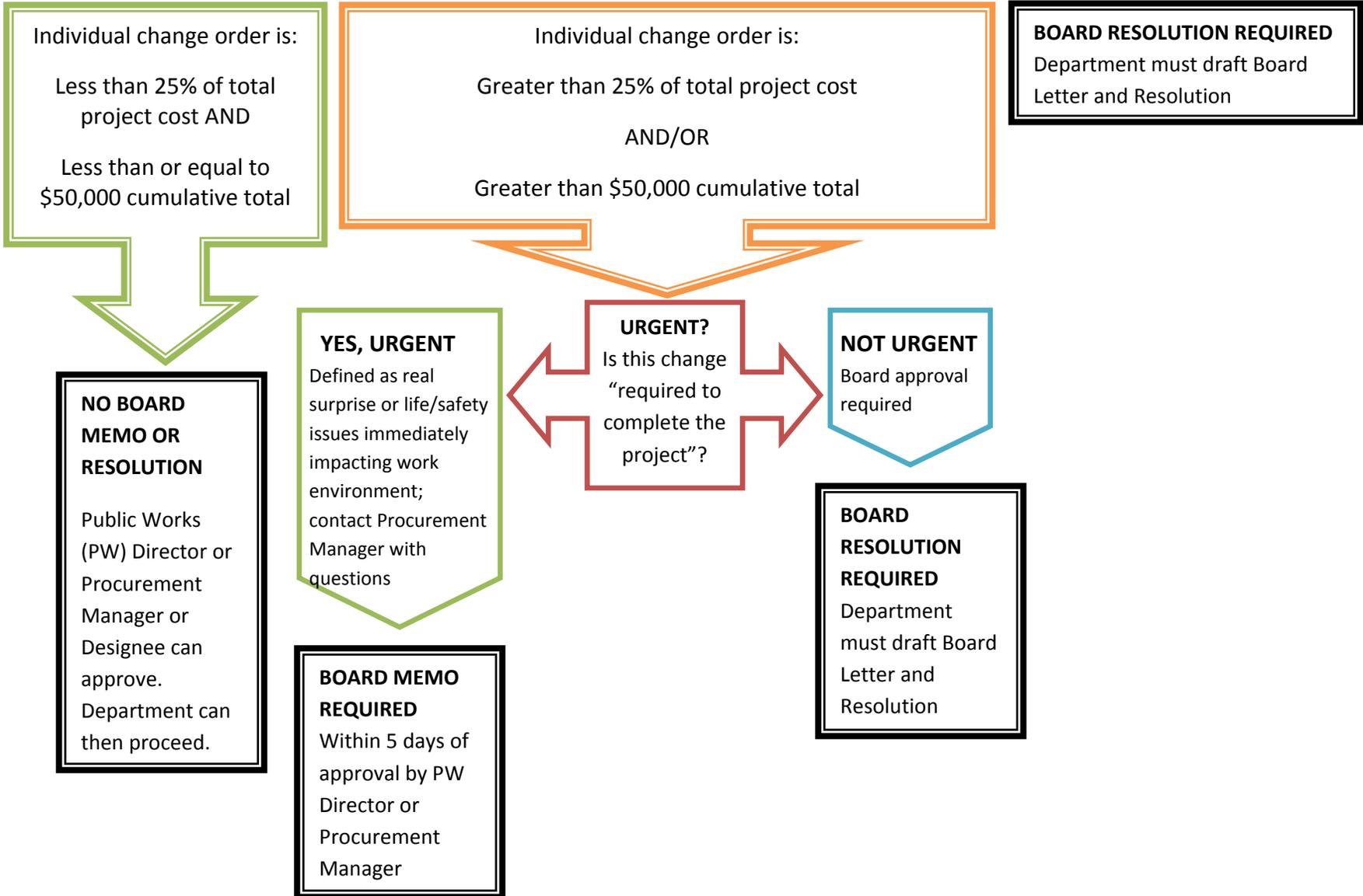
<u>Must Sign if X</u>		<u>Date</u>
<u> X </u> Contractor		_____
_____ Department Head		_____
_____ Procurement Manager		_____
_____ County Board Chairperson		_____
_____ Auditor		_____
<u> X </u> County Attorney		_____

**RETURN THIS FORM, WITH ALL COPIES OF THE FULLY EXECUTED CONTRACT, TO CONTACT PERSON LISTED ABOVE.**

Contact person shall send this form with a copy of completed contract to the Auditor for official file.

(Reference: County Board Resolution No. 91-867 included in the Purchasing Rules & Regulations)

Change Order request is within the approved project scope	Change Order request is outside of approved project scope (of any size)
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ST. LOUIS COUNTY BOARD POLICIES  
GRANT MANAGEMENT  
CHAPTER 11  
**GRANT APPROVAL FORM**

GRANT NAME: \_\_\_\_\_ GRANT AMOUNT: \_\_\_\_\_

GRANTOR: \_\_\_\_\_ MATCH AMOUNT: \_\_\_\_\_

FUND: \_\_\_\_\_ AGENCY: \_\_\_\_\_ GRANT: \_\_\_\_\_ GRANT YEAR: \_\_\_\_\_

AGENCY NAME: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ PHONE: \_\_\_\_\_

GRANT PERIOD: BEGIN DATE: \_\_\_\_\_ END DATE: \_\_\_\_\_

STATE GRANT AWARD NUMBER OR FEDERAL CFDA # \_\_\_\_\_

FILL IN THE ABOVE INFORMATION ON THIS FORM AND IDENTIFY THE CATEGORY OF THE GRANT FROM THE CHOICES BELOW. ATTACH THIS FORM TO THE GRANT APPLICATION AND ANY OTHER PERTINENT OTHER DOCUMENTATION AND ROUTE THE PACKET TO THE INDIVIDUALS LISTED FOR THE TYPE OF GRANT.

**IT IS ESSENTIAL THAT DEPARTMENTS SUBMIT THE COMPLETED APPROVAL FORM ON THOSE GRANTS THAT DO NOT REQUIRE BOARD RESOLUTION TO THE AUDITOR'S OFFICE ACCOUNTING DEPARTMENT FOR BUDGETING PURPOSES. NO GRANT ACTIVITY WILL BE RECORDED WITHOUT AN ESTABLISHED BUDGET.**

**GRANTS OF \$25,000 OR LESS**

A grant of \$25,000 or less may be applied for and/or accepted by the department without a separate County Board Resolution if it meets the following:

1. The grant fits within the department's functions, and
2. If the grant requires a County match (not to exceed in money or value an amount equal to the actual grant), and if that match is "in kind, that "in-kind" match is part of the ongoing operations, **or** if the match is monetary, that the department can find the necessary amount within its existing budget.

**DOES THIS GRANT QUALIFY UNDER "GRANTS OF \$25,000 OR LESS"?**

**YES \_\_\_ NO \_\_\_**

If so, this type of grant requires the following review approval:

County Auditor \_\_\_\_\_ Date: \_\_\_\_\_

County Administrator \_\_\_\_\_ Date: \_\_\_\_\_

County Attorney \_\_\_\_\_ Date: \_\_\_\_\_

**The Grant Budget must be entered into the accounting system. Send a copy of the grant, this signed approval form and any other pertinent information to the Auditor's Office-Accounting, so the budget can be entered into the system. Without a budget, no expenditures or revenues will be recorded.**

ST. LOUIS COUNTY BOARD POLICIES  
GRANT MANAGEMENT  
CHAPTER 11

**NEW GRANTS GREATER THAN \$25,000**

All new grants that exceed \$25,000 and all recurring grants that exceed \$25,000 that contain changes in the grant's requirements which may affect either County resources or the scope of the grant need two (2) board resolutions. One board resolution is required to apply for the grant and a second resolution is required to accept the grant.

**DOES THIS GRANT QUALIFY UNDER "GRANTS GREATER THAN \$25,000"?**  
**YES \_\_\_ NO \_\_\_**

If this is a new grant greater than \$25,000, it requires the following review approval:

County Auditor \_\_\_\_\_ Date: \_\_\_\_\_  
County Administrator \_\_\_\_\_ Date: \_\_\_\_\_

**The Grant Budget must be entered into the accounting system. Send a copy of the grant, this completed approval form and the Board Resolution to the Auditor's Office-Accounting, so a budget can be entered into the system. Without a budget, no expenditures or revenues will be recorded.**

**RECURRING GRANTS GREATER THAN \$25,000**

A recurring grant greater than \$25,000 that is a repeat of a grant which has been received by the County in past year(s) and that has no changes in the use of County resources or in the scope of the grant, requires one Board Resolution to both apply for and/or accept the grant.

**DOES THIS GRANT QUALIFY AS "RECURRING GRANTS GREATER THAN \$25,000"?**  
**YES \_\_\_ NO \_\_\_**

If yes, this recurring grant greater than \$25,000 requires the following review approval:

County Auditor \_\_\_\_\_ Date: \_\_\_\_\_  
County Administrator \_\_\_\_\_ Date: \_\_\_\_\_

**The Grant Budget must be entered into the accounting system. Send a copy of the grant, this completed approval form and the Board Resolution to the Auditor's Office-Accounting, so a budget can be entered into the system. Without a budget, no expenditures or revenues will be recorded.**

## APPENDIX B

### St. Louis County Board Resolutions

*“St. Louis County Purchasing Rules and Regulations,” adopted by the St. Louis County Board by Resolution No 15-xx, dated November 10, 2015, includes citations for resolutions noted in Appendix B. These resolutions are provided for historical reference. Adoption of these rules modifies some resolutions to reflect inflationary increases over time, and incorporates technical advances and preferred methodologies.*

#### **RESOLUTION NO. 73-141, Adopted March 12, 1973**

RESOLVED, That Resolution No. 69-142 adopted by the County Board of Commissioners of St. Louis County on March 24, 1969 is hereby amended to read as follows:

“RESOLVED, That the specifications in all contracts made by the County for construction work of any and every kind shall require payment by contractors to tradespeople and laborers working on the project at wages at the prevailing rate for the area where the construction work is being done.”

#### **RESOLUTION NO. 84-519, Adopted July 23, 1984**

WHEREAS, The St. Louis County Board wishes to adopt a uniform policy on time payment purchases;

RESOLVED, That any lease/purchase agreement or other form of time payment agreement for the acquisition of personal property must be approved by the County Board as a time payment purchase in its annual County budget or specifically approved as a time payment purchase by County Board resolution prior to requisition.

RESOLVED FURTHER, That all such agreements must specifically limit the seller's remedy against St. Louis County for non-payment of installments of the purchase price to recovery of the property that is the subject of the agreement.

RESOLVED FURTHER, That the Purchasing Agent is hereby authorized and directed to incorporate a copy of this resolution into any bid request providing for payment beyond one budget year.

#### **RESOLUTION NO. 88-381, Adopted May 24, 1988**

RESOLVED, That pursuant to Minnesota Statutes, the St. Louis County Board of Commissioners hereby delegates the authority for setting the date for the calling of bids on projects approved in the budget for capital improvements in the Highway Department to the Highway Engineer.

RESOLVED FURTHER, That County Board approval continues to be required for the calling of bids on projects which have not been approved in the budget.

RESOLVED FURTHER, That County Board approval continues to be required for the awarding of bids on all projects.

**RESOLUTION NO. 91-867, Adopted November 5, 1991**

RESOLVED, That the Highway Engineer/Public Works Director is hereby authorized to approve contract change orders for public works road construction projects, and the Purchasing Agent for all other projects, as follows:

1. Change orders for a project total of \$12,500 for construction projects of less than \$50,000.
2. Change orders for 25 percent of project cost not to exceed \$50,000 total for all other construction projects.

RESOLVED FURTHER, That any contract change orders over this authorized amount may be approved by the Highway Engineer/Public Works Director or Purchasing Agent, as designated, if required to complete the project, but shall be reported with detailed explanation to the County Board within five working days after approval.

RESOLVED FURTHER, That this resolution is subject to any authority granted by subsequent contract of the County Board.

**RESOLUTION NO. 92-66, Adopted January 21, 1992**

RESOLVED, That the St. Louis County Board of Commissioners hereby designates and sets aside for awarding contracts to rehabilitation facilities an amount equal to one-half of one percent of the value of the County's anticipated total procurement of goods and services as a targeted procurement volume of goods and services to be received from qualified rehabilitation facilities.

RESOLVED FURTHER, That procurement of goods and services from such qualified rehabilitation facilities shall be awarded to said facilities. If the cost does not exceed by more than five percent, the estimated cost of goods or services or the bid price of the lowest solicited bid for such goods or services.

RESOLVED FURTHER, That the Purchasing Agent is hereby directed to develop purchasing rules and regulations for implementation of target procurement from qualified rehabilitation facilities. Said rules and regulations to be subject to County Board approval.

**RESOLUTION NO. 98-369, Adopted May 5, 1998**

RESOLVED, That the St. Louis County Board of Commissioners authorizes all County departments to transfer their obsolete, surplus, and unusable computer components to the Management Information Systems Department and authorizes that department to donate those computer components to approved end users consistent with Minnesota Statutes 471.85.

**RESOLUTION NO. 00-651, Adopted September 26, 2000**

RESOLVED, That section 25 of the Purchasing Rules and Regulations adopted in 1998 is hereby amended as follows:

**OBSOLETE, UNUSED, OR SURPLUS EQUIPMENT**

The Purchasing Agent is authorized to transfer to or between County departments, boards, commissions, and agencies supplies, materials and equipment which are surplus with one department, board, commission, or agency but which may be needed by another or others and for property not needed by any department for the disposal by sale, after receipt of competitive bids for property valued at \$15,000 or

more, or by sale on the open market for property valued at less than \$15,000 of supplies, materials and equipment which are surplus, obsolete or unused.

The transfer or sale of surplus, obsolete or unused, personal property to another public corporation for public use must be approved by the County Board. (Minnesota Statutes Section 471.85)

All County departments are authorized to transfer their obsolete, surplus and unusable computer components to the Management Information Systems Department for disposal in accordance with Resolution No. 369, adopted May 5, 1998, and Minnesota Statutes, Section 471.85.

RESOLVED FURTHER, That small items valued at less than \$15,000 such as furniture, supplies, and equipment, will go to the Salvation Army Thrift Store for sale pursuant to an agreement with the Salvation Army. After any item is sold, the Auditor's Department will be notified and the item will be removed from the list of County assets.

**RESOLUTION NO. 04-127, Adopted February 24, 2004**

WHEREAS, The Purchasing Department has prepared bid specifications for new 2004 vehicles up to one ton capacity; and

WHEREAS, Bids were received and compared with the State of Minnesota contracts as they became available; and

WHEREAS, Several vehicles were priced lower on the State of Minnesota contracts; and

WHEREAS, local qualifying bids within \$300.00 of the State of Minnesota Contract prices will be awarded to local bidders; and

WHEREAS, build-out dates are often announced with short lead times for placing orders;

NOW THEREFORE BE IT RESOLVED, That the Director of Purchasing is hereby authorized to purchase, in accordance with the specifications of Bid No. 4428, and State of Minnesota Contract Releases, 2004 vehicles as follows:

- 1.0 Six (6) Class III, full-size, four door sedans, with police package...
- 2.0 Deleted
- 3.0 One (1) Class IIA, mid-size, four door sedan...
- 3.1 One (1) Class IIA, mid-size, four door sedan...
- 3.2 One (1) Class IIA, mid-size, four door sedan...

**RESOLUTION NO. 04-255, Adopted May 4, 2004**

WHEREAS, The St. Louis County Board of Commissioners is desirous of efficient and timely completion of construction projects undertaken by St. Louis County; and

WHEREAS, The courts have upheld the implementation of project labor agreements for public projects; and

WHEREAS, Project labor agreements facilitate the timely completion of projects by: making available a ready and adequate supply of skilled craft workers; providing a negotiated commitment which is a legally enforceable means of assuring labor stability and labor peace over the life of a project; avoiding work stoppage following expiration of a collective bargaining agreement between the union and an employer performing work on the project and facilitating equal employment opportunities on a project.

NOW, THEREFORE, BE IT RESOLVED, That project labor agreements be utilized by the County for all future construction projects, in excess of \$150,000, unless otherwise prohibited by law.

RESOLVED FURTHER, That the St. Louis County Board of Commissioners hereby directs the St. Louis County Purchasing Director to utilize the Project Labor Agreement, identified as County Board File No. 58235, or a variation of the Agreement approved by the St. Louis County Attorney, for all future construction projects in excess of \$150,000.

RESOLVED FURTHER, That the Purchasing Director shall implement the Project Labor Agreement by requiring adherence to the Agreement in the bid specifications on all relevant bid documents.

**RESOLUTION NO. 04-534, Adopted October 12, 2004**

RESOLVED, That the St. Louis County Board hereby rescinds Resolution No. 599, dated August 4, 1998.

RESOLVED FURTHER, That the St. Louis County Board delegates contracting authority to the Director of Public Health and Human Services in the following situations:

1. No county dollars are expended
2. The Fraud Prevention Investigation Grant
3. Non-Financial Agreements
4. Cooperative agreements with other county departments and Arrowhead Regional Corrections
5. Contracts under \$25,000

**RESOLUTION NO. 06-24, Adopted January 3, 2006 (Amendment)**

NOW, THEREFORE, IT IS MOVED, That Resolution No. 24, adopted January 3, 2006, be reconsidered to:

*Delete:* RESOLVED FURTHER, that the County Board directs after six months starting July 1, 2006, all Requests for Bids, Requests for Proposals and Requests for Information will only be advertised on the St. Louis County web page.

*Add:* RESOLVED FURTHER, that the County Board directs after six months starting July 1, 2006, all Requests for Bids, Requests for Proposals and Requests for Information with the exception of road and bridge projects will only be advertised on the St. Louis County web page.

**RESOLUTION NO. 07-65, Adopted February 13, 2007**

WHEREAS, The St. Louis County Board of Commissioners desires that County building construction contracts require the use of domestically produced steel and iron products and materials for projects of sufficient value to require formal bidding;

NOW, THEREFORE, BE IT RESOLVED, That the St. Louis County Board authorizes County Administration, County Attorney, and other appropriate County officials to draft language to be used in formally bid building construction projects that require the use of domestic steel and iron materials and components.

**RESOLUTION NO. 13-347, Adopted June 4, 2013**

WHEREAS, Minn. Stat. § 471.345, Subd. 18, allows counties to accept bids, quotations, and proposals electronically in a form required by the county and further allows counties to accept bids, performance and payment bonds furnished electronically; and

WHEREAS, The St. Louis County Board adopted revised Purchasing Rules and Regulations by Board Resolution No. 08-610 dated November 18, 2008, which, in part, states that all bids, requests for proposals and requests for information shall be posted on an electronic bidding service and that formal bids may be received electronically, with the exception of road and bridge projects; and

WHEREAS, The Minnesota Department of Transportation has been using electronic bidding in excess of 15 years with great success; and

WHEREAS, The incidence of rejected bids can be minimized through the use of an electronic bidding process, thereby ensuring the lowest possible bids on projects;

THEREFORE, BE IT RESOLVED, That the St. Louis County Board directs the Auditor's Office, the Purchasing Division and the Public Works Department to implement an electronic bidding process for Public Works Department road and bridge projects.

RESOLVED FURTHER, That the Purchasing Rules and Regulations shall be modified to prescribe electronic bidding for Public Works Department road and bridge projects, with electronic format being the sole allowable form of bid submission.

## APPENDIX C

1

MINNESOTA STATUTES 2015

16C.02

### 16C.02 DEFINITIONS.

Subdivision 1. **Applicability.** For purposes of this chapter, the following terms have the meanings given them, unless the context clearly indicates otherwise.

Subd. 1a. [Repealed by amendment, 2014 c 196 art 2 s 1]

Subd. 2. **Agency.** "Agency" means any state officer, employee, board, commission, authority, department, entity, or organization of the executive branch of state government.

Unless specifically provided elsewhere in this chapter, agency does not include the Minnesota State Colleges and Universities.

Subd. 3. **Award.** "Award" means a commissioner's written acceptance of a bid or proposal to provide goods, services, construction, or utilities.

Subd. 3a. **Best and final offer.** "Best and final offer" means an optional step in the solicitation process in which responders are requested to improve their response by methods including, but not limited to, the reduction of cost, clarification or modification of the response, or the provision of additional information.

Subd. 4. **Best value.** "Best value" describes a result intended in the acquisition of all goods and services. Price must be one of the evaluation criteria when acquiring goods and services. Other evaluation criteria may include, but are not limited to, environmental considerations, quality, and vendor performance. In achieving "best value" strategic sourcing tools, including but not limited to best and final offers, negotiations, contract consolidation, product standardization, and mandatory-use enterprise contracts shall be used at the commissioner's discretion.

Subd. 4a. [Repealed by amendment, 2014 c 196 art 2 s 1]

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of administration.

Subd. 5a. **Competitive proposal.** "Competitive proposal" means a response to a request for proposal in which the evaluation criteria upon which an award is based consists of price and other factors such as vendor qualifications.

Subd. 5b. **Construction.** "Construction" means building construction, alteration improvements, or repair. Construction does not mean highway construction.

Subd. 6. **Contract.** "Contract" means any written instrument or electronic document containing the elements of offer, acceptance, and consideration to which an agency is a party.

Subd. 6a. **Enterprise procurement.** "Enterprise procurement" means the process undertaken by the commissioner to leverage economies of scale of multiple end users to achieve cost savings and other favorable terms in contracts for goods and services.

Subd. 6b. **Emergency.** "Emergency" means a threat to public health, welfare, or safety that threatens the functioning of government, the protection of property, or the health or safety of people.

Subd. 7. **Formal solicitation.** "Formal solicitation" means a solicitation which requires a sealed response.

Subd. 7a. **General services.** "General services" means any nonprofessional or technical services. General services does not include construction.

Subd. 8. **Goods.** "Goods" means all types of personal property including commodities, materials, supplies, and equipment.

Subd. 9. **Informal solicitation.** "Informal solicitation" means a solicitation which does not require a sealed response.

Subd. 10. **Lease.** "Lease" means a contract conveying from one entity to another the use of real or personal property for a designated period of time in return for payment or other consideration.

Subd. 10a. **Organizational conflict of interest.** "Organizational conflict of interest" means that because of existing or planned activities or because of relationships with other persons:

- (1) the vendor is unable or potentially unable to render impartial assistance or advice to the state;
- (2) the vendor's objectivity in performing the contract work is or might be otherwise impaired; or
- (3) the vendor has an unfair advantage.

Subd. 11. **Request for bid or RFB.** "Request for bid" or "RFB" means a solicitation in which the terms, conditions, and specifications are described and responses are not subject to negotiation.

Subd. 12. **Request for proposal or RFP.** "Request for proposal" or "RFP" means a solicitation in which it is not advantageous to set forth all the actual, detailed requirements at the time of solicitation and responses are negotiated to achieve best value for the state.

Subd. 13. **Resident vendor.** "Resident vendor" means a person, firm, or corporation that:

- (1) is authorized to conduct business in the state of Minnesota on the date a solicitation for a contract is first advertised or announced. It includes a foreign corporation duly authorized to engage in business in Minnesota;
- (2) has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought;
- (3) has a business address in the state; and
- (4) has affirmatively claimed that status in the bid or proposal submission.

Subd. 14. **Response.** "Response" means the offer received from a vendor in response to a solicitation. A response includes submissions commonly referred to as "offers," "bids," "quotes," "proposals," "best and final offers," or "negotiated offers."

Subd. 15. **Sealed.** "Sealed" means a method determined by the commissioner to prevent the contents being revealed or known before the deadline for submission of responses.

Subd. 16. [Repealed by amendment, 2014 c 196 art 2 s 1]

Subd. 17. **Services.** "Services" means, unless otherwise indicated, both professional or technical services and service performed under a general service contract.

Subd. 18. **Single source.** "Single source" means an acquisition where, after a search, only one supplier is determined to be reasonably available for the required product, service, or construction item.

Subd. 19. **Solicitation.** "Solicitation" means the process used to communicate procurement requirements and to request responses from interested vendors. A solicitation may be, but is not limited to, a request for bid and request for proposal.

Subd. 20. [Repealed by amendment, 2014 c 196 art 2 s 1]

Subd. 21. **Vendor.** "Vendor" means a business, including a construction contractor or a natural person, and includes both if the natural person is engaged in a business.

**History:** 1998 c 386 art 1 s 3; 1Sp2001 c 10 art 2 s 33; 1Sp2003 c 1 art 2 s 45; 2007 c 148 art 2 s 24-29; art 3 s 1,2; 2009 c 131 s 1; 2013 c 142 art 3 s 16; 2014 c 196 art 2 s 1

**16C.03 COMMISSIONER'S AUTHORITY; POWERS AND DUTIES.**

Subdivision 1. MS 2012 [Renumbered 16C.001]

Subd. 2. **Rulemaking authority.** (a) Subject to chapter 14, the commissioner may adopt rules, consistent with this chapter and chapter 16B, relating to the following topics:

- (1) procurement process including solicitations and responses to solicitations, bid security, vendor errors, opening of responses, award of contracts, tied bids, and award protest process;
- (2) contract performance and failure to perform;
- (3) authority to debar or suspend vendors, and reinstatement of vendors;
- (4) contract cancellation;
- (5) procurement from rehabilitation facilities;
- (6) organizational conflicts of interest; and
- (7) surplus property acquisition, distribution, and disposal.

(b) Minnesota Rules, parts 1230.0100 to 1230.4300, adopted under chapter 16B, govern under this chapter until amended, repealed, or superseded by rules adopted under chapter 16B or this chapter. In the event rules adopted under chapter 16B conflict with provisions of this chapter, this chapter governs.

Subd. 3. **Acquisition authority.** The commissioner shall acquire all goods, general services, building construction, and utilities needed by agencies. The commissioner shall make all decisions regarding acquisition activities. The commissioner shall conduct all contracting by, for, and between agencies and perform all contract management and review functions for contracts, except those functions specifically delegated to be performed by the contracting agency, the attorney general, or as otherwise provided for by law.

Subd. 3a. **Acquisition authority; best value construction contracts.** The commissioner is authorized to award construction contracts based on best value pursuant to section 16C.28.

Subd. 4. **Enterprise contracts.** The commissioner may require that agency staff participate in the development of enterprise procurements.

Subd. 4a. **Commissioner approval.** Notwithstanding any law to the contrary, any contract entered into by the Department of Transportation must be approved by the commissioner.

Subd. 5. **Amendments, cancellations, and protests.** The commissioner shall make all decisions regarding agency amendments, cancellations, and protests.

Subd. 6. **Lease and installment purchases.** The commissioner is authorized to enter into lease purchases or installment purchases for periods not exceeding the anticipated useful life of the items acquired unless otherwise prohibited by law.

Subd. 7. **Lease, rental, and installment agreements.** The commissioner is authorized to enter into lease, lease purchase, rental, or installment agreements for the use or acquisition, whichever is applicable, of real or personal property.

Subd. 8. **Policy and procedures.** The commissioner is authorized to issue policies, procedures, and standards applicable to all acquisition activities by and for agencies.

Subd. 9. [Repealed by amendment, 2014 c 196 art 2 s 2]

Subd. 10. **Cooperative purchasing.** The commissioner is authorized to enter into a cooperative purchasing agreement for the provision of goods, services, construction, and utilities in accordance with section 16C.105.

Subd. 11. [Repealed by amendment, 2014 c 196 art 2 s 2]

Subd. 12. [Repealed by amendment, 2014 c 196 art 2 s 2]

Subd. 13. [Repealed by amendment, 2014 c 196 art 2 s 2]

Subd. 14. **Provision of goods, services, and utilities.** The commissioner has the authority to provide goods, services, and utilities under this chapter to state legislative and judicial branch agencies, political subdivisions, the Minnesota State Colleges and Universities, the University of Minnesota, and federal government agencies.

Subd. 15. **Reimbursement for goods, services, and utilities.** The commissioner is authorized to charge a fee to cover costs and expenses associated with operating a revolving fund or an enterprise fund to acquire goods, services, construction, and utilities. The fees are appropriated to the commissioner to administer and manage the programs and facilities covered under this section.

Subd. 16. **Delegation of duties.** The commissioner may delegate duties imposed by this chapter to the head of an agency and to any subordinate of the agency head.

Subd. 17. [Repealed by amendment, 2014 c 196 art 2 s 2]

Subd. 18. **Contracts with foreign vendors.** (a) The commissioner and other agencies to which this section applies and the legislative branch of government shall, subject to paragraph (d), cancel a contract for goods or services from a vendor or an affiliate of a vendor or suspend or debar a vendor or an affiliate of a vendor from future contracts upon notification from the commissioner of revenue that the vendor or an affiliate of the vendor has not registered to collect the sales and use tax imposed under chapter 297A on its sales in Minnesota or to a destination in Minnesota. This subdivision shall not apply to state colleges and universities, the courts, and any agency in the judicial branch of government. For purposes of this subdivision, the term "affiliate" means any person or entity that is controlled by, or is under common control of, a vendor through stock ownership or other affiliation.

(b) Beginning January 1, 2006, each vendor or affiliate of a vendor selling goods or services, subject to tax under chapter 297A, to an agency or the legislature must provide its Minnesota sales and use tax business identification number, upon request, to show that the vendor is registered to collect Minnesota sales or use tax.

(c) The commissioner of revenue shall periodically provide to the commissioner and the legislative branch a list of vendors who have not registered to collect Minnesota sales and use tax and who are subject to being suspended or debarred as vendors or having their contracts canceled.

(d) The provisions of this subdivision may be waived by the commissioner or the legislative branch when the vendor is the single source of such goods or services, in the event of an emergency, or when it is

in the best interests of the state as determined by the commissioner in consultation with the commissioner of revenue. Such consultation is not a disclosure violation under chapter 270B.

Subd. 19. [Repealed, 2014 c 196 art 2 s 2,16]

**History:** *1998 c 386 art 1 s 4; 2000 c 420 s 1; 1Sp2001 c 10 art 2 s 34,35; 1Sp2003 c 1 art 2 s 46; 1Sp2005 c 3 art 5 s 1; 2007 c 67 s 1; 2007 c 83 s 1; 2007 c 139 s 1; 2007 c 148 art 2 s 30-33; art 3 s 3-5; 2008 c 277 art 1 s 2; 2009 c 101 art 2 s 109; 2009 c 131 s 2; 2014 c 196 art 2 s 2,15*

**16C.26 COMPETITIVE BIDS OR PROPOSALS.**

Subdivision 1. **Application.** Except as otherwise provided by section 16C.10 and this section, all contracts for building and construction or repairs must be based on competitive bids or proposals. "Competitive proposals" specifically refers to the method of procurement described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c).

Subd. 2. **Requirement contracts.** Standard requirement price contracts for building and construction must be established by competitive bids as provided in subdivision 1. The standard requirement price contracts may contain escalation clauses and may provide for a negotiated price increase or decrease based upon a demonstrable industrywide or regional increase or decrease in the vendor's costs or for the addition of similar products or replacement items not significant to the total value of existing contracts. The term of these contracts may not exceed five years including all extensions.

Subd. 3. **Publication of notice; expenditures over \$25,000.** If the amount of an expenditure is estimated to exceed \$25,000, bids or proposals must be solicited by public notice in a manner designated by the commissioner. To the extent practical, this must include posting on a state Web site. For expenditures over \$50,000, when a solicitation is issued, the commissioner shall solicit sealed responses by posting notices at least seven days before the due date and time. All bids over \$50,000 must be sealed when they are received and must be opened in public or electronically at the hour stated in the notice. All proposals responsive to a request for proposals according to section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c), shall be submitted and evaluated in the manner described in the request for proposals, regardless of the dollar amount. All original bids and proposals and all documents pertaining to the award of a contract must be retained and made a part of a permanent file or record and remain open to public inspection.

Subd. 4. **Building and construction contracts; \$50,000 or less.** An informal bid may be used for building, construction, and repair contracts that are estimated at less than \$50,000. Informal bids must be authenticated by the bidder in a manner specified by the commissioner. Alternatively, a request for proposals may be issued according to section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c), for such contracts.

Subd. 5. **Standard specifications, security.** Contracts must be based on the standard specifications prescribed and enforced by the commissioner under this chapter, unless otherwise expressly provided or as authorized under section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c). Each vendor or contractor must furnish security approved by the commissioner to ensure the making of the contract being bid for.

Subd. 6. MS 2012 [Renumbered 16C.06, subd. 11]

**History:** 2002 c 254 s 2; 2005 c 78 s 3,4; 2005 c 156 art 2 s 27,28; 2007 c 148 art 3 s 6; 2014 c 196 art 2 s 13,15

**16C.28 CONTRACTS; AWARD.**

Subdivision 1. **Award requirements.** (a) All state building and construction contracts entered into by or under the supervision of the commissioner or an agency for which competitive bids or proposals are required may be awarded to either of the following:

(1) the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract is intended, the status and capability of the vendor or contractor, other considerations imposed in the call for bids, and, where appropriate, principles of life-cycle costing; or

(2) the vendor or contractor offering the best value, taking into account the specifications of the request for proposals, the price and performance criteria as set forth in subdivision 1b, and described in the solicitation document.

(b) The vendor or contractor must secure bonding, commercial general insurance coverage, and workers' compensation insurance coverage under paragraph (a), clause (1) or (2). The commissioner shall determine whether to use the procurement process described in paragraph (a), clause (1), or the procurement process described in paragraph (a), clause (2), and paragraph (c). If the commissioner uses the method in paragraph (a), clause (2), and paragraph (c), the head of the agency shall determine which vendor or contractor offers the best value, subject to the approval of the commissioner. Any or all bids or proposals may be rejected.

(c) When using the procurement process described in subdivision 1, paragraph (a), clause (2), 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 shall be stated in the solicitation document and applied accordingly.

Subd. 1a. **Establishment and purpose.** (a) The state recognizes the importance of the inclusion of a best value contracting system for construction as an alternative to the current low-bid system of procurement. In order to accomplish that goal, state and local governmental entities shall be able to use best value.

(b) "Best value" means the procurement method defined in subdivision 1b.

(c) The commissioner or any agency for which competitive bids or proposals are required may not use best value contracting for more than one project annually, or 20 percent of its projects, whichever is greater, in each of the first three fiscal years in which best value construction contracting is used.

Subd. 1b. **Best value; definition.** For the purposes of construction, building, alteration, improvement, or repair services, "best value" describes the result determined by a procurement method that considers price and other criteria, which 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 capabilities;
- (8) the individual qualifications of the contractor's key personnel; or
- (9) the vendor's or contractor's ability to assess and minimize risks.

"Performance on previous projects" does not include the exercise or assertion of a person's legal rights. This definition does not apply to sections 16C.32, 16C.33, 16C.34, and 16C.35.

Subd. 1c. **Procedures.** The commissioner shall establish procedures for developing and awarding best value requests for proposals for construction projects. The criteria to be used to evaluate the proposals must be included in the solicitation document and must be evaluated in an open and competitive manner.

Subd. 1d. **Training.** Any personnel administering procurement procedures for a user of best value procurement or any consultant retained by a local unit of government to prepare or evaluate solicitation documents must be trained, either by the department or through other training, in the request for proposals process for best value contracting or construction projects.

Subd. 2. **Alterations and erasures.** A bid containing an alteration or erasure of any price contained in the bid which is used in determining the lowest responsible bid must be rejected unless the alteration or erasure is corrected in a manner that is clear and authenticated by an authorized representative of the responder. An alteration or erasure may be crossed out and the correction printed in ink or typewritten adjacent to it and initialed by an authorized representative of the responder.

Subd. 3. **Special circumstances.** The commissioner may reject the bid or proposal of any vendor or contractor who has failed to perform a previous contract with the state. In the case of identical low bids from two or more bidders, the commissioner may use 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. The commissioner may award contracts to more than one vendor or contractor in accordance with subdivision 1, if doing so does not decrease the service level or diminish the effect of competition.

Subd. 4. [Repealed by amendment, 2014 c 196 art 2 s 14]

Subd. 5. [Repealed by amendment, 2014 c 196 art 2 s 14]

Subd. 6. **Contract awards.** When prevailing wage laws apply, an agency shall not be liable for costs under section 177.43, subdivision 3, if it has included language in its contracts which requires vendors and contractors to comply with prevailing wage laws and the contract also contains the following elements:

- (1) a description of the prevailing wage laws and a citation to relevant statutes;
- (2) contact details for further information from the Department of Labor and Industry; and
- (3) a statement of contractor and subcontractor liability for failure to adhere to prevailing wage laws.

**History:** 2002 c 254 s 4; 2005 c 78 s 5; 2005 c 156 art 2 s 29; 2007 c 148 art 3 s 8; 2009 c 78 art 5 s 1; 2014 c 196 art 2 s 14

**16C.285 RESPONSIBLE CONTRACTOR REQUIREMENT DEFINED.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Construction contract" means a contract or subcontract of any tier for work on a project.

(c) "Contractor" means a prime contractor or subcontractor or motor carrier, and does not include a design professional or a material supplier. A "design professional" is a business or natural person retained to perform services on the project for which licensure is required by section 326.02. A "material supplier" is a business or natural person that supplies materials, equipment, or supplies to a subcontractor or contractor on a project, including performing delivery or unloading services in connection with the supply of materials, equipment, or supplies; provided, however, that a material supplier does not include a natural person or business that delivers mineral aggregate such as sand, gravel, or stone that is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

(d) "Contracting authority" means a state agency, the Minnesota State Colleges and Universities, the University of Minnesota, the Metropolitan Council, the Metropolitan Airports Commission, or a municipality that enters into a construction contract or authorizes or directs entering into a construction contract.

(e) "Motor carrier" means a business or natural person providing for-hire transportation of materials, equipment, or supplies for a project.

(f) "Municipality" means a county, town, home rule charter or statutory city, school district, housing and redevelopment authority, port authority, economic development authority, sports facilities authority, joint powers board or organization created under section 471.59 or other statute, special district, instrumentality, drainage authority, watershed district, destination medical center corporation, or other municipal corporation or political subdivision of the state authorized by law to enter into contracts.

(g) "Prime contractor" means a vendor that submits a bid or proposal or otherwise responds to a solicitation document of a contracting authority for work on a project or is awarded a construction contract by a contracting authority for work on a project. A prime contractor includes a construction manager for purposes of this section.

(h) "Principal" means an owner holding at least a 25 percent ownership interest in a business.

(i) "Project" means building, erection, construction, alteration, remodeling, demolition, or repair of buildings, real property, highways, roads, bridges, or other construction work performed pursuant to a construction contract.

(j) "Related entity" means:

(1) a firm, partnership, corporation, joint venture, or other legal entity substantially under the control of a contractor or vendor;

(2) a predecessor corporation or other legal entity having one or more of the same principals as the contractor or vendor;

(3) a subsidiary of a contractor or vendor;

(4) one or more principals of a contractor or vendor; and

(5) a person, firm, partnership, corporation, joint venture, or other legal entity that substantially controls a contractor or vendor.

(k) "Solicitation document" means an invitation to bid, bid specifications, request for proposals, request for qualifications, or other solicitation of contractors for purposes of a construction contract.

(l) "Subcontractor" means a vendor that seeks to enter into a subcontract or enters into a subcontract for work on a project.

(m) "Vendor" means a business, including a construction contractor or a natural person, and includes both if the natural person is engaged in a business.

**Subd. 2. Responsible contractor required.** (a) A contractor must meet the minimum criteria in subdivision 3 to be eligible to be awarded a construction contract as the lowest responsible bidder or the vendor or contractor offering the best value as provided in section 16C.28, 103D.811, 103E.505, 116A.13, 123B.52, 160.17, 160.262, 161.32, 161.3206, 161.3209, 161.38, 162.17, 365.37, 374.13, 375.21, 383C.094, 412.311, 429.041, 458D.21, 469.015, 469.068, 469.101, 471.345, 473.4057, 473.523, 473.652, 473.756, 473J.11, or any of their successor provisions.

(b) This section applies to publicly owned or financed projects where the contracting authority's construction contract with the prime contractor is estimated to exceed \$50,000 and is awarded pursuant to a lowest responsible bidder selection method or a best value selection method as provided in paragraph (a). The amount of any tax increment financing must be excluded in determining whether a construction contract exceeds \$50,000. A subcontractor or motor carrier must meet the minimum criteria in subdivision 3 to be eligible to be awarded a subcontract on a project regardless of the value of the subcontract.

(c) If only one prime contractor responds to a solicitation document, a contracting authority may award a construction contract to the responding prime contractor even if the minimum criteria in subdivision 3 are not met.

**Subd. 3. Minimum criteria.** "Responsible contractor" means a contractor that conforms to the responsibility requirements in the solicitation document for its portion of the work on the project and verifies that it meets the following minimum criteria:

(1) the contractor:

(i) is in compliance with workers' compensation and unemployment insurance requirements;

(ii) is in compliance with Department of Revenue and Department of Employment and Economic Development registration requirements if it has employees;

(iii) has a valid federal tax identification number or a valid Social Security number if an individual; and

(iv) has filed a certificate of authority to transact business in Minnesota with the secretary of state if a foreign corporation or cooperative;

(2) the contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 177.24, 177.25, 177.41 to 177.44, 181.13, 181.14, or 181.722, and has not violated United States Code, title 29, sections 201 to 219, or United States Code, title 40, sections 3141 to 3148. For purposes of this clause, a violation occurs when a contractor or related entity:

(i) repeatedly fails to pay statutorily required wages or penalties on one or more separate projects for a total underpayment of \$25,000 or more within the three-year period, provided that a failure to pay is

"repeated" only if it involves two or more separate and distinct occurrences of underpayment during the three-year period;

- (ii) has been issued an order to comply by the commissioner of labor and industry that has become final;
- (iii) has been issued at least two determination letters within the three-year period by the Department of Transportation finding an underpayment by the contractor or related entity to its own employees;
- (iv) has been found by the commissioner of labor and industry to have repeatedly or willfully violated any of the sections referenced in this clause pursuant to section 177.27;
- (v) has been issued a ruling or findings of underpayment by the administrator of the Wage and Hour Division of the United States Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Review Board; or
- (vi) has been found liable for underpayment of wages or penalties or misrepresenting a construction worker as an independent contractor in an action brought in a court having jurisdiction.

Provided that, if the contractor or related entity contests a determination of underpayment by the Department of Transportation in a contested case proceeding, a violation does not occur until the contested case proceeding has concluded with a determination that the contractor or related entity underpaid wages or penalties;

- (3) the contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 181.723 or chapter 326B. For purposes of this clause, a violation occurs when a contractor or related entity has been issued a final administrative or licensing order;
- (4) the contractor or related entity has not, more than twice during the three-year period before submitting the verification, had a certificate of compliance under section 363A.36 revoked or suspended based on the provisions of section 363A.36, with the revocation or suspension becoming final because it was upheld by the Office of Administrative Hearings or was not appealed to the office;
- (5) the contractor or related entity has not received a final determination assessing a monetary sanction from the Department of Administration or Transportation for failure to meet targeted group business, disadvantaged business enterprise, or veteran-owned business goals, due to a lack of good faith effort, more than once during the three-year period before submitting the verification;
- (6) the contractor or related entity is not currently suspended or debarred by the federal government or the state of Minnesota or any of its departments, commissions, agencies, or political subdivisions that have authority to debar a contractor; and
- (7) all subcontractors and motor carriers that the contractor intends to use to perform project work have verified to the contractor through a signed statement under oath by an owner or officer that they meet the minimum criteria listed in clauses (1) to (6).

Any violations, suspensions, revocations, or sanctions, as defined in clauses (2) to (5), occurring prior to July 1, 2014, shall not be considered in determining whether a contractor or related entity meets the minimum criteria.

**Subd. 4. Verification of compliance.** A contractor responding to a solicitation document of a contracting authority shall submit to the contracting authority a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria in subdivision 3, with the exception of

clause (7), at the time that it responds to the solicitation document. A contracting authority may accept a signed statement under oath as sufficient to demonstrate that a contractor is a responsible contractor and shall not be held liable for awarding a contract in reasonable reliance on that statement. A prime contractor, subcontractor, or motor carrier that fails to verify compliance with any one of the required minimum criteria or makes a false statement under oath in a verification of compliance shall be ineligible to be awarded a construction contract on the project for which the verification was submitted. A false statement under oath verifying compliance with any of the minimum criteria may result in termination of a construction contract that has already been awarded to a prime contractor or subcontractor or motor carrier that submits a false statement. A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria. A verification of compliance need not be notarized. An electronic verification of compliance made and submitted as part of an electronic bid shall be an acceptable verification of compliance under this section, provided that it contains an electronic signature as defined in section 325L.02, paragraph (h).

**Subd. 5. Subcontractor verification.** A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project. Prior to execution of a construction contract, and as a condition precedent to the execution of a construction contract, the apparent successful prime contractor shall submit to the contracting authority a supplemental verification under oath confirming compliance with subdivision 3, clause (7). Each contractor or subcontractor shall obtain from all subcontractors with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each subcontractor. If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors. A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to subdivision 3, clause (7). A prime contractor and subcontractors shall not be responsible for the false statements of any subcontractor with which they do not have a direct contractual relationship. A prime contractor and subcontractors shall be responsible for false statements by their first-tier subcontractors with which they have a direct contractual relationship only if they accept the verification of compliance with actual knowledge that it contains a false statement.

**Subd. 5a. Motor carrier verification.** A prime contractor or subcontractor shall obtain annually from all motor carriers with which it will have a direct contractual relationship a signed statement under oath by an owner or officer verifying that they meet all of the minimum criteria in subdivision 3 prior to execution of a construction contract with each motor carrier. A prime contractor or subcontractor shall require each such motor carrier to provide it with immediate written notification in the event that the motor carrier no longer meets one or more of the minimum criteria in subdivision 3 after submitting its annual verification. A motor carrier shall be ineligible to perform work on a project covered by this section if it does not meet all the minimum criteria in subdivision 3. Upon request, a prime contractor or subcontractor shall submit to the contracting authority the signed verifications of compliance from all motor carriers providing for-hire transportation of materials, equipment, or supplies for a project.

**Subd. 6. Additional criteria.** Nothing in this section shall restrict the discretion of a contracting authority to establish additional factors for defining contractor responsibility. This subdivision is not an

independent grant of authority to a contracting authority to establish additional minimum criteria pursuant to subdivision 3.

Subd. 7. **Implementation.** The definition of responsible contractor, as defined in subdivision 3, or a statement that the term responsible contractor as used in the solicitation document means a contractor as defined in subdivision 3, shall be included in the solicitation document for all projects covered by this section. The solicitation document for any project shall state that any prime contractor or subcontractor or motor carrier that does not meet the minimum criteria in subdivision 3 or fails to verify that it meets those criteria is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project. The solicitation document shall provide that a false statement under oath verifying compliance with any of the minimum criteria shall render the prime contractor or subcontractor or motor carrier that makes the false statement ineligible to be awarded a construction contract on the project and may result in termination of a contract awarded to a prime contractor or subcontractor or motor carrier that submits a false statement. The solicitation document shall state that a prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier and motor carriers, pursuant to subdivision 3, clause (7).

Subd. 8. **Effective date.** This section is effective January 1, 2015, and shall apply to all construction contracts entered into based on solicitation documents issued on or after that date.

**History:** 2014 c 253 s 1; 2015 c 64 s 1-8

**16C.34 CONSTRUCTION MANAGER AT RISK.**

Subdivision 1. **Solicitation of qualifications.** (a) Every user agency, except the Capitol Area Architectural and Planning Board, shall submit a written request for proposals for a construction manager at risk for its project to the commissioner. The written request for proposals must include a description of the project, the estimated cost of completing the project, a description of any special requirements or unique features of the proposed project, and other information which will assist the commissioner in carrying out its duties and responsibilities set forth in this section.

(b) The commissioner may include in the request for qualifications criteria a requirement that the proposer include the overhead and fee that the construction manager at risk proposes to charge for its services.

(c) A request for qualifications shall be prepared for each construction manager at risk contract as provided in this section. The request for qualifications shall contain, at a minimum, the following elements:

(1) the identity of the agency for which the project will be built and that will award the construction manager at risk contract;

(2) procedures for submitting qualifications, the criteria and subcriteria for evaluation of qualifications and the relative weight for each criteria and subcriteria, and the procedures for making awards in an open, competitive, and objective manner, and according to the stated criteria and subcriteria, including a reference to the requirements of this section;

(3) the terms and conditions for the contract;

(4) the qualifications that the construction manager at risk shall be desired to have;

(5) a schedule for commencement and completion of the project;

(6) any applicable budget limits for the project;

(7) requirements for insurance, statutorily required performance and payment bonds;

(8) identification and location of any other information in the possession or control of the agency that the user agency determines is material, which may include surveys, soils reports, drawings or models of existing structures, environmental studies, photographs, or references to public records; and

(9) criteria shall not impose unnecessary conditions beyond reasonable requirements to ensure maximum participation of construction managers at risk. The criteria shall not consider the collective bargaining status of the construction manager at risk.

(d) Notice of requests for qualifications must be advertised in a manner designated by the commissioner.

Subd. 2. **Construction manager at risk selection process.** In a construction manager at risk selection process, the following shall apply:

(a)(1) Upon receipt of a written request from a user agency for a construction manager at risk for its project, the commissioner shall create a selection committee composed of a minimum of three persons, at least one of whom has construction industry expertise; (2) the selection committee shall establish procedures for determining the appropriate content of each request for qualifications, the weighted criteria and subcriteria to be used to score the proposals of the construction managers at risk, and shall establish procedures

for evaluating qualifications in an open, competitive, and objective manner; and (3) the commissioner shall issue a request for qualifications that includes the information as described in subdivision 1.

(b) In accordance with the criteria and procedures set forth in the request for qualifications, the selection committee shall evaluate the construction manager at risk's experience as a constructor, including, but not limited to, capacity of key personnel, technical competence, capability to perform, the past performance of the construction manager at risk and its employees, its safety record and compliance with state and federal law, availability to and familiarity with the project locale, and other appropriate facts submitted by the construction manager at risk in response to the request for qualifications. The commissioner must receive at least three proposals from construction managers or the commissioner may either (1) solicit new proposals; (2) request the selection committee to revise the request for qualifications and thereafter solicit new proposals using the revised request for qualifications; (3) select another allowed procurement method; or (4) reject all proposals.

(c)(1) The selection committee shall review the proposers' qualifications and create a short list of three to five proposals of construction managers at risk; (2) the commissioner shall issue a request for proposal requiring fee and expense proposals and other information as desired from the short-listed construction managers at risk; (3) the selection committee shall conduct formal interviews with the short-listed construction managers at risk but shall not disclose any proprietary or confidential information contained in one proposal to another proposer; and (4) the selection committee shall recommend the construction manager at risk achieving the highest score on the evaluation criteria as described in subdivision 1, paragraph (b).

(d) The board shall select the primary designer as described in section 16B.33 or in the case of the commissioner, section 16C.08 or 16C.087.

**Subd. 3. Construction manager at risk contract.** (a) The commissioner shall conduct contract negotiations with the recommended construction manager at risk.

(b) If the construction manager at risk selected for the project declines the appointment or is unable to reach agreement with the commissioner concerning the fee or terms of the contract, the commissioner shall, within 60 days after the first selection, request the selection committee to make another recommendation.

(c) If the selection committee fails to make a second recommendation and forward it to the commissioner within 60 days of the commissioner's request for a second recommendation, the commissioner may select a construction manager at risk without the recommendation of the selection committee.

(d) The primary designer selected by the board shall develop various design documents for review and approval by the commissioner.

(e) The construction manager at risk shall competitively bid all trade contract work for the project from a list of qualified firms, subject to availability of such qualified firms for the specific work. The list of qualified firms shall be based upon an open, competitive, and objective prequalification process in which the selection criteria includes the firm's experience as a constructor, including capacity of key personnel, technical competence, capability to perform, the past performance of the firm and its employees, including its safety record and compliance with state and federal law, availability to and familiarity with the project locale, and other considerations as defined by the construction manager at risk and the commissioner. The construction manager at risk and the commissioner shall jointly determine the composition of the list of qualified firms. The criteria shall not impose unnecessary conditions beyond reasonable requirements to ensure maximum participation of qualified contractors. With the commissioner's approval or request, the construction manager at risk may also submit bids for trade contract work.

(f) The construction manager at risk and the commissioner shall enter into a guaranteed maximum price contract for the project.

**History:** 2005 c 78 s 8; 2013 c 142 art 3 s 22; 2014 c 196 art 2 s 15

**103D.811 BIDS FOR CONSTRUCTION.**

Subdivision 1. **Call for bids.** After an establishment order has been made by the managers directing the establishment of a project, the managers shall call for bids for the construction or implementation of the work and give notice by publication specifying the time and place when the bids will be opened for awarding a contract for the construction or implementation of the project. The contract may be awarded in sections or as a whole, as directed by the managers.

Subd. 2. **Bid notice.** A bid notice shall be published in at least one of the newspapers in the state where notices are usually published.

Subd. 3. **Awarding of contract.** (a) At a time and place specified in the bid notice, the managers may accept or reject any or all bids and may award the contract to the lowest responsible bidder. The bidder to whom the contract is to be awarded must give a bond, with ample security, conditioned by satisfactory completion of the contract.

(b) Bids must not be considered which in the aggregate exceed by more than 30 percent the total estimated cost of construction or implementation.

(c) As an alternative to the procurement method described in paragraph (a), the managers may issue a request for proposals and award the contract to the vendor or contractor offering the best value as described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c).

(d) The contract must be in writing and be accompanied by or refer to the plans and specifications for the work to be done as prepared by the engineer for the watershed district. The plans and specifications shall become a part of the contract.

(e) The contract shall be approved by the managers and signed by the president, secretary, and contractor.

**History:** 1990 c 391 art 4 s 65; 1995 c 199 s 51,52; 2007 c 148 art 3 s 9

160.17 MS 1953 [Repealed, 1957 c 943 s 72]

**160.17 ROAD CONSTRUCTION CONTRACTS; COUNTIES AND TOWNS.**

Subdivision 1. **Plans and specifications filed.** No contract for the construction or improvement of any road by a county or town in which the contract price exceeds the amount for which sealed bids are required as provided in section 471.345 shall be let unless the plans and specifications for the construction or improvement of the county or county state-aid highway are on file in the office of the county auditor and a true copy of them available for reference in the office of the county highway engineer, and the plans and specifications for the construction or improvement of the town road are on file with the town clerk.

Subd. 2. **Advertisement for bids.** No county or town road contract for construction or improvement exceeding the amount for which sealed bids are required as provided in section 471.345 shall be let without first advertising for bids in a newspaper of general circulation published in the county where the construction or improvement is proposed to be done. The advertisement shall be published once a week for three successive weeks in the case of a county contract and two successive weeks in the case of a town contract, the last publication to be made at least ten days before the time fixed for receiving bids and letting the contract. It shall specify, generally, the work to be done, the place where the plans and specifications are on file, and the time and place of receiving bids and awarding the contract.

Subd. 2a. **Best-value alternative.** As an alternative to the procurement method referenced in subdivision 2, counties or towns may issue a request for proposal and award the contract to the vendor or contractor offering the best value as described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c).

Subd. 3. **Final payment.** A county or town board shall not make final payment on any road construction or improvement contract, the amount for which sealed bids are required under section 471.345, until the engineer or person in charge of the work has certified to the county board or the town board, as the case may be, that the work has been done and performed according to contract and the certificate has been filed in the office of the county auditor or town clerk.

Subd. 4. [Repealed, 2004 c 209 s 2]

**History:** 1959 c 500 art 1 s 17; 1969 c 613 s 1,2; 1984 c 562 s 6,7; 1985 c 169 s 1; 1987 c 227 s 1; 2004 c 209 s 1; 2007 c 148 art 3 s 14

**160.262 RECREATIONAL VEHICLE LANES.**

Subdivision 1. **Model standards.** The legislature determines that it is in the interests of the public health, safety and welfare, to provide for the addition of bicycle and recreational vehicle lanes to proposed and existing public highways. The commissioner of transportation shall adopt, in the manner provided in chapter 14, model standards for the establishment of recreational vehicle lanes on and along proposed and existing public highways. The model standards shall include but not be limited to the following: (a) criteria for desirability of a lane in any given location, (b) provision for maintenance of the lanes, and (c) the placement of the lanes in relation to roads. The model standards shall govern state trunk highways.

Subd. 2. **Local regulations; approval for state funding.** Each county and municipality including towns having statutory city powers may adopt the model standards to govern highways under its jurisdiction and may adapt them to local circumstances. Such local regulations shall be submitted to the commissioner of transportation who shall approve them within 60 days after receipt upon finding that they meet the minimum standards established pursuant to this section. Approved local regulations shall qualify the submitting unit of government for state or state-approved funding of recreational vehicle lane projects undertaken pursuant to such regulations.

Subd. 3. **Cooperation among agencies and governments.** The following departments and agencies shall cooperate in providing information and advice for amendments to the model standards by the commissioner of transportation: the Departments of Agriculture, Transportation, Natural Resources, Commerce, and Employment and Economic Development, and the Board of Water and Soil Resources. The commissioner may cooperate with and enter into agreements with the United States government, any department of the state of Minnesota, any unit of local government and any public or private corporation in order to effect the purposes of this section.

Subd. 4. **Design-build bridges for nonmotorized vehicles.** For streets and highways, the commissioner shall allow for the acceptance of performance-specification bids, made by the lowest responsible bidder, for constructing design-build bridges for bicycle paths, bicycle trails, and pedestrian facilities that are:

(1) designed and used primarily for nonmotorized transportation, but may allow for motorized wheelchairs, golf carts, necessary maintenance vehicles and, when otherwise permitted by law, rule, or ordinance, snowmobiles; and

(2) located apart from any road or highway or protected by barriers, provided that a design-built bridge may cross over and above a road or highway.

Subd. 5. **Best-value alternative.** As an alternative to the procurement method described in subdivision 4, the commissioner may allow for the award of design-build contracts for the projects described in subdivision 4 to the vendor or contractor offering the best value under a request for proposals as described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c).

**History:** 1973 c 123 art 5 s 7; 1973 c 620 s 1; 1975 c 271 s 6; 1976 c 149 s 59; 1976 c 166 s 7; 1981 c 356 s 177,178; 1982 c 424 s 130; 1983 c 289 s 115 subd 1; 1986 c 444; 1987 c 312 art 1 s 26 subd 2; 1987 c 358 s 34; 1987 c 384 art 3 s 42; 1994 c 635 art 1 s 1; 1Sp2001 c 4 art 6 s 77; 1Sp2003 c 4 s 1; 2007 c 148 art 3 s 15

**161.315 PROTECTION OF PUBLIC CONTRACTS.**

Subdivision 1. **Legislative intent.** Recognizing that the preservation of the integrity of the public contracting process of the Department of Transportation is vital to the development of a balanced and efficient transportation system and a matter of interest to the people of the state, the legislature hereby determines and declares that:

(1) the procedures of the department for bidding and awarding department contracts exist to secure the public benefits of free and open competition and to secure the quality of public works;

(2) the opportunity to be awarded department contracts or to supply goods or services to the department is a privilege, not a right; and

(3) the privilege of transacting business with the department or local road authority should be denied to persons convicted of a contract crime in order to preserve the integrity of the public contracting process.

Subd. 2. **Definitions.** The terms used in this section have the meanings given them in this subdivision.

(a) "Affiliate" means a predecessor or successor of a person by merger, reorganization, or otherwise, who is, or that has as an officer or director an individual who is, a relative of the person or an individual over whose actions the person exercises substantial influence or control, or a group of entities so connected or associated that one entity controls or has the power to control each of the other entities. "Affiliate" includes the affiliate's principals. One person's ownership of a controlling interest in another entity or a pooling of equipment or income among entities is prima facie evidence that one entity is an affiliate of another.

(b) "Contract crime" means a violation of state or federal antitrust law, fraud, theft, embezzlement, bribery, forgery, misrepresentation, making false statements, falsification or destruction of records, or other criminal offense in connection with obtaining, attempting to obtain, or performing a public or private contract or subcontract.

(c) "Conviction" has the meaning given it in section 609.02, subdivision 5.

(d) "Debar" means to disqualify from receiving a contract or from serving as a subcontractor or material supplier as provided by Laws 1984, chapter 654, article 2, section 8.

(e) "Person" means a natural person or a business, corporation, association, partnership, sole proprietorship, or other entity formed to do business as a contractor, subcontractor, or material supplier and includes an affiliate of a person.

(f) "Pooling" means a combination of persons engaged in the same business or combined for the purpose of engaging in a particular business or commercial venture and who all contribute to a common fund or place their holdings of a given stock or other security in the hand and control of a managing member or committee of the combination.

(g) "Suspend" means to temporarily disqualify from receiving a contract or from serving as a subcontractor or material supplier as provided by Laws 1984, chapter 654, article 2, section 8.

(h) "Relative" means an individual related by consanguinity within the second degree as determined by the common law, a spouse, or an individual related to a spouse within the second degree as determined by the common law, and includes an individual in an adoptive relationship within the second degree as determined by the common law.

Subd. 3. **Prohibitions.** Except as provided in subdivision 4:

(1) neither the commissioner nor a county, town, or home rule or statutory city may award or approve the award of a contract for goods or services to a person who is suspended or debarred;

(2) neither the commissioner nor a county, town, or home rule or statutory city may award or approve the award of a contract for goods or services under which a debarred or suspended person will serve as a subcontractor or material supplier;

(3) a person to whom a contract for goods or services has been awarded may not subcontract with or purchase materials or services from a debarred or suspended person for performance of that contract; and

(4) when a debarred person sells or otherwise transfers to a relative or to any other party over whose actions the debarred person exercises substantial influence or control, a business, corporation, association, partnership, sole proprietorship, or other entity, or an affiliate of the entity, that is ineligible by virtue of the debarment to contract with a governmental entity, the sold or transferred entity remains ineligible for these contracts for the duration of the seller's or transferor's debarment.

Subd. 4. **Exceptions.** The commissioner may terminate a debarment by order, or the commissioner or a county, town, or home rule or statutory city may award a contract to a debarred or suspended person when:

(1) that person is the sole supplier of a material or service required by the commissioner or a county, town, or home rule or statutory city;

(2) the commissioner determines that an emergency exists as defined in section 161.32, subdivision 3;

(3) the commissioner of administration determines that an emergency exists as defined in section 16C.10, subdivision 2;

(4) in the case of a contract to be awarded by a county, town, or home rule or statutory city, the governing body thereof determines by resolution that an emergency exists that will result in a road, street, or bridge being closed to travel; or

(5) the contract is for purchasing materials or renting equipment for routine road maintenance.

Subd. 5. **Duration of debarment.** A person who has been convicted of a contract crime must be debarred for a period of not less than one year. This subdivision applies to contract crime violations which occur after June 30, 1985.

Subd. 6. **Preexisting contracts.** The disqualification of a contractor or its affiliate does not affect the contractor's or its affiliate's obligations under any preexisting contract.

**History:** 1985 c 299 s 3; 1990 c 462 s 1,2; 1998 c 386 art 2 s 58

**161.32 CONTRACTING FOR WORK ON TRUNK HIGHWAY.**

Subdivision 1. **Advertisement for bids.** The commissioner may conduct the work or any part of the work incidental to the construction and maintenance of the trunk highways by labor employed to do the work or by contract. In cases of construction work, the commissioner shall first advertise for bids for contracts, and if no satisfactory bids are received, may either reject all bids and readvertise, or do the work by labor employed to do the work. Except as provided in subdivision 3 or 4, when work is to be done under contract, the commissioner shall advertise for bids once each week for three successive weeks prior to the date the bids are to be received. The advertisement for bids must be published on the Internet. The plans and specifications for the proposed work must be on file in the commissioner's office prior to the first call for bids.

Subd. 1a. **Standard specifications, security.** Contracts under this section must be based on specifications prescribed by the commissioner. Each bidder for a contract shall furnish security approved by the commissioner to ensure completion of the contract. The commissioner may require that bid, performance, or payment bonds, or other security, be furnished electronically.

Subd. 1b. **Lowest responsible bidder; electronic bids.** Bidders may submit bids electronically in a form and manner required by the commissioner; however, the commissioner may require that all bids for trunk highway contracts must be submitted electronically. Notwithstanding section 13.591, subdivision 3, or any other law or rule to the contrary, bids are not required to be opened and read in public if the commissioner publishes the public data specified by section 13.591, subdivision 3, on a state Web site immediately after the deadline for receipt of bids has passed. Bids for federal-aid highway projects must be conducted in accordance with Code of Federal Regulations, title 23, part 635. Trunk highway construction contracts, including design-build contracts, must be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, the purpose for which the contract or purchase is intended, the status and capability of the vendor, and other considerations imposed in the call for bids. The commissioner may decide which is the lowest responsible bidder for all contracts and may use the principles of life-cycle costing, when appropriate, in determining the lowest overall bid. Any or all bids may be rejected. When competitive bids are required and all bids are rejected, new bids, if solicited, must be called for as in the first instance, unless otherwise provided by law.

Subd. 1c. **Alterations and erasures.** A bid containing an alteration or erasure of any price contained in the bid which is used in determining the lowest responsible bid must be rejected unless the alteration or erasure is corrected pursuant to this subdivision. An alteration or erasure may be crossed out and the correction printed in ink or typewritten adjacent to it and initialed in ink by the person signing the bid.

Subd. 1d. **Special circumstances.** The commissioner may reject the bid of any bidder who has failed to perform a previous contract with the state. In the case of identical low bids from two or more bidders, the commissioner may use 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. The commissioner may award contracts to more than one bidder in accordance with subdivision 1b, if doing so does not decrease the service level or diminish the effect of competition.

Subd. 1e. **Record.** A record must be kept of all bids, including names of bidders, amounts of bids, and each successful bid. After the contract is awarded, this record is open to public inspection and may be posted on the Internet.

Subd. 1f. **Best-value alternative.** As an alternative to the procurement method described in subdivisions 1a to 1e, the commissioner may issue a request for proposals and award the contract to the vendor or

contractor offering the best value as described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c).

**Subd. 2. Direct negotiation.** In cases where the estimated cost of construction work or maintenance work does not exceed \$150,000, the commissioner may enter into a contract for the work by direct negotiation, by obtaining two or more quotations for the work, and without advertising for bids or otherwise complying with the requirements of competitive bidding if the total contractual obligation of the state for the directly negotiated contract or contracts on any single project does not exceed \$150,000. All quotations obtained shall be kept on file for a period of at least one year after receipt of the quotation.

**Subd. 3. Emergencies.** In the case of emergency, contracts may be let without advertising for bids. Emergency is defined as a condition on a trunk highway that necessitates immediate work in order to keep such highway open for travel. No such contract shall be let without advertising for bids except upon the written authority of the commissioner or the commissioner's deputy.

**Subd. 4. Damaged trunk highways.** Contracts may be let for the repair and restoration of trunk highways damaged by spring breakup, the effects of the freeze-thaw cycle, floods, other sudden natural phenomenon, or man-made disasters, or to prevent damage from flooding or other natural phenomenon, upon advertisement for bids for a period of one week prior to the date such bids are to be received.

**Subd. 5. Default by contractor.** In cases where work is being done under contract and the commissioner finds that the contractor has failed to comply within the period specified in the contract from the date of receipt of a written demand to make arrangements, satisfactory to the commissioner, to correct specified delays, neglect, or default, within the control of the contractor, the commissioner may negotiate with others, with the approval of the defaulting contractor's surety, for the completion of the contract according to the terms and provisions of the contract.

**Subd. 6. Landscape contractors; payment.** When goods or services are provided to the commissioner by a landscape contractor for the landscaping of a trunk highway, the commissioner shall agree in the contract to pay the landscape contractor 100 percent of the value of the contract upon completion of the contracted work. The commissioner may require the contractor, as part of the contract, to post a bond for a sum not exceeding 125 percent of the value of the contract, payable to the commissioner, and conditioned upon the work's compliance with the contract terms, for a period of one year beyond the work completion date.

**Subd. 7. Approval and payment of supplemental agreements.** Notwithstanding any law to the contrary, when goods or services are provided to the commissioner under an agreement supplemental to a contract for work on a trunk highway, the commissioner or designee may approve the work. Payment of valid state obligations must be made within 30 days of approval of the work or submission by the contractor of an invoice indicating completion of work, whichever occurs later.

**History:** 1959 c 500 art 2 s 32; 1961 c 17 s 1; 1963 c 455 s 1; 1967 c 232 s 1; 1981 c 209 s 4; 1985 c 76 s 1; 1986 c 444; 1998 c 386 art 1 s 27-31; 1999 c 230 s 9; 2000 c 479 art 1 s 13; 2000 c 499 s 20; 1Sp2001 c 8 art 2 s 17-20; 2004 c 295 art 1 s 2; 2007 c 148 art 3 s 16; 2008 c 287 art 1 s 13-15; 2014 c 243 s 3; 2014 c 287 s 3

**161.3206 BEST-VALUE CONTRACTING AUTHORITY.**

Notwithstanding sections 16C.25, 161.32, 161.321, or any other law to the contrary, the commissioner may solicit and award all contracts, other than design-build contracts governed by section 161.3412, for a project on the basis of a best-value selection process as defined in section 16C.28, subdivision 1b. Section 16C.08 does not apply to this section.

**History:** *2007 c 148 art 3 s 17; 2014 c 196 art 3 s 2*

**161.3412 DESIGN-BUILD AUTHORITY.**

Subdivision 1. **Best-value selection for design-build contracts.** Notwithstanding sections 16C.25, 161.32, and 161.321, or any other law to the contrary, the commissioner may solicit and award a design-build contract for a project on the basis of a best-value selection process. Section 16C.08 does not apply to design-build contracts to which the commissioner is a party.

Subd. 2. **Competitive, open process.** Sections 161.3410 to 161.3426 apply only to transportation projects using the two-step competitive process utilizing public solicitation for design-build services.

Subd. 3. **Restriction; reports.** (a) The number of design-build contracts awarded by the commissioner in any fiscal year may not exceed ten percent of the total number of transportation construction contracts awarded by the commissioner in the previous fiscal year.

(b) The commissioner shall notify the chairs of the senate and house of representatives committees with jurisdiction over transportation policy and transportation finance each time the commissioner decides to use the design-build method of procurement and explain why that method was chosen.

Subd. 4. **Municipal consent.** Use of the design-build method of state transportation project delivery is subject to state law concerning municipal consent to highways in municipalities.

**History:** *1Sp2001 c 8 art 3 s 2; 2007 c 148 art 3 s 18; 2014 c 227 art 2 s 4*

**161.38 SPECIAL AGREEMENTS FOR HIGHWAYS IN MUNICIPALITIES.**

Subdivision 1. **Highway width or capacity.** Road authorities, including the road authorities of any city may enter into an agreement with the commissioner for the construction of a roadway or structure of greater width or capacity than would be necessary to accommodate the normal trunk highway traffic upon any trunk highway within its boundaries, and may appropriate from any funds available and pay into the trunk highway fund such sums of money as may be agreed upon. Nothing herein contained shall prevent any city from constructing the portions of the street not included in the trunk highway system independent of any contract with the commissioner; provided the construction conforms to the reasonable rules as the commissioner may prescribe as to grade and drainage.

Subd. 2. **Maintenance.** Where a trunk highway is located over or along a street in any city which street is or may be improved to a width greater than the normal width of such trunk highway, the road authority of the city may enter into an agreement with the commissioner for the maintenance of the additional width by the commissioner and shall in accordance with the agreement appropriate and pay into the trunk highway fund such sums of money as may be agreed upon. Nothing herein contained shall be construed to prevent any city maintaining such additional width at its own expense independent of any contract with the commissioner.

Subd. 3. **Frontage road.** The commissioner for and on behalf of the state may enter into agreements with municipalities for the construction, improvement, and maintenance of trunk highways within the limits of said municipalities, including but not limited to agreements for the construction and maintenance of frontage roads upon and along trunk highways within the limits of said municipalities. Such frontage roads may be constructed along the main-traveled lanes of the trunk highway, or they may be constructed a reasonable distance out from the limits of the right-of-way acquired for the main-traveled lanes if in the considered judgment of the commissioner such location is necessary to eliminate unreasonable circuitry of local travel or to provide access to properties otherwise denied access to public highways by the establishment and construction of the trunk highway. Such frontage roads shall connect, at least at one terminal, either with the main lanes of the trunk highway or with another public highway. The municipalities are authorized to enter into such agreement with the commissioner for the performance and responsibility of the work upon such terms as may be agreed upon.

Subd. 4. **Effects on other law of public contract with commissioner.** Whenever the road authority of any city enters into an agreement with the commissioner pursuant to this section, and a portion of the cost is to be assessed against benefited property, the letting of a public contract by the commissioner for the work shall be deemed to comply with statutory or charter provisions requiring the city (1) to advertise for bids before awarding a contract for a public improvement, (2) to let the contract to the lowest responsible bidder or to the vendor or contractor offering the best value, and (3) to require a performance bond to be filed by the contractor before undertaking the work. The contract so let by the commissioner and the performance bond required of the contractor by the commissioner shall be considered to be the contract and bond of the city for the purposes of complying with the requirements of any applicable law or charter provision, and the bond shall inure to the benefit of the city and operate for their protection to the same extent as though they were parties thereto.

Subd. 5. **Definition of municipalities.** For the purpose of this section the term "municipalities" shall include counties, cities, and towns.

Subd. 6. **Withholding state aid.** If any municipality fails to fulfill its obligations as provided in any mutual agreement entered into pursuant to this section, the commissioner may retain and withhold payment of any state aid money apportioned to such municipality under the provisions of sections 162.01 to 162.181

until such municipality fulfills its obligations under the agreement. If the obligation which the municipality has failed to fulfill is a monetary obligation, the amount of state aid money which the commissioner may withhold shall not exceed the amount of the monetary obligation in default. If the obligation is other than a monetary obligation, the commissioner may withhold a reasonable amount of such state aid money until the municipality fulfills the obligation.

**Subd. 7. Improvements outside limits of state construction project.** The commissioner may act as agent for any municipality, at its request and on its approval, for the construction of street or highway improvements outside the limits of a state construction project. Administration of a contract in this manner must be based on an estimated cost savings for both the state and the municipality. All costs of such work shall be paid by the municipality. Prior to the letting of the state construction contract, the provisions for payment and all details of the work to be done outside of the limits of the state construction project shall be set out in an agency agreement between the municipality and the state.

**History:** 1959 c 500 art 2 s 38; 1961 c 40 s 1; 1961 c 577 s 2; 1965 c 155 s 1; 1973 c 123 art 5 s 7; 1Sp1981 c 4 art 1 s 83; 1982 c 376 s 2; 1985 c 248 s 70; 2007 c 148 art 3 s 19

**177.41 STATE PROJECTS AND STATE HIGHWAY CONSTRUCTION; PUBLIC POLICY.**

It is in the public interest that public buildings and other public works be constructed and maintained by the best means and highest quality of labor reasonably available and that persons working on public works be compensated according to the real value of the services they perform. It is therefore the policy of this state that wages of laborers, workers, and mechanics on projects financed in whole or part by state funds should be comparable to wages paid for similar work in the community as a whole.

**History:** 1973 c 724 s 1; 1975 c 191 s 1; 1984 c 628 art 4 s 1

**177.42 DEFINITIONS.**

Subdivision 1. **Scope.** As used in sections 177.41 to 177.44 the terms defined in this section have the meanings given them except where the context indicates otherwise.

Subd. 2. **Project.** "Project" means erection, construction, remodeling, or repairing of a public building or other public work financed in whole or part by state funds.

Subd. 3. **Area.** "Area" means the county or other locality from which labor for any project is normally secured.

Subd. 4. **Prevailing hours of labor.** "Prevailing hours of labor" means the hours of labor per day and per week worked within the area by a larger number of workers of the same class than are employed within the area for any other number of hours per day and per week. The prevailing hours of labor may not be more than eight hours per day or more than 40 hours per week.

Subd. 5. **Hourly basic rate.** "Hourly basic rate" means the hourly wage paid to any employee.

Subd. 6. **Prevailing wage rate.** "Prevailing wage rate" means the hourly basic rate of pay plus the contribution paid to or for the largest number of workers engaged in the same class of labor within the area for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of:

(1) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and

(2) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.

"Prevailing wage rate" includes, for the purposes of section 177.44, rental rates for truck hire paid to those who own and operate the truck.

The prevailing wage rate may not be less than a reasonable and living wage.

Subd. 7. **Employer.** "Employer" means an individual, partnership, association, corporation, business trust, or other business entity that hires a laborer, worker, or mechanic.

**History:** 1973 c 724 s 2; 1975 c 191 s 2; 1984 c 628 art 4 s 1; 2009 c 78 art 5 s 6,7

**177.43 CONTRACTS FOR STATE PROJECTS; PENALTY.**

Subdivision 1. **Hours of labor.** Any contract which provides for a project must state that:

(1) no laborer or mechanic employed directly on the project work site by the contractor or any subcontractor, agent, or other person doing or contracting to do all or a part of the work of the project, is permitted or required to work more hours than the prevailing hours of labor unless paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times the hourly basic rate of pay; and

(2) a laborer or mechanic may not be paid a lesser rate of wages than the prevailing wage rate in the same or most similar trade or occupation in the area.

Subd. 2. **Exceptions.** This section does not apply to wage rates and hours of employment of laborers or mechanics who process or manufacture materials or products or to the delivery of materials or products by or for commercial establishments which have a fixed place of business from which they regularly supply processed or manufactured materials or products. This section applies to laborers or mechanics who deliver mineral aggregate such as sand, gravel, or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

Subd. 3. **Contract requirements.** The contract must specifically state the prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay. The contracting authority shall incorporate into its proposals and all contracts the applicable wage determinations for the contract along with contract language provided by the commissioner of labor and industry to notify the contractor and all subcontractors of the applicability of sections 177.41 to 177.44. Failure to incorporate the determination or provided contract language into the contracts shall make the contracting authority liable for making whole the contractor or subcontractor for any increases in the wages paid, including employment taxes and reasonable administrative costs based on the appropriate prevailing wage due to the laborers or mechanics working on the project. The contract must also provide that the contracting agency shall demand, and the contractor and subcontractor shall furnish to the contracting agency, copies of any or all payrolls not more than 14 days after the end of each pay period. The payrolls must contain all the data required by section 177.30. The contracting authority may examine all records relating to wages paid laborers or mechanics on work to which sections 177.41 to 177.44 apply.

Subd. 4. **Determination by commissioner; posting; petition for reconsideration.** The prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay for all trades and occupations required in any project must be ascertained before the state asks for bids. The commissioner of labor and industry shall investigate as necessary to ascertain the information. Each contractor and subcontractor performing work on a public project shall keep the information posted on the project in at least one conspicuous place for the information of the employees working on the project. A person aggrieved by a final determination of the commissioner may petition the commissioner for reconsideration of findings. A person aggrieved by a decision of the commissioner after reconsideration may, within 20 days after the decision, petition the commissioner for a public hearing in the manner of a contested case under sections 14.57 to 14.61.

Subd. 5. **Penalty.** It is a misdemeanor for an officer or employee of the state to execute a contract for a project without complying with this section, or for a contractor, subcontractor, or agent to pay any laborer, worker, or mechanic employed directly on the project site a lesser wage for work done under the contract than the prevailing wage rate as stated in the contract. This misdemeanor is punishable by a fine of not more than \$700, or imprisonment for not more than 90 days, or both. Each agent or subcontractor shall furnish to the contractor evidence of compliance with this section. Each day a violation of this section continues is a separate offense.

Subd. 6. **Examination of records; investigation by the department.** The Department of Labor and Industry shall enforce this section. The department may demand, and the contractor and subcontractor shall furnish to the department, copies of any or all payrolls. The department may examine all records relating to wages paid laborers or mechanics on work to which sections 177.41 to 177.44 apply. The department shall employ at least three investigators to perform on-site project reviews, receive and investigate complaints of violations of this section, and conduct training and outreach to contractors and contracting authorities for public works projects financed in whole or in part with state funds.

Subd. 6a. **Prevailing wage violations.** Upon issuing a compliance order to an employer pursuant to section 177.27, subdivision 4, for violation of sections 177.41 to 177.44, the commissioner shall issue a withholding order to the contracting authority ordering the contracting authority to withhold payment of sufficient sum to the prime or general contractor on the project to satisfy the back wages assessed or otherwise cure the violation, and the contracting authority must withhold the sum ordered until the compliance order has become a final order of the commissioner and has been fully paid or otherwise resolved by the employer.

During an investigation of a violation of sections 177.41 to 177.44 which the commissioner reasonably determines is likely to result in the finding of a violation of sections 177.41 to 177.44 and the issuance of a compliance order pursuant to section 177.27, subdivision 4, the commissioner may notify the contracting authority of the determination and the amount expected to be assessed and the contracting authority shall give the commissioner 90 days' prior notice of the date the contracting authority intends to make final payment.

Subd. 7. **Applicability.** This section does not apply to a contract, or work under a contract, under which:

- (1) the estimated total cost of completing the project is less than \$2,500 and only one trade or occupation is required to complete it, or
- (2) the estimated total cost of completing the project is less than \$25,000 and more than one trade or occupation is required to complete it.

**History:** 1973 c 724 s 3; 1975 c 191 s 3,4; 1976 c 331 s 37; 1982 c 424 s 130; 1984 c 628 art 3 s 11; art 4 s 1; 2007 c 135 art 3 s 11-14; 2009 c 78 art 5 s 8

**177.435 FACILITY CONSTRUCTION; PREVAILING WAGE.**

Construction of value-added agricultural product processing facility financed in whole or in part with a loan or grant provided under section 41A.035, 41B.044, or 41B.046 is a "project" as that term is defined in section 177.42, subdivision 2. Contracts for the construction or expansion of a value-added agricultural product processing facility that is a project under this section must comply with section 177.43 if the loan or grant agreement was entered into on or after December 31, 1995.

**History:** *1995 c 220 s 113*

**177.44 HIGHWAY CONTRACTS; HOURS OF LABOR; WAGE RATES; PENALTY.**

Subdivision 1. **Hours, wages permitted.** A laborer or mechanic employed by a contractor, sub-contractor, agent, or other person doing or contracting to do all or part of the work under a contract based on bids as provided in Minnesota Statutes 1971, section 161.32, to which the state is a party, for the construction or maintenance of a highway, may not be permitted or required to work longer than the prevailing hours of labor unless the laborer or mechanic is paid for all hours in excess of the prevailing hours at a rate of at least 1-1/2 times the hourly basic rate of pay of the laborer or mechanic. The laborer or mechanic must be paid at least the prevailing wage rate in the same or most similar trade or occupation in the area.

Subd. 2. **Applicability.** This section does not apply to wage rates and hours of employment of laborers or mechanics engaged in the processing or manufacture of materials or products, or to the delivery of materials or products by or for commercial establishments which have a fixed place of business from which they regularly supply the processed or manufactured materials or products. This section applies to laborers or mechanics who deliver mineral aggregate such as sand, gravel, or stone which is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.

Subd. 3. **Investigations by Department of Labor and Industry.** The Department of Labor and Industry shall conduct investigations and hold public hearings necessary to define classes of laborers and mechanics and to determine the hours of labor and wage rates prevailing in all areas of the state for all classes of labor and mechanics commonly employed in highway construction work, so as to determine prevailing hours of labor, prevailing wage rates, and hourly basic rates of pay.

The department shall determine the nature of the equipment furnished by truck drivers who own and operate trucks on contract work to determine minimum rates for the equipment, and shall establish by rule minimum rates to be computed into the prevailing wage rate.

Subd. 4. **Certification of hours and rate.** The commissioner of labor and industry shall at least once a year certify the prevailing hours of labor, the prevailing wage rate, and the hourly basic rate of pay for all classes of laborers and mechanics referred to in subdivision 3 in each area. The certification must also include future hours and rates when they can be determined for classes of laborers and mechanics in an area. The certification must specifically state the effective dates of future hours and rates when they are certified. If a construction project extends into more than one area there shall be only one standard of hours of labor and wage rates for the entire project. A person aggrieved by a final determination of the commissioner may petition the commissioner for reconsideration of findings. A person aggrieved by a decision of the commissioner after reconsideration may within 20 days after the decision petition the commissioner for a public hearing as in a contested case under sections 14.57 to 14.61. If the commissioner finds that a change in the certified prevailing hours of labor, prevailing wage rate, and the hourly basic rate of pay for a class of laborers or mechanics in any area is required, the commissioner may at any time certify that change.

Subd. 5. **Hours and rates to be posted.** The prevailing hours of labor, the prevailing wage rates, the hourly basic rates of pay, and classifications for all labor as certified by the commissioner must be specifically stated in the proposals and contracts for each highway construction contract to which the state is a party. These hours, rates, and classifications, together with the provisions of subdivision 6, must be kept posted on the project by the employer in at least one conspicuous place for the information of employees working on the project.

Subd. 6. **Penalties.** A contractor, subcontractor, or agent who violates this section is guilty of a misdemeanor and may be fined not more than \$300 or imprisoned not more than 90 days or both. Each day that the violation continues is a separate offense.

Whoever induces a job applicant or employee on any project subject to this section to give up or forgo any part of the wages to which entitled under the contract governing the project by threat not to employ, by threat of dismissal from employment, or by any other means may be fined not exceeding \$1,000 or imprisoned not more than one year or both.

Any employee under this section who knowingly permits the contractor or subcontractor to pay less than the prevailing wage rate set forth in the contract, or who gives up any part of the compensation to which entitled under the contract, may be fined not exceeding \$40 or imprisoned not more than 30 days or both. Each day any violation of this paragraph continues is a separate offense.

Subd. 7. **Department of Transportation to enforce.** The Department of Transportation shall require adherence to this section. The commissioner of transportation may demand and every contractor and subcontractor shall furnish copies of payrolls. The commissioner of transportation may examine all records relating to hours of work and the wages paid laborers and mechanics on work to which this section applies. Upon request of the Department of Transportation or upon complaint of alleged violation, the county attorney of the county in which the work is located shall investigate and prosecute violations in a court of competent jurisdiction.

**History:** 1973 c 724 s 4; 1975 c 191 s 5,6; 1976 c 166 s 7; 1976 c 331 s 38; 1982 c 424 s 130; 1984 c 628 art 4 s 1; 1986 c 444

**373.01 POWERS.**

Subdivision 1. **Public corporation; listed powers.** (a) Each county is a body politic and corporate and may:

(1) Sue and be sued.

(2) Acquire and hold real and personal property for the use of the county, and lands sold for taxes as provided by law.

(3) Purchase and hold for the benefit of the county real estate sold by virtue of judicial proceedings, to which the county is a party.

(4) Sell, lease, and convey real or personal estate owned by the county, and give contracts or options to sell, lease, or convey it, and make orders respecting it as deemed conducive to the interests of the county's inhabitants.

(5) Make all contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers.

(b) No sale, lease, or conveyance of real estate owned by the county, except the lease of a residence acquired for the furtherance of an approved capital improvement project, nor any contract or option for it, shall be valid, without first advertising for bids or proposals 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. The notice shall state the time and place of considering the proposals, contain a legal description of any real estate, and a brief description of any personal property. Leases that do not exceed \$15,000 for any one year may be negotiated and are not subject to the competitive bid procedures of this section. All proposals estimated to exceed \$15,000 in any one year shall be considered at the time set for the bid opening, and the one most favorable to the county accepted, but the county board may, in the interest of the county, reject any or all proposals.

(c) Sales of personal property the value of which is estimated to be \$15,000 or more shall be made only after advertising for bids or proposals in the county's official newspaper, on the county's Web site, or in a recognized industry trade journal. At the same time it posts on its Web site or publishes in a trade journal, the county must publish in the official newspaper, either as part of the minutes of a regular meeting of the county board or in a separate notice, a summary of all requests for bids or proposals that the county advertises on its Web site or in a trade journal. After publication in the official newspaper, on the Web site, or in a trade journal, bids or proposals may be solicited and accepted by the electronic selling process authorized in section 471.345, subdivision 17. Sales of personal property the value of which is estimated to be less than \$15,000 may be made either on competitive bids or in the open market, in the discretion of the county board. "Web site" means a specific, addressable location provided on a server connected to the Internet and hosting World Wide Web pages and other files that are generally accessible on the Internet all or most of a day.

(d) Notwithstanding anything to the contrary herein, the county may, when acquiring real property for county highway right-of-way, exchange parcels of real property of substantially similar or equal value without advertising for bids. The estimated values for these parcels shall be determined by the county assessor.

(e) Notwithstanding anything in this section to the contrary, the county may, when acquiring real property for purposes other than county highway right-of-way, exchange parcels of real property of substantially similar or equal value without advertising for bids. 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. For the purpose of determining for the county the estimated values of parcels proposed to be exchanged, the county assessor need not be licensed under chapter 82B. Before giving final approval to any exchange of land, the county board shall hold a public hearing on the exchange. At least two weeks 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.

(f) If real estate or personal property remains unsold after advertising for and consideration of bids or proposals the county may employ a broker to sell the property. The broker may sell the property for not less than 90 percent of its appraised market value as determined by the county. The broker's fee shall be set by agreement with the county but may not exceed ten percent of the sale price and must be paid from the proceeds of the sale.

(g) A county or its agent may rent a county-owned residence acquired for the furtherance of an approved capital improvement project subject to the conditions set by the county board and not subject to the conditions for lease otherwise provided by paragraph (a), clause (4), and paragraphs (b), (c), (d), (f), and (h).

(h) In no case shall lands be disposed of without there being reserved to the county all iron ore and other valuable minerals in and upon the lands, with right to explore for, mine and remove the iron ore and other valuable minerals, nor shall the minerals and mineral rights be disposed of, either before or after disposition of the surface rights, otherwise than by mining lease, in similar general form to that provided by section 93.20 for mining leases affecting state lands. The lease shall be for a term not exceeding 50 years, and be issued on a royalty basis, the royalty to be not less than 25 cents per ton of 2,240 pounds, and fix a minimum amount of royalty payable during each year, whether mineral is removed or not. Prospecting options for mining leases may be granted for periods not exceeding one year. The options shall require, among other things, periodical showings to the county board of the results of exploration work done.

(i) Notwithstanding anything in this subdivision to the contrary, the county may, when selling real property owned in fee simple that cannot be improved because of noncompliance with local ordinances regarding minimum area, shape, frontage, or access, proceed to sell the nonconforming parcel without advertising for bid. At the county's discretion, the real property may be restricted to sale to adjoining landowners or may be sold to any other interested party. The property shall be sold to the highest bidder, but in no case shall the property be sold for less than 90 percent of its fair market value as determined by the county assessor. All owners of land adjoining the land to be sold shall be given a written notice at least 30 days before the sale. This paragraph shall be liberally construed to encourage the sale of nonconforming real property and promote its return to the tax roles.

**Subd. 2. Road equipment agreements, terms.** Notwithstanding any other contrary law, a county may enter into a rental purchase agreement or conditional sales agreement to acquire road equipment but the seller shall be limited to the remedy of recovery of the property in case of nonpayment of all or part of the purchase price. The purchase price shall be payable over not more than five years.

**Subd. 3. Capital notes.** (a) A county board may, by resolution and without referendum, issue capital notes subject to the county debt limit to purchase capital equipment useful for county purposes that has an expected useful life at least equal to the term of the notes. The notes shall be payable in not more than ten years and shall be issued on terms and in a manner the board determines. A tax levy shall be made for payment of the principal and interest on the notes, in accordance with section 475.61, as in the case of bonds.

(b) For purposes of this subdivision, "capital equipment" means:

(1) public safety, ambulance, road construction or maintenance, and medical equipment; and

(2) computer hardware and software, whether bundled with machinery or equipment or unbundled, together with application development services and training related to the use of the computer hardware or software.

**Subd. 4. Tax anticipation certificates.** The county board of any county may, by resolution, issue and sell as many certificates of indebtedness as may be needed in anticipation of the collection of taxes levied for any fund named in the tax levy for the purpose of raising money for such fund, but the certificates outstanding for any such separate funds shall not on the date on which the certificates are issued exceed 75 percent of the amount of taxes previously levied for such fund remaining uncollected. No certificate shall be issued to become due and payable later than 15 months after the deadline for the certification of the property tax levy under section 275.07, subdivision 1, and the certificates shall not be sold for less than par and accrued interest. The certificates of indebtedness may be issued at any time after the levy has been finally made and certified to the county auditor. They shall be numbered consecutively, be in denominations of \$100 or a multiple thereof, may have interest coupons attached, shall be otherwise of such form and terms, and may be made payable at such place, as will best aid in their negotiation, and the proceeds of the tax assessed and collected on account of the fund and the full faith and credit of the county shall be irrevocably pledged for the redemption and payment of the certificates so issued. Such certificates shall be payable primarily from the moneys derived from the levy for the years against which such certificates were issued, but shall constitute unlimited general obligations of the county. Money derived from the sale of such certificates shall be credited to the fund or funds the taxes for which are so anticipated.

**History:** (638) *RL s 409; 1907 c 310 s 1; 1961 c 539 s 1; 1965 c 56 s 1; 1973 c 163 s 1; 1984 c 437 s 1; 1984 c 629 s 1; 1985 c 108 s 4; 1989 c 26 s 1; 1989 c 176 s 2; 1996 c 471 art 3 s 54; 2003 c 127 art 12 s 8; 1Sp2003 c 21 art 10 s 11; 2004 c 278 s 4; 2005 c 152 art 1 s 6; 2007 c 131 art 1 s 78; 2008 c 154 art 10 s 9; 2011 c 14 s 15; 2013 c 143 art 12 s 4; art 17 s 17*

**375.21 CONTRACTS OF COUNTY BOARDS.**

Subdivision 1. **Procedure, conditions.** When required by the dollar limitations of section 471.345, a contract for work or labor, or to purchase furniture, fixtures, or other property, or to construct or repair roads, bridges, or buildings shall be made by a county board only after advertising for bids or proposals in a qualified legal newspaper of the county. For the purchase of property or for work and labor, two weeks' published notice that proposals will be received, stating the time and place, shall be given. For the construction or repair of roads, bridges, or buildings, three weeks' published notice shall be given. The notice shall state the time and place of awarding the contract and contain a brief description of the work. Every contract shall be awarded to the lowest responsible bidder and duly executed in writing. The person to whom a contract is awarded for work or labor or for the construction or repair of roads, bridges, or buildings shall give a sufficient bond to the board for its faithful performance. If no satisfactory bid is received, the board may readvertise.

An advertised standard requirement price contract for supplies or services established by competitive bids may contain an escalation clause and may provide for a negotiated price increase or decrease. The escalation or negotiated change shall be based upon a demonstrable industrywide or regional increase or decrease in the vendor's costs.

Every contract made without compliance with this section is void.

In case of an emergency arising from the destruction or impassability of roads or bridges by floods, rain or snow, or other casualty, or from 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.

Subd. 1a. **Except Hennepin County.** This section does not apply to Hennepin County.

Subd. 1b. **Best value alternative.** As an alternative to the procurement method described in subdivision 1, a county board may award a contract for construction, building, alteration, improvement, or repair work to the vendor or contractor offering the best value under a request for proposals as described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c).

Subd. 2. [Repealed, 1967 c 364 s 2]

Subd. 3. [Repealed, 1967 c 364 s 2]

**History:** (991, 992, 993-1) RL s 618,619; 1919 c 355; 1921 c 376; 1923 c 80; Ex1933 c 69; 1935 c 17; 1939 c 5; 1939 c 246; 1947 c 138 s 1; 1957 c 497 s 1; 1959 c 337 s 1; 1967 c 364 s 1; 1969 c 153 s 1; 1969 c 613 s 3; 1979 c 198 art 4 s 13; 1981 c 45 s 1; 1984 c 629 s 2; 1987 c 164 s 2; 1990 c 389 s 1; 2007 c 148 art 3 s 22

**375.22 REPAIRS WITHOUT BIDS IN EMERGENCY.**

Subdivision 1. **Procedure.** 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.

Subd. 2. **Except Ramsey County.** This section does not apply to Ramsey County.

**History:** (993) 1905 c 189 s 1; 1974 c 435 art 7 s 1; 1984 c 629 s 2

**375.72 COUNTY PURCHASING DEPARTMENT.**

In order to create economies through volume buying, to promote competitive bidding, and to provide more efficient public service, the county board of any county may establish a county purchasing department. The county board may direct an existing county office, department or agency to perform the duties of the county purchasing department or may create a new department or agency for that purpose.

**History:** 1961 c 447 s 1; 1985 c 109 s 13,16

**375.73 DUTIES OF PURCHASING DEPARTMENT.**

Subdivision 1. **Scope.** The county purchasing department shall perform all acts necessary to purchase or contract for all supplies, materials, equipment, and contractual services required by any or all county offices, departments or agencies. The county board shall select the county offices, departments or agencies to be serviced by the county purchasing department. The board may authorize any county office, department or agency designated by the board to purchase directly, without the intervention of the director of purchasing, certain specified supplies, materials, equipment, or contractual services, and shall designate the manner in which the purchases shall be made.

Subd. 2. **Specifications, surplus items.** The county purchasing department also shall perform the following duties:

- (1) prepare all specifications for supplies, materials and equipment;
- (2) transfer to or between county offices, departments or agencies, or sell supplies, materials, and equipment which is surplus, obsolete, or unused.

**History:** 1961 c 447 s 2; 1985 c 109 s 13,16

**375.74 DIRECTOR OF PURCHASING; EMPLOYEES.**

The county board shall appoint a director of purchasing to direct the operations of the county purchasing department. The director of purchasing shall be qualified by training and experience for the position. The board may appoint an existing county officer to serve as director of purchasing. The board shall fix the salary of the director and require the director to post a bond as the board determines necessary. The board shall provide the director with assistants, office space, equipment, and supplies necessary to carry out the duties of the office. Except for the director, who may be removed from that office by the board for reasons of misconduct or incompetency after due notice and hearing, all employees of the county purchasing department shall be employed in accordance with civil service regulations existing in the county, if any regulations exist.

**History:** 1961 c 447 s 3; 1985 c 109 s 13,16

**375.75 RULES AND REGULATIONS.**

The county board shall adopt rules and regulations as necessary to carry out sections 375.72 to 375.76 and file them with the county auditor. The board may authorize any county office, department or agency designated by it to purchase supplies, materials, equipment or contractual services in the open market for immediate delivery in emergencies. It shall define emergencies and designate the manner in which these purchases shall be made and reported to the director of purchasing.

**History:** 1961 c 447 s 4; 1985 c 109 s 13,16

**375.76 VOIDABLE PURCHASES, CONTRACTS, AND SALES.**

The purchase or contract for any supplies, material, equipment, or contractual service by any county office, department or agency, or the sale of surplus, obsolete, or unusable supplies, material, or equipment by any county office, department or agency contrary to sections 375.72 to 375.76 is voidable. The head of the office, department or agency is personally liable for the cost of such an order or contract and for the reasonable value of supplies, material, or equipment sold. If an order or contract has been paid for out of county funds, the amount may be recovered in the name of the county in an action brought for that purpose. Property sold contrary to sections 375.72 to 375.76, or the reasonable value of the property, may be recovered in the name of the county in a similar manner.

**History:** *1961 c 447 s 5; 1985 c 109 s 13,16*

**383C.027 ADMINISTRATION OF BUDGET.**

Subdivision 1. **Records; rules.** A record of every appropriation shall be kept by the county auditor, or by an officer, agent, or employee designated by rule, which will at all times show the amount of any appropriation which has been expended, contracted, or obligated, and the remaining unencumbered amount which is available for expenditure, to the extent necessary to enable every officer, agent, or employee who has authority to incur an obligation to know whether incurring an additional obligation will exceed the appropriation. The auditor shall make and may amend rules governing in detail the manner in which boards, commissions, administrative officers, and employees of the county incur, record, and report obligations as reasonably necessary to regulate the keeping of the records required by this section and to enable the auditor to determine and certify whether an obligation is within and pursuant to an appropriation made as required by sections 383C.021 to 383C.026. The rules, upon adoption by the county board, shall bind all boards, commissions, officers, agents, and employees. No contract or obligation shall be valid for any purpose unless it is incurred, recorded, reported, and certified in accordance with the rules. No claim or payroll shall be presented to the county board or other board, commission, or agency for allowance, or allowed unless it has been audited by the auditor and certified by the auditor to have been incurred within and pursuant to an appropriation as required by sections 383C.021 to 383C.026. The auditor shall not certify a claim or payroll without ascertaining that it has been so incurred. No claim or payroll shall be allowed or paid until certified by the auditor. Before certifying any claim or payroll, the auditor shall ascertain that the goods or services have actually been received by the county as shown by a receiving report or time record signed by an officer, agent, or employee who has personal knowledge that the goods or services were received or furnished to the county. A person who falsely or fraudulently signs a receiving report or time record is personally liable to the county for any loss sustained.

Subd. 2. **Payments and obligations prohibited.** No payment shall be made or obligation incurred against an allotment or appropriation except in accordance with an appropriation duly made in the adopted budget. An authorization of payment or incurring of obligation in violation of this section is void and a payment so made is illegal.

Subd. 3. **Accounting principles.** The county shall use generally accepted accounting principles in the management of its accounting records.

**History:** 1989 c 240 s 7

**383C.094 REPAIR OF DITCHES.**

Subdivision 1. **Authority.** In St. Louis County, where the state of Minnesota holds title pursuant to tax forfeiture laws or other laws to at least 30 percent of all the land in any one district of a drainage system subject to chapter 103E, the county board may clean or make repairs on any drain or ditch in any one district in said system when said drain or ditch, due to lack of repairs or cleaning, has caused or is causing great damage to county roads, property, crops or lands. It may appropriate and expend from the general revenue fund of said county a sum annually for the cost of cleaning and repairing said drains or ditches. Said cleaning and repairing may be done by the county with its own equipment and employees, or by contract, but if done by contract and said estimated cost exceeds \$500, then bids for same shall be called for and the contract shall be let to the lowest responsible bidder pursuant to law.

Subd. 1a. **Contracts in excess of \$500; best value alternative.** As an alternative to the procurement method described in subdivision 1, the contract may be awarded to the vendor or contractor offering the best value under a request for proposals as described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c).

Subd. 2. **Acceptance of aid.** County boards are hereby authorized and empowered to accept gifts of money from the government of the United States and the state of Minnesota or any of its agencies, to carry out the provisions of this section, and said moneys shall be spent by said county boards only for such purpose.

Subd. 3. **In addition to existing power.** The authority granted in this section is in addition to all existing power and authority granted by law to county boards to repair or clean any drains and ditches in any county or judicial drainage system.

**History:** 1945 c 352 s 1-3; 1988 c 491 s 6; 1990 c 391 art 10 s 3; 2007 c 148 art 3 s 23

**383C.807 MAY CONTRACT FOR SOLID WASTE MANAGEMENT SERVICES.**

Subdivision 1. **With or without bids.** Notwithstanding section 471.345 or other law, St. Louis County may contract for the acquisition, construction, improvement, maintenance, or management operation of solid waste facilities or property or property rights for solid waste facilities by any means available and in any manner determined by the St. Louis County Board, with or without advertisement for bids.

Subd. 2. **Cities, towns singly or jointly may provide.** Towns and home rule charter or statutory cities within service areas determined under section 400.08, subdivision 2, may contract with St. Louis County to provide solid waste management, maintenance, or operation services at solid waste facilities. Towns and cities within a service area may form a joint board to provide the solid waste services to the county by contract.

Subd. 3. **County board acts for unorganized territories.** For the purposes of solid waste management including, but not limited to, the acquisition, construction, improvement, maintenance, or operation of solid waste facilities or property or property rights for solid waste facilities, the St. Louis County Board acts for its unorganized territories. An act of the county board in providing solid waste management services to unorganized townships is as valid as a similar act of a town board or meeting.

**History:** 1990 c 400 s 1; 1993 c 157 s 1

**400.04 SOLID WASTE MANAGEMENT PROGRAM.**

Subdivision 1. **General.** Any county may conduct a solid waste management program which may include activities authorized by sections 400.01 to 400.17 and such other activities as are necessary and convenient to effectively carry out the purposes of sections 400.01 to 400.17. A county that enters into a joint powers agreement under section 471.59 with a metropolitan county as defined in section 473.121, subdivision 4, to accomplish a solid waste management purpose may exercise the powers of the metropolitan county for the purpose of solid waste management under the joint powers agreement.

Subd. 2. **Acquisition of real property.** A county may acquire by gift, lease, purchase, or eminent domain as provided by law any land or interest in land upon such terms and conditions as it shall determine, including the use of contracts for deed, within or outside of the county, which the board deems suitable for these purposes; provided that no such land or interest in land situated in any other county shall be acquired without the approval by resolution of the county board thereof.

Subd. 3. **Acquisition, construction, and operation of property and facilities.** A county may acquire, construct, enlarge, improve, repair, supervise, control, maintain, and operate any and all solid waste facilities and other property and facilities needed, used, or useful for solid waste management purposes. Notwithstanding any other law to the contrary, a county may purchase and lease materials, equipment, machinery, and such other personal property as is necessary for such purposes including recycling upon terms and conditions determined by the board, with or without advertisement for bids including the use of conditional sales contracts and lease-purchase agreements. If a county contract is let by negotiation, without advertising for bids, the county shall conduct such negotiation and award the contract using a fair and open procedure and in full compliance with chapter 13D. If a county contract is to be awarded by bid, the county may, after notice to the public and prospective bidders, conduct a fair and open process of prequalification of bidders prior to advertisement for bids. A county may employ such personnel as are reasonably necessary for the care, maintenance and operation of such property and facilities. A county shall contract with private persons for the construction, maintenance, and operation of solid waste facilities where the facilities are adequate and available for use and competitive with other means of providing the same service.

Subd. 4. **Management and service contracts.** Notwithstanding sections 375.21 and 471.345, a county may enter into contracts for the construction, installation, maintenance, and operation of property and facilities on private or public lands and may contract for the furnishing of solid waste management services upon terms and conditions determined by the board, with or without advertisement for bids, including the use of conditional sales contracts and lease-purchase agreements. If a county contract is let by negotiation, without advertising for bids, the county shall conduct negotiations and award the contract using a fair and open procedure and in full compliance with chapter 13D. If an agency permit is required for a solid waste service, a contract entered into under this subdivision is not binding until the permit is issued.

Subd. 5. **Plans.** The county may provide for surveys and plans to determine locations available, appropriate, and suitable for property and facilities needed for the program, and plans for the improvement of property and facilities.

Subd. 6. **Expenditure of funds.** A county is authorized to expend funds for the purposes enumerated in this section and for any other activities necessary to an efficient solid waste management program.

**History:** 1971 c 403 s 4; 1980 c 564 art 9 s 2; 1984 c 644 s 56; 1985 c 274 s 15; 1989 c 325 s 49; 1993 c 249 s 36,37; 1994 c 585 s 39

**469.015 LETTING OF CONTRACTS; PERFORMANCE BONDS.**

Subdivision 1. **Bids; notice.** All construction work, and work of demolition or clearing, and every purchase of equipment, supplies, or materials, necessary in carrying out the purposes of sections 469.001 to 469.047, that involve expenditure of the amount in section 471.345, subdivision 3, or more shall be awarded by contract. Before receiving bids the authority shall publish, once a week for two consecutive weeks in an official newspaper of general circulation in the community a notice that bids will be received for that construction work, or that purchase of equipment, supplies, or materials. The notice shall state the nature of the work and the terms and conditions upon which the contract is to be let, naming a time and place where bids will be received, opened and read publicly, which time shall be not less than seven days after the date of the last publication. After the bids have been received, opened and read publicly and recorded, the authority shall award the contract to the lowest responsible bidder, provided that the authority reserves the right to reject any or all bids. Each contract shall be executed in writing, and the person to whom the contract is awarded shall give sufficient bond to the authority for its faithful performance. If no satisfactory bid is received, the authority may readvertise. The authority may establish reasonable qualifications to determine the fitness and responsibility of bidders and to require bidders to meet the qualifications before bids are accepted.

Subd. 1a. **Best value alternative.** As an alternative to the procurement method described in subdivision 1, the authority may issue a request for proposals and award the contract to the vendor or contractor offering the best value under a request for proposals as described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c).

Subd. 2. **Exception; emergency.** If the authority by a vote of four-fifths of its members shall declare that an emergency exists requiring the immediate purchase of any equipment or material or supplies at a cost in excess of the amount in section 471.345, subdivision 3, but not exceeding one-half again as much as the amount in section 471.345, subdivision 3, or making of emergency repairs, it shall not be necessary to advertise for bids, but the material, equipment, or supplies may be purchased in the open market at the lowest price obtainable, or the emergency repairs may be contracted for or performed without securing formal competitive bids. An emergency, for purposes of this subdivision, shall be understood to be unforeseen circumstances or conditions which result in the placing in jeopardy of human life or property.

Subd. 3. **Performance and payment bonds.** Performance and payment bonds shall be required from contractors for any works of construction as provided in and subject to all the provisions of sections 574.26 to 574.31 except for contracts entered into by an authority for an expenditure of less than the minimum threshold amount in section 471.345, subdivision 3.

Subd. 4. **Exceptions.** (a) An authority need not require competitive bidding in the following circumstances:

(1) in the case of a contract for the acquisition of a low-rent housing project:

(i) for which financial assistance is provided by the federal government;

(ii) which does not require any direct loan or grant of money from the municipality as a condition of the federal financial assistance; and

(iii) for which the contract provides for the construction of the project upon land that is either owned by the authority for redevelopment purposes or not owned by the authority at the time of the contract but the contract provides for the conveyance or lease to the authority of the project or improvements upon completion of construction;

(2) with respect to a structured parking facility:

(i) constructed in conjunction with, and directly above or below, a development; and

(ii) financed with the proceeds of tax increment or parking ramp general obligation or revenue bonds; and

(3) in the case of any building in which at least 75 percent of the usable square footage constitutes a housing development project if:

(i) the project is financed with the proceeds of bonds issued under section 469.034 or from non-governmental sources;

(ii) the project is either located on land that is owned or is being acquired by the authority only for development purposes, or is not owned by the authority at the time the contract is entered into but the contract provides for conveyance or lease to the authority of the project or improvements upon completion of construction; and

(iii) the authority finds and determines that elimination of the public bidding requirements is necessary in order for the housing development project to be economical and feasible.

(b) An authority need not require a performance bond for the following projects:

(1) a contract described in paragraph (a), clause (1);

(2) a construction change order for a housing project in which 30 percent of the construction has been completed;

(3) a construction contract for a single-family housing project in which the authority acts as the general construction contractor; or

(4) a services or materials contract for a housing project.

For purposes of this paragraph, "services or materials contract" does not include construction contracts.

**Subd. 5. Security in lieu of bond.** The authority may accept a certified check or cashier's check in the same amount as required for a bond in lieu of a performance bond for contracts entered into by an authority for an expenditure of less than the minimum threshold amount in section 471.345, subdivision 3. The check must be held by the authority for 90 days after the contract has been completed. If no suit is brought within the 90 days, the authority must return the amount of the check to the person making it. If a suit is brought within the 90-day period, the authority must disburse the amount of the check pursuant to the order of the court.

**History:** 1987 c 291 s 15,243; 1987 c 344 s 6; 1988 c 702 s 4; 1989 c 355 s 3; 1992 c 376 art 3 s 5-7; 1992 c 545 art 2 s 5; 1993 c 320 s 3,4; 1994 c 614 s 8; 1998 c 389 art 16 s 22; 2001 c 140 s 1-4; 2004 c 278 s 8,9; 2005 c 152 art 1 s 14; 2007 c 148 art 3 s 27; 2009 c 88 art 6 s 14-16; 2009 c 152 s 20; 2010 c 382 s 87 subd 11; 2012 c 294 art 2 s 19

**471.345 UNIFORM MUNICIPAL CONTRACTING LAW.**

Subdivision 1. **Municipality defined.** For purposes of this section, "municipality" means a county, town, city, school district or other municipal corporation or political subdivision of the state authorized by law to enter into contracts.

Subd. 2. **Contract defined.** A "contract" means an agreement entered into by a municipality 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.

Subd. 3. **Contracts over \$100,000.** If the amount of the contract is estimated to exceed \$100,000, sealed bids shall be solicited by public notice in the manner and subject to the requirements of the law governing contracts by the particular municipality or class thereof. With regard to repairs and maintenance of ditches, the provisions of section 103E.705, subdivisions 5, 6, and 7, apply.

Subd. 3a. **Contracts over \$100,000; best value alternative.** As an alternative to the procurement method described in subdivision 3, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c).

Subd. 4. **Contracts exceeding \$25,000 but not \$100,000.** If the amount of the contract is estimated to exceed \$25,000 but not to exceed \$100,000, the contract may be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof.

Subd. 4a. **Contracts exceeding \$25,000 but not \$100,000; best value alternative.** As an alternative to the procurement method described in subdivision 4, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c).

Subd. 5. **Contracts \$25,000 or less.** If the amount of the contract is estimated to be \$25,000 or less, the contract may be made either upon quotation or in the open market, in the discretion of the governing body. If the contract is made upon quotation it shall be based, so far as practicable, on at least two quotations which shall be kept on file for a period of at least one year after their receipt. Alternatively, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in section 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c).

Subd. 5a. **County or town rental contracts.** If the amount of a county or town 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. All quotations shall be kept on file for a period of at least one year after their receipt.

Subd. 5b. **Water tank service contracts.** A municipality may, by direct negotiation or through the solicitation of requests for proposals, enter into a multiyear professional service contract for the engineering,

repair, and maintenance of a water storage tank and appurtenant facilities owned, controlled, or operated by the municipality, if the contract contains:

(1) a provision that the municipality is not required to make total payments in a single year that exceed the water utility charges received by the municipality for that year;

(2) a provision requiring that the work performed be done under the review of a professional engineer licensed in the state of Minnesota attesting that the work will be performed in compliance with all applicable codes and engineering standards; and

(3) a provision that if, at the commencement of the contract, the water tank or appurtenant facilities require engineering, repair, or service in order to bring the water tank or facilities into compliance with federal, state, or local requirements, the party contracting with the municipality is responsible for providing the engineering, repair, or service. The costs to bring the water tank or facilities into compliance must be itemized separately and charged to the municipality in payments spread over a period of not less than three years from the commencement of the contract.

Subd. 6. **Applicability of other laws.** The purpose of this section is to establish for all municipalities, uniform dollar limitations upon contracts which shall or may be entered into on the basis of competitive bids, quotations or purchase or sale in the open market. To the extent inconsistent with this purpose, all laws governing contracts by a particular municipality or class thereof are superseded. In all other respects such laws shall continue applicable.

Subd. 7. **Minimum labor standards.** Nothing in this section shall be construed to prohibit any municipality from adopting rules, regulations, or ordinances which establish the prevailing wage rate as defined in section 177.42, as a minimum standard for wages and which establish the hours and working conditions prevailing for the largest number of workers engaged in the same class of labor within the area as a minimum standard for a contractor's employees which must be agreed to by any contractor before the contractor may be awarded any contract for the furnishing of any labor, material, supplies, or service.

Subd. 8. **Procurement from economically disadvantaged persons.** For purposes of this subdivision, the following terms shall have the meanings herein ascribed to them:

(a) "Small targeted group business" means businesses designated under section 16C.16.

(b) "Business entity" means an entity organized for profit, including an individual, partnership, corporation, joint venture, association, or cooperative.

Nothing in this section shall be construed to prohibit any municipality from adopting a resolution, rule, regulation, or ordinance which on an annual basis designates and sets aside for awarding to small targeted group businesses a percentage of the value of its anticipated total procurement of goods and services, including construction, and which uses either a negotiated price or bid contract procedure in the awarding of a procurement contract under a set-aside program as allowed in this subdivision, provided that any award based on a negotiated price shall not exceed by more than five percent the municipality's estimated price for the goods and services if they were purchased on the open market and not under the set-aside program.

Subd. 9. [Repealed, 1990 c 549 s 3]

Subd. 10. **Shared hospital or ambulance service purchasing.** Supplies, materials, or equipment to be used in the operation of a hospital licensed under sections 144.50 to 144.56 or an ambulance service licensed under chapter 144E that are purchased or leased under a shared service purchasing arrangement

whereby more than one hospital or ambulance service purchases supplies, materials, or equipment with one or more other hospitals or ambulance services either through one of the hospitals or ambulance services or through another entity, may be purchased without regard to the competitive bidding requirements of this section, if the following conditions are met:

(1) the hospital's or ambulance service's governing authority authorizes the arrangement;

(2) the shared services purchasing program purchases items available from more than one source on the basis of competitive bids or competitive quotations of prices; and

(3) the arrangement authorizes the hospital's or ambulance service's governing authority or its representatives to review the purchasing procedures to determine compliance with these requirements.

The shared services purchasing program may award contracts to more than one bidder if doing so does not decrease the service level or diminish the effects of competition.

**Subd. 11. Fuel contracts for generation of municipal power.** Notwithstanding the amount of the contract, any contract entered into by a municipality for the purchase of fuel required for the generation of power from municipal power plants shall be governed by subdivision 4.

**Subd. 12. Procurement from rehabilitation facilities.** Nothing in this section prohibits a municipality from adopting a resolution, rule, regulation, or ordinance that on an annual basis designates and sets aside for awarding to rehabilitation facilities as described in section 268A.06 a percentage of the value of its anticipated total procurement of goods and services, including construction, and which uses either a negotiated price or bid contract procedure in the awarding of a procurement contract under a set-aside program as allowed in this subdivision, provided that any award based on a negotiated price shall not exceed by more than five percent the municipality's estimated price for the goods and services if they were purchased on the open market and not under the set-aside program.

**Subd. 13. Energy efficiency projects.** The following definitions apply to this subdivision.

(a) "Energy conservation measure" means a training program or facility alteration designed to reduce energy consumption or operating costs and includes:

(1) insulation of the building structure and systems within the building;

(2) storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(3) automatic energy control systems;

(4) heating, ventilating, or air conditioning system modifications or replacements;

(5) replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;

(6) energy recovery systems;

(7) cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(8) energy conservation measures that provide long-term operating cost reductions; and

(9) water metering devices that increase efficiency or accuracy of water measurement and reduce energy use.

(b) "Guaranteed energy-savings contract" means a contract for the evaluation and recommendations of energy conservation measures, and for one or more energy conservation measures. The contract must provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time, but not to exceed 20 years from the date of final installation, and the savings are guaranteed to the extent necessary to make payments for the systems.

(c) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures. A qualified provider to whom the contract is awarded shall give a sufficient bond to the municipality for its faithful performance.

Notwithstanding any law to the contrary, a municipality may enter into a guaranteed energy-savings contract with a qualified provider to significantly reduce energy or operating costs.

Before entering into a contract under this subdivision, the municipality shall provide published notice of the meeting in which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose.

Before installation of equipment, modification, or remodeling, the qualified provider shall first issue a report, summarizing estimates of all costs of installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs, or debt service, and estimates of the amounts by which energy or operating costs will be reduced.

A guaranteed energy-savings contract that includes a written guarantee that savings will meet or exceed the cost of energy conservation measures is not subject to competitive bidding requirements of section 471.345 or other law or city charter. The contract is not subject to section 123B.52.

A municipality may enter into a guaranteed energy-savings contract with a qualified provider if, after review of the report, it finds that the amount it would spend on the energy conservation measures recommended in the report is not likely to exceed the amount to be saved in energy and operation costs over 20 years from the date of final installation if the recommendations in the report were followed, and the qualified provider provides a written guarantee that the energy or operating cost savings will meet or exceed the costs of the system. The guaranteed energy-savings contract may provide for payments over a period of time, not to exceed 20 years.

A municipality may enter into an installment payment contract for the purchase and installation of energy conservation measures. The contract must provide for payments of not less than 1/20 of the price to be paid within two years from the date of the first operation, and the remaining costs to be paid monthly, not to exceed a 20-year term from the date of final acceptance.

A municipality entering into a guaranteed energy-savings contract shall provide a copy of the contract and the report from the qualified provider to the commissioner of commerce within 30 days of the effective date of the contract.

Guaranteed energy-savings contracts may extend beyond the fiscal year in which they become effective. The municipality shall include in its annual appropriations measure for each later fiscal year any amounts payable under guaranteed energy-savings contracts during the year. Failure of a municipality to make such

an appropriation does not affect the validity of the guaranteed energy-savings contract or the municipality's obligations under the contracts.

Subd. 14. **Damage awards.** In any action brought challenging the validity of a municipal contract under this section, the court shall not award, as any part of its judgment, damages, or attorney's fees, but may award an unsuccessful bidder the costs of preparing an unsuccessful bid.

Subd. 15. **Cooperative purchasing.** (a) Municipalities may contract for the purchase of supplies, materials, or equipment by utilizing contracts that are available through the state's cooperative purchasing venture authorized by section 16C.11. For a contract estimated to exceed \$25,000, a municipality must consider the availability, price and quality of supplies, materials, or equipment available through the state's cooperative purchasing venture before purchasing through another source.

(b) If a municipality does not utilize the state's cooperative purchasing venture, a municipality 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.

Subd. 16. **Reverse auction.** Notwithstanding any other procedural requirements of this section, a municipality 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 selling price in an open and interactive environment. A municipality may not use this process to contract for services, as defined by section 16C.02, subdivision 17, or a service contract, as defined by section 16C.02, subdivision 7a. Nothing in this subdivision must be construed to prohibit a municipality from adopting a resolution, rule, regulation, or ordinance relating to minimum labor standards under subdivision 7, or procurement from economically disadvantaged persons under subdivision 8.

Subd. 17. **Electronic sale of surplus supplies, materials, and equipment.** Notwithstanding any other procedural requirements of this section, a municipality may contract to sell supplies, materials, and equipment which is surplus, obsolete, or unused using an electronic selling process in which purchasers compete to purchase the surplus supplies, materials, or equipment at the highest purchase price in an open and interactive environment.

Subd. 18. **Electronic bidding.** Notwithstanding any other procedural requirements of this section, vendors may submit bids, quotations, and proposals electronically in a form and manner required by the municipality. A municipality may allow bid, performance, or payment bonds, or other security, to be furnished electronically.

Subd. 19. **Town road construction and maintenance.** Notwithstanding any other procedural requirements of this section, 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.

**History:** 1969 c 934 s 1; 1973 c 123 art 5 s 7; 1973 c 226 s 1,2; 1974 c 510 s 1; 1977 c 182 s 1-3; 1980 c 462 s 4; 1983 c 42 s 1-3; 1983 c 301 s 211; 1984 c 413 s 1; 1985 c 172 s 129; 1Sp1985 c 13 s 347; 1986 c 350 s 1,2; 1986 c 444; 1988 c 409 s 1; 1988 c 689 art 2 s 268; 1989 c 9 s 3; 1989 c 352 s 19,25; 1990 c 391 art 8 s 51; 1990 c 541 s 26,29; 1990 c 549 s 1; 1992 c 380 s 4-6; 1998 c 386 art 2 s 93; 1998 c 397 art 11 s 3; 1999 c 13 s 1; 2000 c 328 s 2-4; 2002 c 358 s 1; 1Sp2003 c 10 s 1; 2004 c 278 s 10-14; 2005

*c 63 s 1; 2006 c 274 s 2; 2007 c 136 art 3 s 4; 2007 c 148 art 3 s 31-33; 2008 c 207 s 4-8; 2008 c 356 s 11; 2009 c 101 art 2 s 92; 2014 c 196 art 3 s 4; 2015 c 22 s 1*

**471.35 SPECIFICATIONS OF SUPPLIES OR EQUIPMENT.**

When any county, city, town, or school district calls for bids for the purchase of supplies or equipment, specifications shall not be so prepared as to exclude all but one type or kind but shall include competitive supplies and equipment.

**History:** (1933-77) 1937 c 416 s 2; 1959 c 261 s 1; 1973 c 123 art 5 s 7; 1975 c 157 s 1

**471.36 NONCOMPETITIVE SUPPLIES AND EQUIPMENT.**

The provisions of sections 471.35 to 471.37 shall not apply to noncompetitive types and kinds of supplies and equipment.

**History:** (1933-78) 1937 c 416 s 3; 1959 c 261 s 2

**471.37 VIOLATIONS.**

The violation of any of the provisions of sections 471.35 to 471.36 shall be a gross misdemeanor.

**History:** (1933-79) 1937 c 416 s 4; 1959 c 261 s 3

**471.85 PROPERTY TRANSFER; PUBLIC CORPORATIONS.**

Any county, city, town, or school district may transfer its personal property for a nominal or without consideration to another public corporation for public use when duly authorized by its governing body.

**History:** *1951 c 176 s 1; 1973 c 123 art 5 s 7*

**574.26 CONTRACTORS' BONDS FOR PUBLIC WORK.**

Subdivision 1. **Citation.** (a) Sections 574.26 to 574.32 are the "Public Contractors' Performance and Payment Bond Act," within those sections referred to as "the act."

(b) For the purposes of the act:

(1) "public body" means the state, municipal corporation, school district, or other public board or body; and

(2) "labor and materials" means work, skill, tools, machinery, materials, insurance premiums, equipment or supplies, or taxes incurred under section 290.92, chapter 268, or 297A; and

(3) "contract" means a contract with a public body for the doing of public work.

Subd. 1a. **Exemptions: certain manufacturers; commissioner of transportation; road maintenance.** (a) Sections 574.26 to 574.32 do not apply to a manufacturer of public transit buses that manufactures at least 100 public transit buses in a calendar year. For purposes of this section, "public transit bus" means a motor vehicle designed to transport people, with a design capacity for carrying more than 40 passengers, including the driver. The term "public transit bus" does not include a school bus, as defined in section 169.011, subdivision 71.

(b) At the discretion of the commissioner of transportation, sections 574.26 to 574.32 do not apply to any projects of the Department of Transportation (1) costing less than the amount in section 471.345, subdivision 3, or (2) involving the permanent or semipermanent installation of heavy machinery, fixtures, or other capital equipment to be used primarily for maintenance or repair.

(c) Sections 574.26 to 574.32 do not apply to contracts for snow removal, ice removal, grading, or other similar routine road maintenance on town roads.

Subd. 2. **Terms.** Except as provided in sections 574.263 and 574.264 or if the amount of the contract is less than the amount in section 471.345, subdivision 3, a contract with a public body for the doing of any public work is not valid unless the contractor gives (1) a performance bond to the public body with whom the contractor entered into the contract, for the use and benefit of the public body to complete the contract according to its terms, and conditioned on saving the public body harmless from all costs and charges that may accrue on account of completing the specified work, and (2) a payment bond for the use and benefit of all persons furnishing labor and materials engaged under, or to perform the contract, conditioned for the payment, as they become due, of all just claims for the labor and materials. Reasonable attorneys' fees, costs, and disbursements may be awarded in an action to enforce claims under the act if the action is successfully maintained or successfully appealed.

Subd. 3. **Penalty.** The penalty of each bond must not be less than the contract price, and if after the giving of the bond the contract price is increased, for any reason, the public body may require additional bonds, the penalties of which shall be not less than the amount of the increase, and if the additional bonds are not furnished within ten days after demand, the work on the contract shall cease until the additional bonds are furnished. In contracts made by the commissioner of administration or the Department of Transportation

of the state, the commissioner of administration or the commissioner of transportation, respectively, may fix the amount of the bond penalty, but at not less than three-quarters of the contract price.

**History:** (9700) *RL s 4535; 1909 c 429 s 1; 1923 c 373 s 1; 1929 c 369 s 1; 1931 c 229 s 1; 1975 c 377 s 39; 1976 c 166 s 7; 1985 c 112 s 2; 1986 c 327 s 5; 1986 c 444; 1994 c 419 s 1; 1995 c 54 s 28; 1995 c 200 s 1; 1998 c 403 s 25; 1Sp2001 c 10 art 2 s 83; 2012 c 287 art 4 s 44,45*

**574.27 BIDDERS TO HAVE RIGHT OF ACTION IN CERTAIN CASES.**

A public body may require that a bidder provide a bid bond or other security as a proposal guaranty that the bidder will enter into a contract if its bid is accepted. Any bidder upon any public work or public improvement of any kind in this state where bids are received and where, in connection with such bids, a deposit of money, or a certified check, or bid bond or other security must be provided with the bid, the public body causing such public work or other public improvement to be made or done shall be liable to such bidder for a return of the money, certified check, or other thing of value so deposited if the bidder's bid on such public work or improvement is not accepted, or if the bidder's bid is accepted before the bid expires, after the bidder enters into a contract for the work and provides acceptable security in connection with it. This liability exists even though the failure to return the money, certified check, or other thing of value is due to the defalcation or unlawful conversion of the thing of value by the officer of the public body charged with the custody of it.

**History:** (9701) 1923 c 348 s 1; 1986 c 444; 1994 c 419 s 7

**574.28 APPROVAL AND FILING OF BOND.**

Before beginning work on the contract for the public work, the contractor on whose behalf the payment and performance bonds were issued must file both bonds with the treasurer, board, or officer having financial management of the public body named in the bonds. The payment and performance bonds must list the address of the contractor on whose behalf the bonds were issued and of the surety providing the bonds. The payment and performance bonds, if acceptable in form and content, must be approved by the board or officer having financial management of the public body, or by the public body's treasurer. The public body must make the payment and performance bonds available for inspection and copying upon request. An assignment, modification, or change of the contract, or change in the work covered by the contract, or an extension of time to complete the contract, does not release the sureties on the bonds.

**History:** (9702) *RL s 4536; 1907 c 379; 1931 c 157; 1994 c 419 s 8; 1995 c 31 s 3*

**574.29 FAILURE TO GET PAYMENT BOND.**

If the state or other public body fails to get and approve a valid payment bond or securities in place of a payment bond as required by the act, the public body for which work is done under the contract is liable to all persons furnishing labor and materials under or to perform the contract for any loss resulting to them from the failure. The public body is not liable if the bond does not list the proper address of the contractor on whose behalf the bond was issued or of the surety providing the bond.

**History:** (9703) *RL s 4537; 1986 c 444; 1994 c 419 s 9*

**574.30 INSOLVENT OR INSUFFICIENT SURETIES.**

When, in the public body's judgment, a surety on a bond required by the act is insolvent, or for any cause is no longer a proper or sufficient surety, the public body may require the contractor to furnish a new or additional bond within ten days; and thereupon, if so ordered by the public body, all work on the contract must cease until the new or additional bonds are furnished. If the bonds are not furnished within the ten days, the public body may, at its option, terminate the contract and complete the same as the agent, and at the expense of the contractor and its sureties.

**History:** (9704) *RL s 4538; 1986 c 444; 1994 c 419 s 10; 1995 c 31 s 4*

**574.31 LIMIT OF TIME TO BRING ACTION.**

Subdivision 1. **Claims on performance bonds.** In the event of a claim by the public body on a performance bond, no action shall be maintained later than permitted under the statute of limitations applicable to the claim. Nothing in this subdivision may be construed to otherwise affect the common law or equitable rights of performance bond sureties, principals, or public bodies that are obligees.

Subd. 2. **Claims on payment bonds.** (a) In the event of a claim on a payment bond by a person furnishing labor and materials, no action shall be maintained on the payment bond unless, within 120 days after completion, delivery, or provision by the person of its last item of labor and materials, for the public work, the person serves written notice of claim under the payment bond personally or by certified mail upon the surety that issued the bond and the contractor on whose behalf the bond was issued at their addresses as stated in the bond specifying the nature and amount of the claim and the date the claimant furnished its last item of labor and materials for the public work. The addresses of the contractor and the surety listed on the bond must be addresses at which the companies are authorized to accept service of the notice of the claim. If an agent or attorney-in-fact is authorized to accept service of notice of the claim for the contractor or surety, that fact must be expressly stated in the bond along with the address of the agent or attorney-in-fact at which service of the notice of the claim can be made. For the purpose of this section, notice is sufficient if served personally or via certified mail to the addresses of the contractor and surety listed on the bond. The form of notice is sufficient if it is substantially as follows:

NOTICE OF CLAIM ON PAYMENT BOND FOR PUBLIC WORK

TO: .....

(Surety that issued payment bond)

and .....

(The contractor on whose behalf the bond was issued)

NOTICE IS HEREBY GIVEN that the undersigned claimant has a claim against the above-named surety for labor and materials furnished by the undersigned for the public work described as follows:.....

.....

(Description of the public work)

The labor and materials were furnished under a contract or agreement with

.....

(Name and address of contractor or supplier requesting labor and materials from the claimant)

The nature of the labor and materials furnished is as follows:

.....

The amount of the claim is:.....

The date the claimant last furnished labor and materials to this public work is the ..... day of ....., .....

Claimant seeks payment of the claim according to the law.

.....  
Claimant

.....  
Address

STATE OF .....

ss.

COUNTY OF .....

..... being duly sworn on oath says that .....  
is ..... of the claimant named above and has  
knowledge of the claim and that the claim is correct, and no  
part of the claim has been paid.

.....  
Signed and sworn to before me  
on ..... ,  
by ..... (Notary Seal)  
.....

Notary Public

(b) If the contractor providing the payment bond fails to comply with the filing requirements of section 574.28 by failing to state both its address and the address of the surety providing the bond, then a claimant under the bond need not provide either the surety or the contractor written notice of its claim under paragraph (a).

(c) An action to enforce a claim against the surety under the bond must be commenced within one year from the date of completion, delivery, or provision by the claimant of its last item of labor and materials for the public work stated in its notice of claim. If no notice of claim was required because the contractor providing the bond failed to comply with the requirements of section 574.28, then any action under the bond must be commenced within one year from the actual date of completion, delivery, or provision by the claimant of its last item of labor and materials for the public work. Any other person having a cause of action on a payment bond may be admitted, on motion, as a party to the action, and the court shall determine the rights of all parties. If the amount realized on the bond is insufficient to discharge all the claims in full, the amount must be prorated among the parties.

(d) The claimant can extend the time within which to bring an action to enforce a claim under the bond to beyond that specified in paragraph (c) either by: (1) written stipulation between the claimant and surety stating the extended deadline and executed by both parties before the expiration of one year from the actual

date of completion, delivery, or provision by the claimant of its last item of labor and materials for the public work; or (2) written notice extending by one year the deadline specified in paragraph (c) sent by the claimant to the surety via certified mail 90 days before the expiration of the deadline specified in paragraph (c), which notice is not objected to in a return written notice sent by the surety to the claimant via certified mail within 30 days after the surety's receipt of claimant's notice. If a claimant's payment is not yet contractually due within one year from the actual date of completion, delivery, or provision by the claimant of its last item of labor and materials, the court shall continue and not dismiss the action until the payment is due.

**History:** (9705) *RL s 4539; 1909 c 413 s 1; 1929 c 369 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1994 c 419 s 11; 1995 c 31 s 5,6; 1998 c 254 art 1 s 107; 2001 c 52 s 1*

**574.32 APPLICATION OF PAYMENTS.**

If a claimant on a payment bond had actual knowledge or should have known that a payment it received was for labor and materials supplied under, or to perform, public work under which a payment bond was provided, then the claimant must prove that it applied the payment to its account for that public work. Its claim must be reduced to the extent it cannot so prove.

**History:** (9705-1) 1929 c 369 s 3; 1971 c 293 s 1; 1973 c 241 s 1; 1978 c 674 s 60; 1979 c 2 s 1; 1983 c 289 s 114 subd 1; 1984 c 592 s 90; 1984 c 655 art 1 s 92; 1986 c 444; 1994 c 419 s 12