



HANDBOOK FOR MINNESOTA CITIES

Chapter 22

Expenditures, Purchasing, and Contracts

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This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

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HANDBOOK FOR MINNESOTA CITIES

Chapter 22 Expenditures, Purchasing, and Contracts

Learn about state laws regulating disbursement of public funds, such as competitive bidding requirements, best value and emergency contracting, construction contracts, contracting with other governmental entities, and purchasing consultant services. Get guidance on the city official prohibition against having a personal financial interest in city contracts.

RELEVANT LINKS:

LMC information memo,
[Public Purpose Expenditures.](#)

Minn. Const. art. X, § 1.
Visina v. Freeman, 252
Minn. 177, 89 N.W.2d 635
(1958).

LMC information memo,
[Public Purpose Expenditures.](#)

I. Expenditures

Cities may spend money only for authorized purposes. Since councilmembers may have personal liability for the unauthorized disbursement of city funds, they should consult their city attorney whenever they doubt the legality of the expenditure.

A. Legal expenditures

Any city expenditure must satisfy the following to be considered lawful:

- Public purpose. There must be a public purpose for the expenditure.
- Authority. There must be specific or implied authority for the expenditure in state statute or the city's charter.
- Procedure. The council must properly approve the expenditure.

1. Public purpose

The Minnesota Constitution requires that taxes further a public purpose. However, the meaning of “public purpose” constantly evolves through court decisions. The Minnesota Supreme Court has followed a rather liberal approach, generally concluding that a “public purpose” exists when an activity meets all the following standards:

- Benefits the community as a body.
- Is directly related to functions of government.
- Does not have *as its primary objective* the benefit of a private interest.

The League information memo, *Public Purpose Expenditures*, provides a more detailed discussion of lawful expenditures, including specific references to common lawful public purpose expenditures.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[Borgelt v. City of Minneapolis](#), 271 Minn. 249, 135 N.W.2d 438 (1965).

LMC information memo, [Public Purpose Expenditures](#).

Part II, *Procedure for paying claims*.

Handbook, [Liability](#).

[Minn. Stat. § 466.07](#).

Minnesota Office of the State Auditor, 525 Park Street, Suite 500, St. Paul, MN 55103; (651) 296-2551.

LMC information memo, [City Special Elections](#).

Handbook, [Property Tax Levy](#).
Handbook, [Debt and Borrowing](#).

2. Authority

Determining whether a statute or a city charter provides express authority for an expenditure is relatively easy. In contrast, determining whether a statute or charter provision implicitly provides authority for an expenditure proves more difficult. Cities should consult with their city attorney if they are unsure of the authority related to specific expenditures.

3. Proper procedure

If an expenditure has valid authority and furthers a public purpose, the council must follow the proper procedure to make the expenditure. Minnesota statutes set forth the procedures statutory cities must use to pay claims and disburse city funds.

B. Invalid expenditures

Cities may face the following issues if they end up approving an invalid expenditure:

- Taxpayer lawsuits. The city bears the responsibility for the expenses incurred while defending itself in a taxpayer lawsuit. In some situations, individual councilmembers may incur personal liability as well.
- Non-compliance finding by the state auditor. This could result in future special audits and embarrassment for the city.
- Public mistrust. The council could lose the trust of the community.
- Law changes. If the violation is substantial, the event could prompt the Legislature to adopt more explicit restrictions on expenditures that would impact all local governments.

C. Limitation on city expenditures

If either express or implicit authorization exists and the expenditure furthers a public purpose, then the state law generally does not limit city disbursements. In general, there are no requirements compelling voter authorization of expenditures either as to purpose or amount. Although isolated examples of both kinds of restrictions can be found in the statutes, they generally apply only to specific projects. Statutes imposing limitations on tax levies, for example, do not usually impose a limitation on the amount a city can spend, but rather how much money the city can collect through a tax levy. Debt limits impose further restrictions by limiting the amount of money a city can obtain through borrowing.

RELEVANT LINKS:

[Minn. Stat. § 412.271.](#)
LMC information memo,
Procedures for Paying City Claims.

LMC information memo,
Procedures for Paying City Claims.

[Minn. Stat. § 412.691.](#)

LMC information memo,
Procedures for Paying City Claims.

[Minn. Stat. § 471.38.](#)
[Minn. Stat. § 471.391, subd. 2.](#)
[Minn. Stat. § 410.33.](#)

LMC information memo,
Procedures for Paying City Claims.

II. Procedure for paying claims

Standard Plan and Plan A cities follow the same procedure to pay city bills, including the officials involved. The process for Plan B statutory cities varies slightly. When the city owes money to a particular individual or business, that person or business has a “claim” against the city depository (the bank account in which the city deposits its money).

Generally, cities follow three steps when paying any claim. This process can vary slightly depending on the nature of the claim and the authorization required for issuing the order. For example, some types of claims may require prior council approval, and, in some instances, council may delegate authority to pay certain types of claims. Generally, however, the following basic process applies:

- Filing the claim. The claim or bill must go to the clerk for filing.
- Approval of claim. The council must audit the claim or bill.
- Issuance of order. City officials sign and issue the check or order.

After the approval or disapproval of the claim by the council, the clerk shall endorse on each claim the word "disallowed" (if that is the case), or "allowed in the sum of \$.....," if approved in whole or in part, specifying in the latter case the items rejected. The mayor or the clerk can submit approved claims, called an order, to the treasurer. Once signed by the treasurer, that order becomes a check on the city depository. This process does not apply to payment of judgments, salaries, and wages previously fixed by the council or by statute; principal and interest on obligations, rent and other fixed charges (the exact amount of which has been previously determined by contract authorized by the council); and for other instances provided by state law.

As mentioned above, Standard Plan and Plan A statutory cities follow this basic process. For a Plan B statutory city, the city manager acts as the chief purchasing agent and may exercise some purchasing independence, subject to any procedural requirements established by the council. For example, city managers can make contracts for purchases in the amount of \$20,000 or less.

Home rule charter cities may have different procedures for paying claims outlined in their charters. In addition to the charter, Minnesota statutes specifies certain requirements for second, third, and fourth-class home rule charter cities apply. These requirements mirror the requirements for statutory cities. Additionally, a charter city also may choose to generally apply the procedures and exercise authority found in the statutory city code if their charter does not address situations that arise.

RELEVANT LINKS:

[Minn. Stat. § 412.271, subd. 2.](#)
[Minn. Stat. § 471.38, subd. 1.](#)

[Minn. Stat. § 412.271, subd. 1.](#)
[Minn. Stat. § 471.38, subd. 2.](#)
[Minn. Stat. § 412.271, subd. 1.](#)

Fargo Cornice & Ornament Co. v. Sch. Dist. No. 88, 152 Minn. 342, 188 N.W. 733 (1922).

[Minn. Stat. § 412.271, subd. 2.](#)

For example, if a city’s charter is silent on the matter of delegating authority to pay certain claims to an administrative official, then that city could still make such a delegation in the manner described above for statutory cities. However, in these instances, the city could amend its charter or local ordinance to reflect the practice and to avoid future procedural confusion.

A. Filing a declaration of claim

With some exceptions, generally, the person claiming payment (or the person’s representative) must provide the city with an itemized list in writing or in an electronic transaction records. The act of filing the claim for payment means that the claimant is declaring that the claim is just and correct and that no part of the claim has been paid. The council may, in its discretion, allow the clerk to prepare a claim prior to the claimant filing the claim, if the order-check issued to pay the claim contains a specific declaration statement above the endorsement for the person making the claim to sign. This declaration states:

The undersigned payee, in endorsing this order-check, declares that the same is received in payment of a just and correct claim against the city of _____, and that no part of the claim has heretofore been paid.”

When signed by the person seeking payment, the statement operates as a sufficient declaration of the claim.

Some exceptions to the general requirement of presenting claims in writing include:

- Salaries and wages fixed by law or by the council.
- Settlements of lawsuits and judgments against the city.
- Principal and interest payments on obligations of the city.
- Rent and other fixed charges (as set by contract and previously authorized by council).
- Claims arising from the city’s failure to perform a statutory duty.

B. Payroll

For city employees paid on an hourly or daily basis, the clerk must keep a payroll indicating the name of each employee and the number of hours or days worked. The timekeeper, supervisor, or other city officer or employee having knowledge of the facts must then sign a declaration attesting to the payroll as recorded. This declaration should be substantially in the following form:

RELEVANT LINKS:

“I declare under the penalties of perjury that to the best of my information and belief the items of this payroll are correct.”

Signature

Date

When the city pays the wages, the employee also must sign a declaration that substantially follows the below form:

[Minn. Stat. § 412.271, subd. 2.](#)

“I declare under the penalties of perjury that I have received the wages stated on this payroll opposite my name and have done the work for which the wages were paid.”

Signature

Date

This declaration may be made a part of the payroll.

[Minn. Stat. § 412.271, subd. 2\(c\).](#)

Notwithstanding the procedures described above, a city may choose to use an electronic time recording system if the city council adopts policies to ensure the accuracy and reliability of the timekeeping and payroll methods.

C. Audits and allowances

[Minn. Stat. § 412.271, subd. 3.](#)

In most cases, a city official or employee cannot issue an order for disbursement of city funds until the council has audited and allowed the claim. The council passes a motion or resolution for the approval of claims. The clerk then must endorse each claim with the word “disallowed”, if the council did not approve it, or “allowed in the sum of \$_____”, if the council approved all or part of it. In the case of a claim the council approved in part, the clerk must specify the items rejected by the council. An order then is drawn by the mayor and clerk upon the treasurer.

[Minn. Stat. § 412.201.](#)

[Minn. Stat. § 412.141.](#)

[Office of the State Auditor, Approval of Claims, Jan. 2015.](#)

[Office of the State Auditor, Statement of Position: Meeting Minutes, Jan. 2014.](#)

While each member of the council does not need to sign the claims to show approval, the state auditor has suggested that all the members of the council fully review each claim for appropriateness and accuracy. It also is important for the meeting minutes to identify the claims approved and how each member voted.

RELEVANT LINKS:

LMC information memo,
Meetings of City Councils.

[Minn. Stat. § 412.271, subds. 1, 3.](#)

[Minn. Stat. § 471.425, subd. 4.](#)

[Minn. Stat. § 412.271, subd. 1.](#)

[Minn. Stat. § 412.271, subd. 3.](#)

[Minn. Stat. § 412.271, subds. 2 and 5.](#)

[Minn. Stat. § 471.38. Minn. Stat. § 645.26, subd. 4.](#)

[Minn. Stat. § 471.38.](#)

Without such detail, it can be difficult to determine whether the council approved a specific claim when the council had approved multiple claims and had allowed some, but not others.

D. Issuance of order

After completing the previous steps, the clerk may issue to the treasurer an order for payment. The treasurer may not disburse funds without such an order. If the treasurer receives a payment order and the city does not have sufficient funds to pay it, the treasurer must mark the order “not paid for want of funds” and pay it in the sequence received, with interest from the date of presentation at the rate of 5 percent. The council, prior to issuance of the order, may set a lower interest rate. The council may not set this lower rate below 1.5 percent.

This order-check requirement applies to all city funds, including disbursements from municipal liquor store funds.

The form of the order should provide that, when the treasurer signs the order, it becomes a check on the city depository.

1. Form of claim payment

Two separate statutes apply to how cities can pay claims. One section states that a city may not disburse city funds except through an order drawn by the mayor and clerk upon the treasurer, except where cash makes more sense. An “order” represents a numbered document in the form of a check signed by the mayor and city clerk. When an order is presented to and signed by the treasurer, it becomes an order check. An order check constitutes the written instrument that authorizes the bank to disburse city funds to the payee and in the amount indicated on the order check.

In the 2017 legislative session, the Legislature passed a law that allows payment of claims and obligations of any city by warrant, check or any form of electronic or wire funds transfer. Cities should work with their city attorneys to resolve any conflict between these two statutes if one arises, however, the newer law likely prevails regarding forms of payment, with the older statute setting forth the specific process for payment of claims.

For example, cities now have specific authority to make electronic fund transfers for certain claims, including:

- For a claim for a payment from an imprest payroll bank account or investment of excess money.
- For a payment of tax or aid anticipation certificates.
- For a payment of contributions to pension or retirement fund.
- For vendor payments.

RELEVANT LINKS:

[Minn. Stat. § 412.271, subd. 3.](#)
[Minn. Stat. § 471.391, subd. 2.](#)

[A.G. Op. 469a-16 \(May 21, 1965\).](#)

[Minn. Stat. § 47.41.](#)

[Minn. Stat. § 47.42.](#)

[A.G. Op. 159-C-9 \(Mar. 24, 1953\).](#)

Contractors Edge, Inc. v. City of Kilkenny, No. C0-02-802 (Minn. Ct. App. Jan. 28, 2003) (unpublished decision).

[Minn. Stat. § 471.425, subd. 1\(b\).](#)

[Minn. Stat. § 471.425, subd. 2.](#)

- For payment of bond principal, bond interest and a fiscal agent service charge from the debt redemption fund.

2. Declaration of claim

As discussed above, the order-check may have the following statement printed on its reverse side, above the space for the payee's signature: "The undersigned payee, in endorsing this order-check, declares that the same is received in payment of a just and correct claim against the City of _____, and that no part of such claim has heretofore been paid."

When the payee signs the order-check, this statement acts as the declaration of claim. The council may approve such a claim without first receiving a declaration from the claimant.

3. Facsimile signatures

State law specifically allows the use of facsimile signatures (produced by rubber stamp or machine). Public officers may authorize their banks to honor instruments signed by facsimile.

A public officer does not have personal liability for any loss that results from the use of the facsimile signature if all the following circumstances are met:

- The city council has passed a resolution approving the use of a facsimile signature.
- The city council has insured the depositor against losses from the unauthorized use of the facsimile signature.
- The loss did not result from a wrongful act of the public officer.

4. Prepayment of claims

A city council also has discretion to pay for a contract for goods or services in advance of receiving the good or services.

E. Prompt payment

Cities must promptly pay their obligations, unless a good faith dispute exists. Generally, cities must pay their bills within the terms of the contract. If no contractual terms apply, state statutes provide a standard payment period, calculated from the date of receipt.

The "date of receipt" represents the date of the completed delivery of the goods or services, the satisfactory installation or assembly, or the receipt of the invoice for the delivery of goods (whichever is later). The following time requirements apply to payments:

RELEVANT LINKS:

[Minn. Stat. § 471.59.](#)

[Minn. Stat. § 471.425, subd. 4.](#)

[Minn. Stat. § 471.425, subds. 3, 4.](#)

[Minn. Stat. § 412.271, subd. 4.](#)

[Office of State Auditor audit form.](#)

[Minn. Stat. § 412.271, subd. 6.](#)

[Minn. Stat. § 412.151, subd. 1.](#)

- Cities that have at least one regularly scheduled council meeting per month must pay within 35 days of receipt.
- Cities that do not have at least one regularly scheduled council meeting per month must pay within 45 days of receipt.
- Joint powers entities must pay within 45 days of receipt.

If the city does not pay within the required period (and no good faith dispute concerning the product or the service exists), it must calculate and pay interest of 1.5 percent per month.

The minimum monthly interest penalty on the unpaid balance of any overdue bill of \$100 or more is \$10. For unpaid balances less than \$100, the city must calculate and pay the actual interest.

Cities must notify vendors of invoice errors within 10 days of receipt. If delays in payments result from good faith disputes (such as the fitness of the product or service, contract compliance, or any related defect, error or omission), no interest penalties accrue. If the delay is not in good faith, the vendor may recover costs and attorney's fees.

F. Immediate payment of claims

When the city cannot defer payment of a claim until the next council meeting without forfeiting a discount or similar benefit, immediate payment can occur if at least a majority of the council endorses an itemized claim for payment. The council then must formally act on the claim at the next council meeting. Earlier payment does not affect the right of the city or any taxpayer to challenge the validity of the claim.

G. Independent boards and commissions

When a municipal public utilities commission or other independent board has the authority to contract and disburse funds without council approval, the independent commission, rather than the council, audits and approves the claims.

H. Account book entry

The clerk must enter, in the permanent account book, the dates and amounts of all receipts; the person from whom the money was received; and all orders drawn upon the treasurer with their payees and reasons for payment.

RELEVANT LINKS:

[Minn. Stat. § 471.69.](#)

[Minn. Stat. § 471.69.](#)

[Minn. Stat. § 471.415, subd. 1.](#)

[Minn. Stat. § 471.415, subd. 2.](#)

[Minn. Stat. § 471.415, subd. 3.](#)

[Minn. Stat. § 412.271, subd. 5.](#)

[Minn. Stat. § 412.271, subd. 5.](#)
Office of the State Auditor,
Statement of Position: Petty
Cash (Imprest) Funds, Jan.
2014.

I. Limits on issuing checks

No statutory city may contract for any debt, or issue any warrant or order in any calendar year in anticipation of the collection of taxes levied or to be levied for that year in excess of the average amount actually collected on the tax levy for the previous three years, plus 10 percent. This does not apply to cities where the mineral net tax capacity exceeds the net tax capacity of real property by 25 percent or more.

This limit applies to each fund for which the city has made a tax levy. The clerk must annually (as soon as possible after January 1) present to the council a statement of tax collections the city credited to each fund during each of the three previous fiscal years with the yearly average.

The county auditor must furnish this information to the clerk upon request.

J. Duplicate checks

The city may issue duplicate checks to replace those lost or destroyed. The new check must correspond in number, date, and amount with the original, and the word “duplicate,” along with the date of its issuance, must be written on its face.

Before the clerk can issue a duplicate, the check’s owner must file with the clerk:

- An affidavit indicating ownership, a description of the order, and the manner of its loss or destruction.
- An indemnifying bond in the amount of the lost check (at its discretion, the council may dispense with this requirement).

The clerk must keep a record showing: the number, dates, and amounts of all mutilated, lost or destroyed orders; the date of duplicate issuance; and the names of people who received duplicates.

K. Petty cash (imprest funds)

The council may establish one or more petty cash (or “imprest”) funds for the payment, in cash, of any proper claim against the city which is impractical to pay in any other manner, except that no claim for salary or personal expenses of an officer or employee shall be paid from such funds.

Each fund must have a council appointed custodian responsible for its safekeeping and disbursement. When the custodian has accumulated a number of claims, he or she should present an itemized “master” claim for council approval at the next council meeting following the disbursement(s).

RELEVANT LINKS:

[Minn. Stat. § 465.13.](#)

[Minn. Stat. § 465.14.](#)

Handbook, [Debt and Borrowing](#).

[Minn. Stat. § 471.38.](#)
[Minn. Stat. § 471.391.](#)

Once the council has approved the master claim, the treasurer may issue a check to replenish the fund. If the council fails to approve the master claim for any sufficient reason, the custodian must personally reimburse the fund for the difference.

L. Judgments

A city council does not necessarily need to approve payment of a court ordered amount. If an appeal does not postpone payment, the city treasurer, upon receiving a certified copy, must pay the judgment. The treasurer may not use money he or she determines necessary to meet current city expenses for payment of judgments. This exception prevents an undue depletion of the treasury because of the judgment.

If the city has not paid a judgment at the time of the annual tax levy, and if the council has not provided another means for its payment, it must levy a special tax for that purpose.

These claims need not be filed with the clerk, nor does the council have to audit and allow a judgment. If the judgment is too large for immediate payment, the city may issue bonds to raise the necessary funds.

M. Home rule charter cities

Home rule charter cities adopt procedural requirements (including written claims and signed declarations) that mirror those in statutory cities. However, a city's charter may allow different city officers to make some purchases. Home rule charter cities should check their city charters for additional authority for purchasing, as well as for any other procedural requirements.

III. Purchasing

City officials must make a variety of purchases.

A. General purchasing

With some significant exceptions, limited legal requirements govern city purchasing. Purchasing procedures often only need to secure the best balance of quantity, quality, and price.

1. Central purchasing

Purchasing can get complex. In larger cities, a single, separate department, usually headed up by a trained purchasing agent, oversees purchasing.

RELEVANT LINKS:

Handbook, *City Administrative Staff*.

[Minn. Stat. § 412.691.](#)

[Minn. Stat. § 412.271, subd. 8.](#)

Office of the State Auditor, *Statement of Position: The Importance of Internal Controls*, Feb. 2014.

LMC information memo, *Procedures for Paying City Claims*.

[Minn. Stat. § 471.382.](#)

[Minn. Stat. § 412.271, subd. 2.](#)
[Minn. Stat. § 471.38.](#)

While smaller cities likely do not have one person solely responsible for purchasing, an administrative officer (the city's clerk, deputy clerk, administrator, administrative assistant, or manager) often has the responsibility to make most purchases and take advantage of savings through bulk purchasing, systematic procedures, and effective expenditure controls.

2. Authority for purchasing

Because only the council may approve actual purchases, a purchasing agent should obtain approval before taking any final action.

In Plan B statutory cities, the manager has the authority to make purchases and negotiate contracts for amounts up to \$20,000, unless the council sets a lower limit. Even in this case, the council must audit all bills for materials, supplies, and services.

Statutory city councils may delegate their authority to pay certain claims to an administrative official if:

- The council has adopted a resolution specifying the types of claims to be paid in this manner and the specific administrative official to whom the council grants this authority.
- The council establishes internal accounting and administrative control procedures that ensure the proper disbursement of public funds, including periodic review of the official's actions by the council.
- The authorized administrative official submits the list of expenditures for review at the next council meeting after payment.
- The city prepares an annual audited financial statement attested to by an independent certified public accountant, public accountant, or the state auditor.

3. Use of credit cards

A city council may authorize the use of a credit card by any city officer or employee otherwise authorized to make a purchase on behalf of the city. A purchase by credit card must comply with all statutes, rules, and city policies applicable to city purchases. If a city employee or officer makes or directs a purchase by credit card not approved by the council, the officer or employee is personally liable for the amount of the purchase.

Claimants must provide the city with an itemized list in writing or in an electronic transaction records. Cities should work with city attorneys to determine if a credit card statement contains the detail necessary to satisfy these requirements.

RELEVANT LINKS:

[Minn. Stat. Ch. 475. Handbook, *Debt and Borrowing*.](#)

Office of the State Auditor, [Statement of Position: Credit Card Use and Policies](#), Feb. 2014.

[Minn. Stat. § 471.38.](#)

[Minn. Stat. § 471.38.](#)

[Minn. Stat. § 471.59.](#)
[Minn. Stat. § 471.345, subd. 15.](#)

In the alternative, city staff could retain invoices and receipts for all items charged to a credit card.

Credit card must also comply with laws governing city borrowing. Cities may not carry debt on their credit cards. Cities that use credit cards must adopt a policy of paying the entire credit card balance each month.

The Office of the State Auditor strongly urges cities to develop a credit card use policy to avoid misuse or misappropriation of funds. The policy should:

- Identify the officers and employees authorized to make purchases on behalf of the city and eligible to use the card.
- Identify the types of purchases to be made with the card.
- Set up a review process for all purchases made with the card.
- Prohibit the use of a city credit card for personal purchases.
- Require supporting documentation.
- Limit the total amount of charges that can be made on city credit cards.
- Obtain signed written acknowledgments of the credit card policy from all authorized card users.

4. Other electronic funds transfer

Electronic funds transfer means value exchange by mechanical means without the use of checks, drafts, or similar negotiable instruments. A local government may make an electronic funds transfers for the following:

- For a claim for a payment from an imprest payroll bank account or investment of excess money.
- For a payment of tax or aid anticipation certificates.
- For a payment of contributions to pension or retirement fund.
- For vendor payments.
- For payment of bond principal, bond interest and a fiscal agent service charge from the debt redemption fund.

5. Cooperative purchasing

Cities may increase savings by making purchases jointly with one or more governmental units through a process commonly known as cooperative purchasing. Under these programs, several governmental units can authorize one city to solicit bids on behalf of all participating units.

Communities have found it profitable to purchase such items as fire hoses, street signs, paint, coal, oil, soap, office supplies, fire trucks, and police cars in this manner.

RELEVANT LINKS:

[Minn. Stat. § 16C.105.](#)
[Minnesota's Cooperative Purchasing Venture.](#)
[Minn. Stat. § 471.345, subd. 15.](#)

[Minn. Stat. § 471.345, subd. 15.](#)

[Minn. Stat. 465.73.](#)

[Minn. Stat. § 471.35.](#)
[Minn. Stat. § 471.36.](#)

Once the cities involved in the joint powers agreement agree on the specifications, one city may advertise for bids on behalf of all the cities party to the agreement. Rather than specifying a specific number of items, they will advertise for "...up to (number) of (item)." This way, each participating entity can make the final decision on whether to purchase from the successful bidder.

Many cities also purchase a variety of equipment and supplies from state contracts. The Department of Administration operates a cooperative purchasing program that cities can join. In fact, for contracts estimated to exceed \$25,000, a city must consider the availability, price, and quality of supplies, materials, or equipment available through the state cooperative purchasing venture before buying through another source.

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 goes 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.

6. USDA assistance

For purposes of constructing, repairing, or acquiring city halls, fire halls, fire or rescue equipment, libraries or child care facilities (if otherwise authorized by law), a city may borrow (not to exceed \$450,000) from either (i) funds granted to a rural electric cooperative or (ii) directly from an agency of the United States Department of Agriculture by a note secured by a mortgage or other security agreement on the property purchased with the borrowed funds.

The city may pledge its full faith and credit and assign or pledge the revenues, if any, from the facilities or equipment to secure the loan. The obligation of the note need not be included when computing the net debt of the city, nor do the voters need to approve the issuance of the note.

7. Standards and specifications

A city should prepare quality standards to help guide all significant city purchases. The standards should set forth the minimum requirements for purchases with brief, clear descriptions. The standards, however, also must be broad enough to cover all competitive supplies and equipment.

RELEVANT LINKS:

[National Institute of Standards and Technology](#),
100 Bureau Drive, Stop
2100, Gaithersburg, MD
20899; (301) 975-4000.

[Minn. Stat. § 471.345.](#)
[Minn. Stat. § 412.311.](#)
[Rochester City Lines, Co. v. City of Rochester](#), 868
N.W.2d 655 (Minn. 2015).
Part VI, *Competitive bidding requirements*.

[Minn. Stat. §§ 412.721-.741.](#)

Part III-A-2, *Authority for purchasing*.

The department requiring the item (the city engineer or architect in the case of major items) and the purchasing agent should jointly develop the specifications. Sample standard specifications exist for many items, and cities also can check with neighboring cities and various state and federal agencies for examples.

When two or more departments use similar items, the city should consider developing one set of specifications that can meet the needs of all departments, possibly reducing future purchasing costs.

B. Making purchases

Cities generally must follow a more detailed process when making larger purchases. Under the uniform municipal contracting law, a city must use a competitive bidding process for certain contracts that exceed \$175,000. State law defines what types of agreements amount to a “contract” for purposes of applicability of the uniform municipal contracting law and provides cities the option to use the “best value alternative” for certain types of contracts, including those for construction, alteration, repair, or maintenance work.

1. Regular purchasing procedures

Regardless of whether the competitive bid process applies, most purchasing should adhere to the following:

- The person (or department) needing an item should prepare a requisition form. The form should include a description of the product, quantity, applicable specifications, and any other relevant information. The form should go to either the purchasing agent or the clerk for presentation to the council.
- The purchasing agent or the clerk should see whether the budget has authorized the purchase and if sufficient funds are available. The clerk or purchasing agent should cancel the requisition if the budget does not allow for the purchase or if funds are not available. The council may modify the city’s budget to make funds available, but may not increase the total amount already levied. Only optional Plan B cities must follow this step, but other cities may choose to follow it as well.
- After completing the first two steps, the purchasing agent may then proceed to acquire the requested item. The council must approve the purchase unless the person has the proper authority to make the purchase.
- If the city has no purchasing agent, the purchase exceeds the agent’s authority, or the city needs to get bids for the proposed purchase, the requisition should go to the council for further action.

RELEVANT LINKS:

- After the city has received the item and confirmed it meets all specifications, the city may process and pay the bill.

2. Price agreements

Cities use price agreements to acquire items they frequently purchase. For example, cities often buy gasoline and heating fuel with price agreements.

A price agreement represents a contract between the city and a merchant. Under the agreement, the merchant agrees to supply the city the specified commodities for the term of the agreement. Price agreements often contain either a fixed price or a variable price that offers a set discount off the market price. The city usually estimates its probable needs, even though not obligated to purchase any definite quantity. Price agreements expedite delivery, reduce paper work, and generally result in lower prices.

The city may then make purchases as the need arises. Depending on the commodity and the frequency of purchases, the council may or may not require separate requisition forms. The council should set some type of accounting system, however, to prevent the city (or any city department) from overspending its budgetary appropriation.

3. Inspection and testing

Before the city pays for purchased items, someone should confirm that the items conform to the city's specifications. Normally, the purchasing agency or an employee in the department receiving the item performs the check.

Employees can easily test many products by counting, measuring or weighing. In other cases, the city may need to have an outside agency perform the tests.

IV. Disposing of city property and equipment

Cities often find themselves in possession of property or equipment they no longer require. Sometimes equipment being replaced or retired may still be in working condition and may have value to someone else. In those situations, cities often choose to sell the property.

A. Salvage operations

Cities often sell excess materials from construction jobs, excess inventories, obsolete or outgrown equipment, and even real property that does not fit the city's current or future needs.

RELEVANT LINKS:

[Minn. Stat. § 471.345.](#)

LMC information memo,
*Competitive Bidding
Requirements in Cities.*

[Minn. Stat. § 15.054.](#)

LMC information memo,
Official Conflict of Interest.

LMC information memo,
*Purchase and Sale of Real
Property.*

[Minn. Stat. § 462.356, subd.
2.](#)

[Minn. Stat. § 471.64, subd.
1.
A.G. Op. 707a \(Mar. 5,
1986\).](#)

[Minn. Stat. § 471.345, subd.
17.](#)

[Minn. Stat. § 471.3459.](#)

*Donation of Surplus City
Equipment to a Nonprofit
Organization, LMC Model
Policy.*

Some official, preferably the city purchasing agent, should maintain a list of all surplus property, sell unneeded items, and promote interdepartmental sharing of equipment whenever possible. This procedure helps eliminate unnecessary (and costly) duplications of city-owned equipment.

B. Restricted sales

In some cases, cities must follow special procedures before selling property or equipment. For example, if the expected selling price of a piece of equipment exceeds \$175,000, the city generally must use the competitive bidding process. Home rule charter cities may have additional requirements within their charters.

Cities generally cannot sell government property to city officers or employees. A limited exception allows cities to sell property to city employees (but not to city officers) if the sale is made by sealed bids or through an auction and the employee has no involvement in the process.

Competitive bidding usually is not required when selling real estate. In certain instances, however, cities may have other procedural requirements to follow. For example, if the city has a comprehensive plan, it typically must notify the planning commission and wait for its comment before selling city-owned land.

C. Sales to other government agencies

A city need not comply with competitive bidding requirements when selling property, services, or equipment to the national government, the state, or any political subdivision of the state.

D. Electronic sales of surplus supplies, material, and equipment

Regardless of value, cities may sell surplus supplies, materials, and equipment using an electronic selling process where purchasers compete for the highest price in an open and interactive environment.

E. Donations of surplus equipment

In 2016, the Minnesota Legislature passed a new law authorizing a “local government,” including statutory and home rule charter cities, to donate “surplus equipment” to a “nonprofit organization.”

RELEVANT LINKS:

[Minn. Stat. § 412.691.](#)

City of Staples v. Minn. Power & Light Co., 196 Minn. 303, 265 N.W. 58 (1936).

[Minn. Stat. § 412.201.](#)

State ex rel. Kron v. Hodapp, 104 Minn. 309, 116 N.W. 589 (1908).

[Minn. Stat. § 471.345.](#)
LMC information memo,
Competitive Bidding Requirements in Cities.

Surplus equipment includes equipment used by a local government public works department, and includes cellular phones and emergency medical and firefighting equipment no longer needed by the local government (because the phones or equipment no longer meet industry standards for emergency medical services, police, or fire departments; have minimal value; or have no resale value). Before donating surplus equipment, a city must adopt a policy on how it will determine what qualifies as surplus eligible for donation and how it will select nonprofit organizations eligible to receive donations. One caveat worth mentioning—the policy “must address the obligations of the local government to disclose to the nonprofit that the surplus equipment may be defective and cannot be relied upon for safety purposes.”

V. Contracts in general

Generally, only the council may make contracts on behalf of the city. Individual councilmembers, council committees, and city administrative officers do not have that authority. However, the manager in Plan B statutory cities may let contracts, on the cities behalf, when the amount does not exceed \$20,000, unless the council sets a lower limit. Charters often give the city manager similar limited authority.

As long as a city council acts reasonably and honestly, the council generally may enter into contracts on any terms it deems appropriate. If a contract does not require a tax levy higher than that allowed by law or result in indebtedness that exceeds the city’s statutory debt limit, the law does not place an expenditure limit on such agreements.

The council should approve every contract by resolution. In addition, the mayor and the clerk (or the manager in Plan B cities) must sign and affix the city seal to the contract. So long as the contract expresses an agreement of the council as a whole, and no other reasonable doubt concerning the contract’s legality exists, these officials may not, on the basis of their own judgment, refuse to execute the contract.

VI. Competitive bidding requirements

As mentioned above, the uniform municipal contracting (competitive bidding) law requires cities to use the competitive bidding process for certain contracts estimated to exceed \$175,000.

The competitive bidding law applies to:

- Contracts for the sale, purchase, or rental of supplies, materials, or equipment.

RELEVANT LINKS:

[Buffalo Bituminous, Inc. v. Maple Hill Estates, Inc](#) 311 Minn. 468, 250 N.W.2d 182 (1977). [Kotschevar v. N. Fork Township](#), 229 Minn. 234, 39 N.W.2d 107 (1949).

[Fargo Foundry Co. v. Village of Calloway](#), 148 Minn. 273, 181 N.W. 584 (1921). [Williams v. Nat'l Contracting Co.](#), 160 Minn. 293, 199 N.W. 919 (1924). [Minn. Stat. § 471.345, subd. 14.](#)

[Minn. Stat. § 471.345, subd. 3.](#)

[Minn. Stat. § 471.345, subd. 4.](#)

[Minn. Stat. § 471.345, subd. 5.](#)

[Minn. Stat. § 429.041, subd. 1.](#)

LMC information memo, [Special Assessment Toolkit](#).

- Contracts for the construction, alteration, repair, or maintenance of real or personal property.

Cities that fail to follow the statutory requirements may face consequences. If a council fails to advertise for bids when the law requires competitive bidding, the contract generally is void. Courts also have ordered cities to pay for any benefits they already had received to avoid injustice to the party who performed work and to prevent unjust enrichment of a city by its own failure to advertise for bids.

Councilmembers probably would not have personal liability to a contractor if they acted in good faith. Unsuccessful bidders may sue to recover the costs of preparing their bids if the competitive bidding process is not followed properly, but may not recover damages or attorney's fees.

A. General requirements

For contracts less than the \$175,000 threshold, the city council has choices regarding what procedure to use.

If the contract cost is expected to exceed \$25,000 but not to exceed \$175,000, the city can choose either to use the competitive bidding process or to directly negotiate the contract. If using direct negotiation, the city must get at least two quotations when possible and keep them on file for at least one year.

If the contract likely will not exceed \$25,000, the council has discretion to make the contract by either obtaining bids, quotes or simply buying or selling the item on the open market. If the council chooses to obtain quotes, it must, as far as practicable, obtain at least two quotes and keep them on file for at least one year. If the city council decides to solicit sealed bids, it must follow all the requirements of the bidding process and cannot change the process midway through.

B. Local improvements

For local improvement projects funded by special assessments, cities generally must use the competitive bidding process if the estimated cost of the contract will exceed \$175,000. The process for competitively bidding a local improvement project differs somewhat from other contracts, so the city should consult with its city attorney to review the law before the bidding process begins.

RELEVANT LINKS:

[Griswold v. Ramsey County](#), 242 Minn. 529, 65 N.W.2d 647 (1954).

[Coller v. City of St. Paul](#), 223 Minn. 376, 26 N.W.2d 835 (1947); [Interboro Packaging Corp. v. City of Minneapolis](#), No. A09-0189 (Minn. Ct. App. September 15, 2009)(unpublished decision).

[Minn. Stat. §§ 471.35-.37.](#)

[Diamond v. City of Mankato](#), 89 Minn. 48, 93 N.W. 911 (1903). [Davies v. Village of Madelia](#), 205 Minn. 526, 287 N.W. 1 (1939).

[Hendricks v. City of Minneapolis](#), 207 Minn. 151, 290 N.W. 428 (1940).

[Westra Constr., Inc. v. City of Minnetonka](#), No. A03-50 (Minn. Ct. App. Dec. 30, 2003) (unpublished decision).

[Duffy v. Village of Princeton](#), 240 Minn. 9, 60 N.W.2d 27 (1953). [Otter Tail Power Co. v. MacKichan](#), 270 Minn. 262, 133 N.W.2d 511 (1965).

[Minn. Stat. § 412.311.](#)

[Minn. Stat. § 410.33.](#)

[Minn. Stat. § 429.041, subd. 1.](#)

C. Competitive bidding procedures

Once the engineer or purchasing agent has prepared the necessary specifications, the council should seek competitive bids if the law so requires or if the council believes desirable. If the council chooses to seek bids, the city most likely must still follow all competitive bidding requirements. A bid constitutes a definite offer that a municipality may accept without further negotiations but, in order for a bid to be valid, it must substantially comply with the requirements of law and the call for bids.

1. Specifications

When a city calls for bids for the purchase of supplies or equipment that are competitive in nature, it cannot prepare specifications to exclude all but one type of supply or equipment.

The proposals and specifications must allow for free and full competition and may not give a prospective bidder an unfair advantage over other prospective bidders.

A city can include reasonable specifications, even if it causes a reduction in the number of people or companies able to bid.

For example, the Minnesota Court of Appeals has approved a home rule charter city's use of specifications that included evaluation criteria. The city used the criteria to evaluate bidders based on their experience and history of completing projects on time, within budget, and in a satisfactory manner. The city used the evaluation criteria to determine which bidders had sufficient points to be considered eligible for the contract award.

Again, specifications must be sufficiently definite and precise to afford a basis for comparable bids. If the city cannot determine in advance the number of units it will need, it can ask for bids on a unit basis. The city should, however, estimate the number of units since the number may affect the unit price.

2. Advertising for bids

a. General statutory requirements

Except as noted below, statutory cities must publish all requests for competitive bids in the city's official newspaper at least 10 days before the last day for submission of bids. A charter may provide other publishing requirements for competitive bids. (If the charter is silent, a home rule charter city may follow the statutory procedure as well).

RELEVANT LINKS:

[Minn. Stat. § 429.041, subd. 1.](#)

[Minn. Stat. § 331A.01, subd. 11.](#)

[Minn. Stat. § 429.041, subd. 1.](#)

[Minn. Stat. § 331A.01, subd. 11.](#)

[Minn. Stat. § 331A.03.](#)

[LMC information memo, *Newspaper Publication.*](#)

[Minn. Stat. § 331A.03.](#)

The advertisement shall state that no bids will be considered unless sealed and filed with the clerk and accompanied by a cash deposit, cashier's check, bid bond, or certified check payable to the clerk, for such percentage of the amount of the bid as the council may specify.

If the city intends to use special assessments to finance a local improvement project estimated to exceed \$175,000, the city must use competitive bidding. If the estimated cost likely will not exceed \$350,000 (twice the amount required for mandatory competitive bidding), the publication of the request for bids may be for any length of time the council feels desirable (though statutory cities must still meet the 10-day minimum advertising requirement), but it must run in the official newspaper or recognized industry trade journal.

If the estimated cost of a local improvement project financed by special assessments exceeds \$350,000 (again, twice the amount for mandatory competitive bidding), publication must appear no less than three weeks before the last date for submission of bids in the city's official newspaper and either at least once in a newspaper published in a city of the first class or in a recognized industry trade journal.

The advertisement must specify the work to be done, contain a statement of when the bids will open, which cannot occur not less than three weeks after its first publication.

b. Alternative notice of bids on web site or trade journal

Under certain circumstances, cities have authorization to use two alternative means of providing notice for bid advertisements, either in addition to, or as an alternative to, the statutory requirements for newspaper publication.

The two-alternative means of dissemination include publishing on a city's web site or in a recognized trade journal.

Certain conditions must be met when a city uses an alternative means of dissemination:

- The alternative dissemination must be in substantially the same format and for the same period of time as required for newspaper publication.
- The city must simultaneously publish, either as part of its regular meeting minutes or in a separate notice, a description of all the solicitations being disseminated through alternative means.

RELEVANT LINKS:

- For the first six months after a city designates an alternative means of dissemination, it must continue to publish bid advertisements in the official newspaper in addition to the alternative method. The newspaper publication must indicate where to find the designated alternative method.

After the expiration of the six-month period, an alternative means of dissemination satisfies any publication requirements.

These represent minimum requirements. As the number of people or firms receiving notification increases, so will the chances of receiving more favorable bids or proposals. Consequently, cities find it a best practice to advertise in magazines, newspapers, and trade journals that have readers who could supply the needed article or construction work. In addition, the city may personally contact merchants or contractors who may have an interest in submitting a bid.

c. Contents of bid advertisement

The published notice should contain at least the following information:

- A description of the project or purchase being sought.
- The availability and location of specifications.
- Bid requirements (such as sealed bids, or any accompanying security).
- Where the bids must be submitted.
- The deadline for submitting bids.
- The time and place of the bid opening.
- The city officers who will be present for the opening.
- A statement indicating that the city may delay the award until certain events occur.
- A statement indicating that the city reserves the right to reject all bids submitted.

A solicitation document for a public construction “project” estimated to exceed \$50,000 and awarded pursuant to either the lowest responsible bidder selection method or the best value selection method must contain certain information. A “project” means the “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.”

A responding contractor shall submit to the city a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria at the time it responds to the solicitation document.

Ryan v. City of Coon Rapids,
462 N.W.2d 420 (Minn. Ct.
App. 1990).

[Minn. Stat. § 16C.285.](#)

LMC information memo,
*Competitive Bidding
Requirements in Cities.*

[Minn. Stat. § 16C.285, subd.
4.](#)

RELEVANT LINKS:

[Minn. Stat. § 325L.02\(h\).](#)

LMC information memo,
[Competitive Bidding Requirements in Cities.](#)

[Minn. Stat. § 471.345, subd. 18.](#)

[Minn. Stat. § 429.041, subd. 1.](#)

State v. Snively, 175 Minn. 379, 221 N.W. 535 (1928).

[Elecs. Unlimited, Inc. v. Village of Burnsville](#), 289 Minn. 118, 182 N.W.2d 679 (1971).

This signed statement under oath sufficiently verifies that a contractor represents a responsible contractor. As a result, cities cannot be held liable for awarding a contract in reasonable reliance on that statement. A verification of compliance need not be notarized. An electronic verification of compliance made and submitted as part of an electronic bid represents an acceptable verification of compliance if it contains an electronic signature that complies with state law.

A city shall not have liability for declining to award a contract or terminating a contract based upon a reasonable determination that the contractor failed to verify compliance with the minimum criteria or the contractor falsely stated it meets the minimum criteria.

A more detailed discussion can be found in the League's information memo, *Competitive Bidding Requirements in Cities*.

d. Electronic submission of bids

Cities may authorize bidders to submit their bids electronically. If cities choose to authorize electronic submission of bids, the bid advertisement should specify the form and manner required for electronic submission.

3. Opening and tabulation of bids

The city clerk should keep all bids unopened until after the closing time for submissions.

When advertising for bids on local improvement projects financed with special assessments, the city may specify in the public notice that two or more designated officers or agents of the city will open bids publicly and tabulate them in advance of the meeting at which the council will consider them.

4. Investigation

After opening all bids, the council should investigate their compliance with the specifications, their reasonableness, and the responsibility of the bidders. The city engineer, purchasing agent, or another designated person may perform this investigation and assist the council.

5. Disposition of the bids

After the investigation, the council may either accept one of the bids or reject all of them. If the council awards a contract, it generally must pick the lowest responsible bidder.

RELEVANT LINKS:

[Minn. Stat. § 429.041, subd. 2.](#)

[Minn. Stat. § 429.041, subd. 1.](#)

[Minn. Stat. § 429.041, subd. 2.](#)

[Elevs. Unlimited, Inc. v. Village of Burnsville](#), 289 Minn. 118, 182 N.W.2d 679 (1971).

[Minn. Stat. § 412.311, subd. 1.](#) [Minn. Stat. § 429.041, subd. 2.](#)

Part VI-D, *Best value contracting*.

[Kelling v. Edwards](#), 116 Minn. 484, 134 N.W. 221 (1912). [Elevs. Unlimited, Inc. v. Village of Burnsville](#), 289 Minn. 118, 182 N.W.2d 679 (1971). [Otter Tail Power Co. v. Village of Elbow Lake](#), 234 Minn. 419, 49 N.W.2d 197 (1951). [Westra Constr. Inc., v. City of Minnetonka](#), No. A03-50 (Minn. Ct. App. Dec. 30, 2003) (unpublished decision).

If, for a local improvement project under the special assessment statutes, either no bid is submitted or the only bids submitted exceed the engineer's estimate, the council may either advertise for new bids or, without advertising for bids, directly purchase the materials for the work. If the city directly purchases the materials for the work, then the city will complete the project by either employing day labor or in a different manner considered proper by the council.

In the case of projects paid for with special assessments, a city may delay accepting a bid until after the assessment hearing to make sure sufficient funds exist to pay for the project.

The council must let the contract or order the work done no later than one year after the adoption of the resolution ordering the improvement.

6. Rejecting bids

The local improvement code gives the city the right to reject any and all bids for a local improvement, even if the city did not include such a statement in the advertisement. The same holds true for any city with a similar charter provision applying to other contracts.

In any other case, the city should reserve the right to reject any or all bids or to waive informalities or irregularities. If the city has not reserved the right to reject any and all bids, a court possibly could compel the city to award the contract to the low bidder.

7. Lowest responsible bidder

Statutory city contracts, and the contracts of all cities for improvements under the local improvement code, generally must go to the lowest responsible bidder. Most home rule charters contain similar requirements that govern contracts not under the local improvement code, using terms such as "lowest bidder" or "lowest and best bidder" to describe the process.

The bidder who submits the lowest bid in dollars does not necessarily represent the "lowest responsible bidder" and the council has some reasonable discretion in choosing among bidders. Courts have interpreted the term "responsible bidder" to include considerations of financial responsibility, integrity, skill, and the likelihood of performing faithful and satisfactory work. Promptness, for example, represents an element of responsibility. When bids on equipment items cannot provide precise specifications, the council may exercise reasonable discretion in determining the lowest bidder. In doing so, the council can consider the quality, suitability, and adaptability of the equipment sought.

RELEVANT LINKS:

[Otter Tail Power Co. v. Village of Wheaton](#), 289 Minn. 118, 49 N.W.2d 804 (1951).

[Diamond v. City of Mankato](#), 89 Minn. 48, 93 N.W. 911 (1903).

[Coller v. City of St. Paul](#), 223 Minn. 376, 26 N.W.2d 835 (1947).

[Coller v. City of St. Paul](#), 223 Minn. 376, 26 N.W.2d 835 (1947).
[Rochon Corp. v. City of St. Paul](#), 814 N.W.2d 365 (Minn. Ct. App. 2012).

[Duininck Bros., Inc. v. State](#), No. C3-97-972 (Minn. Ct. App. Nov. 25, 1997) (unpublished opinion).
[Lovering-Johnson, Inc. v. City of Prior Lake](#), 558 N.W.2d 499 (Minn. Ct. App. 1997).

[Sutton v. City of St. Paul](#), 234 Minn. 263, 48 N.W.2d 436 (1951).

[Minn. Stat. § 471.3457](#).

Value does not always depend on price alone. The council also may consider the quality, suitability, and adaptability of the items. Where plans and specifications demand consideration of several factors and no single bid represents the lowest in light of all these factors, the council may decide what weight to give to the various factors and, considering all of them, accept what it considers the lowest responsible bid.

8. Variances in bids

Principles of competitive bidding require that the successful bid conform to the specifications.

If the final contract contains provisions that benefit the successful bidder but were not in the specifications, the contract may be voidable. Similarly, an award of a contract may be invalid if the selected bid varies materially from the specifications. A material variance arises when the variance gives one bidder a substantial advantage or benefit over other bidders.

For example, a court has ruled that when a contract called for a company to install equipment according to its own specifications instead of those of the city, a material variance existed. Another court held that a modification to increase a bid after bids were opened represented a material change, even though the modification did not displace a lower bidder.

Neither a mistake in a price term nor an ambiguous contract-bid price can be waived as an irregularity. Once the designated official or agent opens the bid, a city has no authority to make any “material” change or modifications to the bid, even if the city bid instructions allow it to waive irregularities. If a problem or confusion arises, the city council can reject all bids and make a new request for bids.

Whether a variance gives a bidder substantial advantage or benefit does not represent the only test for determining material variances. Unless the bid responds to the specifications in all material respects, that bid does not qualify as a bid, but rather represents a new proposition the city should reject.

9. Veteran-owned small business contracts

Cities may implement programs to provide veteran-owned businesses with a bid preference when awarding contracts for the sale, purchase, or rental of supplies, materials, or equipment or the construction, alteration, repair, or maintenance of real or personal property or for services.

RELEVANT LINKS:

Minn. Stat. § 16C.28. Minn. Stat. § 412.311, subd. 2. Minn. Stat. § 429.041, subd. 2a. Minn. Stat. § 469.015, subd. 1a. Minn. Stat. § 469.068, subd. 1a. Minn. Stat. § 469.101, subd. 5a. Minn. Stat. § 471.345, subds. 3a, 4a, and 5.

Rochester City Lines, Co. v. City of Rochester, 868 N.W.2d 655 (Minn. 2015) (holding the “unreasonable, arbitrary, or capricious” standard of review applies to a city’s best value bidding process).

Minn. Stat. § 16C.28, subd. 1(c).

Minn. Stat. § 16C.28, subd. 1a (c).

Krohnberg v. Pass, 187 Minn. 73, 244 N.W. 329 (Minn. 1932).

D. Best value contracting

Best value contracting provides an alternative to the competitive bidding process for contracts for construction, building, alteration, improvement, or repair work. A city may award this type of contract to the vendor or contractor offering the best value through the request for proposals process set forth in state law. With best value, cities can consider performance factors, along with price, when awarding construction project contracts. Performance criteria may include (but are not limited to):

- Quality of performance on previous projects (this does not include the exercise or assertion of a person’s legal rights).
- Timeliness of performance on previous projects.
- Level of customer satisfaction on previous projects.
- Record of performing previous projects on budget and ability to minimize cost overruns.
- Ability to minimize change orders.
- Ability to prepare appropriate project plans.
- Technical capabilities.
- Qualifications of key personnel.
- Ability to assess and minimize risks.

A city’s request for proposal (RFP) must set forth the criteria used to evaluate best value contracting. The RFP also must state the relative weight assigned to price, as well as to other selection criteria. If an interview of the vendor or contractor’s personnel represents a factor in the selection criteria, the RFP must specify the relative weight of the interview and must apply it accordingly.

It appears that cities are limited to using best value contracting for either one project annually or 20 percent of their projects, whichever is greater, for the first three fiscal years in which best value contracting is used.

E. Exemptions

In the absence of a statutory or charter requirement, a city need not advertise for bids. Cities may choose to advertise for bids, however, even if the law does not require them to do so. Cities need not follow the competitive bidding process for the following types of contracts.

1. Professional services

Cities do not have to use the competitive bidding process when contracting for professional services, such as those of doctors, engineers, lawyers,

RELEVANT LINKS:

[A.G. Op. 707a-7 \(July 22, 1985\). A.G. Op. 707-A \(Feb. 8, 1990\).](#)

[Minn. Stat. § 471.6161.](#)

[Minn. Stat. § 471.345, subd. 16.](#)

[Minn. Stat. § 471.64.](#)

[A.G. Op. 707a-15 \(Sept. 14, 1987\).](#)

[Minn. Stat. § 513.05.](#)

[Minn. Stat. § 412.201.](#)

[Minn. Stat. § 471.3455.](#)

architects, and accountants as well as other services requiring technical, scientific, or professional training like refuse hauling and janitorial services.

2. Insurance contracts

Cities also need not follow the competitive bidding process for insurance contracts. Cities must, however, seek requests for proposals for group insurance for 25 or more employees.

3. Reverse auctions

Electronic reverse auctions differ from a traditional auction in that vendors bid against each other to offer the lowest selling price for a particular contract in an open and interactive electronic environment. Cities cannot use a reverse auction to contract for professional or technical services.

4. Purchases from other government agencies

A city does not need to comply with competitive bidding requirements when purchasing property or equipment from the federal government, the state, or any political subdivision of the state.

The council may, by resolution, authorize any of its officers or employees to enter a bid for the city at any sale of equipment, supplies, materials, or other property owned by the federal government, the state, or any political subdivision of the state. The city may authorize an officer or employee to make a down payment or a payment in full, if necessary, in connection with this bidding. This represents the only situation in which the council may delegate such authority.

5. Real estate

Cities also need not follow the competitive bidding process for the purchase, lease, or sale of real estate. However, a contract for the sale of land must be in writing, with the corporate seal affixed and executed by the mayor or clerk pursuant to authority from the council.

6. Public safety equipment

A city may acquire, by purchase or lease, used public safety equipment without competitive bids or proposals if the equipment is clearly and legitimately limited to a single source of supply and the contract price may be best established by direct negotiation.

RELEVANT LINKS:

LMC information memo,
[Competitive Bidding
Requirements in Cities.](#)

[Minn. Stat. § 12.37.](#)

Handbook, [Public Safety and
Emergency Management.](#)

[Minn. Stat. § 471.345.](#)

[Minn. Stat. § 12.03, subds. 2,
3.](#)

[Minn. Stat. § 12.03, subd. 2.](#)

The statute defines “public safety equipment” as vehicles and specialized equipment used by a fire department in firefighting, ambulance and emergency medical treatment services, rescue, and hazardous materials response.

7. Other exemptions

Several other types of contracts qualify for an exemption from competitive bidding, which the League’s memo on Competitive Bidding discusses in more detail.

VII. Emergency contracts

Many statutory exceptions from the normally required contracting procedures exist for emergency situations.

A. Cities and other political subdivisions

Under Minnesota’s Emergency Management Act, cities, counties, towns, and metropolitan airport commissions have authority to enter into contracts and perform other duties during emergencies without following many of the normally required procedures, including:

- Arranging for the performance of public work.
- Contracting.
- Incurring obligations.
- Employing temporary workers.
- Renting equipment.
- Purchasing supplies and materials.
- Complying with limitations on tax levies.
- Appropriating and expending public funds, including publication of ordinances and resolutions, advertisement for bids, provisions of civil service laws and rules, competitive bidding, and budget requirements (in other words, during an emergency, a city does not need to follow the procedures in the uniform municipal contracting law).

The Emergency Management Act defines an “emergency” as an unforeseen combination of circumstances that calls for immediate action to prevent a “disaster” from developing or occurring.

The statute defines “disaster” as a situation that creates an actual or imminent serious threat to the health and safety of persons, or a situation that has resulted or likely will result in catastrophic loss to property or the environment, and for which traditional sources of relief and assistance within the affected area are unable to repair or prevent the injury or loss.

RELEVANT LINKS:

[Minn. Stat. § 12.29.](#)

[Proclamation Declaring a Local Emergency](#), LMC model form.

[Extending the Period of a Local Emergency](#), LMC model resolution.
[Making a Local or Special Emergency Contract](#), LMC model resolution.

[Minn. Stat. § 365.37, subd. 4.](#)

[Minn. Stat. § 415.01.](#)

[Layne Minn. Co. v. Town of Stuntz](#), 257 N.W.2d 295 (Minn. 1977).

[Minn. Stat. § 365.37, subd. 4.](#)

[Declaring a Special Emergency](#), LMC model resolution.

[Making a Local or Special Emergency Contract](#), LMC model resolution.

B. Procedures for making an emergency contract under the Emergency Management Act

Making a contract under the Emergency Management Act consists of the following steps:

- The mayor issues a proclamation declaring an emergency. Only the mayor can declare a local emergency. The emergency declaration will not last longer than three days unless continued by the city council.
- The declaration of an emergency will invoke the city's disaster plan. The portions of the plan necessary for response and recovery must be used. The declaration of the emergency also may authorize aid and assistance under the disaster plan.
- The council passes a resolution to continue the emergency if it likely will last longer than three days.
- The council passes a resolution to make the emergency contract.

C. Towns (and possibly cities)

A town may enter into a contract without giving notice or using the competitive bidding process if a "special emergency" occurs. A "special emergency" represents a situation that requires immediate action to ensure the health, safety, or welfare of the town.

Although this exception would appear to apply only to towns, cities may exercise powers granted to towns in state law.

The Minnesota Supreme Court held that a town's use of this exception to have a well drilled to raise the level of a lake was not justified because a special emergency did not exist. The Supreme Court reasoned that the situation with the lake was no worse than it had been the previous two years and that the health, welfare, and safety of the citizens of the township did not require such immediate action which made it necessary to dispense with bids.

Under this authority, a city council should pass a resolution declaring a special emergency and describing the reasons necessitating immediate action for protection of the health, safety or welfare of its citizens. The resolution passed to make an emergency contract also should specifically refer to the special emergency.

RELEVANT LINKS:

[Minn. Stat. § 12.37.](#)

[Minn. Stat. § 442A.21.](#)

[Minn. Stat. § 458D.21, subd. 2.](#)

[Minn. Stat. § 645.08 \(1\).](#)
See The American Heritage Dictionary of the English Language, 4th Ed., 2006.

[Minn. Stat. § 469.015, subd. 2.](#)

[Minn. Stat. § 469.015, subd. 2.](#)

[Minn. Stat. § 469.068, subd. 1.](#)

Since the Emergency Management Act expressly applies to cities, it seems the preferred method for cities to use. In the alternative, if a city decides to use township authority, before doing so, it should first consult the city attorney.

D. Local sanitary districts

Unless otherwise provided in state law, as political subdivisions, sanitary district boards may exercise the powers provided to statutory cities, as necessary, to accomplish the district's purpose. That includes sanitary districts having the authority to execute emergency contracts under the Emergency Management Act.

The Western Lake Superior Sanitary District has specific statutory authority for emergency contracting. If that board determines, by resolution, that an emergency exists requiring the immediate purchase of materials or supplies or in making emergency repairs, it need not advertise for bids. The statute, in this instance, does not define the word "emergency."

As a result, a court likely would interpret the word emergency according to its common usage or dictionary definition. One dictionary, for example, defines an emergency as a serious situation that happens unexpectedly and demands immediate action.

E. Housing and Redevelopment Authorities (HRAs)

An HRA may make some emergency contracts without using the competitive bidding process if four-fifths of its members declare the existence of an emergency. This exception applies to:

- Contracts for the purchase of any equipment, material or supplies that cost more than \$175,000, but not more than \$262,500.
- Contracts for making emergency repairs.

The statute, in this instance, defines an emergency as "unforeseen circumstances or conditions that jeopardize human life or property."

F. Port Authorities

Port authorities also may execute certain contracts without using the competitive bidding process if two-thirds or five-sevenths of its members declare that an emergency exists. This applies to:

RELEVANT LINKS:

[Minn. Stat. § 469.068, subd. 1.](#)

[Minn. Stat. § 471.88, subd. 5.](#)

[Minn. Stat. § 471.88, subd. 1.](#)

[Minn. Stat. § 471.89, subd. 2.](#)

[Minn. Stat. § 471.89, subd. 3.](#)

[LMC information memo, Official Conflict of Interest.](#)

- Contracts for the purchase of equipment, materials, or supplies that exceed \$1,000, but do not exceed \$5,000.
- Contracts for emergency repairs.

An emergency, with respect to port authorities, also is defined as “unforeseen circumstances or conditions that jeopardize human life or property.”

G. Emergency contracts with a city official

Generally, a city cannot contract with one of its officials. One of the exceptions to this rule includes contracts not required to be let using the competitive bidding process. Because the competitive bid process does not apply in emergencies for certain contracts, this exception may allow a city to contract with one of its officials in an emergency.

The city must abide by the following procedure, whether an emergency or not, to use this exception:

- The interested officer should abstain from voting on the matter.
- The remaining council members must approve the contract by unanimous vote.
- Unless impracticable because of any emergency, the council must pass a resolution setting out the essential facts, such as the nature of the interested officer’s interest and the item or service to be provided, and stating that the contract price is as low, or lower, than elsewhere. In case of an emergency when the contract cannot be authorized in advance, payment of the claims shall be authorized by a similar resolution in which the facts of the emergency also are stated.

Before paying on these contracts, the interested officer must file an affidavit with the clerk that contains the following information.

- The name and office of the interested officer.
- An itemization of the commodity or services furnished.
- The contract price.
- The reasonable value.
- The officer’s interest in the contract.
- A statement indicating that to the best of the officer’s knowledge and belief the contract price is as low as, or lower than, the price that could be obtained from other sources.

When the council considers the claim, the interested officer should not vote on the matter. The remaining councilmembers must approve the claim by unanimous vote.

RELEVANT LINKS:

[Minn. Stat. § 326.03.](#)
Kariniemi v. City of Rockford, 882 N.W.2d 593 (Minn. 2016).

Compare *W. V. Nelson Const. Co. v. City of Lindstrom*, 565 N.W.2d 434 (Minn. Ct. App. 1997) with *Hubbard Broadcasting, Inc. v. Metropolitan Sports Facilities Com'n*, 381 N.W.2d 842 (Minn. 1986).

[Minn. Stat. § 326.03, subd. 1.](#)
[Minn. R. 1800.5200.](#)

Kariniemi v. City of Rockford, 882 N.W.2d 593 (Minn. 2016). [Minn. Stat. § 444.18, subd. 3.](#)

VIII. Purchasing consultant services

Cities often hire consultants such as attorneys, architects, engineers, accountants, or other persons with technical, scientific, or professional training. In certain cases, a city must hire a state licensed professional. Professional services generally do not have to be competitively bid; however, a city can choose to use competitive bidding, if the council decides to do so.

More commonly, cities will advertise a request for proposals (RFP) to find their consultants. An RFP broadly defines the scope of the contract and asks interested persons to submit proposals describing the services offered as well as the price.

A. Types of Consultants

1. Engineers and architects

Most city construction projects (buildings, streets, remodeling) require the use of a licensed architect or engineer. Only a few limited exceptions to this requirement exist. Failure to use a qualified person creates the possibility of future liability for the city.

A design-build contract represents a contract for both design services and building construction services jointly awarded to one firm. Minnesota's Court of Appeals, in a review of a design-build contract, held that the contract for design and build contracts should have complied with competitive bidding laws. However, an earlier Minnesota Supreme Court decision may, in some instances, suggest a different outcome since, in that case, the court found the public bidding statutes inapplicable to a mixed contract for a scoreboard (equipment) and advertising services associated with the scoreboard since the nature of the contract made it more than simply a contract for "materials, supplies and equipment." Cities should work with their city attorneys when considering mixed contracts.

A registered architect, engineer, or land surveyor must prepare plans, specifications, reports, plats, or other engineering or architectural documents for most public works projects.

Also, prior to a municipality awarding a contract for the improvement of a storm sewer system, "the council shall secure from the city engineer or some other competent person a report advising it" about matters such as feasibility and cost.

RELEVANT LINKS:

[Minn. Stat. § 326.02, subd. 5.](#)
[Minn. Stat. § 326.03, subd. 2.](#)
[Minn. R. 1800.5200.](#)

[Minn. R. 1800.5200, subd. 3.](#)

[Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design](#), 85 E. 7th Place, Suite 160, St. Paul, MN 55101; (651) 296-2388.

[Minn. Stat. § 326.03, subd. 3.](#)

[Minn. Stat. § 412.222.](#) [Minn. Stat. § 471.697, subd. 1\(c\).](#)
[Minn. Stat. § 412.02, subd. 3.](#) [Minn. Stat. § 412.591, subd. 3.](#) [Minn. Stat. § 326A.04.](#)

a. Structure-type exceptions

The statutes exempt several types of structures from needing a licensed architect or licensed engineer to prepare the plans for those structures. These types of exempted structures include standardized manufactured products, farm buildings, and temporary structures used exclusively for construction purposes that don't exceed two stories in height and are not used as living quarters.

b. Remodeling or renovation exception

A city does not need to hire an architect or engineer for building remodeling projects that do not change:

- The load on the electrical and mechanical systems or the live or dead weight on weight-bearing parts of the building.
- Access or exit patterns in violation of the building code.
- The building code occupancy classification of the building.

c. Preliminary plans exception

The city also does not have to hire a licensed architect or engineer to draw up preliminary plans intended only for soliciting bids for the project and not to be used as specifications for construction.

Since determining whether an exception exists, a city's local building official should act as the first contact. The state board that licenses and regulates architects and engineers also may serve as a good resource for insight or assistance.

2. Registered land surveyor

A registered land surveyor must certify all plats, maps, subdivisions, or surveys that the city must file with the county recorder.

3. Accountants

Individuals who audit, examine, and report on the books and records of a statutory city in accordance with statutory requirements (such as when the positions of clerk and treasurer are combined) must be public accountants or certified public accountants.

4. Other consultants

All cities, regardless of size, use consultants. Before hiring a consultant, the council should answer the following questions:

RELEVANT LINKS:

- Why do we need a consultant? Unless the council can draft a brief statement (100 words or less) describing what the consultant will accomplish, the council needs to discuss the issue further.
- Can members of the city workforce (officers or employees) capable of performing the job?
- Do other alternatives to hiring an outside consultant exist? Alternatives could include a citizen advisory task force; assistance from neighboring cities, towns, counties, regions, special purpose districts; or even tapping into the capabilities and interests of college faculty and students.
- Can the council justify the decision to hire a consultant to city residents?

B. Selecting a consultant

Many communities find the following suggested steps helpful when hiring a consultant:

- Outline briefly (100 words or less) the city's needs and what the consultant should accomplish.
- Prepare, obtain council approval of, and advertise an RFP. The proposals should help determine a potential consultant's interest and qualifications (for example, the city may require previous experience on similar projects). The proposal should contain an estimate of the maximum compensation and a breakdown on how the consultant arrived at the figure.
- Create a list of possible consultants and provide those identified consultants with a copy of the RFP. Inquire with other cities about consultants they have used and how well those consultants performed (often, the city staff person who worked with the consultant can give the best evaluation). Professional associations also often can provide lists.
- Hold an informational meeting on the proposed project and invite all proposed consultants. The meeting should only involve a discussion of the proposed project to give council members and staff an opportunity to observe the interested consultants. Consultants should submit their proposals after attending the meeting. The city council, along with the city staff involved in the project, should review the consultant's proposals and select three to interview.
- At the interview with the city council and its staff, each councilmember should receive a rating sheet, a detailed summary of each consultant's qualifications and an overview of how each consultant proposes to complete the project.

RELEVANT LINKS:

[LMCIT Contract Review Service.](#)

Krohnberg v. Pass, 187 Minn. 73, 244 N.W. 329 (1932). *Schwandt Sanitation v. City of Paynesville*, 423 N.W.2d 59 (Minn. Ct. App. 1988).
[A.G. Op. 707a-7 \(July 22, 1985\)](#). [A.G. Op. 707-A \(Feb. 8, 1990\)](#).

[LMCIT Contract Review Service.](#)

In selecting the consultants for interviews, the council may wish to consider the following questions:

- Does the consultant have experience with the specific type of project?
- What is the consultant's reputation? Contact references and other cities that have used the consultant. Pay attention to the financial responsibility of the consultant and the level of liability insurance coverage maintained.
- Does the consultant have adequate, experienced staff?
- Who on the consultant's staff will do the project and what are those individuals' qualifications?
- What is the time schedule for completing the work? Is it realistic?
- How far is the consultant's office from the project or problem?

After the interview, the council should select one firm, and city staff should negotiate a written contract with the consultant for council approval. The contract should address liability.

C. Bidding for consultant services

Again, state law does not require cities to competitively bid contracts for consultants, but cities may choose to do so. Cities should remember that a consultant's competence and qualifications generally carries more weight than the possibility of saving money, making competitive bidding not as ideal for these situations. If the city feels a consultant may overcharge, checking with previous clients should reveal that information and may take the place of the financial safeguards achieved with competitive bids.

D. Contracting with consultants

Some consultants attempt to insert clauses within their service contracts that severely limit their liability for errors.

Councils should take special precautions to have all contracts carefully reviewed before the parties sign. Contractual terms need to be reviewed, even if the consultant claims the terms and conditions represent "the standard agreement for all municipal clients." Executed contracts bind the parties, even if the person signing the contract did not read it or understand its contents.

Some consultants often include a contract term that states the city will reimburse the consultant for extra costs (even if those costs resulted from the consultant's negligence) or requires the city to report claims against the consultant within a very short time period. Dollar limitations on liability can prove problematic for cities, as can agreeing to limiting liability to the amount of the consultant's liability insurance.

RELEVANT LINKS:

[Minn. Stat. § 574.27.](#)

[Minn. Stat. § 429.041, subd. 1.](#)

[Minn. Stat. § 471.345, subd. 18.](#)

[Minn. Stat. § 574.26.](#)
[Minn. Stat. § 471.345, subd. 3.](#) *Goodin v. City of Prior Lake*, A14-1144 (Minn. Ct. App. March 9, 2015)(unpublished decision).
[Minn. Stat. § 574.29.](#)

[Minn. Stat. § 574.38.](#)

The damages or losses incurred either may far exceed these limitations, or multiple claims against the insurance may exceed the dollar limitations of the liability insurance.

Once uncovering these contractual liability limits, the city, or, preferably, the city's attorney, should negotiate with the consultant to modify or remove them from the contract.

IX. Construction contracts

Several unique requirements exist for public works contracts, whether for a new city hall, utility line extensions, street extensions or improvements, or any other improvements financed from grants-in-aid, the general fund, or special assessments.

These requirements include:

A. Bid bonds

Cities may require bidders to submit a bid bond with their bids. Generally, a bid bond ensures the city does not waste time with a frivolous bid. It guarantees the successful bidder will enter into a contract within the confines of the bid submitted by providing the required bonds and insurance. No general requirement for bid bonds exists in statute, however, projects financed under the special assessment statutes must submit a cash deposit, cashier's check, bid bond, or certified check for such percentage of the bid amount as specified by the council. Some home rule charters also may require the city to obtain bid bonds from bidders.

Cities may allow electronic submission of bid, performance, or payment bonds or other such security.

B. Performance bond

Before any contract for public work over \$175,000 becomes binding, the contractor must provide a payment and performance bond protecting the city, and all people furnishing work, equipment, materials or supplies. If a city does not secure a bond, a third-party supplier that the general contractor fails to pay can hold the city liable for payment.

Cities may choose to waive the bonds for projects of \$175,000 or less. For projects less than \$50,000, the city may choose to require a letter of credit in lieu of a performance bond.

RELEVANT LINKS:

[Minn. Stat. § 337.02.](#)
LMC information memo,
Making and Managing City Contracts, Section IV-A,
Defense and indemnification.

[Minn. Stat. § 337.05, subd. 1.](#)
Engineering & Const. v. LH Bolduc Co., 825 N.W.2d 695 (Minn. 2013).

[Minn. Stat. § 181.59.](#)
Borom v. City of St. Paul, 289 Minn. 371, 184 N.W.2d 595 (1971).

[Minn. Stat. § 176.182.](#)

[Minn. Stat. § 290.92.](#)
[Minn. Stat. § 270C.66.](#)
Fact Sheet 13 Construction Contracts with State or Local Government Agencies, Minnesota Department of Revenue, December 2017. Form IC-134.

C. Indemnification clauses

Indemnification agreements generally provide that the contractor promises to defend, indemnify, and hold the city harmless from any and all damages arising out of the contract. State law limits the enforceability of indemnity clauses in building and construction contracts to only defending, indemnifying, and holding the city harmless for damages arising out of the *contractor's own wrongful conduct* (or from conduct of contractor's agents, employees, or delegates). However, indemnifying a party to a construction contract for damages resulting from something other than the promisor's own wrongful conduct generally is not enforceable. An exception to this exists, however, allowing enforcement of indemnity clauses when the contractor fails to comply with a contract provision to furnish a bond or insurance policy that would protect the city from any liability arising out of the project.

D. Non-discrimination clauses

All public contracts must contain a statement where the contractor promises not to discriminate against prospective employees because of race, creed, or color.

E. Workers' compensation

A city may not enter into a contract for any public works project until it has received, from all contracting parties, proof of compliance with the workers' compensation insurance requirements. The contractor must show they either are self-insured, carry workers' compensation insurance for their employees, or are exempt from having to provide such insurance.

The city should maintain proof of the contractor's compliance with the workers' compensation laws, but the city does not need to file or report this information to any state agency.

F. Income tax withholding

Cities cannot make final payment to a contractor until the contractor has shown proof of compliance with state income tax-withholding requirements. The Department of Revenue requires all contractors and subcontractors to file a Form IC-134 to show compliance with the withholding requirements. Cities should obtain a copy of this document from the contractor before making final payment on a contract.

RELEVANT LINKS:

[Minn. Stat. § 16C.05, subd. 5.](#)

[Minn. Stat. § 471.425, subd. 4a.](#)

[Minn. Stat. § 15.411.](#)

LMC information memo,
*Competitive Bidding
Requirements in Cities.*

[Minn. Stat. § 15.71, subd. 5.](#)

[Minn. Stat. § 15.72.](#)

G. Audits

A contract must include an audit clause that provides that the books, records, documents, and accounting procedures and practices of the contractor (with regard to the contract) are subject to examination by the city and the state auditor, as appropriate, for a minimum of six years.

H. Prompt payment of subcontractors

A city contract must require that the prime contractor pay subcontractors within 10 days of the prime contractor's receipt of payment from the city. The contract also must require the payment of 1.5 percent interest per month (or any part of a month) on a late payment. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due.

I. No damages-for-delay clauses

A clause in a public works construction contract that waives, releases, or extinguishes the right of a contractor to seek costs or damages for delays, disruptions, or acceleration in performance is unenforceable if the public entity or a person acting on the entity's behalf caused the delay, disruption or acceleration.

However, clauses that require notice of a delay, disruption, or acceleration by the party affected; provide for reasonable liquidated damages; or provide for arbitration (or other procedure for settling contract disputes) are enforceable.

Other potential considerations often arise, depending upon the specific circumstances and the city's needs. All cities should have their city attorney involved in the actual drafting and review of their contracts.

X. Retainage

The retainage laws apply to any public contract for any city purchase, lease, or sale of personal property, public improvements or services other than agreements exclusively for personal services. Retainage is the difference between what a contractor earned or is owed on a public contract and what the public entity has paid.

A. Progress payments

Unless the terms of the contract provide otherwise, a city must make monthly progress payments on a public contract for a public improvement.

RELEVANT LINKS:

[Minn. Stat. § 15.72.](#)

Payments must be based on estimates of work completed as approved by the council.

A progress payment acts as an acceptance or approval of any work, or a waiver of any defects. A city may reserve an amount as retainage from any progress payment on a public contract for a public improvement. The amount may not exceed 5 percent of the payment. The city may reduce the amount of the retainage and may eliminate retainage on any monthly contract payment if the work progresses satisfactorily.

B. Optional method

[Minn. Stat. § 15.73.](#)

At the option of the contractor, the city must pay retainage to the contractor. The contractor may deposit bonds or securities with the city or in any bank or trust company that may hold the security in lieu of a cash retainage for the benefit of the city.

In that event, the city must reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the contractor. Interest on the bonds or securities must be payable to the contractor as it accrues.

[Minn. Stat. § 15.73, subd. 3.](#)

The commissioner of Management and Budget approves the types of bonds and securities a contractor may provide in lieu of retainage.

[Minnesota Management and Budget, 400 Centennial Building, 658 Cedar Street, St. Paul, MN 55155; \(651\) 201-8000.](#)

These commonly approved types of bonds and securities include, but are not limited to: bills, certificates, notes, or bonds of the United States; other obligations of the United States or its agencies; obligations of any corporation the federal government owns; or indebtedness of the Federal National Mortgage Association.

[Minn. Stat. § 15.73, subd. 4.](#)

If the city incurs additional costs because of this option, it may recover the costs from the contractor by reducing the final payment due under the contract. As work on the contract progresses, the city must, upon demand, inform the contractor of all accrued costs.

XI. Limited sales tax exemption for construction projects

[Minn. Stat. § 297A.70, subd 2.](#)

The Minnesota Legislature has granted a limited sales tax exemption to cities for certain construction projects. Materials for a city's construction projects are generally tax-exempt if the city purchases them directly. However, if the city contracts out the labor and purchase of materials separately, the tax exemption is not automatically available.

RELEVANT LINKS:

[Minnesota Department of Revenue Notice #17-10](#), December 4, 2017.

For information on competitive bidding generally see LMC information memo, [Competitive Bidding Requirements in Cities](#).

[Minnesota Department of Revenue Notice #17-10](#), December 4, 2017.

[Minnesota Department of Revenue Factsheet #111 – Schools: Sales and Purchases](#).

[Minnesota Department of Revenue Factsheet #128 – Contractors](#).

[Minnesota Department of Revenue Factsheet #142 – Sales to Governments](#).

LMC Model [Purchasing Agent Agreement](#).

The sales tax exemption is only available if a city or its contractor purchases construction materials to be used in constructing buildings or facilities used principally by the city.

The tax exemption does not apply to sales of materials if purchased by a contractor or subcontractor for building, construction, or reconstruction if part of a lump-sum contract, or similar type of contract, with a guaranteed maximum price covering both labor and materials. Therefore, a combined labor and materials guaranteed maximum contract (or similar type of contract) will not benefit from the sales tax exemption.

The alternative to lump-sum contracts is to solicit bids on two separate contracts—one for materials and one for labor—and to designate a contractor as the city’s purchasing agent. If done properly, the city will not have to pay sales or use tax on the materials for the contracted project.

A. Soliciting bids on two contracts

When soliciting two separate contracts to obtain the sales tax exemption, a city must:

- Initially advertise for separate bids for materials and labor.
- Reserve the right to accept only one bid without accepting both bids from any one contractor.
- Award separate contracts for materials and labor.

The Department of Revenue extends this separation of labor and materials requirement to contracts with subcontractors as well.

B. Purchasing agent agreements

To receive the tax exemption, a city must also formally authorize the contractor providing the materials as its purchasing agent. Minnesota schools and towns and their contractors benefited from the sales tax exemption before Minnesota cities. The Department of Revenue has published fact sheets for those entities that can be used to guide cities when designating a purchasing agent.

Using a proper form for designating a purchasing agent agreement is important because using an improper form could deprive a city of its intended sales tax exemption. The purchasing agent agreements have many requirements, which are described below.

1. Agreements for contractors

The purchasing agent agreement between the city and the city’s materials contractor must specify that:

RELEVANT LINKS:

[Minn. R. 8130.1200, subp. 3 D.](#)

[Minnesota Department of Revenue Notice #17-10, December 4, 2017.](#)

[Minn. R. 8130.1200, subp. 3 D.](#)

[Minnesota Department of Revenue, Certificate of Exemption Form ST3.](#)

[Minnesota Department of Revenue, Certificate of Exemption Form ST3.](#)

[Minn. Stat. §§ 471.87-.89.](#)

[LMC information memo, Official Conflict of Interest.](#)

- The city has appointed a purchasing agent.
- When the purchasing agent delivers the materials to the city, the city becomes the owner of the materials. The city takes on the risk of loss with respect to such materials.
- The city, and not the purchasing agent, shall have responsibility for all defective materials and supplies, including those incorporated into realty purchased in such manner.

State administrative rule also requires the designated purchasing agent to “furnish adequate notification” to all vendors and suppliers of the agency relationship with the city and to make it clear to the vendors and suppliers that the city is the one responsible for paying and not the contractor-agent. This must be included in the purchase order between the purchasing agent and the retail vendor.

This is re-emphasized when the contractor checks the box on a completed Certificate of Exemption Form ST3, indicating it has been appointed as a purchasing agent. The contractor-agent should provide the completed form, along with the purchase order, to the seller before the sales tax-exempt transaction is completed.

2. Agreements for subcontractors

A subcontractor can also make purchases tax-free as the city’s purchasing agent if the subcontractor has also provided separate bids on materials and labor, and at the time of sale, the subcontractor:

- Has a copy of the completed Certificate of Exemption Form ST3 showing the city is exempt from sales and use tax.
- Has a document appointing the subcontractor as purchasing agent for the city. This is usually provided by the primary purchasing agent whom the city has authorized to appoint subagents.
- Secures separate contracts for materials and labor (avoiding the lump-sum contract or similar guaranteed maximum contract for both materials and labor), or only obtains a materials contract.

XII. Conflict of interest in contracts

City officials—elected or appointed—generally may not have a personal financial interest, directly or indirectly, in any contract the council makes. This prohibition applies whether or not the interested official votes on or otherwise attempts to influence the council in its decision-making process or any related matter. Again, some limited exceptions exist, but a city should seek the advice of the city attorney before entering into any contract where a councilmember or other city official will have a personal financial interest.

RELEVANT LINKS:

[Minn. Stat. § 471.87.](#)
[Minn. Stat. § 609.43.](#)
[A.G. Op. 90a-1 \(Apr. 22, 1971\).](#)
[Bjelland v. City of Mankato, 127 Minn. 397, 149 N.W. 647 \(1910\).](#)

[Minn. Stat. § 471.64.](#)
[A.G. Op. 707a \(Mar. 5, 1986\).](#)

[Minn. Stat. § 471.64.](#)

[Minn. Stat. § 161.38.](#)
[Minn. Stat. § 162.17.](#)

[40 U.S.C. §§ 3141-3148.](#)
[Minn. Stat. §§ 177.41-44.](#)
[A.G. Op. \(Jan. 14, 1988\).](#)
[A.G. Op. \(July 15, 1988\).](#)

[Minn. Stat. § 471.59.](#)
[Handbook, Intergovernmental Cooperation.](#)
[LMC information memo, Intergovernmental Cooperative Agreements.](#)

A public officer who violates the conflict of interest law is guilty of a gross misdemeanor and can incur a fine up to \$3,000 and imprisonment for up to one year. In addition, the other members of the council who knowingly authorized the unlawful contract also may incur criminal penalties. Contracts that violate these statutes generally are void.

XIII. Contracts with other governmental agencies

A city does not need to follow competitive bidding laws when acquiring property or equipment from the federal government, the state, or any political subdivision of the state.

The council may, by resolution, authorize any of its officers or employees to enter a bid for the city at any sale of equipment, supplies, materials, or other property owned by the federal government, the state, or any political subdivision of the state. The city may authorize an officer or employee to make a down payment or a payment in full, if necessary, in connection with the bidding. This is the only situation in which the council may delegate such authority.

A. Road construction contracts

Cities may negotiate contracts with the commissioner of the Department of Transportation and with their county boards for the construction and maintenance of state-aid streets located within the city. Under such contracts, either governmental unit may do the work subject to reimbursement from the other. The commission must maintain information on expenditures by local road authorities from local funding sources for trunk highway projects.

Before entering into any formal agreements, cities should consider the possible effects of federal (Davis Bacon Act) and state (“Little Davis Bacon Act”) laws that require the payment of prevailing wage rates when projects are financed in whole or in part by the state or federal government.

B. Contracts for other public services

Under the Joint Powers Act, cities may contract with other units of government for a variety of public services. Some of these services include police protection, purchasing, building inspection, planning assistance, recreation, and fire protection.

RELEVANT LINKS:

XIV. How this chapter applies to home rule charter cities

Except as otherwise indicated by law or in the applicable charter, everything in this chapter generally applies to home rule charter cities.