

County Purchasing Act

Nebraska Association of County Officials

October 2011

County Purchasing Act

Neb. Rev. Stat. §§ 23-3101 to 23-1115

Citation of the Act: Sections 23-3101 to 23-3115 are known and may be cited as the County Purchasing Act. Section 23-3101.

Purpose of Act: To provide a uniform purchasing procedure for county purchases of equipment, supplies, other items of personal property, and services and to provide for county sales of surplus personal property which is obsolete or not usable by the county. Section 23-3102.

Legislative Intent: The Legislature encourages counties to work together under the provisions of the County Purchasing Act when joint purchases would be to the best advantage of such counties. Section 23-3103.

Mobile Equipment, Personal Property and Services: The Act governs the purchase of mobile equipment; personal property that includes, but is not limited to, supplies, materials, mobile equipment, and equipment used by or furnished to any county officer, office, department, institution, board, or other agency of the county government. Personal property does not include election ballots. Additionally, there are provisions related to services. Section 23-3104.

Definitions Used in the County Purchasing Act

- Mobile equipment means all vehicles propelled by any power other than muscular, including, but not limited to, motor vehicles, off-road designed vehicles, motorcycles, passenger cars, self-propelled mobile homes, truck-tractors, trucks, cabin trailers, semitrailers, trailers, utility trailers, and road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors;
- Personal property includes, but is not limited to, supplies, materials, mobile equipment, and equipment used by or furnished to any county officer, office, department, institution, board, or other agency of the county government. Personal property does not include election ballots;
- Services means any and all services except telephone, telegraph, postal, and electric light and power service, other similar services, and election contractual services; and
- Purchasing or purchase means the obtaining of personal property or services by sale, lease, or other contractual means. Purchase also includes contracting with sheltered workshops for products or services as provided in Chapter 48, article 15. Section 23-3104.

Purchasing Authority: The statutes empower only the county board or its purchasing agent to make purchases on behalf of the county. The statutes do not explicitly confer any such power on any other county official. Section 23-3106.

Section 23-3106 states in part, "The purchasing agent under the supervision of the county board or the county board ... shall purchase all personal property and services required by any office, officer, department, or agency of the county government in the county subject to the County Purchasing Act."

All elected officials are hereby authorized to make purchases with an estimated value less than \$5,000. See 23-3108(1)(c).

Purchasing Agent

Any county may employ a purchasing agent who shall not be a county officer of the county; however, counties with a population of more than 150,000 must employ a purchasing agent who shall not be a county officer. All purchases made from appropriated funds of the county must be made through the purchasing agent. The county board pays the agent for such services as shall be agreed upon at the time of employment. The person so employed and designated shall serve at the pleasure of the county board and give bond to the county in such amount as the county board shall prescribe. Section 23-3105. Any county purchasing agent or any member of his or her office staff, if any, who violates any of the provisions of the County Purchasing Act shall, upon conviction thereof, be guilty of a Class IV felony. Section 23-3113(1).

Purchases of Election Ballots and Contractual Services

All purchases of election ballots and election contractual services must be made by the election commissioner or by the county clerk in counties without an election commissioner. Section 23-3106. Election ballots are not included as personal property within the County Purchasing Act and election contractual services are not included within the definition of services for the County Purchasing Act. Sections 23-3104(2) and (4).

General Duties of County Board or Purchasing Agent

The purchasing agent or the county board, if there is no purchasing agent, must draw up and enforce standard specifications which shall apply to all personal property purchased for the use of the county government, shall have charge of all central storerooms operated or established by the county board, and shall transfer personal property to or between the several county offices, officers, and departments. Section 23-3106.

The county board or purchasing agent, subject to the approval of the county board, must:

- (1) Prescribe the manner in which personal property shall be purchased, delivered, and distributed;
- (2) Prescribe dates for making estimates, the future period which they are to cover, the form in which they are submitted, and the manner of their authentication;
- (3) Revise forms from time to time as conditions warrant;
- (4) Provide for the transfer to and between county departments and agencies of personal property which is surplus with one department or agency but which may be needed by another or others;
- (5) Dispose of by sale personal property which has been declared by the county board to be surplus and which is obsolete or not usable by the county. Except as otherwise provided in subsection (2) of section 23-3115, such property with a value of less than \$2,500 may be sold without competitive bidding. Except as otherwise provided in subsection (2) of section 23-3115, property with a value of \$2,500 or more shall be sold through competitive bidding;
- (6) Prescribe the amount of cash deposit or bond to be submitted with a bid on a contract and the amount of deposit or bond to be given for the performance of a contract, if the amount of the bond is not specifically provided by law; and
- (7) Prescribe the manner in which claims for personal property or services delivered to any department or agency of the county shall be submitted, approved, and paid. Section 23-3107.

Competitive Bids, Informal Bids, and Open Market Purchases

Except where purchases are exempt from competitive bidding, purchases of personal property or services by the county board or purchasing agent must be made as follows:

- (a) \$20,000 or more -- Competitive sealed bidding process is required;

- (b) \$5,000 or greater and less than \$20,000 -- By securing and recording at least three informal bids, if practicable; or
- (c) Less than \$5,000 - By purchasing in the open market if the estimated value of the purchase is less than \$5,000, subject to section 23-3112. In any county having a population of less than 100,000 inhabitants and in which the county board has not appointed a purchasing agent pursuant to section 23-3105, all elected officials are hereby authorized to make purchases with an estimated value less than \$5,000. Section 23-3108(1).

NOTE: In no case shall a purchase made pursuant to subdivision (1)(a), (b), or (c) of this section be divided to produce several purchases which are of an estimated value below that established in the relevant subdivision. Section 23-3108(2). All contracts and leases shall be approved as to form by the county attorney, and a copy of each long-term contract or lease shall be filed with the county clerk. Section 23-3108(3).

Competitive Bids Not Required

Competitive bidding is not required:

- (a) when purchasing unique or noncompetitive items,
- (b) when purchasing petroleum products,
- (c) when obtaining professional services or equipment maintenance, or
- (d) when the price has been established by one of the following:
 - (i) The federal General Services Administration;
 - (ii) the materiel division of the Department of Administrative Services (for contact information see the last page of this handout); or
 - (iii) a cooperative purchasing agreement by which supplies, equipment, or services are procured in accordance with a contract established by another governmental entity or group of governmental entities if the contract was established in accordance with the laws and regulations applicable to the establishing governmental entity or, if a group, the lead governmental entity. Section 23-3109(1).

Election ballots are not included as personal property within the County Purchasing Act and election contractual services are not included within the definition of services for the County Purchasing Act. Sections 23-3104(2) and (4). Services within the County Purchasing Act do not include telephone, telegraph, postal, and electric light and power service, other similar services. Section 23-3104(4).

Emergency

The county board may, by majority vote of its members, waive the bidding requirements of the County Purchasing Act if such waiver is necessary to meet an emergency which threatens serious loss of life, health, or property in the county. Section 23-3109(2).

Special Purchase Procedure (Auctions and Sales)

The governing board may waive the bidding requirements of the County Purchasing Act if the county can save a significant amount of money by entering into a special purchase. The county board shall, five days prior to such special purchase, publish notice of its intention to make such a special purchase, stating the items considered and inviting informal quotes. A two-thirds vote of the entire county board shall approve such special purchase. Section 23-3109(3).

Considerations In Awarding the Bid

In awarding the bid, the following elements must be given consideration when applicable:

- (1) The price;
- (2) The ability, capacity, and skill of the supplier to perform;
- (3) The character, integrity, reputation, judgment, experience, and efficiency of the supplier;
- (4) The quality of previous performance;
- (5) Whether the supplier can perform within the time specified;
- (6) The previous and existing compliance of the supplier with laws relating to the purchase or contract;
- (7) The life-cost of the personal property or service in relation to the purchase price and the specific use;
- (8) The performance of the personal property or service taking into consideration any commonly accepted tests and standards of product or service usability and user requirements;
- (9) The energy efficiency ratio as stated by the supplier;
- (10) The life-cycle costs between alternatives for all classes of equipment, the evidence of expected life, the repair and maintenance costs, and the energy consumption on a per year basis; and
- (11) Such other information as may be secured having a bearing on the decision. Section 23-3110.

Procedure Required for Competitive Bidding

When competitive sealed bidding is required for purchases which are valued at \$20,000 or greater:

- (1) Sealed bids must be solicited by public notice in a legal newspaper of general circulation in the county at least once a week for two consecutive weeks before the final date of submitting bids;
- (2) In addition to subdivision (1) of this section, sealed bids may also be solicited by sending requests by mail to prospective suppliers and by posting notice on a public bulletin board;
- (3) The notice must contain:
 - a. A general description of the proposed purchase;
 - b. an invitation for sealed bids;
 - c. the name of the county official in charge of receiving the bids;
 - d. the date, time, and place the bids received shall be opened; and
 - e. whether alternative items will be considered;
- (4) All bids must remain sealed until opened on the published date and time by the county board or its designated agent;
- (5) Any or all bids may be rejected and the bid need not be awarded at the time of opening, but may be held over for further consideration;
- (6) If all bids received on a pending contract are for the same unit price or total amount and appear to be so as the result of collusion between the bidders, the county board or purchasing agent shall have authority to reject all bids and to purchase the personal property or services in the open market, except that the price paid in the open market shall not exceed the bid price;
- (7) Each bid, with the name of bidder, must be entered on a record and each record, with the successful bidder indicated thereon, must, after the award or contract, be open to public inspection; and
- (8) All lettings on such bids shall be public and must be conducted as provided in Chapter 73, article 1. Section 23-3111.

General Bidding Requirements

Whenever any county board, county clerk, county highway superintendent, any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act, advertises for bids in pursuance of any statutes of the State of Nebraska, on any road contract work or any public improvements work, or for supplies, construction, repairs, and improvements, and in all other cases where bids for supplies or work, of any character whatsoever, are received for the various subdivisions and agencies enumerated in this section, they must fix not only the day upon which such bids must be returned, received, or opened, as provided by other statutes, but shall also fix the hour at which such bids shall close, or be received or opened, and they shall also provide that such bids shall be immediately and simultaneously opened in the presence of the bidders, or representatives of the bidders, when the hour is reached for the bids to close. If bids are being opened on more than one contract, the officials having in charge the opening of such bids may, if they deem it advisable, award each contract as the bids are opened. Section 73-101.

Resident Bidder

When a public contract is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference over a nonresident bidder from a state which gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder. Resident bidder as used in sections 73-101.01 and 73-101.02 shall mean any person, partnership, foreign or domestic limited liability company, association, or foreign or domestic corporation authorized to engage in business in the State of Nebraska and which has met the residency requirement of the state of the nonresident bidder necessary for receiving the benefit of that state's preference law on the date when any bid for a public contract is first advertised or announced or has had a bona fide establishment for doing business within this state for the length of time established by the state of the nonresident bidder necessary for receiving the benefit of that state's preference law on the date when any bid for a public contract is first advertised or announced. Any contract entered into without compliance with sections 73-101.01 and 73-101.02 is null and void. Section 73-101.01.

NOTE: The provisions of section 73-101.01 shall not apply to any contract for any project upon which federal funds would be withheld because of the provisions of sections 73-101.01 and 73-101.02. Section 73-101.02.

Violations

Any officer or person who may be in charge of any such bids prior to the time fixed for the simultaneous opening, who shall open prior to such time, or otherwise disclose to any bidder the contents, amount or other details of any rival bid, shall be guilty of a Class IV misdemeanor. Any person violating any of the provisions of sections 73-101 to 73-104 shall be guilty of a Class IV misdemeanor. Section 73-105.

Compliance With Budget, Wrongful Purchase

Except in an emergency, which the county board must declare by resolution, no order for delivery on a contract on open market order for personal property or services for any county department or agency shall be awarded until the county clerk is satisfied that the unencumbered balance in the fund concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order or contract or the county clerk is satisfied that the purchase is one contemplated in the terms of the county budget as set up by the county board. Whenever any officer, office, department, or agency of the county government shall purchase or contract for any personal property or services contrary to the County Purchasing Act, such order or contract shall be void. The county officer or the head of such department or agency shall be personally liable for the costs of such

order or contract and, if already paid for out of county funds, the amount may be recovered in the name of the county in an appropriate action. Section 23-3112.

Purchasing Agent or Staff -- Financial Interest Prohibited

Neither the county purchasing agent nor any member of his or her office staff, if any, shall be financially interested in or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any personal property or services used by or furnished to any office, officer, department, or agency of the county government, nor shall such purchasing agent or a member of his or her staff, if any, receive directly or indirectly, from any person, firm, or corporation to which any contract or purchase order may be awarded, by rebate, gift, or otherwise, any money, anything of value whatsoever, or any promise, obligation, or contract for future reward or compensation. All contracts or agreements in violation of this section are declared unlawful and shall be wholly void as an obligation against the county. Section 23-3113(1).

If there is no purchasing agent, the county board acting pursuant to the County Purchasing Act shall be subject to section 49-14,103.01. Section 23-3113(2).

Contracts – Lease Agreements

The county board, in addition to other powers granted it by law, may enter into contracts for lease of real or personal property for authorized purposes. Such leases shall not be restricted to a single year and may provide for the purchase of the property in installment payments. This section shall be in addition to and notwithstanding the provisions of sections 23-132 (warrants) and 23-916 (contracts or liabilities in excess of the budget). Section 23-3114.

All contracts and leases shall be approved as to form by the county attorney, and a copy of each long-term contract or lease shall be filed with the county clerk..Section 23-3108(3).

Surplus Personal Property - Sale

Included within the purpose of the Act is to provide for county sales of personal property which is obsolete or not usable by the county. Section 23-3102. The county board or purchasing agent, subject to the approval of the county board, must provide for the transfer to and between county departments and agencies of personal property which is surplus with one department or agency but which may be needed by another or others; and dispose of by sale personal property which has been declared by the county board to be surplus and which is obsolete or not usable by the county. Except as otherwise provided in subsection (2) of section 23-3115, such property with a value of less than \$2,500 may be sold without competitive bidding. Except as otherwise provided in subsection (2) of section 23-3115, property with a value of \$2,500 or more shall be sold through competitive bidding. Section 23-3107(4) and (5).

Property Other Than Mobile Equipment: The county board or the purchasing agent, with the approval of the county board, may authorize a county official or employee to sell surplus personal property which is obsolete or not usable by the county and which has a value of less than \$2,500. In making such authorization, the county board or purchasing agent may place any restriction on the type or value of property to be sold, restrict such authority to a single transaction or to a period of time, or make any other appropriate restrictions or conditions. Section 23-3115(1).

Mobile Equipment: The county board or the purchasing agent, with the approval of the county board, may authorize a county official or employee to sell surplus mobile equipment which is obsolete or not usable by the county and which has a value of less than \$5,000. Surplus mobile equipment which is obsolete or not usable by the county and which has a value of \$5,000 or more shall be sold through competitive bidding. Section 23-3115(2).

Written Report to County Board: Any county official or employee granted the authority to sell surplus personal property which is obsolete or not usable by the county as prescribed in subsection (1) or (2) of this section shall make a written report to the county board within thirty days after the end of the fiscal year reflecting, for each transaction, the item sold, the name and address of the purchaser, the price paid by the purchaser for each item, and the total amount paid by the purchaser. Section 23-3115(3).

Money From Sales: The money generated by any sales authorized by this section shall be payable to the county treasurer and shall be credited to the funds of the department, office, or agency to which the property belonged. Section 23-3115(4).

No Warranty: No person authorized by the county board or purchasing agent to make such sales shall be authorized to make or imply any warranty of any kind whatsoever as to the nature, use, condition, or fitness for a particular purpose of any property sold pursuant to this section. Any person making sales authorized by this section shall inform the purchaser that such property is being sold as is without any warranty of any kind whatsoever. Section 23-3115(5).

Miscellaneous Provisions Not Included Within the County Purchasing Act

Following is a list of some additional topics and statutory cites that are related to some of the issues discussed in the County Purchasing Act:

Section 13-329	Conditions for the donation of motor vehicle
Section 23-104	General Powers of Counties, including the power to purchase and hold real and personal estate necessary for the use of the county
Section 23-175	Purchase Liability Insurance – public bidding every three years unless county is member of a risk management pool
Section 39-810 et seq.	Bridges, Culverts, Construction and Repair, Road Improvements
Section 39-1407	County Road Improvement Projects – lettings and procedures
Section 73-101 et seq.	Public Letting, Preference Bidding
Section 81-161	State and Political Subdivisions – Competitive Bids – Award to Lowest Responsible Bidder
Section 81-3445	State and Political Subdivisions – Construction Projects Involving Professional Engineers or Architects

Additional Information on Purchasing May Be Obtained At:

Nebraska Administrative Services (AS)
Materiel Division
301 Centennial Mall South, Mall Level
PO Box 94847
Lincoln, NE 68509-4847

Phone: 402.471.2401; Fax: 402.471.2089

Web site: www.das.state.ne.us/materiel/