



CODE OF ORDINANCES

CHAPTER 2. ADMINISTRATION

Article 2-7. Purchasing Procedures and Disposal of City Property

Contents:

- 2-7-1. Policies and Procedures.
- 2-7-2. Definitions.
- 2-7-3. Administration.
- 2-7-4. Bid Processes.
- 2-7-5. Choice of Bid Process.
- 2-7-6. Exceptions to Bidding Requirements set forth in Section 2-7-5.
- 2-7-7. Bid Awards.
- 2-7-8. Agreements with other agencies.
- 2-7-9. Special Rules and Procedures Required by State Law.
- 2-7-10. Disposal or Lease of Public Property.
- 2-7-11. Sanctions.
- 2-7-12. Attachment "O" to the Office of Management and Budget Circular A-110 to be followed.

2-7-1. Policies and Procedures.

The provisions of this Article govern the purchase of goods and services and the disposal of property by the City. The City Manager may adopt policies and procedures as needed to supplement and carry out the intent of this Article. The City Manager's policies and procedures may augment, but not alter, the standards set forth in this Article.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

2-7-2. Definitions.

Unless the context requires otherwise, the terms used in this Article shall have the following meanings:

- A. **Bidding:** Procedure used to solicit quotations on price and delivery from various prospective suppliers of specified supplies, equipment, and contractual services.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)



B. **Bid process:** The type of process used by the City to solicit and award bids or contracts. Examples of bid processes used in this Article include formal competitive bidding, requests for proposals (RFPs), and open market procedure.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

C. **City Manager:** The City Manager of the City of Orem, Utah, or his or her designee.

(Ord. No. O-07-0047, Enacted 10/23/2007)

D. **Lowest responsible bidder** A bidder who:

1. has submitted a bid in compliance with the invitation to bid and within the requirements of the City's plans and specifications;
2. is the lowest bidder that satisfies, if applicable, the City's criteria relating to financial strength, past performance, integrity, reliability, quality of equipment, delivery times, and other factors that the City uses to assess the ability of a bidder to fully and in good faith perform the contract requirements;
3. has furnished a bid bond or equivalent in money as a condition to the award of a contract; and
4. furnishes a payment and performance bond as required by law.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

E. **Public property:** Any item of real or personal property owned by the City.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

F. **Supplies, materials and equipment:** Any tangible article or thing furnished to or used by any City department or by any City employee in the performance of his or her duties. For purposes of brevity, supplies, materials, and equipment shall hereafter be collectively referred to as "supplies".

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

2-7-3. Administration.

The City Manager shall administer the purchasing procedures outlined in this Article. The City Manager shall perform the following duties and have the following powers concerning purchasing matters:

A. Administer and maintain the purchasing procedures and other rules and regulations established by this Article and its authority.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007; Ord. No. O-2014-0030, Amended 08/26/2014)

B. Recommend new or revised purchasing rules and regulations as are deemed desirable and in conformance with other statutory requirements, and to interpret the provisions of this Article and applicable statutes.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007; Ord. No. O-2014-0030, Amended 08/26/2014)

C. Negotiate and execute contracts for the purchase of supplies and the provision of services.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007; Ord. No. O-2014-0030, Amended 08/26/2014)

D. To the extent possible, obtain full and open competition on all purchases in accordance with this ordinance.



(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007; Ord. No. O-2014-0030, Amended 08/26/2014)

E. Keep informed of current developments in the field of purchasing, i.e., prices, market conditions, new products, etc.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007; Ord. No. O-2014-0030, Amended 08/26/2014)

F. Prescribe and maintain such forms as are reasonably necessary to the operation of this Article and other rules and regulations.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007; Ord. No. O-2014-0030, Amended 08/26/2014)

G. Supervise the inspection of all supplies to assure conformance with specifications.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007; Ord. No. O-2014-0030, Amended 08/26/2014)

H. Transfer surplus or unused supplies between departments as needed.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007; Ord. No. O-2014-0030, Amended 08/26/2014)

I. Maintain a bidders' list, vendors' catalog file, and other records needed for the efficient operation of the purchasing procedures.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007; Ord. No. O-2014-0030, Amended 08/26/2014)

J. Establish relationships with and select appropriate outside sources to assist in advertising and recruitment for bids and requests for proposals.

(Ord. No. O-2014-0030, Enacted 08/26/2014)

2-7-4. Bid Processes.

Except as provided in Section 2-7-9, bids shall be accepted and awarded by the City Manager pursuant to one of the bid processes outlined in this Section. Section 2-7-5 establishes when each of the bid processes described in this Section may be used. The City shall substantially comply with the following guidelines for the specific bid process used:

A. Competitive Sealed Bidding.

1. Description. Competitive sealed bidding is a procedure in which vendors or contractors are invited to submit formal bids to provide a designated product or to complete a designated project in accordance with specifications provided by the City
2. Appropriateness. Competitive sealed bidding is generally appropriate for all types of procurements. When contractor quality is a prime concern in awarding a project bid, the City may pre-qualify bidders according to a policy established by the City Manager.
3. Notice inviting bids issued. The City shall provide notice of its invitation for bids.
 - a. Notice includes a general description of the articles to be purchased or the work to be performed, the location where bid blanks and specifications may be secured, and the time and place for opening bids.
 - b. The notice inviting bids shall be:
 - (i) Published in a newspaper of general circulation in the City at least ten (10) days before the date of the opening of the bids or published with an outside sources entity whose purpose it is to facilitate



the advertisement and recruitment of competitive bidders at least ten (10) days before the date of the opening of the bids.

- (ii) Delivered to all known responsible prospective suppliers, including those whose names are on a bidders' list or who have made a written request that their names be added to the bidders' list.
 - (III) Posted on a public bulletin board in the City Center Building and the City's website at least ten (10) days before the opening of the bids.
4. Bid procedure.
- a. Sealed bids (or electronically submitted bids) shall be submitted as designated in the notice with the statement "Bid for (item or project)" on the envelope (or in the electronic transmission).
 - b. Bids shall be opened (or read, in the case of electronically submitted bids) in public at the time and place stated in the public notice.
 - c. Bids submitted to the City shall be evaluated on the basis of compliance with specifications and other relevant criteria.
5. Bid Award. If the City elects to proceed with the purchase or project, bids shall be awarded to the lowest responsive responsible bidder.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007; Ord. No. O-2014-0030, Amended 08/26/2014)

B. Requests for Proposals.

1. **Description.** Requests for proposals (RFPs) are invitations for suppliers or contractors to submit a proposal on a specific product or service. The City awards the contract for the product or service based on criteria set forth in the request for proposals.
2. **Appropriateness.** RFPs may be used when required by law, or when the City Manager determines that the use of formal competitive bidding is either impractical or not advantageous to the City. In making this determination, the City Manager shall consider factors such as:
 - a. whether there may be a need for price and service negotiation;
 - b. whether there may be a need for negotiation during performance of the contract;
 - c. whether the relative skills or expertise of the offerors will have to be evaluated;
 - d. whether cost is secondary to the characteristics of the product or service sought, as in a work of art;
 - e. whether the conditions of the service, product or delivery are unable to be sufficiently described in the invitation for bids;
 - f. whether the City is requesting the offeror to propose a method or strategy for completing the project; and
 - g. whether there may be a need to negotiate completion times related to the project.

If the City is requesting a price to complete an already designed project or to purchase a specific product(s), it will generally be more appropriate to use the competitive sealed bids procedure rather than the request for proposals procedure. Professional services will generally be procured through the request for proposals procedure or as set forth in Section 2-7-6(A).

3. **Notice.**
 - a. Proposals shall be solicited through a request for proposals.
 - b. Public notice of the request for proposals shall be given. The time period to submit a response to a request for proposal shall be no less than ten (10) days.



4. **Request for proposals.** The request for proposals shall state the relative importance of price and other evaluating factors.
5. **Opening of proposals.** Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Nothing herein shall be interpreted to prohibit the City from allowing or accepting electronically submitted proposals.
6. **Revision of proposals.**
 - a. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.
 - b. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revision may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.
 - c. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
7. **Award.** Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the City, taking into consideration price, the evaluation factors set forth in the request for proposals, and other criteria set forth herein.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007; Ord. No. O-2014-0030, Amended 08/26/2014)

C. Open market procedure.

1. Price Quotations. Purchases shall, whenever possible, be based on at least three (3) bids (price quotations) and shall be awarded to the lowest responsible bidder.
2. Request for Quotations. Bids (price quotations) shall be solicited from prospective vendors by written or oral request.
3. Records. The person soliciting the price quotations shall keep a record of quotations solicited, including vendor names, date of solicitation and price quoted, and shall include this information with the purchase order.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

- D. Errors and Mistakes in Bid Process.** The City Manager may waive minor irregularities in bid procedures if he determines, in his sole discretion, that the minor irregularities do not have a material effect on the outcome of the bid process and that the process remains fundamentally fair to the City and all participants. In cases where the error has a material effect on the outcome of the bid process, the City Manager may (1) reject all bids, (2) award the bid to the lowest responsive responsible bidder (if the City elects to disqualify bidders who do not strictly comply with the bid specifications), or (3) correct mistakes in accordance with policies adopted by the City Manager or in accordance with procurement rules in the State Administrative Code.

(Ord. No. O-07-0047, Enacted 10/23/2007)

2-7-5. Choice of Bid Process.



Except as otherwise provided in this Article or by provisions of State or Federal law, purchases of supplies or services shall follow one of the bid processes outlined below for the appropriate dollar amount. The cost of the supply or service shall not be divided to avoid bid requirements. In cases where more than one alternative is listed as acceptable for a given dollar amount, any of the listed alternatives shall be acceptable, and the City shall not incur any liability for choosing one alternative over another.

A. **Supplies and contractual services having an estimated value in excess of \$10,000.00.** Purchases of supplies or contractual services having an estimated value in excess of ten thousand dollars (\$10,000.00) shall be pursuant to one of the following procedures:

1. Formal competitive bidding.
2. Request for proposals. (If approved by the City Manager pursuant to 2-7-4(B).)

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

B. **Supplies and contractual services having an estimated value between \$2,500.00 and \$10,000.00.** Purchases of supplies or contractual services having an estimated value of greater than Two Thousand Five Hundred Dollars (\$2,500.00) but less than or equal to ten thousand dollars (\$10,000.00) shall be pursuant to one of the following procedures:

1. Formal competitive bidding.
2. Request for proposals.
3. Open market procedure.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

C. **Supplies and contractual services having an estimated value of \$2,500.00 or less.** Whenever the supplies or contractual services have an estimated value of \$2,500.00 or less, the City need not follow any formal bid procedure, but shall seek to obtain the best price possible.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

2-7-6. Exceptions to Bidding Requirements set forth in Section 2-7-5.

The bid process requirements set forth in section 2-7-5 do not apply in the following situations:

A. **Professional service contracts.** Contracts for professional services may be awarded at the discretion of the City Manager without using the competitive sealed bids process.

1. Professional Services. Professional services include the following: accounting, auditing, architecture, banking, insurance, engineering, appraisal, legal, court reporter, medical, education, research, consulting, and other services where the professional qualifications of the contractor are of prime importance. Professional service contracts shall be awarded based on professional qualifications, experience, willingness and ability to meet the City's specific service requirements, cost of service, and other criteria deemed important by the City Manager.
2. Annual Audit. A professional service contract for the annual fiscal year financial audit shall be awarded by the City's Audit Committee. This contract may be awarded for consecutive years; however, the performance of the auditing firm shall be reviewed by the Audit Committee at the end of five (5) years, and the Audit Committee shall at that time determine whether to continue the contract for an additional two (2) years maximum or put it back out to bid. The contract must be awarded to a different firm after it has been with the same firm for seven (7) years.



(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007; Ord. No. O-2014-0030, Amended 08/26/2014)

- B. **Sole Source Procurements.** Sole source procurement may be used only if the City Manager determines that a service, product, or requirement is reasonably available only from a single supplier or contractor. Examples of circumstances which may necessitate sole source procurement are:
1. If there is only one vendor or supplier who can provide the needed product or service;
 2. If the compatibility of supplies, accessories, replacement parts, or service is the paramount consideration;
 3. If a sole supplier's product is needed for trial use or testing;
 4. If the City is procuring utility services;
 5. If the City seeks to add to, repair or maintain supplies owned by the City which may be more efficiently added to, repaired or maintained by a particular person or firm; and
 6. If the City seeks supplies which, by reason of the training of City personnel or the inventory of replacement parts maintained by the City, is more compatible with the existing supplies owned by the City and if the supplies can only be acquired from a sole source.

The justification for sole source procurement shall be included in the procurement documentation. The City Manager may establish policies governing the negotiation of sole source procurements.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

- C. **Library purchases.** The purchase of library books, records, tapes, films, publications, periodicals, and subscriptions are specifically exempted from competitive bidding requirements, but the City shall make a good faith effort to obtain the best price possible for these purchases.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

- D. **Auction, closeout, bankruptcy sales.** If the City Manager determines that supplies can be purchased at any public auction, closeout sale, bankruptcy sale or other similar sale, and if the City Manager finds that a purchase at any such auction or sale will be made at a cost below the market cost in the community, a contract or contracts may be let, or the purchase made, without complying with the competitive bidding requirements of this article.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

- E. **Exchanges.** Exchanges of supplies between the City and any other public agency which are not by sale or auction shall be by mutual agreement of the respective public agencies.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

- F. **Projects performed by City employees.** City employees may be used to complete City projects, provided that the City complies with State statutory requirements governing contracts for municipal public improvements.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

- G. **State bid list.** The City may purchase supplies from the vendor who has submitted the lowest bid price for such items to the State of Utah Purchasing Office (or any agency of the Federal government) at the quoted price, without any solicitation or price quotation or invitation to bid. For such purposes, the quoted price shall be deemed to be the lowest price available for such items and the City need not follow any other bidding requirements.



(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

- H. **Utah Correctional Industries Division.** Goods and services produced by the Utah Correctional Industries Division may be purchased from the Utah Correctional Industries Division without following any of the bidding requirements set forth herein.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

- I. **Emergency Procurements.** In times of emergency, the City Manager may choose the most practical means available to procure needed goods and services. If the situation allows, the City Manager shall attempt to achieve as much competition in the emergency procurement process as possible. Emergency procurement shall be limited to the services, supplies, and construction necessary to meet the emergency. For purposes of this paragraph, an emergency is a condition or situation which creates an immediate threat to the public health, safety, or welfare. Examples of conditions or situations which may constitute emergencies include earthquakes, floods, terrorist attacks, wars, epidemics, riots, road failures, utility failures, structure failures, and equipment failures.

(Ord. No. O-07-0047, Enacted 10/23/2007)

- J. **Unsuccessful Competitive Sealed Bidding.** If the bids received in response to a competitive sealed bid process are unreasonable, noncompetitive, or in excess of available funds, and if the City Manager determines that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, the City may procure the needed goods or services using the emergency procurement procedure.

(Ord. No. O-07-0047, Enacted 10/23/2007)

- K. **Internet Auction Sites.** The City may acquire supplies from internet auction sites without following formal purchasing procedures if the City Manager determines that there is an established market price for the supplies and that the supplies can be acquired less expensively from an internet auction site.

(Ord. No. O-07-0047, Enacted 10/23/2007)

- L. **Used Supplies.** The City may acquire used supplies without following formal purchasing procedures if the City Manager determines that there is an established market price for the used supplies and that it is beneficial for the City to acquire the used supplies.

(Ord. No. O-07-0047, Enacted 10/23/2007)

- M. **Purchases from City Warehouse.** The City may purchase items from the City warehouse without following purchasing procedures.

(Ord. No. O-07-0047, Enacted 10/23/2007)

- N. **Ongoing Construction Work.** If a contractor has been hired to work in a given area by a person or entity other than the City, and if the City has work that needs to be completed in the area, and if the City Manager determines that there is an established price for the type of work that the City needs completed and that the City can save on mobilization costs by hiring the contractor that is already in the area, then the City may negotiate with and contract directly with the contractor without following formal purchasing processes.

(Ord. No. O-07-0047, Enacted 10/23/2007)



O. **Purchases by Other Governmental Entities.** If another governmental entity has, after a competitive process, awarded a bid to purchase supplies from a particular vendor within the preceding 180 days, the quoted price may be deemed to be the lowest price available for such items and the City need not follow formal purchasing procedures. Any such purchase must be approved by the City Manager on a case by case basis.

(Ord. No. O-07-0047, Enacted 10/23/2007)

P. **CARE Tax Grants.** CARE Tax grants, which are awarded by the City Council after a public process, are not subject to the bidding requirements of this Article. Expenditures of CARE Tax grants for cultural or recreational facilities are subject to the bidding requirements of this Article.

(Ord. No. O-07-0047, Enacted 10/23/2007)

Q. **Federal or State Money.** In cases where federal or state money is being used, or in cases where federal or state procurement laws or procedures govern the types of goods or services being procured, the City shall follow the applicable federal or state procurement laws or procedures in lieu of the procedures set forth in this ordinance.

(Ord. No. O-07-0047, Enacted 10/23/2007)

R. **Donated Funds.** In cases where a donor or grantor has contributed funds to the City, the City may expend the funds in the manner designated by the donor or grantor in lieu of the procedures set forth in this ordinance.

(Ord. No. O-07-0047, Enacted 10/23/2007)

2-7-7. Bid Awards.

A. **Rejection of Bids.** . The City Manager may, in his or her own discretion, reject any and all bids presented, and may re-advertise for bids as set forth in this Article.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

B. **Lowest Responsive Responsible Bidder.** Except as otherwise allowed or required, the City Manager shall award the contract or bid to the lowest responsive responsible bidder.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

C. **Tie Bids.** If two (2) or more of the bids received are for the same total amount (quality and service being equal), the City Manager may negotiate with the bidders and obtain the best bid possible and/or give a preference to a bidder based in the City of Orem.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

D. **Single Bids.** The City Manager may require a price or cost analysis if only one bid is received. The bidder may be required to furnish a detailed cost proposal, and the bid award shall be subject to subsequent negotiation.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

E. **Bonds.** Before entering a contract, the City Manager shall have authority to require performance, payment and other bonds deemed necessary in such amounts as deemed necessary to protect the interests of the City. The types and amounts of the bonds to be required shall be described in the notice inviting bids.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)



F. **Contracts.** Contracts for services or supplies shall be signed by the City Manager. Contracts shall be for a term of three years or less, unless the City Manager determines on a case by case basis (before the service or supply is put out to bid or RFP) that a longer contract term is in the best interests of the City and that it would be impractical to enter into a shorter term contract for the type of service or supply contracted.

(Ord. No. O-07-0047, Enacted 10/23/2007)

G. **Appeals.** Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may appeal to the City Manager. An appeal with respect to an invitation for bids or an RFP shall be submitted in writing prior to the opening of bids or the closing date for proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to the protest prior to the bid opening or the closing date for proposals. The appeal shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto. The appeal shall be handled pursuant to policies established by the City Manager. The City Manager shall promptly issue a written decision regarding the appeal. The written decision shall state the reasons for the action taken. The City Manager's decision shall be deemed final unless overturned by a Court of competent jurisdiction. The statute of limitations set forth in Section 63-56-817 of the Utah Procurement Code shall apply to any suits filed related to the application of this Article, with the date of the City Manager's decision substituted for the date of the final administrative decision.

(Ord. No. O-07-0047, Enacted 10/23/2007)

2-7-8. Agreements with other agencies.

The City shall have the power to enter into joint purchase agreements with any or all other public agencies within the State for the purchase of any commodity, if the City Manager finds the joint purchase agreement to be in the best interests of the City.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended 10/23/2007)

2-7-9. Special Rules and Procedures Required by State Law.

State law requires the City to follow specific bid procedures for specified types of supplies and services. This Section sets forth the requirements and cites the applicable State law. The City shall comply with the applicable State law, as amended, regardless of whether or not this ordinance reflects the most recent version of State law.

A. **Building Improvements and Public Works Projects.** Building improvements and public works projects with a cost estimate that exceeds the bid limit shall be bid in accordance with applicable State law (U.C.A. '11-39-101, et seq., as amended). Applicable requirements of State law include the following:

1. Definitions. For purposes of this subsection A, the designated words shall be defined as follows:

a. **"Bid limit"** means:

(i) For a building improvement:

a. for the year 2003, \$40,000; and

b. for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year; and



- (ii) For a public works project:
 - a. for the year 2003, \$125,000; and
 - b. for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year.
 - b. **Building Improvement:** The construction or repair of a public building or structure.
 - c. **Consumer Price Index:** The Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.
 - d. **Public Works Project:** The construction of (i) a park or recreational facility; or (ii) a pipeline, culvert, dam, canal, or other system for water, sewage, storm water, or flood control. The definition of “public works project” does not include the replacement or repair of existing infrastructure on private property.
2. **Plans and Specifications.** The City shall cause plans and specifications to be made for the building improvement or public works project.
3. **Cost Estimate.** The City shall estimate the cost of the building improvement or public works project.
4. **Bid Notice.** If the estimated cost of the building improvement or public works project exceeds the bid limit, and if the City decides to proceed with the project, the City shall request bids by publishing notice at least twice in a newspaper published or of general circulation in Orem at least five (5) days before opening the bids, and publishing notice in accordance with Utah Code §45-1-101 on the public notice website, at least five days before opening the bids..
5. **Contract.** If the City decides to proceed with the project, the City shall enter into a contract for the completion of the building improvement or public works project with the lowest responsive responsible bidder.
6. **Exceptions.** The State statutory bidding requirements do not apply to (i) emergency repairs, as defined by State law, or (ii) building improvements or public works projects if the estimated cost is less than the bid limit.
7. **Bid Rejection/Work by City.** The City may reject any or all bids submitted for a given building improvement or public works project. If the City rejects all bids submitted but still intends to undertake the building improvement or public works project, the City shall again request bids by following the procedure outlined above. If, after twice requesting bids by following the procedure outlined above, the City determines that no satisfactory bid has been submitted, the City may undertake the building improvement or public works project as it considers appropriate.

(Ord. No. O-07-0047, Enacted 10/23/2007; Ord. No. O-2014-0030, Amended 08/26/2014)

- B. **B and C Road Funds.** Any improvement project using Class B and C road funds shall be bid in accordance with applicable State law (U.C.A. '72-6-108 and '72-6-109, as amended). Applicable requirements of State law include the following:
1. **Definitions.** For purposes of this subsection B, the designated words shall be defined as follows:
 - a. **Bid Limit.** “Bid limit” means:
 - (i) for the year 2003, \$125,000; and
 - (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year.



b. **Consumer Price Index.** “Consumer Price Index” means the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.

c. **Construction.** “Construction” means the work that would apply to:

- (i) any new roadbed either by addition to existing systems or relocation;
- (ii) resurfacing of existing roadways with more than two inches of bituminous pavement; or
- (iii) new structures or replacement of existing structures, except the replacement of drainage culverts.

“Construction” does not include maintenance, emergency repairs, or the installation of traffic control devices as described in U.C.A. '41-6a-302, as amended.

d. **Improvement Project.** “Improvement project” means construction and maintenance as defined in this section except for that maintenance excluded under Subsection (B)(9).

e. **Maintenance.** “Maintenance” means the keeping of a road facility in a safe and usable condition to which it was constructed or improved, and includes:

- (i) the reworking of an existing surface by the application of up to and including two inches of bituminous pavement;
- (ii) the installation or replacement of guardrails, seal coats, and culverts;
- (iii) the grading or widening of an existing unpaved road or flattening of shoulders or side slopes to meet current width and safety standards; and
- (iv) horizontal or vertical alignment changes necessary to bring an existing road in compliance with current safety standards.

f. **Project.** “Project” means the performance of a clearly identifiable group of associated road construction activities or the same type of maintenance process, where the construction or maintenance is performed on any one class B or C road, within a half-mile proximity and occurs within the same calendar year.

2. **Plans.** The City shall cause plans, specifications, and estimates to be made prior to the construction of any improvement project on a class B or C road if the estimated cost for any one project exceeds the bid limit for labor, equipment, and materials.
3. **Lowest Responsible Bidder.** All projects in excess of the bid limit shall be performed under contract to be let to the lowest responsible bidder.
4. **No Project Division.** If the estimated cost of the improvement project exceeds the bid limit for labor, equipment, and materials, the project may not be divided to permit the construction in parts, unless each part is done by contract.
5. **Advertisement.** The advertisement on bids shall be published in a newspaper of general circulation in the City at least once a week for three consecutive weeks.
6. **Bids.** The City shall receive sealed bids and open the bids at the time and place designated in the advertisement. The City may then award the contract but may reject any and all bids.
7. **Procurement Code.** The person, firm, or corporation that is awarded a contract under this section is subject to the provisions of Title 63, Chapter 56, Utah Procurement Code.
8. **Retainage.** If any payment on a contract with a private contractor for construction or improvement of a class B or C road is retained or withheld, the payment shall be retained or withheld and released as provided in Section U.C.A. '13-8-5.
9. **Exceptions.** The following types of maintenance work are not subject to the contract or bid limit requirements of this subsection B:



- a. the repair of less than the entire surface by crack sealing or patching; and
 - b. road repairs incidental to the installation, replacement, or repair of water mains, sewers, drainage pipes, culverts, or curbs and gutters.
10. **Force Accounts.** If the estimates of the qualified engineer are substantially lower than any responsible bid received or in the event no bids are received, the City may perform the work by force account. In no event shall “substantially lower” mean estimates that are less than 10% below the lowest responsible bid. If the City performs an improvement project by force account, it shall:
- a. provide an accounting of the costs and expenditures of the improvement including material, labor, and direct equipment costs to be calculated using the Cost Reference Guide for Construction Equipment by Dataquest Inc. or the Federal Emergency Management Agency schedule of equipment rates;
 - b. disclose the costs and expenditures to any person upon request and allow the person to make a copy and pay for the actual cost of the copy; and
 - c. perform the work using the same specifications and standards that would apply to a private contractor.

(Ord. No. O-07-0047, Enacted 10/23/2007)

C. **Architect-Engineer Services.**

1. As used in this subsection C, “architect-engineer services” means those professional services within the scope of the practice of architecture as defined in U.C.A.'58-3a-102, or professional engineering as defined in U.C.A. 'Section 58-22-102.
2. When the City elects to obtain architect or engineering services by using a competitive procurement process and has provided public notice of its competitive procurement process:
 - a. a higher education entity, or any part of one, may not submit a proposal in response to the City’s competitive procurement process; and
 - b. the City may not award a contract to perform the architect or engineering services solicited in the competitive procurement process to a higher education entity or any part of one.

(Ord. No. O-07-0047, Enacted 10/23/2007)

2-7-10. Disposal or Lease of Public Property.

- A. **Declaration of Surplus.** No City-owned property having an estimated value in excess of five hundred dollars (\$500.00) shall be disposed of or released to anyone other than the City, unless such property has been declared surplus as set forth in this ordinance.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-03-0018, Amended, 07/01/2003; Ord. No. O-07-0047, Amended and Renumbered 10/23/2007)

- B. **Inter-Department Transfers.** Whenever City-owned personal property is surplus, unused, obsolete, unsuitable or otherwise no longer needed, the department head having control of such property shall notify the City Manager. The City Manager may notify other city departments of the availability of such property. The City Manager shall supervise any transfer of such property to any other department. If no use can be made or can be expected to be made within the reasonably foreseeable future, the property shall be disposed of in accordance with this section.



(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-03-0018, Amended, 07/01/2003; Ord. No. O-07-0047, Amended and Renumbered 10/23/2007)

C. **Disposal of City-owned Personal Property.** The City Manager shall prepare a listing of all City-owned personal property which he or she feels is no longer needed by the City and which can be declared surplus. After an item has been declared surplus by the City Manager, the property may be disposed of. All disposals, leases and/or subleases of City-owned personal property shall be made, as nearly as possible, under the same conditions and limitations as required by this Article for the purchase of personal property by the City, but the City Manager may also authorize, at his or her discretion:

1. The sale of any such property at public auction if he or she deems such a sale desirable and in the best interest of the City; or
2. The lease or sublease of any such property under such terms and conditions as he or she may deem desirable, fair and appropriate, considering the best interests of the City.
3. The sale of any such property at market price, assuming that the property has a reasonably ascertainable market price.
4. A sale or trade to another governmental agency, if he or she deems such disposition to be in the best interests of the City.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-03-0018, Amended, 07/01/2003; Ord. No. O-07-0047, Amended and Renumbered 10/23/2007)

D. **Disposal of City-owned Real Property.** The City Council may declare any City-owned significant parcel of real property (as defined below) to be surplus. The City Manager may declare any City-owned nonsignificant parcel of real property (as defined below) to be surplus if he finds that the parcel is no longer needed by the City. After City-owned real property is declared to be surplus, the City may dispose of the real property pursuant to the following guidelines:

1. Definitions. For purposes of this Section 2-7-10, the designated words shall have the following meanings:
 - a. **Significant Parcel of Real Property.** A “significant parcel of real property” means a parcel of real property that is larger than 5,000 square feet in size or that has a fair market value in excess of \$20,000. The following parcels of real property are excluded from the definition of “significant parcel of real property”, even if they meet the size or valuation standards set forth above:
 - (i) Parcels disposed of by the City as part of a boundary line agreement or adjustment.
 - (ii) Parcels created by a right-of-way vacation or an easement vacation.
 - (iii) Parcels that are undevelopable unless combined with an adjacent parcel. A parcel will be considered to be undevelopable if it cannot be developed as an independent parcel due to City ordinance requirements or due to the physical characteristics of the parcel.
 - (iv) Parcels acquired by eminent domain or other means if the City is statutorily or contractually obligated to first offer the parcel to a specific party, provided that the parcel is offered, sold, or conveyed to the party holding the right to acquire the parcel.
 - b. **Nonsignificant Parcel of Real Property.** A “nonsignificant parcel of real property” shall mean any parcel of real property that is not included in the definition of “significant parcel of real property.”



- c. **Reasonable Notice.** “Reasonable notice” shall mean a brief summary of the proposed disposition including (1) a general description of the parcel (including the approximate address of the parcel, the approximate size of the parcel, the zone designation of the parcel, and the current use of the parcel), and (2) the date, time and location where the public can comment on the proposed disposition. The notice shall be published at least once in a newspaper of general circulation in the City of Orem, and posted in at least one location at the Orem City Center.
2. Disposal of Significant Parcel of Real Property. Before disposing of a significant parcel of real property, the City shall:
 - a. Notice. Provide reasonable notice of the proposed disposition at least 14 days before the opportunity for public comment; and
 - b. Public Comment. Allow an opportunity for public comment on the proposed disposition. The opportunity for public comment shall take place at an Orem City Council meeting.
3. Disposal of Nonsignificant Parcels of Real Property. The City Manager may dispose of any nonsignificant parcel of real property pursuant to a policy adopted by the City Manager.
4. Manner of Disposal. The City may dispose of real property by sale, trade, lease, sub-lease, or other means deemed to be in the best interests of the City by the City Council (for significant parcels of real property) or the City Manager (for nonsignificant parcels of real property).

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-03-0018, Amended, 07/01/2003; Ord. No. O-07-0047, Amended and Renumbered 10/23/2007)

2-7-11. Sanctions.

- A. It is unlawful:
 1. For any bidder or prospective bidder, or any employee or officer thereof, in restraint of freedom of competition or otherwise, by agreement with any other person, bidder, or prospective bidder, to bid a fixed price, or to "rotate" bidding practices among competitors.
 2. For any person to offer or to give to any elected official, officer or employee of the City or any member of his immediate family, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, promise, or other form, under circumstances in which it could reasonably be intended to influence him or could reasonably be expected to influence him in his duties concerning the award of any contract or order of purchase, or for any elected official, officer or employee to directly or indirectly solicit or directly or indirectly accept any such gift for such purpose.
 3. For any elected official, officer, or employee to disclose, in advance of the opening of the bids, the content of any bid invited through the formal competitive bidding procedure.
 4. For any elected official, officer, or employee to actively participate in the awarding of a contract from which he will directly benefit, without fully disclosing any interest he has therein.
 5. For any elected official, officer or employee or other person to appropriate for personal or private use any item of public property.
 6. To purchase supplies for the personal use of any elected official, officer or employee unless the item or items are required parts of a worker's equipment and are necessary to the successful performance of the duties of such official, officer or employee. Other personal purchases shall not be permitted and will be cause for disciplinary action.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-07-0047, Amended and Renumbered 10/23/2007)



B. The following contracts are, in the discretion of the City Manager, voidable:

1. Contracts which result from a conflict of interest under this Chapter or other applicable law.
2. Contracts awarded to a person or firm that tried to influence the award of such contract by offering something of value to any elected official, officer, or employee.

(Ord. No. 661, Revised 04/10/1990; Ord. No. O-07-0047, Amended and Renumbered 10/23/2007)

2-7-12. Attachment "O" to the Office of Management and Budget Circular A-110 to be followed.

The City shall follow the guidelines of Attachment "O" to Office of Management and Budget Circular A 110 as published in the *Federal Register* when Federal funds are used for any purchase.

(Ord. No. O-96-0009, Enacted, 04/23/96; Ord. No. O-07-0047, Amended and Renumbered 10/23/2007)