

## **Purchasing Goods and Services, and Contracts for Public Improvements**

Cities of the first, second, third, fourth, and fifth class must, adopt an orderly system of purchasing goods and services.<sup>1</sup> A municipality may, but does not have to follow any or all of the provisions of the Utah Procurement Code, Section Title 63G chapter 6, or the rules and regulations promulgated under it.

All municipalities must, before making any new building improvement or public works project to be paid for out of the funds of the city or town, bid the project out according to the procedure required by state law.<sup>2</sup> Plans and specifications for the project and an estimate of the cost of the improvement are made. If the improvement is a building improvement and if the estimated cost of the improvement is less than \$40,000, (in 2003 dollars) the city or town may make the improvement without calling for bids. If the improvement is a public works project and if the estimated costs of the project is less than \$125,000 (in 2003 dollars), the city or town may do the project without calling for bids. If the estimated cost of the proposed building improvement exceeds the \$40,000 or the public works project exceeds \$125,000, the city or town shall, if it determines to do the work, only do so by contract let to the lowest responsible bidder after the notice has been published at least twice in a newspaper of general circulation printed and published in that city or town at least five days prior to the opening of bids. The term “lowest responsible bidder” means any prime contractor who has bid in compliance with the invitation to bid and within the requirements of the plans and specifications for a construction project, who is the low bidder, who has furnished a bid bond or equivalent in money as a condition to the award of a prime contract, and who furnishes a payment and performance bond as required by law. In cities or towns where no newspaper is printed or published, this notice must be posted at least five days prior to the opening of bids in at least five public places in the city or town. This notice must remain posted for at least three days.

When the cost of a contemplated improvement exceeds the bid requirement sum, you cannot divide the job up into smaller jobs to avoid having to bid the job.

The governing body has the right to reject any or all bids presented. The notices calling for bids should always have this statement in it. If all bids are rejected and the governing body decides to make the improvement, it shall readvertise for bids. If after advertising twice, no bid is received that is satisfactory, the governing body may proceed under its own direction to make the improvement.

If any payment on a contract with a private person, firm, or corporation is retained or withheld, it must be placed in an interest-bearing account with the interest to accrue for the benefit of the contractor and subcontractors to be paid after the project is completed

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<sup>1</sup> The Uniform Fiscal Procedures Act for cities requires this of cities but not towns. It is recommended that towns also adopt some simple purchasing rules.

<sup>2</sup> Utah Code 11-39-101 et seq.

and accepted by the city or town. It is the responsibility of the contractor to make sure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

No retention can exceed 5 percent of the payment due, and the total retention cannot exceed 5 percent of the construction price.<sup>3</sup>

Maintenance and construction of streets and roads must still comply with the Utah Transportation Code, which requires bidding of certain projects paid for from Class C road funds.<sup>4</sup> There are different bidding requirements for these types of projects.

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<sup>3</sup> Utah Code 13-8-5.

<sup>4</sup> Utah Code 72-6-108. These road funds are the cities and towns portion of the gasoline tax. They are distributed to the cities and towns based on a formula that includes road miles and population.