

# 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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## Chapter 22

# Expenditures, Purchasing, and Contracts

*Learn about state laws that regulate disbursement (the payment of money from a fund) 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 laws that prohibit city officials from 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 can only spend money for a lawful purpose. If a city official spends public funds in an unlawful way, that official may be legally responsible for the expenditure and could be required to reimburse the city. City officials should consult their city attorney whenever they doubt whether an expenditure is lawful.

### A. Legal expenditures

To be lawful, an expenditure must:

- Have a public purpose.
- Have express or implied authority from state statute or the city's charter.
- Follow procedure by having the council properly approve the expenditure.

#### 1. Public purpose

The Minnesota Constitution requires that taxes promote a public purpose. However, the meaning of “public purpose” constantly evolves through court decisions. The Minnesota Supreme Court has generally concluded that a “public purpose” exists when an activity:

- Benefits the entire community.
- Is directly related to government activity.
- Does not mainly benefit a private interest.

The League's information memo, *Public Purpose Expenditures*, provides a more detailed discussion of lawful expenditures, including a list of public purpose expenditures that are lawful.

## 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. See [Office of the State Auditor, 2023 Minnesota Legal Compliance Audit Guide for Cities](#).

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

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

## 2. Authority

Determining whether a statute or a city charter gives express authority for an expenditure is relatively easy. Express authority is clearly stated in writing. In contrast, determining whether a statute or charter gives implied authority for an expenditure is more difficult. Implied authority is not clearly stated in writing but is assumed based on other written authority. Cities should consult with their city attorney if they are unsure whether there is authority for a specific expenditure.

## 3. Proper procedure

If an expenditure has express or implied authority and promotes 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 (pay out money from a fund) city funds.

## B. Invalid expenditures

Cities may face the following issues if they approve an invalid expenditure:

- Taxpayer lawsuits. The city is responsible for the cost of defending itself in a taxpayer lawsuit. In some situations, individual council members may be personally responsible as well.
- Non-compliance finding by the state auditor (failure to follow the standards and regulations set by the auditing body during an audit). This could result in future special audits, a negative effect on a city's bond rating, 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 cause the Legislature to adopt more specific restrictions on expenditures that would impact all local governments.

## C. Limitation on city expenditures

State law authorizes cities to spend funds if there is express or implied authority, and the expenditure promotes a public purpose. In general, there are no requirements that voters authorize the purpose or amount of expenditures. Although examples of both can be found in statute, they only apply to specific projects. Statutes that put limits on tax levies, for example, do not usually put a limit on the amount a city can spend, but limit the amount of money the city can collect through a tax levy. Debt limits limit the amount of money a city can borrow.

## RELEVANT LINKS:

Minn. Stat. § 412.271.  
See Handbook, *The Statutory City*.

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

See Office of the State Auditor, Claims and Disbursements, 2023 Minnesota Legal Compliance Audit Guide for Cities.

Minn. Stat. § 412.271, subd. 3.

Minn. Stat. § 412.271, subd. 3.

Minn. Stat. § 412.271, subd. 1.

Minn. Stat. § 412.691.

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. 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 depending on the type of claim and the authorization required to issue (send out) the order (an approved claim; a numbered document in the form of a check signed by the mayor and the city clerk). For example, some types of claims may require prior council approval, and, in some situations, the council may delegate authority (transfer its decision-making power and responsibility to another individual) 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 the claim. The council must audit the claim or bill.
- Issuance of the order. City officials sign and issue the check or order.

After the council approves the claim, approves only a part of the claim, or does not approve the claim at all, the clerk must endorse (sign) the claim as either "disallowed" (if that is the case), or "allowed in the sum of \$.....," depending on the council's action. If the claim is approved only in part, the council must specifically point out which items have been rejected.

The mayor or the clerk can submit approved claims, called orders, to the treasurer. Once signed by the treasurer, orders become checks on the city depository (the financial institution that receives municipal deposits). This process does not apply to payment of judgments (payment of money owed to the winning party in a court case), salaries, and wages previously set by the council or by statute; principal (the original amount borrowed) and interest (the fee charged for borrowing) on obligations (money owed to others), rent and other fixed charges (repeat expenses the city must pay, the exact amount of which has been previously determined by contract authorized by the council); and for other situations provided by state law.

As mentioned above, Standard Plan and Plan A statutory cities follow this basic process. For Plan B statutory cities, the city manager acts as the chief purchasing agent and has the authority to make purchases and negotiate contracts for amounts up to \$20,000, unless the council sets a lower limit.

## RELEVANT LINKS:

[Minn. Stat. § 471.38.](#)  
[Minn. Stat. § 471.391, subd. 2.](#)  
See Handbook, *The Home Rule Charter City*. LMC information memo, *Procedures for Paying City Claims*.  
[Minn. Stat. § 410.33.](#)

[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).

Home rule charter cities may have different procedures for paying claims outlined in their charters. In addition to these procedures, Minnesota statutes include specific requirements for second-, third-, and fourth-class home rule charter cities. These requirements are similar to the requirements for statutory cities. Additionally, a charter city can choose to follow the procedures and exercise the authority found in the statutory city code if its charter does not address a specific situation.

For example, if a city's charter does not discuss delegating authority to pay certain claims to an administrative official, the city could still delegation authority follow the procedure for statutory cities. The city could also amend its charter or local ordinance to avoid confusion in the future.

## A. Filing a declaration of claim

Although there are some exceptions, a person claiming payment (or their representative) must give the city an itemized list in writing or in an electronic transaction record. The act of filing the claim for payment means that the person claiming payment is declaring that the claim is fair and correct and that no part of the claim has been paid. The council can, in its discretion (freedom to decide what should be done in a particular situation), allow the clerk to prepare a claim before the person claiming payment files the claim. To do so, the order-check must include a declaration statement above the endorsement (signature line) 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 claiming payment, the statement operates as a sufficient declaration of the claim.

Some exceptions to the general requirement that claims be in writing include:

- Salaries and wages fixed by law or by the council.
- Lawsuit settlements (an agreement between parties to end a legal dispute and resolve a case without going to court) and judgments (the court's final decision in a legal proceeding) against the city.
- Principal (the original amount borrowed) and interest (the fee charged for borrowing) payments on obligations (money owed to others) of the city.
- Rent and other fixed charges (repeat expenses the city must pay, the exact amount of which has been previously determined by contract authorized by the council).

## RELEVANT LINKS:

[Minn. Stat. § 412.271, subd. 2.](#)

[Minn. Stat. § 412.271, subd. 2.](#)

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

[Minn. Stat. § 412.271, subd. 3.](#)

[Minn. Stat. § 412.201.](#)

- Claims (a demand for money, property, or enforcement of a right provided by law) arising from the city’s failure to perform a statutory duty (a legal requirement the city must follow).

## B. Payroll

For city employees paid on an hourly or daily basis, the clerk must keep a payroll that includes the name of each employee and the number of hours or days worked. The timekeeper, supervisor, or other city officer or employee must then sign a declaration that states:

“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 must also sign a declaration that states:

“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 can be a part of the payroll.

Alternatively, a city can choose to use an electronic time recording system if the city council adopts policies to make sure that their timekeeping and payroll procedures are accurate and reliable.

## C. Audits and allowances

In most cases, a city official or employee cannot issue an order to disburse city funds until the council has audited and approved 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.

## RELEVANT LINKS:

[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.  
[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.](#)

[Minnesota State Auditor Audit Guide for Cities.](#)

In the case of a claim the council approved in part, the clerk must list the items rejected by the council. An order is then drawn by the mayor and clerk upon the treasurer.

While each member of the council does not need to sign the claims to show approval, the state auditor has recommended that all council members review each claim for accuracy.

It also is important that the meeting minutes list the claims that were approved and how each council member voted so that there is no confusion about specific claims.

## D. Issuance of order

After completing the previous steps, the clerk can issue an order for payment to the treasurer. The treasurer cannot disburse funds without the order. If the treasurer receives an order and the city does not have enough funds to pay it, the treasurer must mark the order “not paid for want of funds” and pay it in the order it was received, with interest from the date it was presented to the treasurer at the rate of 5%. The council, before issuing the order, can set a lower interest rate. The council cannot set this lower rate below 1.5%.

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

The order should be made so that, when the treasurer signs the order, it becomes a check on the city depository.

### 1. Form of claim payment

Two laws control how cities pay claims. One law states that a city cannot disburse city funds except through an order made by the mayor and clerk and presented to the treasurer, except where cash makes more sense. An “order” is a numbered document in the form of a check signed by the mayor and the city clerk. When an order is presented to and signed by the treasurer, it becomes an order check. An order check is the written and authorizes the bank to disburse city funds to the individual or group and in the amount stated on the order check.

Cities can also make 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 and auditors to resolve any conflict that arises between these two laws. It appears that the authorization of electronic transfers would prevail regarding forms of payment, with the older statute setting forth the specific process for payment of claims.

## RELEVANT LINKS:

[Minn. Stat. § 471.38.](#)

[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 \(Mar. 24, 1953\).](#)

For example, cities 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.
- 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 signature of the payee (person to be paid): “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 can approve the claim without first receiving a declaration from the claimant.

## 3. Facsimile signatures

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

A public officer does not have personal legal responsibility 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 (the person making the deposit) 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 can also choose to pay for a contract for goods or services before receiving the good or services.

## RELEVANT LINKS:

[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.](#)

[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.](#)

## 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 law provides a standard payment period, calculated from the date of receipt.

The “date of receipt” is 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:

- 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 a 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% 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 quality 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 can 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 losing 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.

## RELEVANT LINKS:

[Minn. Stat. § 412.271, subd. 6.](#)

[Minn. Stat. § 412.151, subd. 1.](#)

[Minn. Stat. § 471.69.](#)

[Minn. Stat. § 471.69.](#)

[Minn. Stat. § 471.415, subd. 1.](#)

[Minn. Stat. § 471.415, subd. 2.](#)

## 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.

## I. Limits on issuing checks

Statutory cities cannot contract for any debt, issue any warrant, or order in any calendar year in anticipation of the collection of taxes levied that year that are more than the average amount actually collected on the tax levy for the previous three years, plus 10%. This does not apply to cities where the mineral net tax capacity exceeds the net tax capacity of real property by 25% 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 give this information to the clerk upon request.

## J. Duplicate checks

The city can 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).

## RELEVANT LINKS:

[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.](#)

[Minn. Stat. § 465.13.](#)

[Minn. Stat. § 465.14.](#)

[Handbook, \*Debt and Borrowing\*.](#)

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

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)

A city council can establish one or more petty cash (or “imprest”) funds for the payment, in cash, of any proper claim against the city which is unreasonable to pay in any other manner, except that claims for salary or personal expenses of an officer or employee cannot be paid from such funds.

Each fund must have a council appointed custodian responsible for its safekeeping and disbursement.

When the custodian has collected a number of claims, they should present an itemized “master” claim for council approval at the next council meeting following the disbursement(s).

Once the council has approved the master claim, the treasurer can issue a check to refill 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 cannot use money necessary to meet current city expenses for payment of judgments. This exception prevents an excessive reduction 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 do not need to be filed with the clerk, and the council does not have to audit and allow a judgment. If the judgment is too large for immediate payment, the city can 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.

## RELEVANT LINKS:

See Handbook, [The Home Rule Charter City](#).

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](#).

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 balance quantity, quality, and price.

#### 1. Central purchasing

Purchasing can be complicated. In larger cities, a single, separate department, usually led by a trained purchasing agent, oversees purchasing.

While smaller cities likely do not have one person who is responsible for purchasing, an administrative officer (the city's clerk, deputy clerk, administrator, administrative assistant, or manager) is often responsible for making most purchases and taking advantage of savings through bulk purchasing (buying a large quantity of something at one time), systematic procedures, and effective expenditure controls.

#### 2. Authority for purchasing

Only the city council can approve purchases, so a purchasing agent should get approval before taking any final action.

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

Statutory city councils can 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.

## RELEVANT LINKS:

[Minn. Stat. § 471.382.](#)

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

[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 subd. 3.](#)

- 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 can allow city officers or employees who are already allowed to make a purchase for the city to use a credit card. Credit card purchases must follow all laws, rules, and city policies. If a city employee or officer makes or tells someone else to make a credit card purchase that is not approved by the council, the officer or employee is legally responsible for the amount of the purchase.

Persons claiming payment must give city an itemized list of each purchase in writing or in an electronic transaction record. Cities should work with their city attorneys to determine if a credit card statement meets these requirements.

Alternatively, city staff can keep invoices and receipts for all items charged to a credit card.

Credit card use must also follow laws that control city borrowing. Cities cannot carry debt on their credit cards. Cities that use credit cards must have a policy of paying the entire credit card balance each month.

The Office of the State Auditor recommends that cities have a credit card use policy to avoid misuse or misappropriation of funds (unauthorized, improper, or unlawful use of money). The policy should:

- Identify the officers and employees that can make purchases for the city and use the card.
- Identify the types of purchases that can 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 transfers

Electronic funds transfer is defined as “value exchange by mechanical means without the use of checks, drafts, or similar negotiable instruments.” Generally, this means that money is moved electronically through a device. A local government can make an electronic funds transfer for:

## RELEVANT LINKS:

[Minn. Stat. § 471.38 subd. 3.](#)

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

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

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

- A claim for a payment from an imprest payroll bank account (a cash account used to pay for small, routine expenses, including payroll) or investment of excess money.
- A payment of tax or aid anticipation certificates (debt certificates used to make an advance payment on state and federal aid and taxes before their due date).
- A payment of contributions to pension or retirement fund.
- Vendor payments.
- 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.

Some cities cooperatively purchase items like fire hoses, street signs, paint, coal, oil, soap, office supplies, fire trucks, and police cars.

Once cities involved in a joint powers agreement agree on the terms of the agreement, one city can advertise for bids for all of the cities who are part of 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 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, cities 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 use the state's cooperative purchasing venture it can contract for the purchase of supplies, materials, or equipment without regard to the competitive bidding requirements if the purchase is made 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.

## RELEVANT LINKS:

[Minn. Stat. § 465.73.](#)

[Minn. Stat. § 471.35.](#)

[Minn. Stat. § 471.36.](#)

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

## 6. USDA assistance

Cities can borrow up to \$450,000 for constructing, repairing, or acquiring city halls, fire halls, fire or rescue equipment, or libraries or child care facilities (if authorized by law) from either:

- Funds granted to a rural electric cooperative.
- Directly from an agency of the United States Department of Agriculture.

Cities can do so by a note (a written promise to repay a loan) secured by a mortgage (the property is used as collateral for the loan, which means that if the borrower does not pay back the loan, the lender can legally claim the property and may foreclose on it) or other security agreement (a contract that gives a lender a security interest in a borrower's property or assets that are used as collateral for a loan) on the property that is purchased with the borrowed funds.

A city may pledge its full faith and credit (guarantee to fulfill its payment obligations) and assign or pledge the revenues, if any, from the facilities or equipment to secure the loan (use revenue from the facilities or equipment to repay 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, must also be broad enough to cover all competitive supplies and equipment.

The department requiring an 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.

## RELEVANT LINKS:

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*.  
*2023 Minn. Laws ch. 62, § 14 to be codified at Minn. Stat. § 471.345 subd.3b.*

Minn. Stat. §§ 412.721-.741.

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

## 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 are a “contract” as subject to the uniform municipal contracting law and provides cities the option to use the “best value alternative” or “construction manager at risk 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 (a document used to request goods or services). 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 can modify the city’s budget to make funds available but cannot increase the total amount already levied. Only optional Plan B cities must follow this step, but other cities can choose to follow it as well.
- After completing the first two steps, the purchasing agent can 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 must get bids for the proposed purchase, the requisition should go to the council for further action.
- After the city has received the item and confirmed it meets all specifications, the city can process and pay the bill.

### 2. Price agreements

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

## RELEVANT LINKS:

*Declaring Surplus  
Equipment and Authorizing  
its Sale*, LMC model  
resolution.

A price agreement is a contract between the city and a merchant. Under the agreement, the merchant agrees to supply the city with the specified items 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 it is not obligated to purchase any fixed quantity. Price agreements expedite delivery, reduce paperwork, and generally result in lower prices.

The city can then make purchases as it needs. Depending on the item and the frequency of purchases, the council may or may not require separate requisition forms (documents used to request items). 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 a city pays for purchased items, someone should confirm that the items follow the city's specifications. Normally, the purchasing agent 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 need. 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.

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

## 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.

## 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 is not involved in the process.

Competitive bidding is usually 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 does not need to follow 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 can 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

State law gives cities limited authority to donate “surplus equipment” to a “nonprofit organization.” Surplus equipment includes equipment used by a local government public works department, and 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).

## RELEVANT LINKS:

[Minn. Stat. § 471.3459.](#)

[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.](#)

[Minn. Stat. § 471.345, subd. 2.](#)

[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).

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 caution 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 a city council can make contracts on the city’s behalf. Individual councilmembers, council committees, and city administrative officers do not have that authority. However, the manager in Plan B statutory cities can make contracts, on the city’s 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, it can enter into contracts on any terms it finds 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 city contracts.

The mayor and the clerk (or the manager in Plan B cities) must sign and affix the city seal to any 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 cannot, 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.
- 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 city council fails to advertise for bids when the law requires competitive bidding, the contract is void.

## RELEVANT LINKS:

*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*.

Courts have also ordered cities to pay for any benefits already 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. Unjust enrichment occurs when a city receives a benefit at the expense of the party who performed the work and expected compensation.

Unsuccessful bidders can sue to recover the costs of preparing their bids if the competitive bidding process is not followed properly but cannot recover damages or attorney's fees.

## A. General requirements

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

If the contract cost is expected to exceed \$25,000 but not to exceed \$175,000, the city can choose to either 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 can choose to make the contract by either obtaining bids or quotes, or simply buying or selling the item on the open market. If the council chooses to obtain quotes, it must, if possible, 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 exceeds \$175,000. Special assessments are a charge imposed on properties for a particular improvement that benefits the owners of those selected properties. 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).

See also, A.G. Op. 707a  
(July 27, 1993)(In some  
instances, city may require  
project labor agreements).

*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).

## C. Competitive bidding procedures

Once the engineer or purchasing agent has prepared the necessary specifications, the council should seek competitive bids if the law requires it or if the council believes it is desirable.

If the council chooses to seek bids, even when not required by statute, the city must still follow all competitive bidding requirements. A bid is a final offer that a city can accept without further negotiations. However, for a bid to be valid, it must substantially comply with the requirements under the 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 in a way that excludes all but one type of supply or equipment.

The proposals and specifications must allow for free and full competition and cannot 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 eligible for the contract award.

Again, specifications must be sufficiently definite and precise to have 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.

## RELEVANT LINKS:

[Minn. Stat. § 412.311.](#)

[Minn. Stat. § 410.33.](#)

[Minn. Stat. § 429.041, subd. 1.](#)

[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.](#)

## 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 can include other publishing requirements for competitive bids. (If the charter does not discuss publishing requirements for competitive bids, a home rule charter city may follow the procedure for statutory cities).

The advertisement for bids must state that no bids will be considered unless they are sealed and filed with the clerk and unless a cash deposit, cashier's check, bid bond, or certified check payable to the clerk is included for a percentage of the amount of the bid, as set by the city council.

If the city plans 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 can be for any length of time that the city council wants (however, statutory cities must still meet the 10-day minimum advertising requirement), but it must be published 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), the advertisement for bids must be published in the city's official newspaper for at least three weeks before bid submissions are due, and either at least once in a newspaper published in a first-class city or in a recognized industry trade journal.

The advertisement must state what work will be done and when the bids will open, which must be at least three weeks after it is first published.

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

Under certain circumstances, cities can give notice for bid advertisements in two different ways, either in addition to, or as an alternative to, the statutory requirements for newspaper publication.

The two alternative ways of giving notice include publishing on a city's web site or in a recognized trade journal.

## RELEVANT LINKS:

[Minn. Stat. § 331A.03.](#)

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

- The alternative notice that is given must be in substantially the same format and for the same period of time as required for newspaper publication.
- The city must, at the same time, publish, either as part of its regular meeting minutes or in a separate notice, a description of all the solicitations being noticed through alternative means.
- For the first six months after a city designates an alternative means of giving notice, it must continue to publish bid advertisements in the official newspaper in addition to the alternative method. The newspaper publication must state where to find the designated alternative method.

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

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

### c. Contents of bid advertisement

The published notice should include at least the following information:

- A description of the desired project or purchase.
- 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 that the city can delay the award until certain events occur.
- A statement that the city has the right to reject all bids submitted.

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

[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.](#)

## RELEVANT LINKS:

[Minn. Stat. § 16C.285, subd. 4.](#)

[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.](#)

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 (following) a construction contract.”

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

This signed statement under oath sufficiently verifies that a contractor is a responsible contractor (a contractor that meets certain minimum standards and has the capability to perform the specifications of the contract). As a result, cities cannot be legally responsible for awarding a contract in reasonable reliance on that statement. A verification of compliance does not need to be notarized. An electronic verification of compliance made and submitted as part of an electronic bid is an acceptable verification of compliance if it includes an electronic signature that complies with state law.

A city cannot be legally responsible for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria, or the contractor falsely stated that it met 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 can allow bidders to submit their bids electronically. If cities choose to allow 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 can 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 city council will consider them.

## RELEVANT LINKS:

*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).

Minn. Stat. § 429.041, subd. 2.

Minn. Stat. § 429.041, subd. 1.

Minn. Stat. § 429.041, subd. 2.

*Elecs. 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.

## 4. Investigation

After opening all bids, the city 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 can perform this investigation and assist the council.

## 5. Disposition of the bids

After the investigation, the council can 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.

If, for a local improvement project under the special assessment laws, either no bid is submitted or the only bids submitted exceed the engineer's estimate, the council can 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 method authorized by the council.

In the case of projects paid for with special assessments, a city can delay accepting a bid until after the assessment hearing to make sure there are enough funds to pay for the project. The council must let the contract or order the work to be 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 a statement of that right in the advertisement. This is also the case 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 could possibly force the city to award the contract to the lowest 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.

## RELEVANT LINKS:

Part VI-D, *Best value contracting*.

*Kelling v. Edwards*, 116 Minn. 484, 134 N.W. 221 (1912).

*Elecs. 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).

*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).

Most home rule charters contain similar requirements that apply to 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 city council has some reasonable discretion in choosing among bidders.

Courts have interpreted the term “responsible bidder” to include financial responsibility, integrity, skill, and the likelihood of performing faithful and satisfactory work. Timeliness, for example, represents an element of responsibility. When bids on equipment items cannot provide precise specifications, the council can exercise reasonable discretion to determine the lowest bidder. In doing so, the council can consider the quality, suitability, and adaptability of the equipment sought.

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 require consideration of several factors, and no single bid represents the lowest after considering all of these factors, the council can decide what weight to give to the various factors and, considering all of them, accept what it considers to be the lowest responsible bid.

## 8. Variances in bids

Competitive bidding requires that the successful bid follow the advertised 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 occurs when the variance gives one bidder a substantial advantage or benefit over other bidders.

For example, a court ruled that when a contract called for a company to install equipment following its own specifications instead of the city’s specifications, a material variance existed. Another court held that a modification to increase a bid after bids were opened was 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, meaning that a minor defect or variation in a bid has been waived or corrected, without affecting other bidders. Once the designated official or agent opens the bid, a city cannot make any “material” change or changes 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.

## RELEVANT LINKS:

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

Minn. Stat. § 471.3457.

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).

Whether a variance gives a bidder substantial advantage or benefit is not 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 proposal the city should reject.

## 9. Veteran-owned small business contracts

Cities can 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.

## 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 can 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 is a factor in the selection criteria, the RFP must specify the relative weight of the interview and must apply it accordingly.

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

## RELEVANT LINKS:

[Minn. Stat. § 471.345, subd.3b.](#)

[Minn. Stat. § 471.463.](#)  
[Minn. Stat. §. 471.463, subd. 3.](#)

[Minn. Stat. § 471.463, subd. 4.](#)

[Minn. Stat. § 471.463, subd. 3.](#)

## E. Construction manager at risk

Another alternative to the competitive bidding process allows cities to award contracts for construction, building, alteration, maintenance, or repair work to a construction manager at risk.

A construction manager at risk (CMAR) is a person selected by a city to act as a construction manager to manage the construction process. A construction manager at risk contract is a contract for construction of a project between a construction manager at risk and a municipality that includes a guaranteed maximum price, construction schedule, and workmanship of the construction performed.

The CMAR is responsible for the price, schedule, and workmanship of the construction, among other responsibilities assigned.

A city that wishes to use a CMAR for a project must first create a selection committee that includes at least three people, with at least one member of the committee having construction industry expertise. The city will establish procedures for determining content of the request for qualifications (RFQ) for each contract, which should at minimum contain:

- Procedures for submitting qualifications, the criteria for evaluating the qualifications, and the relative weight for each criteria.
- Procedures for making awards in an open, competitive, and objective manner, applying a scoring or trade-off evaluation method.
- Proposed terms and conditions for the contract.
- Desired qualifications of the CMAR.
- Schedule for the start and completion of the project.
- Applicable budget limits for the project.
- Requirements for insurance and performance and payment bonds as required by law.
- Important information the city possesses, including surveys, soil reports, drawings or models of existing structures, environmental studies, photographs, or references to public records.

The RFQ criteria cannot impose unnecessary or unreasonable requirements, including the collective bargaining status of the CMAR. The RFQ criteria may require the proposer to divulge the cost for their services.

The city must receive at least two proposals from construction managers. If the city does not receive at least two proposals they may solicit new proposals, revise the RFQ and solicit new proposals with the new criteria, select another procurement method, or reject all proposals.

## RELEVANT LINKS:

[Minn. Stat. § 471.463, subd. 4\(b\).](#)

[Minn. Stat. § 471.463, subd. 4\(d\)-\(f\).](#) [Minn. Stat. § 471.463, subd. 5.](#)

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

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

The selection committee must evaluate the experience of each proposer based on their capacity of key personnel, technical competence, ability to perform, past performance, safety record, compliance with state and federal laws, availability and familiarity with the project location, and other facts submitted in the RFQ. After reviewing the qualifications of each proposal, the committee shall make a short list of two to five proposers, from whom they will issue a request for proposals (RFP) to include cost, ranking method, and other information as desired.

The city then interview the short-listed proposers and rank them using a scoring or trade-off evaluation method. The ranking method must be described in the RFP. The city will negotiate cost and terms of the contract with the highest ranked proposer. If an agreement cannot be reached, the city can negotiate with the next highest proposer and so on until an agreement is reached, or the city rejects all proposals. The selected CMAR and city shall enter into a guaranteed maximum price contract for the project.

The CMAR must competitively bid trade contract work for the project from a list of qualified firms that have been identified. The CMAR and the city will jointly determine the composition of qualified firms, which must be based on an open, competitive, and objective prequalification process and may include the firms' experience, capacity, competence, ability to perform, past performance, safety record and compliance with laws, and other considerations defined by the CMAR and the city. The CMAR may also, with approval by the city, submit bids for trade contract work if they do not participate in the city's review of the bids or selection decision.

## F. Exemptions

In the absence of a statutory or charter requirement, a city does not need to advertise for bids. Cities can choose to advertise for bids, however, even if the law does not require them to do so. If a city advertises for bids, even if not required to do so, it must follow all the requirements of the sealed bid law. Cities do not need to 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, architects, and accountants as well as other services requiring technical, scientific, or professional training like refuse hauling and janitorial services.

## RELEVANT LINKS:

[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.](#)

[Minn. Stat. § 471.3455.](#)

## 2. Insurance contracts

Cities also do not need to 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 traditional auctions. In electronic reverse auctions, 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 follow competitive bidding requirements when purchasing property or equipment from the federal government, the state, or any political subdivision of the state.

The city council can, by resolution, allow 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 can allow an officer or employee to make a down payment or a payment in full, if necessary, in connection with this bidding. This is the only situation in which the council may delegate such authority.

## 5. Real estate

Cities also do not need to 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 following the authority given by the council.

## 6. Public safety equipment

A city can get, 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. “Public safety equipment” is defined as vehicles and specialized equipment used by a fire department in firefighting, ambulance and emergency medical treatment services, rescue, and hazardous materials response.

## 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.](#)

## 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

There are many exceptions to the required contracting procedures for emergency situations.

### A. Cities and other political subdivisions

Under Minnesota’s Emergency Management Act, cities, counties, towns, and metropolitan airport commissions can 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.
- Setting aside and spending public funds, including publishing ordinances and resolutions, advertising for bids, requirements 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 includes 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" is a situation that requires immediate action to ensure the health, safety, or welfare of the town.

Although this exception seems 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 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 requiring immediate action for the protection of the health, safety, or welfare of its citizens.

The resolution passed to make an emergency contract should also 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 applies to cities, it seems to be the preferred method for cities to use. Alternatively, if a city decides to use township authority, it should first consult the city attorney before using the authority.

### D. Local sanitary districts

Unless stated otherwise in state law, because they are political subdivisions, sanitary district boards can exercise the powers provided to statutory cities, as necessary, to accomplish the districts' purpose. That includes sanitary districts that have 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 that requires the immediate purchase of materials or supplies or making of emergency repairs, it does not need to advertise for bids. The statute, in this instance, does not define the word "emergency."

As a result, a court would likely 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 can 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 law, in this instance, defines an emergency as "unforeseen circumstances or conditions that jeopardize human life or property."

### F. Port Authorities

Port authorities may also 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, concerning port authorities, is also defined as “unforeseen circumstances or conditions that jeopardize human life or property.”

## G. Contracts with city officials

Generally, a city cannot contract with one of its officials. One of the exceptions to this rule includes contracts that are not required to follow the competitive bidding process. Because the competitive bidding 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 follow the following procedures, whether there is 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 it is not possible because of an emergency, the council must pass a resolution that includes 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 must 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 (a sworn statement put in writing) with the clerk that includes the following information.

- The name and office of the interested officer.
- An list of the items or services furnished.
- The contract price.
- The reasonable value.
- The officer’s interest in the contract.
- A statement 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.](#)  
[Karniemi 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.](#)

[Karniemi 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 use competitive bidding if the city 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. Failure to use a qualified person creates the possibility of future legal responsibility for the city.

A design-build contract is 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 a design-build contract should have complied with competitive bidding laws. However, an earlier Minnesota Supreme Court suggests a different outcome may occur in some instances. In that case, the court found that the competitive bidding law did not apply to a contract for a scoreboard (equipment) and advertising services associated with the scoreboard because 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, before a city is awarded a contract for the improvement of a storm sewer system, the city council must get a report from the city engineer or some other experienced and capable person that advises the city council about 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, subp. 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

State law exempts 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 only for construction purposes that do not 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 to be used only for soliciting bids for the project and not as specifications for construction.

In determining whether there is an exception, a city's local building official should act as the first contact. The state board that licenses and regulates architects and engineers may also serve as a good resource for understanding 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, following the requirements set out in state law (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 city 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.
- Are 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 consultants:

- Outline briefly (100 words or less) the city's needs and what the consultant should accomplish.
- Prepare, obtain council approval of, and advertise a Request for Proposal ("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 of how the consultant arrived at the figure.
- Create a list of possible consultants and provide those identified consultants with a copy of the RFP. Ask 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 proposals from the consultants and select some 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.

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

## 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.](#)

- 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 city council should select one firm, and city staff should negotiate a written contract with the consultant for approval by the city council. The contract should address legal responsibility.

## C. Bidding for consultant services

State law does not require cities to competitively bid contracts for consultants, but cities can choose to do so. Cities should remember that a consultant's competence and qualifications are generally more important than the possibility of saving money, which makes competitive bidding for consultants difficult. If a city feels a consultant may overcharge, checking with previous clients should reveal that information.

## D. Contracting with consultants

Some consultants attempt to insert clauses in their service contracts that severely limit their legal responsibility for errors.

City councils should make sure that all contracts are carefully reviewed before signing. Contractual terms need to be reviewed, even if the consultant claims the terms and conditions are standard. Contracts, once entered into, legally 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 legal responsibility can be problematic for cities, as can agreeing to limiting legal responsibility to the amount of the consultant's liability insurance.

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

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

There are several unique requirements 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 can require bidders to submit a bid bond or other security (bid bonds and bid security guarantee that the successful bidder will accept the contract if offered) with their bids. Although a bid bond may not be required, they can be used to ensure that a city does not waste time with a bid that is not serious. It guarantees the successful bidder will enter into a contract and follow the terms of the submitted bid by providing the required bonds and insurance. Projects financed with special assessment are required to submit a cash deposit, cashier's check, bid bond, or certified check for a percentage of the bid amount set by the council. Some home rule charters may also require the city to obtain bid bonds from bidders.

Cities can allow electronic submission of bid, performance, or payment bonds or other securities.

### B. Performance bond

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

Cities can choose to waive the bonds for projects of \$175,000 or less. For projects less than \$50,000, the city can choose to require a letter of credit (a bank-issued document that guarantees payment) instead of a performance bond.

## RELEVANT LINKS:

[Minn. Stat. § 337.02.](#)

[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, January 2022.  
Form IC-134.](#)

## C. Indemnification clauses

Indemnification language generally requires a contractor to defend, indemnify (compensate), and hold a city harmless (promise not to hold someone responsible) from any and all damages arising out of the performance of a 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 the contractor's agents, employees, or delegates (representatives)). Indemnifying a party to a construction contract for damages resulting from something other than the contractor's own wrongful conduct generally is not enforceable. An exception to this, however, allows enforcement of indemnity clauses when the contractor does not follow a contract term to provide 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 include a statement that the contractor promises not to discriminate against potential employees because of race, creed (faith), or color.

## E. Workers' compensation

A city cannot 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 that they either are self-insured, carry workers' compensation insurance for their employees, or are exempt from having to provide 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 get 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.](#)

## G. Audits

A city contract must include an audit clause providing that the books, records, documents, and accounting procedures and practices of the contractor (concerning 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 (the main contractor responsible for managing and completing a project) 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% 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 must 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.

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 on 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 a contract for any city purchase, lease, or sale of personal property, public improvements, or services other than agreements only 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.

## RELEVANT LINKS:

[Minn. Stat. § 15.72.](#)

[Minn. Stat. § 15.72.](#)

[Minn. Stat. § 541.051, subd. 1\(a\).](#)

[Minn. Stat. § 15.72, subd. 2 \(f\).](#)

[Minn. Stat. § 15.72, subd. 2 \(c\).](#)

[Minn. Stat. § 15.72, subd. 2 \(e\).](#)

[Minn. Stat. § 270C.66.](#)

[Minn. Stat. § 15.72, subd. 2 \(c\).](#)

[Minn. Stat. § 15.72, subd. 2 \(b\).](#)

[Minn. Stat. § 15.72, subd. 2 \(g\).](#)

## A. Progress payments

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

Payments must be based on estimates of work completed as approved by the city council. A progress payment does not act as an acceptance or approval of any work, or a waiver of any defects. A city can reserve an amount as retainage from any progress payment on a public contract for a public improvement.

The amount cannot be more than 5% of the payment. With some exceptions, cities are required to release all retainage no later than 60 days after substantial completion of construction project.

“Substantial completion” is determined by the date when construction is sufficiently completed so that the city can occupy or use the improvement for the intended purpose. For street projects, substantial completion means the date when construction-related traffic device and ongoing inspections are no longer required.

The general contractor must pay retainage to its subcontractors within 10 days after receiving retainage payment unless there is a dispute about the work. The contractor must pay retainage to any subcontractor whose work is not involved in the dispute and must provide a written statement detailing the amount and reason for the withholding to the affected subcontractor.

After substantial completion, a city can still withhold 250% of the cost to correct or complete work known at the time of substantial completion and the greater of \$500 or 1% of the value of the contract for “final paperwork.” Final paperwork is defined as documents required to fulfill contractual obligations including, but not limited to, operation manuals, payroll documents for projects subject to prevailing wage requirements, and the withholding exemption certificate required by statute.

If any payment is withheld for these reasons, a written statement must be promptly provided to the contractor, including the amount and basis of withholding. Withheld funds must be paid within 60 days after completion of the work or submission of final paperwork.

If a city reduces the amount of retainage, the contractor is required to reduce retainage at the same rate for subcontractors.

Cities cannot withhold retainage for warranty work. Paying retainage does not waive any rights a city may have for warranty claims.

## RELEVANT LINKS:

[Minn. Stat. § 15.72, subd. 2 \(h\).](#)

[Minn. Stat. § 15.71, subd. 1a.](#)  
[Minn. Stat. § 15.72, subd. 3.](#)

The portion of a construction project funded with federal or state aid is only required to be paid when the federal or state aid has been received, the work is complete, and an invoice has been submitted.

An indemnification agreement is an agreement to indemnify (compensate), defend, or hold harmless (promise not to hold someone responsible) against legal responsibility for damages arising out of bodily injury or physical damage to items or real estate. Generally, an indemnification agreement in a contract for a public improvement cannot be enforced unless:

- The underlying injury or damage is due to the negligence, wrongful act or omission, or breach of contractual duty of the promisor (the party making a promise) or their independent contractors, agents, employees, or delegates (the people who are given a responsibility and then able to perform a task); or
- An owner, responsible party, or governmental entity agrees to indemnify a contractor directly or through another contractor concerning legal responsibility under environmental laws.

Generally, a provision in a public building or construction contract that requires a party provide insurance coverage to one or more parties for the negligent or intentional acts or omissions of any party is against public policy and is void and unenforceable. This does not affect the validity of provisions that require a party to give or have:

- Workers' compensation insurance.
- Construction performance or payment bonds.
- Builder's risk policies.
- Owner or contractor-controlled insurance programs or policies.
- Project-specific insurance for claims arising out of the promisor's negligent acts or omissions or the negligent acts or omissions of the promisor's independent contractors, agents, employees, or delegates.

Provisions that require the promisor to give or have insurance coverage for the promisee's (the person receiving a promise) vicarious liability (holding a person or entity legally responsible for the actions of another person or entity based on the relationship between them), or legal responsibility imposed by warranty, resulting from the acts or omissions of the promisor are also valid.

## B. Optional method

At the option of the contractor, a city must pay retainage to the contractor.

## RELEVANT LINKS:

[Minn. Stat. § 15.73.](#)

[Minn. Stat. § 15.73, subd. 3.](#)

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

[Minn. Stat. § 15.73, subd. 4.](#)

[Minn. Stat. § 297A.70, subd 2.](#)

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

The contractor can deposit bonds or securities with the city or in any bank or trust company that can hold the security instead 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.

The commissioner of the Department of Management and Budget approves the types of bonds and securities a contractor can provide instead of retainage.

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 government.
- Obligations of any corporation the United States government owns.
- Indebtedness of the Federal National Mortgage Association.

If the city has additional costs because of this option, it can 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**

The Minnesota Legislature gave a limited sales tax exemption to cities for specific 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.

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 purchased by a contractor or subcontractor for building, construction, or reconstruction if they are 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.

## RELEVANT LINKS:

[Minn. Laws 2024, ch. 121, art. 2, sec. 36, amending Minn. Stat. 297A.70, subd. 2\(b\)\(5\).](#)

[Minn. Stat. § 297B.01, subd. 11.](#)

[Minn. Stat. § 297A.61, subd. 3. Minn. Stat. § 297A.67, subd. 2. Minn. Stat. § 295.81, subd. 1.](#)

[Minn. Stat. § 295.81, subd. 1.](#)

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 Information on Purchasing Agent Agreements.](#)

The tax exemption also does not apply to:

- Construction materials purchased by tax exempt entities or their contractors to be used in constructing buildings or facilities which will not be used principally by the tax exempt entities.
- Leasing motor vehicles, except for leases entered into by the United States government.
- Lodging, prepared food, candy, soft drinks, alcoholic beverages, and taxable cannabis products, except for lodging, prepared food, candy, soft drinks, alcoholic beverages, and taxable cannabis products purchased directly by the United States government.
- Goods or services purchased by local government as inputs to a liquor store, taxable cannabis product retailer, gas or electric utility, solid waste hauling service, solid waste recycling service, landfill, golf course, marina, campground, cafe, or laundromat.

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:

- At first, advertise for separate bids for materials and labor.
- Reserve the right (inform that the city has the right) to accept only one bid without accepting both bids from a single contractor.
- Award separate contracts for materials and labor.

The requirement to separate labor and materials also applies to contracts with subcontractors.

## 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 guidance for schools and towns that can be used to guide cities when designating a purchasing agent.

## RELEVANT LINKS:

[Minnesota Department of Revenue, Sales to Governments](#)

[LMC Model \*Purchasing Agent Agreement\*](#).

[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\*.](#)

Using a proper form for designating a purchasing agent agreement is important because using an improper form could prevent a city from receiving 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:

- 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 (responsibility for covering the cost of loss of the materials) with respect to such materials.
- The city, and not the purchasing agent, is responsible for all defective materials and supplies, including materials and supplies that are part of real property.

The designated purchasing agent is also required to give clear and sufficient notice to all 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 tax-free purchases as the city's purchasing agent if the subcontractor 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 that the city is exempt from sales and use tax.
- Has a document appointing the subcontractor as the purchasing agent for the city. This is usually provided by the primary purchasing agent that the city has authorized to appoint subagents.
- Has separate contracts for materials and labor (avoiding the lump-sum contract or similar guaranteed maximum contract for both materials and labor), or only has a materials contract.

## RELEVANT LINKS:

[Minn. Stat. §§ 471.87-.89.](#)

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

[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.](#)

[Minn. Const. art XIV, § 2.](#)

## XII. Conflict of interest in contracts

Elected and appointed city officials cannot have a direct or indirect personal financial interest in any city contract. 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. State law provides some limited exceptions to this prohibition. Cities should seek the advice of their city attorney to determine how to apply these limited exceptions.

A public officer who violates the conflict of interest law is guilty of a gross misdemeanor and can be fined up to \$3,000 and imprisoned for up to 365 days. Additionally, other council members who knowingly authorized the unlawful contract can also be criminally punished. Contracts that violate these laws are generally void.

## XIII. Contracts with other governmental agencies

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

The council can, 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 can 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 can delegate this authority.

### A. Road construction contracts

Cities can negotiate contracts with the commissioner of the Department of Transportation and with their county boards for the construction and maintenance of state-aid streets (a collection of higher volume and key streets) located within the city.

Under such contracts, either governmental unit can do the work and it will be reimbursed by the other. The commission must maintain information on expenditures by local road authorities from local funding sources for trunk highway projects. Trunk highways include all roads established under article 14, section 2 of the Constitution of the state of Minnesota.

Local road authorities include the following:

## RELEVANT LINKS:

[Minn. Stat. § 160.02, subd. 25.](#)

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

[Minn. Stat. § 471.59.](#)  
[Handbook, Intergovernmental Cooperation.](#)

- For trunk highways, the commissioner of the Department of Transportation.
- For county state-aid highways and county highways, the county board.
- For town roads, the town board.
- For specific governing bodies and city streets, the governing bodies of cities (city councils, for example).

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 (the average wage paid to similarly employed workers in a specific occupation in the area of intended employment) 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 can contract with other units of government for various public services, including police protection, purchasing, building inspection, planning assistance, recreation, and fire protection.

## 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.