

**CHAPTER 13**  
**MODEL PURCHASING POLICY FOR CITIES**  
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References:

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(<http://www.sao.state.ut.us>; UCA – ~~63-56~~ **63G-6**, Utah Procurement Code; 11-39, Building Improvements & Public Works Projects, and 72-6-108 & **109**, Class B & C Roads Improvement Projects Contracts)

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Utah Code Section 10-6-122 requires:

All purchases or encumbrances thereof by a city shall be made or incurred according to the purchasing procedures established by each city by ordinance or resolution and only on an order or approval of the person duly authorized to act as a purchasing agent for the city. (Emphasis added.)

The 1980 Utah State Legislature modified the “Utah Procurement Code” and exempted cities from the provisions of the act. However, each city must by ordinance or resolution, establish purchasing procedures that are not inconsistent with the appropriate section of the Utah Procurement Code. A model purchasing policy is provided. The city may use this for a guide or starting point in developing its own purchasing policy.

Additional information regarding the State Procurement Code, purchasing policies, and available State contracts is available on the State Division of Purchasing website at [www.purchasing.utah.gov](http://www.purchasing.utah.gov). This website may be a beneficial resource to cities either in updating current purchasing procedures or for cities currently developing or planning to develop purchasing procedures to be formally adopted.

Cities are encouraged to take advantage of the purchasing power of the State by purchasing goods or services under Utah State purchasing contracts. In addition to reduced prices, cities can save time by not having to price shop for items covered by State contracts. Additional information concerning this program can also be obtained by going to the State website [www.purchasing.utah.gov](http://www.purchasing.utah.gov) and clicking on “State Contracts” or through the State Purchasing Division.

Cities are also encouraged to be aware of the availability of Surplus Property that may be purchased through the State Agency for Surplus Property, 447 West 13800 South, Draper, Utah, 84020, (801) 619-7200.

“Appropriate Certification” of Expenditures

In accordance with Utah Code 10-6-139, the city auditor or the city recorder, as appropriate shall pre-audit all claims and demands against the city before they are allowed, and shall prepare the necessary checks in payment. The checks shall include the “appropriate certification.” This certification can take many forms, however, the basic information that it provides should include the following, as applicable and appropriate:

- a. That the claim has been pre-audited and documented.
- b. That the claim has been authorized and approved by the mayor in the council-mayor optional form of government, or the governing body or its delegate in other cities;
- c. That the claim has been approved by the financial office.
- d. That the claim is within the lawful limit of the city, and
- e. That the claim does not overspend the appropriate departmental budget.

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MODEL PURCHASING POLICY FOR CITIES  
(compiled by Utah State Auditor's Office)

**1. ARTICLE 1 - GENERAL PROVISIONS**

A. The underlying purposes of this policy are:

- (1) To ensure fair and equitable treatment of all persons who wish to, or do conduct business with \_\_\_\_\_ City.
- (2) To provide for the greatest possible economy in City procurement activities.
- (3) To foster effective broad-based competition within the free enterprise system to ensure that the City will receive the best possible service or product at the lowest possible price.

B. Compliance - Exemptions from this policy.

- (1) This policy shall not prevent the City from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.
- (2) When procurement involves the expenditure of federal assistance funds, the City shall comply with applicable federal law and regulations.

C. Definitions

- (1) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (2) "Change order" means a written order signed by the purchasing agent, directing a contractor to suspend work or make changes, which the appropriate clauses of the contract authorize the purchasing agent to order without the consent of the contractor or any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- (3) "Contract" means any City agreement for the procurement or disposal of supplies, services, or construction.
- (4) "Invitation for bids" means all documents, whether attached or incorporated by reference used for soliciting bids.
- (5) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

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- (6) "Procurement" means buying, purchasing, renting, leasing, leasing with option to purchase, or otherwise acquiring any supplies, services, or construction.
- (7) "Purchasing agent" means any person duly authorized by the governing body of the City to enter into and administer contracts and make written determinations with respect thereto.
- (8) "Purchase description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to or made a part of the solicitation.
- (9) "Request for proposals" means all documents, whether attached or incorporated by reference, used for soliciting proposals.

**2. ARTICLE 2 - OFFICE OF THE PURCHASING AGENT**

The governing body of the City shall appoint a Purchasing Agent. The Purchasing Agent shall be responsible to make procurement, solicit bids and proposals, enter into and administer contracts, and make written determinations for the City.

**3. ARTICLE 3 - SOURCE SELECTION AND CONTRACT FORMATION – GENERAL PROVISIONS**

A. Purchases not requiring sealed bids:

- (1) Purchases costing less than \$\_\_\_\_\_ in total, shall not require bids of any type. (Purchases shall not be artificially divided so as to constitute a small purchase under this section)
- (2) Purchases costing more than \$\_\_\_\_\_ but less than \$\_\_\_\_\_ in total, shall require (2 to 3) telephone bids.
- (3) Purchases made through the cooperative purchasing contracts administered by the State Division of Purchasing.
- (4) Purchases made from a single-source provider.
- (5) Purchases required during an emergency, i.e., an eminent threat to the public's health, welfare, or safety. However, as much competition as practical should be obtained; and, such purchases should be limited to amounts necessary to the resolution of the emergency.

B. Purchases requiring sealed bids.

- (1) Contracts shall be awarded by competitive sealed bidding except as otherwise provided by this policy.
- (2) An invitation for bids shall be issued when a contract is to be awarded by competitive sealed bidding. The invitation shall include a purchase

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description and all contractual terms and conditions applicable to the procurement. Public notice of the invitation for bids shall be given at least \_\_\_\_\_ days prior to the date set forth therein for the opening of bids. The notice may include publication in a newspaper of general circulation.

- (3) Any procurement in excess of \$ \_\_\_\_ shall require a legal notice in a local newspaper of general circulation.
- (4) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and any other relevant information, together with the name of each bidder, shall be recorded. The record of each bid shall be open to public inspection.
- (5) Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the invitation for bids.
- (6) Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competitor shall be permitted. All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the purchasing agent.
- (7) The contract shall be awarded with reasonable promptness, by written notice, to the lowest bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

C. **Public Improvement Contracts – UCA 72-6**

Bid limit for public improvements for the year 2003, \$125,000; and for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year. (UCA 72-6-109)

All projects in excess of the bid limit shall be performed under contract to be let to the lowest responsible bidder. If the estimated cost of the improvement exceeds the bid limit for labor, equipment, and materials, the project may not be divided to permit the construction in parts, unless each part is done by contract. (UCA 72-6-108)

D. **Building Improvements and Public Works Projects – UCA 11-39**

- (1) Bid limit for a building improvement for the year 2003, \$40,000, and for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for

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the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year. Bid limit for a public works project for the year 2003, \$125,000, and for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year. *(UCA 11-39-101)*

- (2) Building improvements means the construction or repair of a public building or structure. *(UCA 11-39-101)*
- (3) Requirements for undertaking a building improvement or public works project – Request for bids – Authority to reject bids: If the estimated cost of the building improvement or public works project exceeds the bid limit, the local entity shall, if it determines to proceed with the building improvement or public works project. Request bids for completion of the building improvement or public works project by publishing notice at least twice in a newspaper published or of general circulation in the local entity at least five days before opening the bids; or if there is no newspaper published or of general circulation in the local entity, posting notice at least five days before opening the bids in at least five public places in the local entity and leaving the notice posted for at least three days. *(UCA 11-39-103)*

E. Use of competitive sealed proposals in lieu of bids:

When the purchasing agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract may be entered into by competitive sealed proposals. Competitive sealed proposals are most appropriately used for professional service-type contracts.

- (1) Proposals shall be solicited through a request for proposals. Public notice of the request for proposals shall be given at least \_\_\_\_\_ days prior to the advertised date of the opening of the proposals.
- (2) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and shall be open for public inspection after the contract is awarded.
- (3) The request for proposals shall state the relative importance of price and other evaluating factors.
- (4) Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

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(5) Award shall be made to the responsible offeror whose proposal is determined, in writing, to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

F. Architect-Engineer services are qualification-based procurement. Requests for such services should be publicly announced. Contracts should be negotiated by the City based on demonstrated competence and qualification at fair and reasonable prices. See Section 63G-6-701 through 705 of the Utah Code. Architect-Engineer services shall be procured as provided in this part except as authorized by Sections 63G-6-409 through 411. This part does not affect the authority of, and does not apply to procedures undertaken by, a public procurement unit to obtain the services of architects or engineers in the capacity of employees of such unit.

G. Cancellation and rejection of bids.

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposal may be rejected, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the City. The reasons shall be made part of the contract file.

H. Determination of non-responsibility of bidder or offeror

Determination of non-responsibility of a bidder or offeror shall be made in writing. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to the bidder or offeror. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the purchasing division without prior written consent by the bidder or offeror.

I. Cost-plus-a-percentage-of-cost contracts prohibited.

Subject to the limitations of this section, any type of contract which will promote the best interests of the City may be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract. (UCA 63G-6-416)

J. Required contract clauses:

(1) The unilateral right of the City to order, in writing, changes in the work within the scope of the contract and changes in the time of performance of the contract that do not alter the scope of the contract work.

- (2) Variations occurring between estimated quantities of work in a contract and actual quantities.
- (3) Suspension of work ordered by the City.
- (4) Site conditions differing from those indicated in the construction **contract**, or ordinarily encountered, except that differing site conditions **clauses required** by the rules and regulations need not be included in a construction **contract** when the **contract** is negotiated, when the contractor provides the site or design, or when the parties have otherwise agreed with respect to the risk of differing site conditions.**4. ARTICLE 4 - SPECIFICATIONS**

All specifications shall seek to promote overall economy and best use for the purpose intended and encourage competition in satisfying the City's needs, and shall not be unduly restrictive. Where practical and reasonable, and within the scope of this article, Utah products shall be given preference.

## **5. ARTICLE 5 – APPEALS**

- A. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may appeal to the purchasing agent. An appeal shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts.
- B. The purchasing agent shall promptly issue a written decision regarding any appeal, if it is not settled by mutual agreement. The decision shall state the reasons for the action taken and inform the protester, contractor, or prospective contractor of the right to appeal to the governing board.
- C. The City’s governing board shall be the final appeal on the City level.
- D. All further appeals shall be handled as provided in Section 63G-6-811 through 64 820 of the Utah Code.

## **6. ARTICLE 6 – ETHICS IN PUBLIC CONTRACTING**

- A. No person involved in making procurement decisions may have personal investments in any business entity which will create a substantial conflict between their private interests and their public duties.
- B. Any person involved in making procurement decisions is guilty of a felony if the person asks, receives, or offers to receive any emolument, gratuity, contribution, loan, or reward, or any promise thereof, either for the person’s own use or the use or benefit of any other person or organization from any person or organization interested in selling to the City.