CONTRACTS and RFPs

1. Contracting Authority

Minn. Stat. § 365.02 provides townships with the general authority to enter into contracts. Minn. Stat. § 365.025 further provides that the town board may enter into any contract it considers necessary or desirable to use any town power. While this scope of authority is quite broad, the underlying subject matter of the contract, however, must still be for something on which the township has authority to expend public funds. Some statutes provide specific authority to enter into contracts for specific purposes. For example, Minn. Stat. § 365.181 authorizes contracts for fire protection services. Other statues provide implied authority. Before entering into any contract, the board must be confident in its ability to explain the public purpose of the contract, the statute on which it is basing its authority, and what other statutes may come into play as a result of the contract.

2. Applicable Law

Once contracting authority is found, townships must comply with a number of different contracting regulations. General common-law principles of contract law (i.e. offer, consideration, acceptance, etc.) all apply to local government contracts. Minn. Stat. § 471.345, entitled the Uniform Municipal Contracting Law, however, serves as the primary source of statutory regulation of public sector contracts in Minnesota. The statute expressly applies to counties, cities, townships, school districts, and all other municipal corporations and political subdivisions. The details of the Uniform Municipal Contracting Law are discussed later in this paper.

In addition to Minn. Stat. § 471.345, certain types of contracts are subject to State regulations designed specifically for that particular subject matter. For example, under Minn. Stat. § 365.10, subd. 14, the town board must first seek the approval of the electors at the annual meeting before entering into a contract for the health, social, and recreational services allowed under that statute, and Minn. Stat. § 176.182 requires proof of compliance with workers’ compensation requirements for public works contracts. Minn. Stat. § 160.16, subd. 1 requires any contract for the construction or improvement of a road, culvert, or bridge contain a provision requiring the contractor to place appropriate warning signs at road intersections.

Federal laws can also play a role in local government contracting. The Davis-Bacon Act (USC 3141-3148), for example, requires public contracts involving the use of federal funds to contain a provision related to prevailing wages.

The underlying point is that in addition to finding the authority to enter into a particular contract, the town board must make sure that it follows all other statutes that may apply to the subject matter of that contract, as well as the rules that apply to all local government contracts, or the board may
find itself holding an invalid contract and facing a myriad of legal problems. Common areas of particular concern include compliance with all notice requirements, the proper use of sealed bids, and requiring proof of insurance, bonds, and other regulatory requirements.

3. Uniform Municipal Contracting Law (Minn. Stat. § 471.345)

   A. Purpose

   The Uniform Municipal Contracting Law states that its purpose 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,” (Minn. Stat. §471.345, subd. 6.)

   The courts, however, have gone even further in stating the purpose of this statute. A review of case law reveals that ensuring local units of government get the best price, thus saving taxpayers money, by creating a level playing field and reducing the opportunity for government officials to participate in fraud or favoritism, is the real purpose of the law. Or, to put it simply, it is meant to promote honesty while seeking the most cost effective use of public funds, (see _Coller v. City of St. Paul_, 26 N.W.2d 835 (1947); _Griswold v. County of Ramsey_, 65 N.W. 2d 647 (Minn. 1954); _Foley Bros., Inc. v. Marshall_, 123 N.W. 2d 387 (1963); and _R.E. Short Co. v. City of Minneapolis_, 269 N.W.2d 331 (Minn. 1978). ) Other applicable statutes and local regulations have a similar purpose and may even have been expressly adopted to enhance this purpose.

   B. Scope of Application

   1. Statutory Definition:

      While clearly applicable to all townships, Minn. Stat. § 471.345 is not applicable to all contracts with those units of governments. The statute defines a contract to be “...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,” (Minn. Stat. §471.345, subd.2).

      There are a couple of key issues associated with this definition. First, while most township officials understand that Minn. Stat. § 471.345 applies at the time of purchase, it is important to note that these regulations apply when the township sells any of the items listed in the definition provided above.

   2. General Exclusions:

      The second key issue related to this definition is what it excludes. While the list of included items is fairly extensive, it is nevertheless not exhaustive as to the types of contracts townships enter into. The courts have stated that the contracting statutes are to be interpreted narrowly and are not be extended to contracts not clearly within their respective purviews or the intent of the legislature, (see _Otter Tail Power Co. v. Village of Elbow Lake_, 49 N.W.2d 197 (Minn. 1951); _Griswold v. Ramsey County_, 65 N.W.2d 647 (1954); _R.E. Short Co. v. Minneapolis_, 269 N.W.2d 331 (Minn. 1978); and
A careful reading of the list of regulated contracts, for example, reveals that while contracts for altering, repairing, or maintaining property is subject to regulation, the actual purchasing of real estate is not included, (see A.G. Op - 707a15, September 14, 1987.) Likewise, employment contracts and contracts for professional services are also exempt by way of exclusion from the requirements of Minn. Stat. § 471.345.

Determining what constitutes a professional service, however, can be challenging. While it is clear that services provided by attorneys, accountants, and other comparable services are exempt, the definition is not as clear with other types of services. Architectural services, for example, may appear to be for the construction of property. The Minnesota Supreme Court, however, held that because such services actually precede construction, they are “...technical and professional in character” and thus not subject to the requirements of Minn. Stat. § 471.345, (see Krohnberg v. Pass, 244 N.W. 329, (Minn. 1932).)

Similarly, the courts have found rubbish hauling contracts to be services and not maintenance, although the issue is less clear regarding janitorial services and likely depends on the specific duties assigned, (see Schwandt Sanitation v. City of Paynesville, 423 N.W.2d 59 (Minn. App. 1988); A.G. Op. 707A-15, December 23, 1977; and A.G. Op. 707-A, February 8, 1990.)

Further complicating the interpretation and application of the statute is the finding of the courts that the exchange of a scoreboard in the Metrodome for the contract rights to control the advertising on the billboard primarily constituted a service contract and did not constitute the sale or rental of supplies, materials, or equipment, (see Hubbard Broadcasting, Inc. v. Metropolitan Sports Facilities Com’n, 381 N.W.2d 842 (Minn. 1986).)

In addition to the exemptions created by virtue of not being within the scope of the definition of a contract, Minn. Stat. § 471.345 specifically provides for a number of specialty contracts that are at least partially exempt. Such contracts include:

a. Limited contracts involving economically disadvantaged persons;
b. Certain contracts for hospital purchases; and
c. Fuel purchases for municipal power generation.

A complete list of exemptions can be found in subdivisions 8 through 13 of Minn. Stat. § 471.345.

To be safe, the intent of each proposed contract should be reviewed independently to determine whether or not it will be exempt from the requirements of Minn. Stat. §471.345. If there is any question, the township should consult an attorney or even consider requesting a formal opinion from the Minnesota Attorney General’s office.

3. Emergencies:
An emergency may also create an exemption to following the requirements of Minn. Stat. §471.345. Townships have express authority to waive the requirements during a time of emergency (see Minn. Stat. §365.37, subd. 4.) Even without this express authority, the courts have recognized a need to allow local governments to deal with emergencies without strict compliance to normal contracting procedures, (see *Griswold v. Ramsey County*, 65 N.W.2d 647 (1954).)

The scope of what constitutes an emergency exemption, however, is extremely limited. The courts have adopted the rule that an emergency must be “...present, immediate and existing, and not a condition which may or may not arise in the future, or a condition which reasonably may be foreseen in time to advertise for bids.” (see *Layne Minnesota Co. v. Town of Stuntz*, 257 N.W.2d 295 (Minn. 1977).) Essentially a problem must exist that was unforeseeable or was not reasonably preventable and which if left undealt with would pose an imminent threat to the health, safety, and welfare of the community.

4. Joint Contracts, Cooperative Purchasing Programs, and Intergovernmental Contracts:

Finally, in some situations where local units of government work together, or where they coordinate purchases with the State or a national association's purchasing alliance, it is possible that not each individual unit will have to follow the provisions of Minn. Stat. §471.345.

The courts have found that when two entities enter into a joint powers agreement pursuant to Minn. Stat. § 471.59 prior to the letting of a joint contract, only one of the two entities needs to follow the procedural requirements. To require both to do so is viewed as a duplication of effort and expense, (see *Village of Excelsior v. F.W. Pearce Corp.*, 226 N.W.2d 316 (Minn. 1975).) Whether or not the contract needs to be let by competitive bids by one or the other entity would still depend on the total combined value of the contract and not each community’s individual portion, (see A.G. Op. 1007, March 22, 1971.) To further protect each participating entity, the joint powers agreement should specify who will do the bidding and that it is being done on behalf of all participating entities.

Local governments who participate in the State’s Cooperative Purchasing Program also do not have to follow the requirements of Minn. Stat. § 471.345 because the State is presumed to have obtained the best available value. Participation in this program, however, is based on membership. While some vendors who hold a contract with the State under this program will offer the same rate to any interested governmental entity, only those who are officially members of the program may make the purchase without otherwise following the requirements of the Uniform Municipal Contracting law.

Minn. Stat. § 471.345, subd. 15 authorizes the purchase of supplies, materials or equipment to be made by a local unit of government without having to comply with the normal restrictions of § 471.345 if the purchase is made from a national
municipal association’s purchasing alliance or a cooperative created by a joint powers agreement that purchases items form more than one source on the basis of competitive bids and competitive quotations.

Finally, Minn. Stat. § 471.64 provides that purchases between local governments, or between political subdivisions and the Federal government or state do not need to follow Minn. Stat. § 471.345 or other normal restrictions.

5. Reverse Auctions and Electronic Sales:

Minn. Stat. § 471.345, subd. 16 and subd. 17, bring the Uniform Municipal Contracting law into the electronic age. Subd. 16 authorizes purchases to be made without regard to the Uniform Municipal Contracting requirements if a reverse auction process is used in which vendors compete via an electronic purchasing process to provide supplies, materials, or equipment at the lowest price. A reverse auction may not be used for services or service contracts as defined in Minn. Stat. § 16C.02.

Subd. 17 allows local governments to sell surplus, obsolete, or unused supplies, materials, and equipment, by means of electronic selling process in which purchases compete to by the items at the highest price. This provision is frequently referred to as the “E-bay” rule in recognition of the popular internet auction site.

C. What the Uniform Municipal Contracting Law Requires (generally speaking)

1. Direct Negotiations, Quotations, and Bids:

Once a contract is determined to be subject to Minn. Stat. § 471.345, the next issue becomes the anticipated value of the contract. The value of the contract should be based on the complete cost, including any applicable sales tax, service fees, etc. This approach protects townships from inadvertently violating the procedural requirements of the statute by actually paying more than allowed under a particular contract value classification when items such as sales tax are added to the base price of the contract but only the base price was used to determine the proper procedural requirements.

Contracts that are based on a unit price should be valued by multiplying the per unit price by the total number of units being obtained. The value of a contract that is based on a yet to be determined definitive variable, such as the number of hours worked, should be estimated by using an average of actual costs of past comparable work and other quantifiable data.

Minn. Stat. § 471.345 divides contracts into three basic categories, although the upper value limit on the last category is based on population as will be discussed below. The specific requirements for contracting changes with each level.

The first category is contracts that have estimated values of less than $25,000.
Contracts in this value range can simply be directly negotiated on the open market, or by obtaining at least two quotations. If quotations are sought, they must be kept for at least one year after the date of receipt (Minn. Stat. § 471.345, subd. 5.)

Any statement of the market price for a good or service can constitute a quotation, but the information must be reduced to writing (preferably by the vendor) in order to have the necessary record.

The second category is contracts that have estimated values between **$25,000 and $100,000**. The law used to set a two-tiered limit based on population, but that provision was amended during the 2004 legislative session to establish uniform bid standards. Contracts that fall into this middle category can be let on direct negotiation but only after receiving at least two quotations that must then be kept on file for at least one year following the date of receipt (Minn. Stat. § 471.345, subd. 4.)

The third category regulates contracts **exceeding $100,000**. Contracts of these values can only be entered into following the advertising for and receipt of sealed bids (Minn. Stat. § 471.345, subd. 3.) An exception to the bidding requirement are contracts estimated not to exceed $60,000 for the rental of equipment by counties or townships. Such rental contracts can be let by direct negotiation following the receipt of at least two quotations that must be kept for a period of at least one year, (Minn. Stat. § 471.345, subd. 5a.)

While bids are not required for contracts below the $100,000 threshold, or for contracts exempt from the requirements of Minn. Stat. § 471.345, any township may voluntarily choose to follow the bidding procedure. Once a township has decided or begun to follow the competitive bidding process, however, the courts have said that they must see the process through to completion, (see **Griswold v. County of Ramsey**, 65 N.W. 2d 647 (Minn. 1954); and **R.E. Short Co. v City of Minneapolis**, 269 N.W.2d 331 (Minn. 1978).)

2. Splitting Contracts:

A township cannot split a contract into a series of smaller contracts solely for the purpose of avoiding the need to advertise for sealed bids by keeping each individual contract under the $100,000 limit (see A.G. Op. April 29, 1952.) If, however, the contract is made up of independently identifiable component parts, then it is may be possible to treat each component as a separate contract, even if the same vendor or provider ends up being awarded each of the separate contracts.

To illustrate this point, consider a brick building construction project. The building will consist of the physical structure, utilities, and other assorted parts. It would be permissible to let out one contract for the bricks, one for the electrical work, and one for the plumbing. Each of these parts are separate, identifiable parts and if the value of each remains below the statutory requirements, the project would not have to be let out on bids. On the other hand, it would not be legal to create separate contracts for the bricks needed for each individual wall. Similarly, three separate road projects could be let out on separate contracts, but work on one road project should not be
subdivided into contiguous quarter mile stretches.

3. Specifications:

Once it is determined that a contract is subject to the formal bidding requirements set forth in Minn. Stat. §471.345, subd. 3, or once an entity decides to voluntarily follow the provision, the next step is to develop specifications. There are no statutory guidelines for developing bid specifications. They should obviously be carefully drafted to ensure that the township will receive what it is truly looking for. The general rule is that they must be “sufficiently definite” and precise to afford the basis for a bid, (see Davies v. Village of Madelia, 287 N.W. 1 (Minn. 1939); and Duffy v. Village of Princeton, 60 N.W.2d 27 (Minn. 1953)).

A township, however, cannot be so restrictive as to keep the process from being fair and competitive. The courts have said that bid specifications should be “...framed so as to permit free and full competition,..., (see Diamond v. City of Mankato, 93 N.W. 911 (Minn. 1903)), and to “...give all bidders an equal opportunity without granting an advantage to one or placing others at a disadvantage..., (see Foley Bros., Inc. v. Marshall, 123 N.W.2d 387, (Minn. 1963)).

This does not mean, however, that they have to be so broad as to allow absolutely every manufacturer or supplier to meet the bid specifications (see Otter Tail Power Co. v. Village of Elbow Lake, 49 N.W.2d 197 (Minn. 1951).) In fact, vague specifications can be grounds for finding a violation of the applicable contracting statutes, even if no actual fraud or other wrongdoing is alleged, (see Davies v. Village, 287 N.W. 1 (Minn. 1939); Coller v. City of St. Paul, 26 N.W.2d 835 (Minn. 1947); and Duffy v. Village of Princeton, 60 N.W.2d 27 (Minn. 1953); and Gale v. City of St. Paul, 96 N.W.2d 377 (Minn. 1959)).

In preparing bid specifications it is okay to consult with vendors and other experts in the field. It is also acceptable to consider past experiences or the experiences of other units of government, (see Davies v. Village, 287 N.W. 1 (Minn. 1939); and Otter Tail Power Co. v. Mackichan, 133 N.W.2d 511 (Minn. 1965).) When drafting the final specifications, however, township officials need to be careful about inadvertently including language that may have the effect of excluding all other potential bidders or which gives the consulting entity an advantage.

To illustrate this point, consider the hypothetical purchase of a computer. It would be proper to develop bid specifications stating a minimum processor speed, memory size, and software compatibility, etc. It would not, however, be permissible to specifically advertise only for an IBM model XYZ. If, however, the government unit were already using IBM computers, it would be prudent to require any new component to be compatible with the existing system.

The specifications can also require the posting of a bid bond, and should include notice of any other bond, insurance, or other documentation that will need to be provided to be eligible for the contract.
Some communities have found it helpful to have a pre-bidding meeting with potential bidders to ensure that the would be contractors understand all of the requirements that will need to be satisfied. A township wishing to do this should include notice of such a meeting in the notice listing the specifications and should schedule the meeting far enough in advance as to still allow ample time to actually compile and submit a bid before the stated deadline for receiving bids.

Finally, Minn. Stat. § 160.17, subd. 1 requires that the specifications and plans for any road construction or road improvement contract be filed with the town clerk prior to soliciting sealed bids.

4. Notice Requirements:

While Minn. Stat. § 471.345 is silent on the issue, it is clear that upon completion of the specifications, a notice of bids must be provided. This obligation is created by both jurisdiction and topic specific statutes related to government contracting, as well as by recognition of the courts (see Diamond v. City of Mankato, 93 N.W. 911 (Minn. 1903) citing Nash v. St. Paul, 11 Minn. 174 (Gil. 110) and Schiffman v. St. Paul, 92 N.W. 503.)

While specific requirements may differ between jurisdictions and between types of contracts, bid notices should generally provide the following information:

a. A brief description of the item or service being sought
b. Information on how to obtain the formal bid specifications
c. When, where, and to whom bids are to be submitted
d. Notice of when, where, and by whom the bids will be opened
e. Any special requirements (i.e. submit bid in sealed and labeled envelope, bonds or other bid security, affidavits, etc.)
f. Notice of the right to waive any minor defect
g. Notice of the right to reject all bids

The length of time and the process for providing the notice also differs by the subject matter of the contract. Townships must generally provide at least ten days posted notice prior to the opening of the bids. The posting must be made at the three most public places in town. As an alternative to posting, the township may elect to publish the notice in a newspaper of general circulation within the town, but such published notice must be provided for at least two weeks prior to the opening of the bids, (see Minn. Stat. § 365.37, subd. 2)

Public improvement contracts under Minn. Stat. § 429.041 are subject to special notice requirements.

If a township maintains a website of its own, Minn. Stat. § 331A.03, subd. 3 authorizes the town board to designate the website and alternative or additional place means of disseminating notice. The use of trade journals is also authorized. Before a township can cease publishing notice in a qualified newspaper, however, it must go through a six-month period of providing duplicate notices both in published form and on its website. The website notice must be in substantially the same format as
the published notice and remain on the website for the same duration as any applicable publishing requirements. Further, notice of the notices that will be placed on the website must be published, either as part of the publishing of the minutes of the meeting at which the board authorized the use of the town website, or as a separate formal notice.

Minn. Stat. § 331.02 now requires official newspapers which, as a course of their normal business, maintain a website, to add a copy of any public notice which it publishes in the newspaper to that website at no additional cost to the governmental entity. This website notice, however, does not satisfy the alternative publication option discussed above as it would not be the township’s own website.

D. Awarding the Contract

At the stated time and place provided for in the bid notice, the designated officials should gather, open, and review all of the bids received. Townships are generally required to award the bid to the lowest responsible bidder (see, Minn. Stat. § 365.37, § 412.311). This does not mean that they are automatically bound to the lowest price submitted.

The courts have repeatedly recognized a need to allow the governing body some discretion in determining who is the lowest responsible bidders, especially when exact bid specifications are not possible. The courts have stated that the discretionary decision to award a contract will only be enjoined if the decision was illegal and arbitrary, capricious, or unreasonable, (see Nielson v. City of Saint Paul, 88 N.W.2d 853 (Minn. 1958); and Queen City Const., Inc. v. City of Rochester, 604 N.W.2d 368 (Minn. App. 1999, rev. denied).) This discretion is in recognition that the lowest price does not always equal the best value and is, therefore, not always in the best interest of the public (see Kelling v. Edwards, 134 N.W. 221 (Minn. 1912); Otter Tail Power Co. v. Village of Elbow Lake, 49 N.W.2d 197 (Minn. 1951); and Leskinen v. Pucelj, 115 N.W.2d 346 (Minn. 1962).) If, however, two or more responsible bids are received, the town board has no discretion and must accept the lowest one, (see Otter Tail Power Co. v. Village of Elbow Lake, 49 N.W.2d 197 (Minn. 1951).) Factors other than price that can be considered when determining the lowest responsible bidder. These factors include such things as the quality (to the extent not quantifiable in the bid specifications), suitability, and adaptability of the item being purchased, (see Otter Tail Power Co. v. Village of Elbow Lake, 49 N.W.2d 197 (Minn. 1951); and Duffy v. Village of Princeton, 60 N.W.2d 27 (Minn. 1953).) The credibility of the bidder, past experiences, and direct knowledge about the bidder can also be considered, (see Kelling v. Edwards, 134 N.W. 221 (Minn. 1912).)

A town board is also free to allow some deviation from the bid specifications when reviewing submitted bids. The failure to satisfy a mere formality or ministerial act is generally not sufficient to invalidate a low bid, (see Nielson v. City of Saint Paul, 88 N.W.2d 853 (Minn. 1958).) In fact, the courts have gone so far as to say that minor deviations must be overlooked in order to preserve the intent of getting the most for the best price, (see Foley Bros., Inc. v. Marshall, 123 N.W.2d 387 (Minn. 1963); Electronics Unlimited v. Village of Burnsville, 182 N.W.2d 679 (Minn. 1971); and Madsen-Johnson Corp. v. City of Becker, 1996 WL 106192.
On the other hand, the courts have also made it clear that deviations that are material and substantial, or which could give one bidder an unfair advantage over the others, cannot be accepted (see Coller v. City of St. Paul, 26 N.W.2d 835 (1947); Sutton v. City of St. Paul, 48 N.W.2d 436 (Minn. 1951); and Carl Bolander & Sons Co. v. City of Minneapolis, 451 N.W.2d 204 (Minn. 1990).)

The courts have adopted the dictionary definitions for the terms “substantial” (meaning considerable in importance, value, degree, amount, or extent) and “material” (meaning both relevant and consequential or crucial) and have held that the context of review must be in relation to the entire contract, (see Madsen-Johnsen Corp. v. City of Becker, 1996 WL 106192 (Minn. App. 1996, rev. denied, unpublished).)

Whether or not a bid with a deviation is to be considered responsible must be determined at the time the bid is opened and no future offer to modify the proposal can be considered prior to awarding the contract, (see Griswold v. Ramsey County, 65 N.W.2d 647 (Minn. 1954); Nielsen v. City of Saint Paul, 88 N.W.2d 853 (Minn. 1958); Carl Bolander & Sons Co. v. City of Minneapolis, 451 N.W.2d 204 (Minn. 1990); and Madsen-Johnson Corp. v. City of Becker, 1996 WL 106192 (Minn. App. 1996, rev. denied, unpublished).)

The courts have also accepted the right to reject any or all bids, (see State v. Snively, 221 N.W. 535 (Minn. 1928); Electronics Unlimited v. Village of Burnsville, 182 N.W.2d 679 (Minn. 1971); J.I. Manta, Inc. v. Braun, 393 N.W.2d 490 (Minn. 1986); and Ryan v. City of Coon Rapids, 462 N.W.2d 420 (Minn. App. 1990, rev. denied).) Any or all bids can be rejected for either being unresponsive to the specifications, or if all the bids come in at an amount higher than anticipated or budgeted for.

Once a contract has been awarded, the terms of the contract, like the terms of the bid, cannot be substantially altered. However, from time to time unanticipated situations arise that create additional expenses or other necessary modifications. As a general rule such changes are permissible without having to re-start the contract process, but the detailed contents of the contract will govern the parameters of acceptable changes, (see Carson v. City of Dawson, 152 N.W.2d 842 (1915).)

Finally, with one limited exception, completed contracts cannot be extended or added onto for new projects or purchases for the purpose of avoiding following the normal contracting procedures outlined in this paper, (see A.G. Op. 707-A-15, October 8, 1945.) The exception is unit priced contracts pursuant to Minn. Stat. § 429.041, subd. 7, which allows additional units to be purchased at the same unit price if the total additional cost will not exceed twenty-five percent of the original contract value.

4. Requests for Proposals (RFPs)

RFPs are similar to bid specifications and the call for bids. They are frequently used to contract for services that are otherwise exempt from requirements of Minn. Stat. § 471.345. The advantage of using RFPs is that the township is not bound to accept the lowest priced proposal, or for that matter
any of the proposals, and it is also free to negotiate and modify any term of the proposal.

Like bid specifications, a good RFP should clearly state the services being sought, the process the township intends to use to select a provider, any particular requirements that will be imposed on the responder, and then solicit detailed responses from interested parties. RFPs can be advertised in the same manner as bids, or they can be sent directly to businesses or individuals with which the township is interested in doing business.

Unlike sealed bids, with one exception, the use of RFPs is not mandated by state law. That one exception is not likely to apply to most townships. Minn. Stat. §471.6161 requires the use of RFPs to solicit contract proposals for group insurance for 25 or more employees.

5. Terms of the Contract.

All agreements for purchases and services should be reduced to writing. While verbal contracts are enforceable, inevitably they lead to disputes over who agreed to what. A good contract should contain very clear statements as to who is responsible for what, at what cost, by what deadline, and under what conditions. Issues such as insurance, indemnification agreements, bonds, and other liability issues need to be addressed. Billing and payment obligations must also be provided for in the contract, including any penalties, interest rates, etc. The issue of subcontractors must also be agreed upon when applicable. Warranties should also be made clear. For more details about what should be in a contract, see Document C9000 “Contracting Issues and Reminders” in the MAT Information Library. Sample contracts can also be found in the Information Library.

6. Conflicts-of-Interest

Except as authorized by Minn. Stat. §§ 471.88 – 471.89, Minn. Stat.§ 365.37 and Minn. Stat. § 471.87 prohibit township officials from being party to, being directly or indirectly interested in, or otherwise benefiting financially from any sale, lease, or other contract in which the official is authorized to participate in any manner. A direct interest usually involves payment or other consideration given directly to the interested official and is usually fairly obvious. Indirect interests, however, require more caution. Examples of indirect interests include contracts with family members when there are shared finances, contracts with the official’s employer if he or she receives any additional bonuses or stock benefits from increased business.

Minn. Stat. § 471.88 provides an extensive list of contracts in which public officials are allowed to have an interest without violating the normal conflicts-of-interest restrictions. Of these numerous exceptions, two are of particular interest to townships. The first is subdivision 5 which exempts any contract for which competitive bids are not required. The second is found in subdivision 12 which allows an official in a community with a population of under 1,000 (according to the last federal census) to provide construction material or services, or both, if sealed bids are used and the officer does not vote on the contract.

In order to take advantage of any of the exceptions, however, a specific process must be followed as set forth in Minn. Stat. §§ 471.88-471.89. This process requires the following steps to be taken:

A. The town board must pass a resolution authorizing the contract. The resolution must provide for all of the information required in Minn. Stat. §471.89, subd.2
B. The contract itself must be authorized by unanimous vote

C. The interested officer submits an affidavit complying with Minn. Stat. § 471.89, subd. 3 each time he or she submits a claim for payment.

To avoid any appearance of impropriety, it is also recommended that the interested official not participate in any of the decision making process.

8. Violations and Penalties

Any contract that is let in violation of Minn. Stat. § 471.345, and any contract with an improper conflict of interest, is considered void and unenforceable. Minn. Stat. § 365.37, subd. 5 and Minn. Stat. § 471.89, subd. 1 expressly provide for the voiding of such contracts. The courts have also created a rule of law that contracts awarded in violation of the statutes must be voided to protect the intent of the statutes as discussed at the beginning of this paper, (see Diamond v. City of Mankato, 93 N.W. 911 (Minn. 1903).)

Challenges to a contract can be brought by either a losing bidder claiming to be the real lowest bidder, or by any tax payer within the community seeking to block the expenditure of public funds on an invalid contract. The sole enforcement mechanism is an injunction against the contract that was improperly awarded, (see Nielsen v. City of St. Paul, 88 N.W.2d 853 (Minn. 1958).) The courts have consistently refused to automatically award the contract to the original low bidder. Instead, the township has the authority to either re-let the contract to the lowest bidder, or to reject all the bids and start the process over again (see Electronics Unlimited v. Village of Burnsville, 182 N.W.2d 679 (Minn. 1971).)

Once a contract has been voided, neither party is liable for satisfying the terms of the original agreement, nor can full payment be demanded. The township, however, can be required to pay for any benefit received prior to the contract being voided, (see Kotschevar v. North Fork Tp., Stearns County, 39 N.W.2d 107 (Minn. 1949); and Layne Minnesota Co. v. Town of Stuntz, 257 N.W.2d 295 (Minn. 1977).)

In addition to having the contract voided, Minn. Stat. § 471.345, subd. 14 provides that a losing bidder who successfully challenges the awarding of a contract is entitled to recover the cost of preparing his or her losing bid. The costs must be those actually demonstrated and not just estimated, (see Lovering-Johnson, Inc. v. City of Prior Lake, 558 N.W.2d 499 (Minn. App. 1997).)

No other damages, nor attorney fees, can be awarded, (see Queen City Const., Inc. v. City of Rochester, 604 N.W.2d 368 (Minn. App. 1999, rev.denied).) The rationale behind these limitations on damages is that the courts do not want to force taxpayers to pay for speculative profits, higher contracts costs, etc., (see Telephone Associates, Inc. v. St. Louis County Bd., 364 N.W.2d 378 (Minn. 1985).)

Finally, township officials need to be aware that Minn. Stat. § 365.37, subd. 3, makes it a misdemeanor for any township official to violate Minn. Stat. § 471.345 and also makes such an
offense grounds for removal from office. Minn. Stat. § 471.87 makes it a gross misdemeanor to enter into a contract with an improper conflict-of-interest.

Case law regarding removal from office makes it clear, however, that elected officials can only be removed on the basis of malfeasance or nonfeasance. It seems unlikely that a violation of Minn. Stat. § 471.345 could rise to the level of malfeasance, which generally requires a serious offense based on “evil intent”. It may, however, be possible that repeated violations could constitute nonfeasance and thus be grounds for removal from office. Township officials with questions about contracting requirements are, therefore, encouraged to seek direct legal assistance.


Before entering into any contract, the town board should know exactly how it intends to pay for the item or service being purchased. Some townships will save up funds until they can pay cash for the value of the contract. More often, however, some type of borrowing will occur, or the township will explore options for collecting additional revenues. Some of the most common financing tools include:

a. Certificate of Indebtedness  
b. Bonds  
c. Lease-Purchase  
d. Special Assessments  
e. Subordinate Service Districts.

Each of these types of financial tools have the benefits and their limits, and all come with specific procedures that must be followed to ensure the validity and lawfulness of the transaction. Additional information about each of these tools can be found in the MAT Information Library. Townships should also consider discussing their options with an attorney familiar with municipal finance matters, or a financial planner. One common mistake to avoid, however, is to simply go to the local bank and borrow money in what amounts to nothing more than a “handshake” agreement.