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# Purchasing-Highways

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Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Reference Number: CTAS-115

The CUHL provides some rules in regard to purchasing, but it does not specify the purchasing agent for the county highway department. The CUHL statute on this subject, T.C.A. § 54-7-113(c)(3), states that the CUHL rules on purchasing found in this statute do not have the effect of repealing existing statutes, including private acts, which establish purchasing provisions for a county road department; however, no county road department is required to publicly advertise and competitively bid purchases of \$25,000 or less even if such bids are now required by public or private act.

Therefore, in CUHL counties, the purchasing agent for the department may be the chief administrative officer of the highway department or some other official under the provisions of a private act, the county purchasing agent under the optional 1957 County Purchasing Law (T.C.A. § 5-14-101 *et seq.*), or the Director of Finance under the County Financial Management System of 1981 (T.C.A. § 5-21-101 *et seq.*). However, in CUHL counties without specific purchasing policies under these other authorities, purchasing should be done in accordance with the procedures found in T.C.A. § 54-7-113(c).

The following purchasing procedures apply to all CUHL counties that have not established any other private act or general law purchasing procedure prior to July 1, 1980:

1. All purchases of \$25,000 or more must be publicly advertised and competitively bid;
2. Purchases of like items that individually cost less than \$25,000 but are customarily purchased in lots of two or more must be advertised and bid if the total purchase price of these items is expected to exceed \$25,000 during any fiscal year;
3. Repair of heavy road building machinery or other heavy machinery for which limited repair facilities are available need not be bid;
4. Purchases of any supplies, materials, or equipment for immediate delivery may be made without bidding in actual emergencies arising from unforeseen causes but such emergencies shall not include conditions arising from neglect or indifference in anticipating normal needs;
5. Leases or lease-purchase arrangements requiring payment of \$25,000 or more, or continuing for 90 days or more, must be advertised and competitively bid [Also, leases and lease-purchase agreements must be approved by the county legislative body. T.C.A. § 7-51-904]; and
6. All purchases costing less than \$25,000 may be made in the open market without newspaper notice, but, wherever possible, should be based upon at least three competitive bids.

T.C.A. § 54-7-113.

County highway departments are authorized to purchase used or secondhand articles from any federal, state or local governmental unit or agency without public advertisement and competitive bidding. They are also authorized to purchase used or secondhand articles from any private individual or entity without public advertisement and competitive bidding as long as they document the general range of value of the item through a listing in a nationally recognized publication or through an appraisal by a licensed appraiser and the price is not more than five percent (5%) higher than the highest value of the documented range. T.C.A. § 12-3-1202. *See also* Attorney General Opinion 13-044 (6/10/13) (stating that the general range of value may not be documented using advertised prices found on the Internet).

County governments may purchase goods and services through a competitive reverse auction process that allows offerors to bid on specified goods or services electronically and adjust bid pricing during a specified time period in accordance with T.C.A. § 12-3-1208. Before initial use of a reverse auction, the county must file a plan with the Comptroller stating the technology to be used, whether a third party will conduct the auctions, describing the policies and procedures to be used, documenting internal controls, and stating whether additional operating resources will be needed and if so, indicating prior approval of the local governing body. Items and services that cannot be purchased through a reverse auction are: construction services (except maintenance, repairs, and renovations costing less than \$25,000); architectural or engineering services; new or unused motor vehicles (except school buses, garbage trucks, fire trucks, ambulances, and other special purpose vehicles); and new or unused construction equipment.

Counties are also authorized to enter into negotiated contracts, including joint contracts with other counties and/or municipalities, with a bank, investment bank or other similar financial institution to

stabilize fuel expenses. Any contract entered into under this section must be for a term of no more than twenty-four (24) months. T.C.A. § 7-51-911.

The CUHL does not specify the officials who must sign warrants on the county highway fund for funds to be disbursed. This is a matter left to the private acts or local option laws and will vary from county to county. In some counties, co-signatures of the chief administrative officer and the county mayor/executive are required, but in a large number of counties, the lone signature of the chief administrative officer of the highway department will be honored by the trustee.

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