



# PROCUREMENT PROCEDURES

## CROW WING COUNTY BRainerd, MINNESOTA

**Administrative Services**  
**Financial Services**  
**August 14, 2018**

**Our Vision:** Being Minnesota's favorite place.

**Our Mission:** Serve well. Deliver value. Drive results.

**Our Values:** Be responsible. Treat people right. Build a better future.

**PROCUREMENT PROCEDURES**  
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**1. Purpose of Procurement Procedures**

The intent of the Procurement Procedures is to assist in County department compliance with the County’s Procurement Policy and federal and state regulations. It is meant to serve as a guide through the procurement process.

**2. Limitations and Expectations**

The Procurement Procedures are not intended to, nor will, reiterate every requirement as stated in the Procurement Policy. The procedures exist to provide additional clarification or information for items that were only briefly mentioned in the policy, as well as to fulfill the federal requirement on the County to maintain written procurement procedures. Absence of a particular requirement does not permit a County employee to disregard that requirement. All applicable requirements as laid out in *either* the Procurement Policy or the Procurement Procedures must be followed.

**3. Understanding Procurement Thresholds**

Many procurement rules are based on the value of the procurement. The following points help define the meaning of “procurement value”:

- Procurement value means the cost of the goods or services themselves, excluding any applicable tax and shipping costs related to the procurement.
- Procurements shall not be artificially divided in order to reduce their value and avoid competitive process requirements.
- Procurement value is not related to the term of the procurement; i.e., the value of a multi-year procurement is not its annual value, but its total value.
- Procurement value is not the cumulative amount paid to a specific vendor during a year. Multiple purchases from the same vendor are considered separate procurements so long as they arise from independent needs and have not been artificially divided for the purpose of reducing their value.

**4. Understanding Types of Procurements**

Many procurement rules are based on the type of procurement. The County defines four basic types of procurements:

- a. Commodities** are defined as equipment, supplies, or materials.

Commodities are purchased using quotes or formal sealed bids because (1) a complete and adequate specification or purchase description can be prepared; (2) two or more responsible bidders are generally available; (3) selection can be made primarily on the basis of price; (4) procurements are suitable for a firm, fixed price; and (5) limited, or no, discussion is needed with bidders after receipt of offers.

- b. Biddable services** are defined as (1) services related to the manufacture, construction, alteration, or repair of **personal property** such as computers, copy machines, automobiles, machinery, and other equipment; (2) services related to the maintenance of real or personal property; or (3) other non-technical services such as janitorial services, waste disposal services, etc.

These types of services are procured using quotes or formal sealed bids because (1) a complete and adequate specification or purchase description can be prepared; (2) two or more responsible bidders are generally available; (3) selection can be made primarily on

the basis of price; (4) procurements are suitable for a firm, fixed price; and (5) limited, or no, discussion is needed with bidders after receipt of offers.

**c. Professional services** are defined as

- Architectural or Engineering Services (A&E), which include:
  - All services which under state law require performance by a registered or licensed architect or engineer; and
  - Other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions may logically or justifiably perform including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operation and maintenance manuals, and other related services.
- Or, other professional and technical services which do not meet the definition of A&E services and are intellectual in character, including consultation, analysis, evaluation, prediction, planning, programming, or recommendation, and result in production of a report or the completion of a task.

These types of services are procured by competitive proposals because (1) complete specifications are not feasible; (2) proposer input is needed for specifications; (3) two or more proposers are generally willing to compete; (4) discussion is needed with proposers after receipt of proposals and prior to award; and (5) a fixed price can be set after discussions.

**d. Construction services** include:

- Construction, alteration, repair, remodeling, rehabilitation, improvement, extension, conversion (including painting, electrical work, plumbing, ventilation work, etc.), or demolition of **real property** such as buildings, structures, plants, sewers, tunnels, highways and streets, parking lots, etc.; and
- Construction, alteration, or improvements to **real property** in the form of land, including excavation and/or site preparation.

These types of services are procured using quotes or formal sealed bids because (1) a complete and adequate specification or purchase description can be prepared; (2) two or more responsible bidders are generally available; (3) selection can be made primarily on the basis of price; (4) procurements are suitable for a firm, fixed price; and (5) limited, or no, discussion is needed with bidders after receipt of offers.

**5. Best Value Procurement**

Statute allows the County to elect a best value procurement method for construction, building, alteration, improvement, or repair work. County staff shall comply with MN Statute 16C.28, including obtaining training in administering a best value procurement process. Departments shall supply their criteria to Finance for review prior to initiating the RFP process.

**6. Sealed Bid Requirements**

Sealed bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and

conditions of the invitation for bids, is the lowest price. In order for sealed bidding to be feasible, the following conditions should be present:

- (1) A complete, adequate, and realistic specification or purchase description is available.
- (2) Two or more responsible bidders are willing and able to compete effectively for the business.
- (3) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

The following requirements apply:

- (1) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids. The invitation for bids must be publically advertised.
- (2) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.
- (3) All bids will be opened at the time and place prescribed in the invitation for bids. The bids must be opened publically.
- (4) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder.
- (5) Any or all bids may be rejected if there is a sound documented reason.

#### 7. **Advertising for Bids (MN Statute 375.21)**

For all contracts requiring advertisement for sealed bids, the Department must first gain approval from the County Board to advertise. For the purchase of property or for work or labor, two weeks' published notice that proposals will be received, stating the time and place, must be advertised in a qualified legal newspaper of the County. 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.

#### 8. **Bonds (MN Statute 574.26)**

Generally, for all contracts over \$100,000 which involve physical modification of real or personal property, prior to beginning work, the County shall require from the contractor:

- A **performance bond** to the County, for the use and benefit of the County to complete the contract according to its terms, and conditioned on holding the County harmless from all costs and charges that may accrue on account of completing the specified work, AND
- A **payment bond** for the use and benefit of all persons furnishing labor and materials engaged under the contract, in order to ensure payment of all just claims for labor and materials as they become due.

Each bond shall be, at a minimum, the amount of the contract price.

Additionally, the County may require a **bid bond** in order to secure guarantee that the winning bidder has the resources to undertake the contract under the terms at which they bid, including supplying the appropriate performance and payment bonds.

#### 9. **Insurance**

Working with Finance, departments will determine appropriate insurance requirements for independent contractors, vendors, and service providers on a case-by-case basis dependent upon various factors such as the scope of work and the potential risks involved. The County will use

Minnesota Counties Intergovernmental Trust (MCIT) recommended minimum liability limits for independent contractors as a starting point when determining adequate insurance coverage.

- **Commercial General Liability Coverage**
  - \$1.5 million each occurrence
  - \$3 million general aggregate
  - \$3 million products and completed operations aggregate
  - The policy should be written on an occurrence basis, not a claims-made basis.
  - The County will be included as an Additional Insured.
  - An excess or umbrella liability policy may be used in conjunction with primary coverage limits to meet the minimum limit requirements.
  
- **Auto Liability Coverage**
  - \$1.5 million on a combined single limit basis
  - Should include any auto, including hired and non-owned.
  - The County will be included as an Additional Insured.
  - Auto coverage will only be waived when the contractor's work under the contract clearly does not involve the use of a vehicle on the County's behalf.
  
- **Excess or Umbrella Liability Coverage**
  - An excess or umbrella liability policy may be used in conjunction with primary coverage limits to meet the minimum limit requirements for each of coverage.
  - The policy should be written on an occurrence basis, not a claims-made basis.
  - The County will be included as an Additional Insured.
  
- **Workers' Compensation and Employer's Liability Coverage**
  - Workers' compensation limits are to be statutory per applicable state and federal laws.
  - Employer's liability coverage with minimum limits of:
    - Bodily injury by accident: \$500,000 each accident
    - Bodily injury by disease: \$500,000 each employee
    - Bodily injury by disease: \$500,000 policy limit
  
- **Professional Liability Coverage**
  - Professional liability coverage should be required for individuals who perform professional or semi-professional services. Some examples of professionals who should obtain this type of coverage include, but are not limited to, individuals who are medical service providers, architects, engineers, attorneys, and consultants.
  - Minimum liability limits for independent contractors should be:
    - \$2 million per wrongful act or occurrence
    - \$4 million annual aggregate level 1
  
- **Hold Harmless and Indemnification Agreement**
  - A hold harmless and indemnification provision favorable to the County should be included in the contract.  
*Sample: Any and all claims that arise, or may arise, on behalf of Contractor, its agents, servants or employees as a consequence of any act or omission on the part of Contractor or its agents, servants, or employees while engaged in the performance of the Contract shall in no way be the obligation or responsibility of*

*the County. Contractors shall indemnify, hold harmless and defend the County, its elected officials, officers, employees and volunteers, against any and all liability, loss, costs, damages, expenses, claims or actions, including attorneys' fees which the County, its officers and employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any negligent or willful act or admission of Contractor, its agents, servants or employees in the execution, performance or failure to adequately perform Contractor's obligations pursuant to this Contract. This shall include any and all copyright, trademark, patent or other intellectual real property claims, issues or matters arising out of Contractor's act or admission, whether the same be negligent, willful or otherwise.*

#### **10. Competition**

For procurements under Federal funding, departments are to provide a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such descriptions must not contain features which unduly restrict competition. Care should be taken when writing detailed product specifications; detailed product specifications should not be used as a means to intentionally eliminate competition. Departments must identify all requirements which bidders are to fulfill and all other factors to be used in evaluating bids or proposals.

#### **11. Evaluating Proposals for Procurements under Federal Funding**

The County shall consider the following factors when conducting technical evaluations of competitive proposals under federal funding sources, in order to select the firm whose proposal is most advantageous to the County:

- Price
- Availability
- Work history/relationship
- Project degree of difficulty

#### **12. Purchase Orders**

The financial system, Munis, has the ability to create purchase orders to encumber funds for future spending. This allows a department to see what they truly have as remaining available budget. It also allows the department to carry over funds from the prior year. In instances where purchase orders are created in the prior year and carried forward to the subsequent year for future spending, Finance will automatically cancel all purchase orders with open balances that are older than three months, unless the department can provide sufficient justification as to why the purchase order is still needed.