Saint Louis County

Administration • 100 North Fifth Avenue West, Room 202 • Duluth, MN 55802
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October 15, 2015

MEMORANDUM

TO: County Commissioners

FROM: Pete Stauber
County Board Chair

Kevin Z. Gray
County Administrator

RE: **County Board Workshop – October 20, 2015**

A County Board Workshop has been scheduled for **Tuesday, October 20, 2015, beginning at 9:30 A.M. at the Mesabi Station, 111 Station 44 Road, Eveleth, MN.** The agenda for the meeting is as follows:

9:30 A.M.	St. Louis County/Arrowhead Economic Opportunity Agency/Range Mental Health Center Building Project – Administration/Property Management
10:30 A.M.	Mineral Lease Sale Update – Minnesota Department of Natural Resources
11:00 A.M.	Vacation Home Rentals – Planning and Community Development
12:00 P.M.	Lunch Break
1:30 P.M.	Revised Purchasing Rules and Regulations - Administration/Purchasing Division

;

Directions: Highway 53 North to MN-37 exit (Gilbert/Biwabik exit). Turn East onto MN-37/County Road 594, take first left onto Station 44 Road. Mesabi Station is straight ahead.

NOTE: County Board Workshops will not be assigned an adjournment time, but rather will continue until Commissioners are satisfied with the completed policy discussion on the topics presented the day of the workshop.

Oct. 5, 2015

Minnesota Department of Natural Resources

500 Lafayette Road • St. Paul, MN • 55155-40

RECEIVED
OCT 07 2015
SLC ADMIN

Routed to:
Comms. ✓
Admin. ✓
Board File ✓
Other Land & Minerals Dir.

St. Louis County Board of Commissioners
Pete Stauber, Chair
St. Louis County Courthouse, Room 202
100 N 5th Avenue W
Duluth, MN 55802

Re: Prior Notice of Sale of State Metallic Minerals Leases

Dear Chair Stauber:

On Oct. 7, 2015, the Minnesota Department of Natural Resources (DNR) will be publishing a Notice of Sale of State Metallic Minerals Leases in the Aikin Independent Age. The Notice will be published in other newspapers, the State Register and the EQB Monitor on later dates. A copy of the notice is enclosed. The sale (bid opening) is scheduled for November 16, 2015 at 9:00 a.m. in the Lobby of the Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota. Areas to be included in the lease sale are located in portions of Aitkin, Carlton, Itasca, Kanabec, Koochiching and St. Louis Counties.

The DNR published a Notice of Intent to Hold State Metallic Minerals Lease Sale on June 22, 2015. In addition to publishing the notice, we posted the areas under consideration for lease (draft mining unit book), interactive web maps of those areas, the DNR's land use screening criteria and other information on the DNR website. We also invited public input about the areas under consideration. We received 470 e-mails and letters in response and have posted them on our website at the following link: http://www.dnr.state.mn.us/lands_minerals/leasesale/input.html

After considering the public input, company input, mineral potential, mineral ownership and natural resources issues, we have refined our areas to be offered for lease. We removed all areas under consideration in Cass County (6,638 acres) and also removed 6,836 acres under consideration in St. Louis County. Although these areas were removed from the 2015 sale, they may be offered in future state metallic minerals lease sales. The finalized mining unit book, along with interactive web maps of the areas to be offered will be published on our metallic minerals lease sale web page, http://www.dnr.state.mn.us/lands_minerals/leasesale/index.html, on October 7, 2015.

If you have questions or would like additional information, please contact me at 651-259-5961 or susan.damon@state.mn.us.

Sincerely,

Susan Damon, Land Acquisition & Legal Services Manager
Division of Lands & Minerals

Enclosure

NOTICE OF SALE OF STATE METALLIC MINERALS LEASES

Notice is hereby given that a sale of leases to explore for, mine and remove metallic minerals in trust fund lands, lands and minerals forfeited for non-payment of taxes, lands and minerals otherwise acquired, and other state-owned land under the jurisdiction of the Commissioner of Natural Resources, and located in portions of Aitkin, Carlton, Itasca, Kanabec, Koochiching, and Saint Louis Counties, is scheduled to be held on Monday, November 16, 2015, at 9:00 a.m. The sale will take place in the Lobby of the Department of Natural Resources, 500 Lafayette Road, Saint Paul, Minnesota.

The Commissioner will receive sealed bids and applications for leases covering minerals in state lands, in accordance with Minnesota Rules, parts 6125.0100 through 6125.0700 – the metallic mineral rules issued under the authority of Minnesota Statutes, Chapter 93. Each bid must be submitted on a form obtained from the Commissioner. Each bid form must be accompanied by a certified check, cashier's check, or bank money order, payable to the Department of Natural Resources in the sum of the following amounts: a) an application fee of $100.00 for each mining unit bid upon; and b) rental for one full calendar year for each mining unit bid upon. All bids must be received by the Commissioner at the office of the Division of Lands and Minerals, Fourth Floor, DNR Building, 500 Lafayette Road, Saint Paul, Minnesota 55155-4045, before 4:30 p.m. on Friday, November 13, 2015.

On Monday, November 16, 2015, at the time specified, the Commissioner or his representative will publicly open the bids and announce the amount of each bid separately. At a subsequent time, leases will be awarded by the Commissioner, subject to the approval of the State Executive Council, to the highest bidder for the respective mining units, but no bids will be accepted that do not equal or exceed the base royalty rates set forth in the Rules or that do not comply with all provisions of the Rules. The State reserves the right, through the State Executive Council, to reject any or all bids.

The purpose of Minnesota's metallic minerals rules is to promote and regulate the prospecting for, mining and removal of metallic minerals on state-owned and state-administered lands. These Rules, and the leases issued under the Rules, authorize exploration and development of these minerals and impose certain requirements on the lessee. The requirements include: the payment of minimum rentals that increase over the term of the lease; the payment of royalty for all ore mined and removed; the submission of data and other reports; and the submission of exploration plans. In addition, the lessee must comply with all applicable laws.

After the conclusion of the sale, each high bidder will be required to provide evidence demonstrating that the bidder is qualified to hold a state mineral lease pursuant to Minnesota Rules, part 6125.0410. The Rules state that a lease will only be issued to an applicant qualified to do business in Minnesota and qualified to conduct exploratory borings in Minnesota. In addition, the Commissioner may request evidence that the lease applicant is technically and financially capable of performing under the terms of a state mineral lease. The requested evidence must be provided within 45 days of the request from the Commissioner or the bids from that high bidder will be rejected.

Upon the award of a lease, the application fee submitted with the bid will be deposited as a fee for the lease. All bids not accepted will become void, and the application fee and rental payment accompanying such bids will be returned to each respective bidder; provided however, the application fee and rental payment accompanying a bid shall not be returned if the bidder was the high bidder and subsequently withdrew the bid prior to the award of a lease.

Bid forms, instructions on how bids are to be submitted, copies of the rules (Minnesota Rules, parts 6125.0100 through 6125.0700) and copies of the Mining Unit Book listing the land areas designated by the Commissioner as mining units may be obtained from the Land Acquisition and Legal Services Section, Division of Lands and Minerals, DNR Building, 500 Lafayette Road, Saint Paul, Minnesota 55155-4045. E-mail inquiries may be sent to susan.damon@state.mn.us.

The Mining Unit Book will be available at least 30 days prior to November 16, 2015. Application for each copy of the Mining Unit Book must be accompanied by a check or money order payable to the Department of Natural Resources in the sum of $25.00 as a fee for such Mining Unit Book plus shipping and applicable State of Minnesota sales tax. Mining Unit Books will also be available for inspection at the Hibbing and Saint Paul offices of the Division of Lands and Minerals, and on the internet through the DNR website at:

http://www.dnr.state.mn.us/lands_minerals/leasesale/index.html.

By: Jess Richards, Director
Division of Lands and Minerals
Minnesota Department of Natural Resources
October 2, 2015

PURCHASING RULES AND REGULATIONS

Adopted: Month/Day/2015

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

ST. LOUIS COUNTY, MINNESOTA

AUTHORITY

Published and promulgated pursuant to authority of Minn. Stat. § 375.75.

St. Louis County Purchasing Rules and Regulations were adopted by St. Louis Board of County Commissioners by Resolution No. 15-xx, and by this resolution, rescinds and supersedes all prior resolutions which approved Purchasing Rules and Regulations. Upon adoption, all St. Louis County staff having purchasing responsibility must attend training through Human Resources - Employee Development. Purchasing 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 C, 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.

Gary E. Eckenberg, Purchasing Director
Deputy County Administrator

Donna M. Viskoe, CPPO
Procurement Manager, Purchasing Division

TABLE OF CONTENTS

Section

I. Duties and Responsibilities of the St. Louis County Purchasing Division……..3

II. Purchasing Definitions…… 3

III. Contract Requirements……... 4
- A. General Requirements for All Contracts……4
- B. Specific Contract Requirements……..… 5
- C. Unique Types of Contracts…….…… 6
- D. Professional Services Agreements……... 7

IV. Bidding and Purchasing Requirements…….…… 7
- A. Bidding Requirements…….. 7
- B. Purchasing by Negotiations and Quotes…….. 9
- C. Purchase Orders……..10
- D. Sole Source Purchasing…… 11
- E. Emergency Purchasing…….. 11
- F. Year End Encumbrances…… 12

V. Property Disposal Procedures……12
- A. Surplus Property……..12
- B. Sale/Rental of Personal Property…… 13

VI. Contract Changes, Amendments and Terminations…… 13
- A. Change Orders and Amendments……13
- B. Public Works Road and Bridge Contract Changes……14
- C. Cancellation and Termination of Contracts……..15
- D. Debarment……15
- E. Appeals and Remedies……16

Appendices

Appendix A: St. Louis County "Sole Source" Procurement Justification
Contract Requirements / Contract Routing
Project Change Order Approval Requirements (Flow Chart)

Appendix B: St. Louis County Board Resolutions

Appendix C: Minnesota State Statutes Relating to Purchasing Rules & Regulations

ST. LOUIS COUNTY PURCHASING RULES AND REGULATIONS 2015

The following rules, regulations, and appendixes shall comprise the St. Louis County Purchasing Rules and Regulations.

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 Minn. Stat. § 16C.02)

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

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

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.

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

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.

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 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. RFQ's are not subject to formal bidding requirements.

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.

Award - "Award" means a written acceptance of a solicitation to provide goods and services.

III. CONTRACT REQUIREMENTS

A. GENERAL REQUIREMENTS FOR 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 Routing" form, found in Appendix A, must be attached to every contract, with relevant information provided, when circulated for review and execution. Professional Services Contracts over $40,000, and all other contracts over $85,000 must be approved by the County Board.

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.

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. *(Minn. Stat. § 383C.027)*

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

thereof may be recovered in the name of the county in an appropriate action instituted therefore. Property sold, or the reasonable value of the property, may be recovered in the name of the county in a similar manner. *(Minn. Stat. § 375.76)*

7. **Contract Routing/Contract Requirements**. The procedures, bidding requirements, and approval and execution requirements, as identified and listed in Appendix C, are incorporated herein, as part of these Purchasing Rules and Regulations.

B. <u>SPECIFIC CONTRACT REQUIREMENTS</u>
(Excluding Purchase of Professional Services agreements)

The requirements of Minn. Stat. § 471.345 shall govern the purchasing and contractual practices of St. Louis County. A "contract" means an agreement entered into by St. Louis County 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. *(Appendix A, 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, Minn. Stat. § 471.35)*

3. Contracts exceeding $25,000 but not exceeding $100,000, can be awarded based on sealed bids, direct negotiation, or best value.(*Minn. Stat. § 471.35)*

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 quotation or in the open market, at the discretion of the Purchasing Director or designee.

a. 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.

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, Minn. Stat. § 471.35)*

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 Information Technology (IT) Department and approved by the Department Head. 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.

5. **Construction Contracts.** Wages paid on all public works projects 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 www.doli.state.mn.us or by calling (800) 342-5354.

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. *(Minn. Stat. § 177.41-44, 177.43, Subd. 7, Resolution No. 73-141)*

For any construction contract over $50,000, Minn. Stat. § 16C.285 requires 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 formally bid building construction projects require the use of domestically produced steel and iron materials and components. *(Resolution No. 07-65)*

6. **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)*

7. **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.

8. **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. For Architectural and Engineering services over $40,000, 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 or in the open market, 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.

3. Agreements under $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, bidder's bond or cash, 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 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.

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. If all bids received on a pending contract are for the same unit price or total amount, the Procurement Manager shall have the authority to award the contract to one of the tie bidders by drawing lots in public, or to reject all bids and to purchase the required supplies, materials, equipment, or contractual services in the open market, provided the price paid in the open market shall not exceed the lowest responsible bid.

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.

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. Rejection of Award. St. Louis County shall, in its sole discretion, determine when a bidder is not a "responsible bidder" utilizing the above.

d. 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 $375 more than the State contract price. This value will be adjusted annually to reflect inflationary changes based upon the Midwest Urban Consumer Price Index (CPI-U) for government.

B. PURCHASING BY NEGOTIATION AND QUOTES *(Minn. Stat. § 471.345)*

1. Purchasing by negotiation is defined as a method of procurement in which bidding procedures are not required. Circumstances, as determined by the Purchasing Division, which would permit negotiations are:

a. Purchases from other governmental bodies, such as the United States, State of Minnesota, other counties or cities.

b. Contract services such as technical and professional, or utility services where no competition exists, or where rates are fixed by law or ordinance.

c. Other purchases for which bidding is not required by statute.

d. The Purchasing Division shall obtain all quotes for purchases if required by statute. Department personnel can obtain quotes for such purchases only if authorized by Purchasing, which shall provide training upon request. Original quotes must accompany the requisition and will be maintained by Purchasing Division. *(Uniform Municipal Contracting Law, Minn. Stat. § 471.345)*

e. The Department Head and the Procurement Manager shall approve and execute contracts that are not subject to bidding under statute, as required in the "Contracts Requirements" matrix, found in Appendix A. If the bidding process is used, the Chair of the Board and the Auditor shall execute after approval by County Board Resolution.

C. 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. P-card purchases are subject to all P-card policies and procedures.

D. <u>SOLE SOURCE PURCHASING</u>

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. St. Louis County Sole Source Procurement Justification form. The procedures and requirements for sole source procurement, as identified and listed in Appendix A, are incorporated herein by reference, as part of these Purchasing Rules and Regulations.

5. Department must submit "St. Louis County Sole Source Procurement Justification" form located on the Purchasing Division web site*. (Appendix A)*

E. 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. In case of an emergency arising from the breakage, damage or decay in county property that cannot be allowed to wait for the time required to advertise for bids or quotes, or if the public health, safety, or welfare would suffer by delay, contracts for purchases, services or repairs may be made without advertising for bids. *(Minn. Stat. § 375.21)*

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, the Purchasing Director or designee will issue an emergency purchase order covering the purchase, unless the emergency purchase was made in violation of the regulations governing same.

3. Emergency purchase orders exceeding $85,000 shall be referred to the County Board for consideration and ratification at its next meeting.

4. Emergency repairs or purchases that cannot be delayed for the time required for processing a purchase order or bidding:

a. Definition - destruction or impassability of roads or bridges by floods, rain, or 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.

b. $85,000 or more in emergency repairs or emergency purchases may be made without advertising for bids or quotes. The emergency work must be ratified and recorded in the official proceedings of the board at its next meeting.

c. Purchase Orders will be issued for emergency purchases when documentation of the emergency is provided to the Purchasing Division. County Board approval must be obtained for emergency purchases over $85,000.

F. 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 obtain authority from 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, 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)*

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/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. 1c)*

VI. CONTRACT CHANGES 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 $20,000 for construction projects less than $85,000.

   b. Change orders up to 25 percent of the project cost, but not exceeding a cumulative total of $85,000, 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 $85,000 cumulative total, with the exceptions noted in Section VI.A.1.c. and VI.B.

   c. Any contract change orders over the $85,000 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 15 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. 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 processes.

2. **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.

3. **Project Change Order Approval Requirements Flow Chart.** The "Project Change Order Approval Requirements Flow Chart," with its procedures and requirements as identified and listed in Appendix C, is incorporated herein by reference, as part of these Purchasing Rules and Regulations.

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

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

1. Failure of the vendor to perform, or any other breach of contract by vendor.

2. Product(s) or service(s) is no longer required and that contract allows cancellation without penalty.

3. 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.

4. Any other reason specified in the applicable purchase order or contract.

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 Purchasing 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) 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. **Debarement Decisions.** A decision made under Subsection D of this Section (Debarement), 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

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/quotes/proposals 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, unique service or position to provide the service, etc.)

3. What steps have you taken to determine this is the only product/service/vendor that will meet your particular needs? (i.e., professional opinions/correspondence, trade publications, personal visits or correspondence with vendor, other institutions that have installed the same product, other site visits, examination of unique circumstances, 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 reasonably provide the same or a similar product/service under these unique circumstances," and enclose any other information which will help make the determination that this is a sole source procurement.

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.

Procurement Manager: Donna M. Viskoe, CPPO_____

Signature of Procurement Manager: _____

Department contact person and phone: _____

Purchasing representative assigned to project: _____

Date: _____/_____/_____

Contract Requirements

Type of Contract	Bidding Requirements	Approval Required	Signatures Required	Authority
Property Lease • **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**	Negotiation	County Board Resolution	Chair of Board County Auditor County Attorney	M.S. § 373.01 subd. 1(5)
• **Renewals**	Negotiation	Director of Property Management Department Head	Director of Property Management Department Head County Attorney	Purchasing Rules and Regulations
Insurance	Negotiation	County Board Resolution	Procurement Manager	M.S. § 375.72-76
Emergency Purchases / Repairs • **≤ $85,000**	N/A	Department Head Procurement Manager	Department Head	Purchasing Rules and Regulations
• **> $85,000**	N/A	Department Head Procurement Manager County Board Resolution for ratification at next meeting	Chair of Board	Purchasing Rules and Regulations M.S. § 375.21, .22, .75
A/E Contracts • **≤ $40,000**	Open Market	Department Head Procurement Manager	Department Head County Attorney	Purchasing Rules and Regulations
• **> $40,000**	Negotiation	County Board Resolution	Chair of Board County Auditor County Attorney	Purchasing Rules and Regulations
Professional Services • **≤ $40,000**	Negotiation 2 Quotes - Minimum	Department Head	Department Head County Attorney	Purchasing Rules and Regulations
• **> $40,000**	Negotiation 2 Quotes - Minimum	County Board Resolution	Chair of Board County Auditor County Attorney	Purchasing Rules and Regulations
Software Licensing / Maintenance Agreements • **≤ $25,000**	Negotiation	IT Review Department Head	Department Head County Attorney	Purchasing Rules and Regulations
• **> $25,000**	Negotiation	IT Review County Board Resolution	Chair of Board County Auditor County Attorney	Purchasing Rules and Regulations
• **Renewals**	Negotiation	Department Head	Department Head County Attorney	Purchasing Rules and Regulations
All Other - Including Construction • **≤ $25,000**	Negotiation	Department Head	Department Head	Purchasing Rules and Regulations; M.S. § 471.345
• **> $25,000 - $100,000**	Negotiation 2 Quotes - Minimum	Department Head Procurement Manager	Department Head County Attorney	Purchasing Rules and Regulations M.S. § 471.345
• **> $100,000**	Formal Bidding	County Board Resolution	Chair of Board County Auditor County Attorney	Purchasing Rules and Regulations M.S. § 471.345
Grants	N/A	County Board Resolution	Chair of Board County Auditor County Attorney	Grants Management Policy

Note: All contracts, except Emergency, are subject to prior review by the County Attorney or his designee and approval as to form and execution and 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

Review and Approval		Initial	Date
_____ Purchasing Division	_____ File No.	_____	_____
_____ County Attorney Draft/Review	_____ Damion No.	_____	_____
_____ Department Head Review		_____	_____

County Board Authorization if Applicable _____
Resolution No.
MUST BE ATTACHED

II. CONTRACT EXECUTION

Must Sign if X		Date
X	Contractor	_____
_____	Department Head	_____
_____	Procurement Manager	_____
_____	County Board Chairperson	_____
_____	Auditor	_____
X	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 91-867 included in the Purchasing Rules & Regulations

Change Order requested is within the approved project scope	Change Order requested is outside of approved project scope (of any size)

Individual change order is:

Less than 25% of total project cost AND

Less than or equal to $85,000 cumulative total

NO MEMO OR RESOLUTION

Public Works (PW) Director or Procurement Manager can approve (e-mail Donna Viskoe); Department can then proceed

Individual change order is:

Greater than 25% of total project cost

AND/OR

Greater than $85,000 cumulative total

URGENT?
Is this project "required to complete the project"?

YES, URGENT
Defined as real surprises, life/safety issues immediately impacting work environment; contact Procurement Manager with questions

BOARD MEMO REQUIRED
Within 5 days of approval by PW Director or Procurement Manager

NOT URGENT
Board approval required

BOARD RESOLUTION REQUIRED
Department to draft Board Letter and Resolution

BOARD RESOLUTION REQUIRED
Department to draft Board Letter and Resolution

APPENDIX B

St. Louis County Board Resolutions

"St. Louis County Purchasing Rules and Regulations," adopted by the St. Louis County Board of Commissioners by Resolution No 15-xx, dated November x, 2015, include citations of the resolutions noted in Appendix B. These resolutions are provided for historical reference. With the adoption of these rules, new dollar values have modified some of the original resolutions.

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. 04-255, 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.

RELOVED 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 an all relevant bid documents.

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.

Purchasing Rules and Regulations, 2015

Prepared for County Board Workshop October 20, 2015

Inflationary adjustments for dollar amounts reflected in revised Purchasing Rules:

1991 base line amounts throughout the revision are converted to 2015 dollars as follows:

Page 14	$12,500	adjusted to	$20,000	(actual $21,872)
Page 4,7	$25,000	adjusted to	$40,000	(actual $43,742)
Page 4,12,14	$50,000	adjusted to	$85,000	(actual $87,486)

2004 base line amount converted to 2015 dollars as follows:

Page 9	$300	adjusted to	$375	(actual $378)

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. **Accessibility and accessible.** "Accessibility" and "accessible" are defined by the accessibility standards developed and required under section 16E.03, subdivision 9.

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, 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. **Best value; construction.** For purposes of construction, building, alteration, improvement, or repair services, "best value" describes the result determined by a procurement method that considers price and performance 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 capacities;

(8) the individual qualifications of the contractor's key personnel; or

(9) the vendor's or contractor's ability to assess and minimize risks.

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

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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, including an amendment to or extension of a contract.

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

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.

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Subd. 16. **Service contract.** "Service contract" means a contract for any nonprofessional or technical services.

Subd. 17. **Services.** "Services" means, unless otherwise indicated, both professional or technical services and service performed under a 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. **Strategic sourcing.** "Strategic sourcing" means methods used to analyze and reduce spending on goods and services, including but not limited to spend analysis, product standardization, contract consolidation, negotiations, multiple jurisdiction purchasing alliances, reverse and forward auctions, life-cycle costing, and other techniques.

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*

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

Subdivision 1. **Scope.** The commissioner's authority in this section applies to an agency and is subject to other provisions of this chapter and chapter 16B. Unless otherwise provided, the provisions in this chapter and chapter 16B do not apply to the Minnesota State Colleges and Universities.

Subd. 2. **Rulemaking authority.** 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.

Subd. 3. **Acquisition authority.** The commissioner shall acquire all goods, services, and utilities needed by agencies. The commissioner shall acquire goods, services, and utilities by requests for bids, requests for proposals, reverse auctions as provided in section 16C.10, subdivision 7, or other methods provided by law, unless a section of law requires a particular method of acquisition to be used. The commissioner shall make all decisions regarding acquisition activities. The determination of the acquisition method and all decisions involved in the acquisition process, unless otherwise provided for by law, shall be based on best value which includes an evaluation of price and may include other considerations including, but not limited to, environmental considerations, quality, and vendor performance. A best value determination must be based on the evaluation criteria detailed in the solicitation document. If criteria other than price are used, the solicitation document must state the relative importance of price and other factors. Any or all responses may be rejected. When using the request for bid process, the bid must be awarded to the lowest responsive and responsible bidder, taking into consideration conformity with the specifications, terms of delivery, the purpose for which the contract or purchase is intended, the status and capability of the vendor, and other considerations imposed in the request for bids. The commissioner may decide which is the lowest responsible bidder for all purchases and may use the principles of life-cycle costing, where appropriate, in determining the lowest overall bid. The duties set forth in this subdivision are subject to delegation pursuant to this section.

Subd. 3a. **Acquisition authority; construction contracts.** For all building and construction contracts, the commissioner shall award contracts pursuant to section 16C.28, and "best value" shall be defined and applied as set forth in sections 16C.02, subdivision 4a, and 16C.28, subdivision 1, paragraph (a), clause (2), and paragraph (c). The duties set forth in this subdivision are subject to delegation pursuant to this section. 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.

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Subd. 4. **Contracting authority.** 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 otherwise provided for by law. The commissioner may require that agency staff participate in the development of enterprise procurements including the development of product standards, the application of accessibility standards, specifications, and other requirements.

Subd. 4a. **Commissioner approval.** Notwithstanding any law to the contrary, after January 1, 2002, any contract entered into by the Department of Transportation must be approved by the commissioner, unless the commissioner has delegated approval authority to the Department of Transportation under subdivision 16.

Subd. 5. **Amendments, cancellations, and appeals.** The commissioner shall, in addition to the duties set forth in subdivisions 3 and 4, make all decisions regarding amendments, cancellations, and appeals of all agency acquisition activities unless the duties are delegated pursuant to this section.

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. Consistent with the authority specified in this chapter, the commissioner shall develop and implement policies, procedures, and standards ensuring the optimal use of strategic sourcing techniques.

Subd. 9. **Employee purchasing.** The commissioner is authorized to enter into contracts under which a vendor agrees to sell computer equipment and related products to state employees, for their own use related to work, at contract prices. Employees may make only one purchase under this subdivision. Under no circumstances shall the state be liable for purchases made under this subdivision. The provisions of section 43A.38, subdivisions 4 and 5, clause (1), do not apply to this subdivision.

Subd. 10. **Cooperative purchasing.** The commissioner is authorized to enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with one or more other states or governmental units, as described in section 471.59, subdivision 1; entities defined in section 16C.23, subdivision 1; a registered combined charitable organization and its affiliated agencies as defined by section 43A.50; a charitable organization defined in section 309.50, subdivision 4, that is also a recipient of a state grant or contract; or a nonprofit community health clinic defined in section 145.9268. The commissioner is authorized to enter into cooperative purchasing agreements for the purchase of goods, services, and utilities with health care facilities that are required to provide indigent care or any entity recognized by another state's statutes as authorized to use that state's commodity or service contracts.

Subd. 11. **Surplus property.** The commissioner is authorized to purchase, accept, transfer, warehouse, sell, distribute, or dispose of surplus property in accordance with state and federal rules and regulations. The commissioner may charge a fee to cover any expenses incurred in connection with any of these acts.

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Subd. 12. **Central distribution center.** The commissioner is authorized to provide and manage a central distribution center for federal and state surplus personal property, as defined in section 16C.23, and may provide and manage a warehouse facility.

Subd. 13. **Central stores.** The commissioner is authorized to provide agencies with supplies and equipment and operate all central stores and supply rooms serving more than one agency.

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, 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. Delegated duties shall be exercised in the name of the commissioner and under the commissioner's direct supervision and control. A delegation of duties may include, but is not limited to, allowing individuals within agencies to acquire goods, services, and utilities within dollar limitations and for designated types of acquisitions. Delegation of contract management and review functions must be filed with the secretary of state and may not, except with respect to delegations within the Department of Administration, exceed two years in duration. The commissioner may withdraw any delegation at the commissioner's sole discretion. The commissioner may require an agency head or subordinate to accept delegated responsibility to procure goods or services intended for the exclusive use of the agency receiving the delegation.

Subd. 17. **Contract extension.** The term of a contract may be extended for a time longer than the time specified in this chapter, up to a total term of ten years, if the commissioner, in consultation with the commissioner of management and budget, determines that the contractor will incur upfront costs under the contract that cannot be recovered within a two-year period and that will provide cost savings to the state and that these costs will be amortized over the life of the contract.

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.

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(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. **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 for construction projects. The commissioner may establish a training program for state and local officials, and vendors and contractors, on best value procurement for construction projects, including those governed by section 16C.28. If the commissioner establishes such a training program, the state may charge a fee for providing training.

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*

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16C.26 COMPETITIVE BIDS OR PROPOSALS.

Subdivision 1. **Application.** Except as otherwise provided by sections 16C.10, 16C.26 and 16C.27, 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 call for bids is issued, the commissioner shall solicit sealed bids by providing notices to all prospective bidders known to the commissioner by posting notice on a state Web site at least seven days before the final date of submitting bids. All bids over $50,000 must be sealed when they are received and must be opened in public 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. **Noncompetitive bids.** Agencies are encouraged to contract with small targeted group businesses designated under section 16C.16 when entering into contracts that are not subject to competitive bidding procedures.

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*

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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 section 16C.02, subdivision 4a, 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 choose the best value system in different phases.

(b) "Best value" means the procurement method defined in section 16C.02, subdivision 4a.

(c) The following entities are eligible to participate in phase I:

(1) state agencies;

(2) counties;

(3) cities; and

(4) school districts with the highest 25 percent enrollment of students in the state.

Phase I begins on July 1, 2007.

(d) The following entities are eligible to participate in phase II:

(1) those entities included in phase I; and

(2) school districts with the highest 50 percent enrollment of students in the state.

Phase II begins two years from July 1, 2007.

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(e) The following entities are eligible to participate in phase III:

(1) all entities included in phases I and II; and

(2) all other townships, school districts, and political subdivisions in the state.

Phase III begins three years from July 1, 2007.

(f) The commissioner or any agency for which competitive bids or proposals are required may not use best value contracting as defined in section 16C.02, subdivision 4a, 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. 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. **Record.** A record must be kept of all bids or proposals, including names of bidders, amounts of bids or proposals, and each successful bid or proposal. This record is open to public inspection, subject to section 13.591 and other applicable law.

Subd. 5. **Preferences not cumulative.** The preferences under sections 16B.121, 16C.06, subdivision 7, and 16C.16 apply, but are not cumulative. The total percentage of preference granted on a contract may not exceed the highest percentage of preference allowed for that contract under any one of those sections.

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*

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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, and does not include a material supplier.

(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) "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.

(f) "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.

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

(h) "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.

(i) "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.

(j) "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.

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

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

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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. A subcontractor 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 currently registered with the Department of Revenue and the Department of Employment and Economic Development 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;

(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

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(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; and

(7) all subcontractors 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 at the time that it responds to the solicitation document. A contracting authority may accept a sworn statement 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. Failure to verify compliance with any one of the minimum criteria or a false statement under oath in a verification of compliance shall render the prime contractor or subcontractor that makes the false statement 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 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.

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. 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

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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. 6. **Additional criteria.** Nothing in this section shall restrict the discretion of a contracting authority to establish additional criteria for defining a responsible contractor.

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 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 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 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 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*

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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*

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123B.52 CONTRACTS.

Subdivision 1. **Contracts.** A contract for work or labor, or for the purchase of furniture, fixtures, or other property, except books registered under the copyright laws, or for the construction or repair of school houses, the estimated cost or value of which shall exceed that specified in section 471.345, subdivision 3, must not be made by the school board without first advertising for bids or proposals by two weeks' published notice in the official newspaper. This notice must state the time and place of receiving bids and contain a brief description of the subject matter.

Additional publication in the official newspaper or elsewhere may be made as the board shall deem necessary.

After taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids, every such contract for which a call for bids has been issued must be awarded to the lowest responsible bidder, be duly executed in writing, and be otherwise conditioned as required by law. The person to whom the contract is awarded shall give a sufficient bond to the board for its faithful performance. Notwithstanding section 574.26 or any other law to the contrary, on a contract limited to the purchase of a finished tangible product, a board may require, at its discretion, a performance bond of a contractor in the amount the board considers necessary. A record must be kept of all bids, with names of bidders and amount of bids, and with the successful bid indicated thereon. 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 as provided in this section. An alteration or erasure may be crossed out and the correction thereof printed in ink or typewritten adjacent thereto and initialed in ink by the person signing the bid. In the case of identical low bids from two or more bidders, the board may, at its discretion, utilize negotiated procurement methods with the tied low bidders for that particular transaction, so long as the price paid does not exceed the low tied bid price. In the case where only a single bid is received, the board may, at its discretion, negotiate a mutually agreeable contract with the bidder so long as the price paid does not exceed the original bid. If no satisfactory bid is received, the board may readvertise. Standard requirement price contracts established for supplies or services to be purchased by the district must be established by competitive bids. Such 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. Either party to the contract may request that the other party demonstrate such increase or decrease. The term of such contracts must not exceed two years with an option on the part of the district to renew for an additional two years. Contracts for the purchase of perishable food items, except milk for school lunches and vocational training programs, in any amount may be made by direct negotiation by obtaining two or more written quotations for the purchase or sale, when possible, without advertising for bids or otherwise complying with the requirements of this section or section 471.345, subdivision 3. All quotations obtained shall be kept on file for a period of at least one year after receipt.

Every contract made without compliance with the provisions of this section shall be void. Except in the case of the destruction of buildings or injury thereto, where the public interest would suffer by delay, contracts for repairs may be made without advertising for bids.

Subd. 1a. **Construction contracts.** A project labor agreement is a hiring agreement that establishes wages, uniform work schedules, and rules for dispute resolution to manage construction projects that generally require, among other things, payment of union dues or fees to a labor organization or membership in or affiliation with a labor organization. A school board

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must adopt at a public meeting a written resolution authorizing a project labor agreement to construct or repair a facility through a contract or bid. The board must publish in the official newspaper of the district notice of the meeting at least 30 days in advance.

Subd. 1b. **Best value alternative.** As an alternative to the procurement method described in subdivision 1, a contract for construction, building, alteration, improvement, or repair work 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. **Contract within budgeted amounts.** The board may authorize its superintendent or business manager to lease, purchase, and contract for goods and services within the budget as approved by the board. Any transaction in an amount exceeding the minimum amount for which bids are required must first be specifically authorized by the board and must fulfill all other applicable requirements in subdivision 1.

Subd. 3. **Transportation; fuel.** Notwithstanding the provisions of subdivision 1 or section 471.345, a contract for the transportation of school children, or a contract for the purchase of petroleum heating fuel or fuel for vehicles may be made by direct negotiation, by obtaining two or more written quotations for the service when possible, or upon sealed bids. At least 30 days before awarding a directly negotiated contract, the district must, by published notice, request quotations for the service to be provided. All quotations obtained must be kept on file for a period of at least one year after receipt. If a contract is made by direct negotiation, all quotations must be public information. If a contract is made upon sealed bids, the procedure for advertising and awarding bids shall conform to the provisions of subdivision 1 except as otherwise provided in this subdivision.

Notwithstanding the provisions of subdivision 1 or section 574.26, a performance bond must be required of a contractor on a contract for the transportation of school children only when deemed necessary by and at the discretion of the board. Such a performance bond must be in the amount determined by the board.

Subd. 4. **Asbestos removal and polychlorinated biphenyls cleanup.** Notwithstanding any law to the contrary, districts may, without an election, enter into contracts extending beyond the end of the fiscal year to pay the costs of removal or encapsulation of asbestos or cleanup of polychlorinated biphenyls found in school buildings or on school property.

Subd. 5. **Contracts with board members.** Members of the board are authorized to contract with, to work for, and furnish supplies to the district subject to the provisions of section 471.87.

Subd. 6. **Disposing of surplus school computers.** Notwithstanding section 471.345, governing school district contracts made upon sealed bid or otherwise complying with the requirements for competitive bidding, other provisions of this section governing school district contracts, or other law to the contrary, a school district under this subdivision may dispose of a surplus school computer and related equipment if the district disposes of the surplus property by conveying the property and title to:

(1) another school district;

(2) the state Department of Corrections;

(3) the Board of Trustees of the Minnesota State Colleges and Universities; or

(4) the family of a student residing in the district whose total family income meets the federal definition of poverty.

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History: *Ex1959 c 71 art 4 s 18,19; Ex1967 c 1 s 6; 1969 c 107 s 1; 1973 c 123 art 5 s 7; 1974 c 521 s 13-15; 1975 c 59 s 1,2; 1975 c 199 s 1; 1976 c 168 s 1; 1976 c 239 s 32; 1976 c 271 s 39,40; 1978 c 706 s 16-18; 1978 c 764 s 33-35; 1979 c 295 s 1; 1980 c 609 art 6 s 17,18; 1981 c 358 art 6 s 13; 1982 c 548 art 4 s 8; 1983 c 314 art 2 s 1; art 6 s 5,6; art 7 s 20; 1984 c 463 art 7 s 9,10; 1985 c 279 s 1; 1Sp1985 c 12 art 7 s 14; 1986 c 444; 1987 c 258 s 6; 1987 c 398 art 7 s 21; 1989 c 222 s 9; 1989 c 246 s 2; 1989 c 329 art 5 s 3,4; 1990 c 375 s 3; 1990 c 562 art 7 s 4; art 8 s 23,24; 1991 c 130 s 37; 1992 c 499 art 12 s 29; 1993 c 224 art 5 s 2; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 13 s 13; 1998 c 397 art 6 s 69-77,124; 2000 c 489 art 5 s 3; 1Sp2003 c 9 art 4 s 3; 2007 c 148 art 3 s 12,13*

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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*

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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*

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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.

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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*

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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.

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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. **Trunk highways damaged by spring breakup.** Contracts may be let for the repair and restoration of trunk highways damaged by spring breakup upon advertisement for bids for a period of one week prior to the date such bids are to be received, and upon the mailing of such advertisements to all contractors who have filed a written request therefor.

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 60 days 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*

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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.02, subdivision 4a. Section 16C.08 does not apply to this section.

History: *2007 c 148 art 3 s 17*

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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 161.3428 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*

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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 circuity 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.

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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*

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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*

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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*

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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.

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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*

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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*

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

Subdivision 1. **Hours, wages permitted.** A laborer or mechanic employed by a contractor, subcontractor, 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.

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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*

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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

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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

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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*

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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*

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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*

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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*

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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*

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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*

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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*

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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*

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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*

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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*

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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*

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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.

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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*

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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;

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(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 nongovernmental 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*

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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

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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,

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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;

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

(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.

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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 16. 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*

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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*

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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*

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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*

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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*

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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.

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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*

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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*

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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*

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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*

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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*

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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:.....

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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

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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*

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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*

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