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# Purchasing

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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.

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# Purchasing

Reference Number: CTAS-159

Purchasing in county government is an essential governmental business function. Procurement activities, which are expenditures made to the private sector for the purchase of goods and services, account for the second largest expenditure of taxpayer dollars in county government. The largest expenditure of taxpayer dollars in county government are for personal services that are paid out in the form of employee wages, salaries, and benefits.<sup>1</sup> Clearly the purchasing function is very important.

Sound purchasing practices are indispensable to good governance. Good purchasing practices have the potential to reduce costs and enhance services provided to the public; poor purchasing practices may lead to waste and delay of services to the public. As the financial structure of counties grew more complex, and the demand for county governments to utilize well-grounded financial and purchasing techniques similar to the techniques employed by businesses increased, the General Assembly passed the Fiscal Control Acts of 1957 and the County Financial Management System of 1981. These are general laws of local application that only apply to counties in which they have been approved by a two-thirds vote of the county legislative body, or by a majority of the voters in a referendum. These acts permit counties to centralize their financial and purchasing functions into one (or possibly two) departments. Further, these acts provide for the employment of a trained finance and/or purchasing professionals, and set about to apply rational business management procedures and improve the county's financial information.

The integrity and efficiency of the county procurement process is a crucial component of its credibility. Fairness and impartiality in all phases of the procurement process are an essential ingredient in county purchasing. Even the perception of public officials and employees misusing the procurement process for personal or political gain threatens the public's confidence in its government. The public demands trust and the decisions made by county officials and department heads should validate that trust. Most of the procurement statutes and county procurement policies are in place to ensure that our purchasing practices are fair, open, and accountable. The actions of the procurement process are open to public scrutiny, and the public expects that those actions be performed with integrity where its tax dollars are at stake.

Spending taxpayers' money requires that all goods and services purchased by county government must be purchased in a fair and equitable manner. Responsible bidders must be given a fair opportunity to compete for the county's business. It is imperative that those who participate in the procurement process perform with a high standard of professional ethics. This applies to the county officials, department heads, and employees of county government.

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<sup>1</sup>*County Market*, Texas Association of Counties, Austin, TX, 1, March, 2005.

## Legal Framework for Purchasing

Reference Number: CTAS-189

Purchasing agents, buyers, department heads, and county officials should have an understanding of the laws that govern their purchasing system, including the purchase of goods and services. The county's purchasing operation is subject to close scrutiny by the county legislative body, local citizens, businesses, and the media. Moreover, purchasing agents and buyers are dealing with the legal implications of purchasing on a daily basis.

Purchasing laws for county government are codified in the *Tennessee Code Annotated* (T.C.A.). The purchasing laws contained in the T.C.A. provide the legal and procedural framework for purchasing in county governments. County purchasing activities are also governed by common (case) law, and where applicable, by the federal laws and the Uniform Commercial Code. Generally, the purchasing laws place an emphasis on control, price, openness, and accountability. (Patricia C. Watt, *An Elected Official's Guide to Procurement*, Government Finance Officers Association).

The laws regarding purchasing for county governments are not uniform, and several options exist. There are many state laws of general application, as well as several local option laws which may apply. Unless the county has adopted one of the optional general laws to centralize purchasing, the county's purchasing functions are performed by several officials and are not handled through a single office. The various general laws that may apply to county purchasing, either separately or in combination, are--

- The County Purchasing Law of 1983, T.C.A. § 5-14-201 *et seq.*
- Title 49 of the *Tennessee Code Annotated*

- The County Uniform Highway Law, T.C.A. § 54-7-113
- The County Purchasing Law of 1957, T.C.A. § 5-14-101 *et seq.*
- The County Financial Management System of 1981, T.C.A. § 5-21-101 *et seq.*

In addition to the foregoing general laws, private acts may be passed by the General Assembly to govern purchasing in a particular county. Also, in those counties that operate under metropolitan or charter forms of government, the county’s purchasing procedures will appear in the metropolitan or county charter.

Newly elected and appointed county officials should examine which purchasing law(s) applies to their particular county.

County Purchasing Laws Table

<b>County</b>	<b>General</b>	<b>Highway</b>	<b>Schools</b>
Anderson	1981	1981	1981
Bedford	1981	1981	1981
Benton	1939 Priv. Act Ch 541	1943 Priv. Act Ch. 250/CUHL	49-2-203
Bledsoe	1983	1941 Priv. Act Ch. 153/CUHL	49-2-203
Blount	1957	1957	1957
Bradley	1951 Priv. Act Ch. 313	1947 Priv. Act Ch. 354/CUHL	49-2-203
Campbell	1981	1981	1981
Cannon	1981	1981	1981
Carroll	2024 Priv. Act Ch. 57	2024 Priv. Act Ch. 57/CUHL	2024 Priv. Act Ch. 57/49-2-203
Carter	1981	1981	1981
Cheatham	1933 Priv. Act Ch. 250/1983	1933 Priv. Act Ch. 250/1945 Priv. Act Ch. 309/CUHL	49-2-203
Chester	1983	1951 Priv. Act Ch. 68/CUHL	49-2-203
Claiborne	1981	1981	1981
Clay	1983	1951 Priv. Act Ch. 565/CUHL	49-2-203
Cocke	1957	1957	49-2-203
Coffee	1957	1957	49-2-203
Crockett	1983	1933 Priv. Act Ch. 26/CUHL	49-2-203
Cumberland	1981	1981	1981
Davidson	Metro Charter	Metro Charter	Metro Charter
Decatur	1983	CUHL	49-2-203
DeKalb	1979 Priv. Act Ch. 63	1979 Priv. Act Ch. 63/CUHL	1979 Priv. Act Ch. 63/49-2-203
Dickson <sup>1</sup>	1957	1957	1951 Priv. Act Ch. 16/49-2-203
Dyer	1983	1929 Priv. Act Ch. 421/CUHL	49-2-203
Fayette	1983	1974 Priv. Act Ch. 234/CUHL	49-2-203
Fentress	1981	1981	1981
Franklin	1981	1981	1981
Gibson	1983	1929 Priv. Act Ch. 111/CUHL	49-2-203
Giles	1981	1981	1981
Grainger	1983	1980 Priv. Act Ch. 232/CUHL	49-2-203
Greene	1957	1957	49-2-203
Grundy	1983	1939 Priv. Act Ch. 435/CUHL	49-2-203
Hamblen	1983	1949 Priv. Act Ch. 313/CUHL	49-2-203
Hamilton	1983 Priv. Act Ch. 90	1983 Priv. Act Ch. 90	1983 Priv. Act Ch. 90/49-2-203
Hancock	1983	1941 Priv. Act Ch. 149/CUHL	49-2-203
Hardeman	1989 Priv. Act Ch. 90	1989 Priv. Act Ch. 90/CUHL	1989 Priv. Act Ch. 90/49-2-203
Hardin	1983	1997 Priv. Act Ch. 62/CUHL	49-2-203
Hawkins	1957 Priv. Act Ch. 256	1957 Priv. Act Ch. 256/CUHL	1957 Priv. Act Ch. 256/49-2-203
Haywood	1983	1991 Priv. Act Ch. 24/CUHL	49-2-203
Henderson	1981	1981	1981
Henry	1983 Priv. Act Ch. 137/1995 Private Act Ch. 10/1983	CUHL	49-2-203
Hickman	1981	1981	1981
Houston	1983	1945 Priv. Act Ch. 366/CUHL	49-2-203
Humphreys	1983	1935 Priv. Act Ch. 634/CUHL	49-2-203
Jackson	1983	1951 Priv. Act Ch. 111/CUHL	49-2-203
Jefferson	1981	1981	1981
Johnson	1957	1957	49-2-203
Knox	1980 Priv. Act Ch. 286 (county	1980 Priv. Act Ch. 286	1980 Priv. Act Ch. 286/49-2-203

	charter)		
Lake	1983	1980 Priv. Act Ch. 262/CUHL	49-2-203
Lauderdale	1983	1929 Priv. Act Ch. 304/CUHL	49-2-203
Lawrence	1957	1957	49-2-203
Lewis	1983	1937 Priv. Act Ch. 395/CUHL	49-2-203
Lincoln	1981	1981	1981
Loudon	1957	1957	1957
McMinn	1981	1981	1981
McNairy	1990 Priv. Act Ch. 171	CUHL	49-2-203
Macon	1937 Priv. Act Ch. 161/1983	1965 Priv. Act Ch. 234/CUHL	49-2-203
Madison	1981	1981	1981
Marion	1983	1933 Priv. Act Ch. 24/CUHL	49-2-203
Marshall	1965 Priv. Act Ch. 69/1983	1965 Priv. Act Ch. 69/1955 Priv. Act Ch. 238/CUHL	49-2-203
Maury	2018 Priv. Act Ch. 47	2018 Priv. Act Ch. 47/CUHL	2018 Priv. Act Ch. 47
Meigs	2007 Priv. Act Ch. 28	2007 Priv. Act Ch. 28/CUHL	49-2-203
Monroe	1981	1981	1981
Montgomery	1957	1957	49-2-203
Moore	Metro Charter	Metro Charter	Metro Charter
Morgan	1981	1981	1981
Obion	1983	CUHL	49-2-203
Overton	1957	1957	49-2-203
Perry	1983	1977 Priv. Act Ch. 18/CUHL	49-2-203
Pickett	1983	1957 Priv. Act Ch. 104/CUHL	49-2-203
Polk	1957	1957	49-2-203
Putnam	1981 Priv. Act Ch. 63	1989 Priv. Act Ch. 122/CUHL	49-2-203
Rhea	1981	1981	1981
Roane	1957	1957	1933 Priv. Act Ch. 477/49-2-203 (schools informally use 1957)
Robertson	1981	1981	1981
Rutherford	2017 Priv. Act Ch. 17	1951 Priv. Act CH. 55/CUHL	49-2-203
Scott	1981	1981	1981
Sequatchie	1983	CUHL	49-2-203
Sevier	1983	1969 Priv. Act Ch. 133/CUHL	49-2-203
Shelby	1974 Priv. Act Ch. 260	1974 Priv. Act Ch. 260	1974 Priv. Act Ch. 260/49-2-203
Smith	1981	1981	1981
Stewart	1983	1951 Priv. Act Ch. 171/CUHL	49-2-203
Sullivan	2020 Priv. Act Ch. 46	2020 Priv. Act Ch. 46	2020 Priv. Act Ch. 46
Sumner	2002 Priv. Act. Ch. 113	2002 Priv. Act. Ch. 113/CUHL	2002 Priv. Act Ch. 113
Tipton	1941 Priv. Act Ch. 518	1973 Priv. Act Ch. 114/CUHL	49-2-203
Trousdale	Metro Charter	Metro Charter	Metro Charter
Unicoi	1983	1949 Priv. Act Ch. 678/CUHL	49-2-203
Union	1981	1981	1981
Van Buren	1983	1951 Priv. Act Ch. 460/1986 Priv. Act Ch. 111/CUHL	49-2-203
Warren	1981	1981	1981
Washington	1957	1957	49-2-203
Wayne	1983	1941 Priv. Act Ch. 32/CUHL	49-2-203
Weakley	1981	1981	1981
White	1981	1981	1981
Williamson	1957	1957	49-2-203
Wilson	1981	1981	49-2-203

<sup>1</sup>Dickson County - 1951 Priv. Act Ch. 16 does not apply to bridges or school buildings

## County Purchasing vs. Private Sector Purchasing

Reference Number: CTAS-894

The procurement of goods and services is a key function in any county government organization. Virtually everything a county department does depends, to a greater or lesser degree, upon "things." Every county department uses supplies, equipment, and furniture. Every employee gets a paycheck, someone must

procure blank checks, the computer system, the toner and paper for the printer, etc. Highway departments need vehicles and equipment, maintenance departments need building materials and janitorial supplies, and the list goes on and on. In short, the purchasing function, directly or indirectly, touches every aspect of county operations.

Citizens unfamiliar to the county purchasing laws and requirements sometimes mistakenly believe that county purchasing is no different from consumer shopping. Actually, however, many purchases made by county governments are of a complex nature (e.g., numerous purchasing laws, complex specifications, etc.), and must be made in accordance with applicable laws or private acts. County officials, department heads, and employees cannot simply go out and buy whatever they want from whomever they please without potentially violating a law or a county purchasing policy.

County purchasing is also different from purchasing in the private sector. While some of the procurement techniques are fundamentally the same for both (a county with a centralized purchasing system is very similar to private sector purchasing), the significant difference is that public sector purchases are made with taxpayer dollars, not individual profits.<sup>1</sup> Thus, county procurement is subject to tighter regulations, more intensive scrutiny, and a greater degree of accountability than private sector purchasing. Here are some similarities and differences between the private sector purchasing and county purchasing:

#### Similarities

- Counties and private sector organizations attempt to obtain the best possible price for the goods and services at the desired quality level that meets the organization's needs.
- Counties and private sector organizations strive to make sure there is a continuing supply for goods and services.
- Counties and private sector organizations seek to have goods and services available where and when they are needed.
- Counties and private sector organizations adhere to high ethical standards for those involved in the purchasing process.
- Many of the same fundamental purchasing principles and techniques are followed; e.g., inventory and warehouse management, transportation of goods, cost and service basis of award, etc.
- Many counties and private sector organizations adhere to professional training for their purchasing personnel.

#### Differences

- Purchases by county governments are made from taxpayer dollars instead of corporate or individual profits.
- County purchasing records are open records subject to public access.
- The process of purchasing in county government is structured, and is subject to applicable general laws, general laws of local application, private acts, and local purchasing policies.
- There is a statutory dollar threshold requirement for formal sealed bids/proposals for county governments.
- County governments are required to publicly advertise for formal bids exceeding the dollar threshold requirement.
- Sealed bids and proposals exceeding the dollar threshold limit require a public bid opening.
- Responsible bidders must be given fair opportunity to compete for the county's business.

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<sup>1</sup>Larry N. Wellman, CPPO, *Centralization of the Procurement Function*, NIGP Technical Bulletin, 1.

## Centralized Purchasing in Counties

Reference Number: CTAS-895

Purchasing in Tennessee counties may or may not be centralized, depending on the laws under which the

county operates. Basically there are three major general laws governing purchasing in Tennessee county governments: (1) the County Purchasing Law of 1957, (2) the County Financial Management System of 1981, and (3) the County Purchasing Law of 1983. The 1957 and 1981 laws are centralized and apply only in those counties that have elected to come under their provisions. The 1983 law, which applies in counties that have not adopted any other purchasing law, is not centralized. Finally, some counties operate under private acts which may or may not centralize the purchasing functions in the county.

Before delving into the various laws that govern purchasing in county governments, we must define "centralization." What does it mean for county purchasing to be centralized? In basic terms, centralized purchasing simply describes the type of organization in which there is some form of centralized control over the purchasing function.<sup>1</sup>

The Council of State Governments lists some of the benefits of centralization, not the least of which is cost savings.<sup>2</sup>

"An effective central purchasing program reduces the cost of government. It inspires public confidence in government. It directly improves the quality and timeliness of services rendered by program departments and agencies. It is government's meaningful link to the business community; it promotes honesty and integrity throughout governmental operations" (CSG, p. 10).

Some major benefits of centralized procurement include:

- Cost savings e.g., volume buys.
- Effective control authority for all procurement is placed in a single entity which establishes uniform procedures and oversight.
- Utilization of a professional purchasing staff to support the many agencies and departments in the county.
- Allowing program/agency personnel to concentrate on their areas of responsibility and expertise while allowing professional purchasing staff to make purchases.<sup>3</sup>
- Allowing the purchasing office and its personnel to accumulate a solid foundation of knowledge and experience about purchasing, marketing trends, prices, and vendors. This knowledge and expertise saves the county money on prices and allows a more efficient purchasing process.<sup>4</sup>

The Institute of Supply Management (formerly NAPM) offers the following advantages\benefits of centralization:

A high level of buying expertise, lower operating costs through central coordination of purchasing activities, avoiding duplication of effort, better prices, and providing more time for line managers to manage (rather than engage in procurement activities) (NAPM, p. 95-96).

As stated previously, there are two major statutes that counties may adopt to centralize the county's purchasing functions into one county purchasing department. Both of these are optional general laws of local application—they only apply to counties in where they have been approved by a two-thirds vote of the county legislative body or by a majority of voters in a referendum.

<sup>1</sup>Clifford P. McCue, et al., *The Fraud/Red Tape Dilemma in Public Procurement: A Study of U.S. State and Local Governments*, Paper Presented at the Public Sector Purchasing and Supply Symposium, April 2003, 22.

<sup>2</sup>McCue, 23.

<sup>3</sup>Larry N. Wellman, CPPO, *Centralization of the Procurement Function*, NIGP Technical Bulletin, 1

<sup>4</sup>Williamson County, Texas, *Purchasing Manual Policies*, (Revised 2001), 10.

## County Purchasing Law of 1957

Reference Number: CTAS-896

The County Purchasing Law of 1957 is one of the two optional general law statutes of local application that a county may adopt to centralize the county's purchasing functions. The County Purchasing Law of 1957—

- Is codified in T.C.A. §§ 5-14-101 *et seq.*
- May be adopted by the majority of voters in a referendum or by two-thirds vote of the



county legislative body. T.C.A. § 5-14-102.

- Is one of three companion Fiscal Control Acts of 1957: the County Budgeting Law of 1957 (budgeting), the County Fiscal Procedure Law of 1957 (accounting), and the County Purchasing Law of 1957 (purchasing). The county may enact any or all three acts; however, it is difficult to implement less than all three acts because each refers to certain provisions of the others. For example, T.C.A. § 5-14-109 states that purchases and contracts are not to be awarded until it has been certified by the director of accounts and budgets, or other county official or employee in charge of the central accounting records of the county, and that the unencumbered balance in the appropriation chargeable with the purchase obligations is sufficient to cover the cost of the order or contract.

Applicability to the Department of Education. The provisions of this act are not applicable to county school funds for any purpose unless approved by the State Commissioner of Education. T.C.A. § 5-14-115.

Liability for Purchases. The county is liable for the payment of all purchases of supplies, materials, equipment and contractual service made in accordance with the provisions of the County Purchasing Law of 1957, but not for the payment of purchases made contrary to its provisions. T.C.A. § 5-14-113.

## Purchasing Agent

Reference Number: CTAS-897

The purchasing agent has the exclusive power to make purchases for any county office or department under the County Purchasing Law of 1957.

Appointment— The county mayor appoints a purchasing agent subject to the approval of the county legislative body. T.C.A. § 5-14-103. The director of accounts and budgets may also serve as purchasing agent.

Qualifications—The purchasing agent must be qualified by training and experience to perform the required duties. T.C.A. § 5-14-103.

Surety Bond—The person appointed as purchasing agent must have a corporate surety bond in an amount not less than \$100,000 as established by the county mayor. The premium for the bond is paid from the county general fund. T.C.A. § 5-14-103(c).

Compensation of Purchasing Agent—The salary of the purchasing agent is set annually by the county legislative body. It cannot be in excess of amounts paid to other county officials under T.C.A. §§ 8-24-101 and 8-24-102. T.C.A. § 5-14-103.

Office Space of Purchasing Agent—Necessary office space and equipment for the use of the purchasing agent shall be provided and maintained at the county seat of such county. Such office shall be open for business during the hours observed by other officials of the county government. T.C.A. § 5-14-104.

Personnel—The purchasing agent is empowered, in accordance with such regulations as may be established by the county mayor, to appoint and remove the office assistants, to prescribe their duties, and to fix their salaries within the limits of the annual appropriation. T.C.A. § 5-14-103(e).

### Duties of the Purchasing Agent

- Purchase all supplies, materials, equipment, and contractual services;
- Arrange for rental of all machinery, buildings, and equipment;
- Transfer materials, supplies, and equipment between county departments; and
- Supervise the central storeroom. T.C.A. § 5-14-105.
- Classify the requirements of the county government for supplies, materials, and equipment;
- Adopt as standards the smallest number of quantities, sizes, and varieties of such supplies, materials, and equipment consistent with the successful operation of the county government; and
- Prepare, adopt and promulgate written specifications describing such standards. In preparation and revision of such standards the purchasing agent shall seek advise,

assistance and cooperation of the county departments and agencies to ascertain their precise requirements. T.C.A. § 5-14-112.

## County Purchasing Commission

Reference Number: CTAS-898

The county purchasing commission consists of five members, one of whom must be the county mayor and the remaining four are appointed by the county mayor with approval of the county legislative body. The duty of the county purchasing commission is to assist the purchasing agent in establishing policies, procedures, and regulations for making purchases and contracts; however, the actual administration of purchasing activities is the sole responsibility of the purchasing agent. T.C.A. § 5-14-106.

## Rules and Regulations

Reference Number: CTAS-899

The county purchasing agent, with the assistance of the county purchasing commission, is required to adopt, promulgate, and may from time to time amend rules and regulations for the purchase of supplies, materials, equipment, and contractual services, and specifically for the following purposes, as set out in T.C.A. § 5-14-107:

Emergencies—Authorizing in writing any department, official or agency of the county government to make purchases in the open market for immediate delivery in emergencies; defining such emergencies; and describing the manner in which such emergency purchases shall be made and promptly afterward reported to the county purchasing agent.

Requisitioning, Purchasing, Delivery, Storage, and Distribution— Prescribing the manner in which supplies, materials and equipment shall be requisitioned, purchased, delivered, stored, and distributed; and prescribing the dates for submitting requisitions and estimates, the future period they are to cover, the form in which they are to be submitted, the manner of their authentication, and their revision by the county purchasing agent.

Receiving and Testing of Materials and Equipment—Prescribing the manner of inspecting all deliveries of supplies, materials and equipment, and of making or procuring chemical and physical tests of samples submitted with bids and samples of deliveries to determine compliance with specifications.

Invoice Examination—Prescribing the manner in which invoices for supplies, materials, equipment and contractual services delivered to any and all departments, agencies, and offices of the county shall be submitted, examined, and approved.

Surplus Property—Requiring periodic and special reports by county departments and agencies of stocks of surplus, unusable or obsolete supplies and equipment on hand; providing for transfers of surplus supplies and equipment to and between county departments and agencies which may be surplus to one but needed by another; and providing for the disposal by sale, after receipt of competitive bids, of supplies, materials, and equipment which are obsolete or unusable.

Bonds—Determining whether a deposit or bond is to be submitted with a bid on a purchase contract or sale, and if required, prescribing the amount and form thereof, and providing that such surety shall be forfeited if the successful bidder refuses to enter into contract 10 days after the award.

Public Auctions of County-Owned Property—Prescribing the manner in which public auctions for the sale of county-owned property, real or personal, which has become surplus, obsolete, or unusable shall be conducted.

Other Matters—Providing for all other such matters as may be necessary to give effect to the foregoing rules and to the provisions of this part.

## Competitive Bidding under the 1957 Law

Reference Number: CTAS-900

The rules concerning bidding are set out in T.C.A. § 5-14-108. The general rule is that competitive bids are required for all purchases of and contracts for supplies, materials, equipment, and contractual services; all contracts for the lease or rental of equipment; and all sales of county-owned property which

is surplus, obsolete, or unusable. All sales must be made to the highest responsible bidder. T.C.A. § 5-14-108(d)(3). All purchases and contracts shall be awarded to the lowest and best bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the county government, and the delivery terms. Any and all bids may be rejected for good cause. T.C.A. § 5-14-108(f). Bids on purchases are to be based on such standards as are adopted by the county purchasing agent and approved by the county purchasing commission. T.C.A. § 5-14-108(e).

**Bid Thresholds**—Sealed bids must be solicited after public advertisement if the amount of the expenditure or sale is expected to exceed the maximum applicable thresholds established in T.C.A. § 12-3-1212 (up to \$50,000 in counties with centralized purchasing and a full-time purchasing agent). Requisitions for items estimated to cost an amount requiring public notice and sealed bids cannot be split to avoid this requirement. T.C.A. § 5-14-108(d)(2).

**Informal Bids**—Purchases or sales that are below the county's bid threshold may be made without public advertisement and sealed bids, but should be based on at least three competitive bids whenever possible. T.C.A. § 5-14-108(d).

**Formal Sealed Bids**—For expenditures and sales above the county's bid threshold, the purchasing agent must solicit sealed bids by public notice inserted at least once in a newspaper of county-wide circulation five days prior to the final date for submitting bids, or by posting notices on a public bulletin board in the county courthouse. The purchasing agent also should solicit bids by mailing requests to prospective suppliers when necessary or desirable. All notices must include a general description of the commodities or contractual services to be purchased or property to be sold, and state where bid blanks and specifications may be obtained and the time and place for opening bids. T.C.A. § 5-14-108(c)(3), (4) and (5). All sealed bids must be opened publicly at the time and place fixed in the advertisement. Each bid must be recorded with the names of the bidders, amounts of their bids, and the name of the successful bidder, and shall, after the award of contract or order, be open to public inspection. T.C.A. § 5-14-108(I).

**Sale of Surplus Property**—All sales of county-owned property, real and personal, which has become surplus, obsolete or unusable must be made by public auction, or by sealed bid, in the discretion of the purchasing agent. The purchasing agent must give public notice of the auction by publishing at least once in a newspaper of countywide circulation or by posting on a public bulletin board in the county courthouse at least five days prior to the auction, specifying the date, time, place, property to be sold, and terms of the auction. T.C.A. § 5-14-108(o).

**Exemptions from Competitive Bidding Requirements**—Certain contracts and purchased items are exempt from the competitive bidding requirements. These exemptions are set out on T.C.A. § 5-14-108, as follows:

- Professional service contracts (legal services, auditing by certified public accountants, and similar services) are not to be based on competitive bids but instead must be awarded based on recognized competence and integrity; the county is not prohibited from interviewing eligible persons or groups to determine their capabilities.
- The county may purchase materials, supplies, commodities, and equipment from any federal, state, or local government unit or agency without conforming to the competitive bidding requirements.
- Competitive bids are not required for services for which the rate or price is fixed by a public authority authorized by law to fix such rates or prices.
- The county legislative body, by resolution, may exempt perishable commodities from sealed or competitive bidding requirements when they are purchased in the open market.
- Effective May 26, 2010 Public Chapter 974 authorizes Washington County, subject to a two-thirds vote of the county legislative body, to opt out of bidding requirements of the county purchasing law for the purchase of group health insurance contracts for county employees and officials.

## Checks and Balances under the 1957 Law

Reference Number: CTAS-901

This act contains the following provisions which are designed to ensure the integrity of the purchasing system:

- Written requisitions are required before any purchase can be made. Requisitions must be signed by the head of the department, office, or agency requiring the articles or services. Original requisitions must be kept in the office of the purchasing agent. T.C.A. § 5-14-108(k)).
- Except for emergencies, purchases and contracts are not awarded unless first certified by the director of accounts and budgets or other county official or employee in charge of the central accounting records. This certification insures that the encumbered balance in the appropriation is sufficient to cover the expense. T.C.A. § 5-14-109.
- Each purchase order or contract issued or executed must be evidenced by a written order signed by the purchasing agent. T.C.A. § 5-14-111.
- The county is liable for the payment of all purchases made in accordance with the provisions of this act, but shall not be liable for the payment of purchases made contrary to its provisions. T.C.A. § 5-14-113.

## Additional Statutory Provisions

Reference Number: CTAS-902

The County Purchasing Law of 1957 contains specific provisions which must be followed when making purchases on behalf of the county. These provisions, set out in T.C.A. § 5-14-108, are as follows:

- All bids, purchase orders, and other documents pertaining to the award of contracts must be retained for five years. T.C.A. § 5-14-108(g).
- If all bids received are for the same unit price or total amount, the purchasing agent may reject all bids and purchase the supplies, materials, equipment or contractual services in the open market as long as the price paid does not exceed the bid price. T.C.A. § 5-14-108(h).
- All contracts must be approved as to form by the county attorney, and the original of long-term contracts must be filed with the county clerk. T.C.A. § 5-14-108(j).
- Purchases cannot be made from anyone whose business tax or license is delinquent. T.C.A. § 5-14-108(l).
- Commitments for the purchase of materials, supplies equipment and contractual services which extend beyond the end of the current fiscal year must be authorized by resolution of the county legislative body. T.C.A. § 5-14-108(m).

## Conflict of Interest under the 1957 Law

Reference Number: CTAS-903

In 2022, the Legislature enacted Public Chapter 700, effective March 18, 2022. The County Purchasing Law of 1957 now contains a conflict of interest provision much like Tenn. Code Ann. § 12-4-101, the general conflict of interest statute.

Tenn. Code Ann. § 5-14-114 now provides in part:

(a) The county purchasing agent, members of the county purchasing commission, members of the county legislative body, and other officials of the county shall not:

(1) Have a direct interest in a contract or purchase order for supplies, materials, equipment, or contractual services used by or furnished to a department or agency of the county government. As used in this subdivision (a)(1), "direct interest" means a contract with such person personally or with a business in which such person is the proprietor, a partner, or the person having the controlling interest in the business; "controlling interest" includes the individual with the ownership or control of the largest number of outstanding shares owned by a single individual or corporation;

(2) Have an indirect interest in the purchase of supplies, materials, equipment, or contractual services for the county unless the person publicly acknowledges the interest. A person who is not a member of a governing body and who is required to publicly acknowledge an indirect interest must do so by reporting the interest to the office of the county mayor to be compiled into a list that must be maintained as a public record. As used in this subdivision (a)(2), "indirect interest" means a contract in which a person is interested, but not directly so, and includes contracts where the person is directly interested and is the sole supplier of goods or services in the county; or

(3) Accept or receive, directly or indirectly, from a person, firm, or corporation to which a contract or purchase order may be awarded, by rebate, gift, or otherwise, money or anything of value whatsoever, or

a promise, obligation, or contract for future reward or compensation.

(b) If an official subject to subsection (a) violates subsection (a), the official shall forfeit all compensation earned by the official under the contract and is removed from office. An official removed from office pursuant to this section is ineligible for the same or similar position for a period of ten (10) years following the date of the violation.

See Op. Tenn. Atty. Gen. 94-073 (June 16, 1994) (in counties that have adopted the County Purchasing Law of 1957, there is a blanket prohibition against the acceptance of gifts of any value by county officials from any company to which a contract may be awarded; depending upon the circumstances, the acceptance of such gifts may constitute the criminal offense of official misconduct).

## County Financial Management System of 1981

Reference Number: CTAS-904

The County Financial Management System of 1981 (CFMS of 1981) is one of the two optional general law statutes of local application that a county may adopt to centralize the county's purchasing functions. The system is similar to the 1957 acts; however, under this act the county operates under one act rather than three separate acts. Furthermore, unlike the 1957 acts, the school funds are managed under this system just like all other county funds. The commissioner of education may remove the school department if records are not maintained properly and timely. T.C.A. § 5-21-124. The County Financial Management System of 1981—

- Is found in T.C.A. §§ 5-21-101 through 5-21-130.
- Provides for the consolidation of financial functions and establishment of a financial management system for all county funds operated through the county trustee.
- Creates a department of finance to administer the finances of the county and all funds handled by the trustee, in conformance with generally accepted principles of governmental accounting and rules and regulations established by the state comptroller of the treasury, state commissioner of education and state law. T.C.A. § 5-21-103.
- Allows the county to choose between two organizational options for purchasing.
- Must be installed within 13 months, beginning on July 1 of the fiscal year after its adoption. T.C.A. § 5-21-127.
- Requires approval by a two-thirds vote of the county legislative body or a majority of the voters in a referendum in order to be effective in any county. T.C.A. § 5-21-126.

Applicability to the Department of Education. School funds are managed centrally under this system just like all other county funds. The commissioner of education may remove the school department if records are not maintained properly and timely. T.C.A. § 5-21-124.

## Department of Finance

Reference Number: CTAS-905

This act creates a department of finance to administer the finances of the county for all funds handled by the county trustee. The department of finance is under the supervision of a director of finance and subject to the policies and regulations adopted by a county financial management committee. Generally the finance department is responsible for purchasing, accounting, budgeting, payroll, cash management, and other fiscal matters of the county. T.C.A. § 5-21-103. The specific provisions setting out the functions of the finance department can be found in the following statutes:

- Budgeting—T.C.A §§ 5-21-110 through 5-21-114.
- Accounting and Fiscal Procedures— T.C.A. §§ 5-21-115 and 5-21-116.
- Payroll Account—T.C.A. § 5-21-117.
- Purchasing—T.C.A. §§ 5-21-118 through 5-21-120.
- Conflict of Interest/Improper Gifts—T.C.A. § 5-21-121.
- Compensation of Committee Members—T.C.A. § 5-21-122.

## Financial Management Committee

Reference Number: CTAS-906

Under this system there is a county financial management committee. The committee consists of the county mayor, supervisor of highways, director of schools, and four (4) members elected by the county

legislative body. The four elected members need not be members of the county legislative body. T.C.A. § 5-21-104 (b). The financial management committee establishes and approves policies, procedures, and regulations implementing a sound and efficient financial system for administering the funds of the county. T.C.A. § 5-21-104 (e). The county legislative body, by resolution, either may create the following committees or it may authorize the financial management committee to assume functions of any or all of the following special committees: (1) budget committee, (2) investment committee, and (3) purchasing committee. T.C.A. §§ 5-21-104 (e) and 5-21-105.

## Director of Finance

Reference Number: CTAS-907

The finance director oversees the operation of the department of finance and installs and maintains a purchasing, payroll, budgeting, accounting, and cash management system for the county. T.C.A. § 5-21-107.

Appointment/Dismissal—The finance director is appointed by the financial management committee (no approval required), and is considered for all purposes an employee of the county. The financial management committee may dismiss the director, subject to the approval of the county legislative body. T.C.A. § 5-21-106.

Qualifications—The finance director must have a minimum of a bachelor of science degree, with a minimum of 18 quarter hours in accounting; however, the committee may select a person who does not have the foregoing qualifications if the person has at least two years of acceptable experience in a related position or an equivalent number of related courses. T.C.A. 5-21-106.

Surety Bond—The finance director must have a blanket bond in the amount not less than \$100,000 for the faithful performance of the director's duties and of the employees of the department. The premium for this bond is paid from funds appropriated to the finance department for this purpose. T.C.A. § 5-21-109.

Compensation of Director of Finance—The financial management committee establishes the compensation of the director of finance with the approval of the county legislative body T.C.A. § 5-21-106(c).

Personnel—The finance director is authorized to hire personnel for the finance department within the amounts provided in the budget. Written job requirements for department personnel are to be recommended by the director and approved by the financial management committee. T.C.A. § 5-21-107(d). A person employed by the finance department is to be recommended by the finance director and approved by the financial management committee to serve as deputy director of finance. The person employed for this position performs the duties and responsibilities that are assigned by the finance director. T.C.A. § 5-21-108.

Duties of the Director of Finance—The following are duties of the finance director which are related to purchasing and which apparently are to be performed by the finance director regardless of whether a separate purchasing agent is appointed under the act:

- Accepting requisitions by the department, agency, or official and if such supplies are not currently on hand, transmitting the requisition to the purchasing agent. T.C.A. § 5-21-119(b)(6).
- Verifying budget appropriations before authorizing a purchase. T.C.A. § 5-21-119(b)(6).
- Approving invoices for payment that are properly authorized and do not exceed the unencumbered balance of the allotments or appropriations against which they are chargeable. T.C.A. §§ 5-21-115(b)(2) and 5-21-119(b)(6).
- Paying invoices and obligations of the county as provided by the statutes. T.C.A. § 5-21-119(b)(6).
- Issuing disbursement warrants for approved obligations. T.C.A. § 5-21-115(b)(3).
- Establishing a system of preaudit of invoices, purchase orders, or other documents, including a comparison with any encumbrance document previously posted or filed authorizing the obligation. T.C.A. § 5-21-115(b)(2).

## Purchasing System

Reference Number: CTAS-908

All county purchasing is handled centrally under the County Financial Management System of 1981. The specific provisions regarding purchasing under the CFMS of 1981 are found in T.C.A. §§ 5-21-118 through 5-21-120. The financial management committee, with the assistance of the purchasing agent, is to establish a purchasing system for the county. The system must provide among other procedures the following:

1. The purchasing agent shall review all contracts or purchases for biddable supplies, materials, equipment, and other needs of the county;
2. No purchase or contract can be made when the bid prices exceed the current market price for the same merchandise or service;
3. Purchases and contracts must be awarded based on the lowest and best bid; and
4. Specifications development shall be made by the department, agency, or official to receive the merchandise, construction or service. T.C.A § 5-21-119.

**Purchasing Agent.** The finance director or a deputy appointed by him or her serves as the county purchasing agent unless the county legislative body establishes a separate purchasing department and appoints a purchasing agent. If the county legislative body approves a separate purchasing department and a purchasing agent is hired, all duties and responsibilities relative to purchasing are removed from the finance director. T.C.A. § 5-21-118.

**Duties of the Finance Director/Purchasing Agent.** The duties related to county purchasing are performed by the finance director or his or her designee (unless a separate purchasing department is created and a purchasing agent is appointed). The purchasing agent's duties are as follows:

- Contracting, purchasing, or obligating the county for supplies, material, equipment, contractual services, rental of machinery, buildings, or equipment. T.C.A. § 5-21-118(b)(1).
- Transferring materials, supplies, and equipment between county offices or agencies. T.C.A. § 5-21-118(b)(1).
- Supervising the storeroom or warehouse. T.C.A. § 5-21-118(b)(2).
- Contracting for building construction and purchase of land. T.C.A. § 5-21-118(b)(3).
- Public sale of all surplus materials, equipment, buildings, and land. T.C.A § 5-21-118(b)(4).
- Reviewing all contracts and purchases for biddable supplies, materials and equipment, and other needs of the county. T.C.A. § 5-21-119(b)(1).
- Reviewing specifications and changes to allow for maximum competition. T.C.A. § 5-21-119(b)(5).
- Preparing formal and informal bids. T.C.A. § 5-21-119(b)(5).
- Collecting sealed bids and opening bids publicly. T.C.A. § 5-21-119(b)(5).
- Evaluating bids (and submitting bids for approval by the financial management committee if required by the committee). T.C.A. § 5-21-119(b)(5).

## Competitive Bidding under the 1981 Law

Reference Number: CTAS-909

The rules concerning bidding under the County Financial Management System of 1981 are set out in T.C.A. § 5-21-120, and do not provide the level of detail as is found in the County Purchasing Law of 1957. The details for the competitive bidding process under this act must be set out in the policies and procedures established by the financial management committee with the assistance of the purchasing agent.

**Bid Thresholds**—The financial management committee sets the dollar limitation over which formal competitive bids are required. This amount is not to exceed the amount authorized under state law for the highway and education departments or other such amounts as established by law. T.C.A. § 5-21-120(a).

**Biddable Items**—"Biddable items" means any need of the county where more than one bidder or contractor in the county's trade area can provide the material or service. Specifications cannot be written to exclude vendors and contractors or limit the bidding to a specific bidder or contractor. T.C.A. § 5-21-120(b).

**Specifications Development**—The development of specifications is to be made by the department, agency, or official to receive the merchandise, construction, or service. The specifications must be reviewed by the purchasing agent and changed as necessary to allow for maximum competition of prospective bidder. T.C.A. § 5-21-119(b)(4) and (5).

Sale of Surplus Property—Under this act, the finance director/purchasing agent is responsible for the public sale of all surplus materials, equipment, buildings, and land. T.C.A. § 5-21-118(b)(4).

## Checks and Balances under the 1981 Law

Reference Number: CTAS-910

The County Financial Management System of 1981 contains the following provisions which are designed to ensure the integrity of the purchasing system:

- The finance director must verify budget appropriations before authorizing a purchase. T.C.A § 5-21-119(b)(6)(B).
- The finance director must establish a system of preaudit of invoices, purchase orders, or other documents, including a comparison with any encumbrance document previously posted or filed authorizing the obligation. T.C.A § 5-21-115(b)(2).
- The finance director approves for payment only those invoices that are properly authorized and do not exceed the unencumbered balance of the allotments or appropriations against which they are chargeable. T.C.A § 5-21-115(b)(2).
- Before any obligation against the county can be paid or any disbursement warrant or voucher issued, a detailed invoice, receivable copy of the purchase order, or other document indicating receipt of the merchandise or service is to be approved by the head of the office, department, or agency for which the obligation was made and be filed with the finance director. T.C.A § 5-21-115(b)(1).
- The county is liable for payment of all purchases and supplies, materials, equipment and contractual service made in accordance with the provisions of the CFMS of 1981, but is not liable for payment of such purchases made contrary to it unless such item is specifically approved by the financial management committee. T.C.A § 5-21-120(c).
- The director of finance is required to make a report showing the condition of the budget at the end of each month and present the report to the county legislative body. Each department head, elected official, and board member is furnished copies of monthly reports for their respective departments as soon as they are available. T.C.A § 5-21-114(a).

## Conflict of Interest under the 1981 Law

Reference Number: CTAS-911

In 2021, the Legislature enacted Public Chapter 472, effective May 18, 2021. The County Financial Management System of 1981 now contains a conflict of interest provision much like Tenn. Code Ann. § 12-4-101, the general conflict of interest statute.

Tenn. Code Ann. § 5-21-121 now provides in part:

(a) The director, purchasing agent, members of the committee, members of the county legislative body, other officials of the county, members of the board of education, members of the highway commission, and employees of the finance department and purchasing department shall not have a direct interest in the purchase of supplies, materials, equipment, or contractual services for the county.

(b) No firm, corporation, partnership, association or individual furnishing any such supplies, materials, equipment or contractual services, shall give or offer, nor shall the director or purchasing agent or any assistant or employee accept or receive directly or indirectly from any person, firm, corporation, partnership or association to whom any contract may be awarded, by rebate, gift or otherwise, any money or other things of value whatsoever, or any promise, obligation or contract for future reward or compensation.

"Direct interest" means a contract with a person personally or with a business in which the person is the proprietor, a partner, or the person having the controlling interest in the business. "Controlling interest" means sufficient ownership in a business or company to control policy and management, including the ownership or control of the largest number of outstanding shares owned by any single individual in a business or company.

In addition to direct interests, those individuals named in the statute can not have an indirect interest in the purchase of supplies, materials, equipment, or contractual services for the county unless the person publicly acknowledges the interest. A person who is not a member of a governing body and who is required to publicly acknowledge an indirect interest must do so by reporting the interest to the office of the



county mayor to be compiled into a list that must be maintained as a public record. As used in this statute, "indirect interest" means a contract in which a person is interested, but not directly so, and includes contracts where the person is directly interested and is the sole supplier of goods or services in the county.

## Penalties for Violation of the Act

Reference Number: CTAS-912

Any official or employee of the county who fails or refuses to perform the duties required by the County Financial Management System of 1981 or who otherwise fails to conform to the requirements of the act commits a Class C misdemeanor and is subject to removal from office or position. T.C.A. § 5-21-125.

## Centralized Purchasing by Private Act

Reference Number: CTAS-913

Another method available to county governments to centralize their purchasing functions is the adoption of private acts. Some counties have adopted private acts passed by the General Assembly which provide for centralized purchasing. Other counties have adopted private acts that contain purchasing provisions for various county departments without centralizing the functions. These private acts only apply to the county named in the private act.

## Non-centralized Purchasing

Reference Number: CTAS-914

Counties that have not adopted some form of centralized purchasing must look to various general laws and sometimes private acts for the purchasing provisions that govern purchasing for particular offices. In these non-centralized counties, purchasing may be handled by several officials.

## County Purchasing Law of 1983

Reference Number: CTAS-915

The County Purchasing Law of 1983, found in T.C.A. § 5-14-201 *et seq.*, is commonly known as the "general law" on purchasing. This law governs purchases from the county general fund in those counties where purchasing is not governed by either a county or metropolitan government charter, a private act, or the County Financial Management System of 1981 or the County Purchasing Law of 1957. This act does not apply to purchases from county highway funds or from county education funds.

Under T.C.A. 5-14-202, the act also does not apply to purchases from nonprofit corporations, such as Local Government Data Processing Corporation (now Local Government Corporation), whose purpose is to provide goods or services specifically to counties.

**Competitive Bidding**—Under T.C.A. § 5-14-204, public advertisement and competitive bidding is required for all purchases and lease-purchase agreements, except for the following:

- Purchases costing less than the maximum amount established in T.C.A. § 12-3-1212 (\$25,000 in counties with non-centralized purchasing).
- Goods or services which may not be procured by competitive means because of a single source or because of a proprietary product;
- Supplies, materials or equipment needed in an emergency situation, subject to reporting requirements of the county legislative body and the county mayor;
- Leases or lease-purchase agreements costing less than the maximum amount established in T.C.A. § 12-3-1212 (\$25,000 in counties with non-centralized purchasing).
- Fuel and fuel products purchased in the open market by governmental bodies.

County legislative bodies may by resolution lower the dollar amount over which competitive bids are required, and may also adopt regulations providing procedures for implementing this act.

**Purchasing Agent**— There is no mention of a purchasing agent in the County Purchasing Law of 1983.

## County Uniform Highway Law

Reference Number: CTAS-916

The County Uniform Highway Law, at T.C.A. § 54-7-113, provides a purchasing law for the county

highway department when purchasing for the department is not governed by private act, County Purchasing Law of 1957, or the County Financial Management System of 1981. The purchasing provisions of the County Uniform Highway Law do not apply to Shelby, Davidson, Knox, and Hamilton counties.

The County Uniform Highway Law does not establish a purchasing system, but T.C.A. § 54-7-113(c) does provide the following guidelines regarding highway department purchasing:

- All purchases of \$25,000 or more must be publicly advertised and competitively bid.
- Leases or lease-purchase arrangements requiring payment of \$25,000 or more, or which are for 90 days or more, must be advertised and competitively bid.
- Purchases of like items which individually cost less than \$25,000, but which are customarily purchased in lots of two or more, must be publicly advertised and competitively bid if the total purchase price of these items is expected to exceed \$25,000 during the fiscal year.

The following are exempted from public advertisement and competitive bidding requirements under T.C.A. § 54-7-113(c):

- Purchases of less than \$25,000 may be made in the open market without newspaper notice, but must wherever possible be based on at least three competitive bids.
- Repair of heavy road building machinery or other heavy machinery for which limited repair facilities are available need not be bid.
- Purchases may be made without competitive bidding in actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work (but not including neglect or indifference in anticipating normal needs).
- No county road department shall be required to publicly advertise and competitively bid purchases of \$25,000 or less, even if such bids are required by public or private act.

The road department or chief administrative officer must obtain at least three competitive bids when possible.

Purchasing Agent—The County Uniform Highway Law does not designate a purchasing agent.

## Purchasing in County Education Departments

Reference Number: CTAS-917

The county education department has its own purchasing law, found in T.C.A. § 49-2-203 (a)(3), but this law is largely superseded or modified in those counties that adopt the statutes of the County Financial Management System of 1981. In counties that have adopted the County Purchasing Law of 1957, the county board of education may or may not use the central county purchasing system depending upon the approval of the State Commissioner of Education. T.C.A. § 5-14-115.

Major Features of Purchasing in County Education Departments (absent any general law of local application or private act):

- It is the duty of the local board of education to purchase all supplies, furniture, fixtures, and material of every kind, through the executive committee. T.C.A. § 49-2-203(a)(3).
- Purchasing is generally handled by the executive committee, which is composed of the chair of the board of education and the director of schools. Purchasing duties of the executive committee include—
  1. To advertise for bids and let contracts authorized by the county board of education; and
  2. To serve as the purchasing agent for the board; provided, that this shall not apply to counties having a purchasing board nor to counties having a purchasing agent created by a private or local act. T.C.A. § 49-2-206.

Competitive Bidding and Bid Thresholds – An LEA may follow the purchasing procedure its local governing body so long as the governing body has established a purchasing procedure that provides for advertisement and competitive bidding. T.C.A. § 49-2-203(a)(3)(A). If an LEA chooses not to follow the local governing body's purchasing procedure, all purchases of supplies, furniture, fixtures and materials of every kind estimated to exceed the maximum applicable thresholds established in T.C.A. § 12-3-1212 (up to \$50,000 for LEAs with centralized purchasing and a full-time purchasing agent) must be made on competitive bids, which must be solicited by advertisement in a newspaper of general circulation in the

county. Newspaper advertisement may be waived in the event of emergency. T.C.A. § 49-2-203(a)(3)(A). Purchases costing less than the maximum applicable threshold established in T.C.A. § 12-3-1212 may be made in the open market without newspaper notice, but must, whenever possible, be based upon at least three (3) competitive bids. T.C.A. 49-2-203(a)(3)(C).

Vendor Lists—School districts which have a purchasing division may use a comprehensive vendor list for the purpose of soliciting competitive bids as long as the vendors on the list are given notice to bid and the purchasing division periodically advertises in a newspaper of general circulation in the county for vendors and updates the list of vendors after the advertisement. T.C.A. § 49-2-203(a)(3)(B)(iii).

Construction Contracts— For construction of or additions to school buildings, the LEA may follow the purchasing procedure of its local governing body if the purchasing procedure provides for advertisement and competitive bidding. If the LEA chooses not to follow the local governing body's purchasing procedures, the board shall contract, following open bids, for the construction of or additions to school buildings in excess of applicable amounts established in T.C.A. § 12-3-1212.

Public notice must be given at least ten days in advance of accepting bids for construction. The board is required to award based on the lowest and best bidder. If no bid is within the budgetary limits for the construction, the board may negotiate with the lowest and best bidder with the approval of the commissioner of education. T.C.A. 49-2-203(a)(3)(D).

Construction Management Services—Construction management services are deemed to be professional services that are to be procured through a request for proposals process stating the service requirements and factors used for evaluating the proposals. The factors to be considered include the construction manager's qualifications and experience on similar projects, qualifications of personnel assigned to the project, fees, and any other criteria deemed relevant. Cost cannot be the sole criterion. Construction managers cannot perform actual construction work except in instances where bids have been solicited twice and no bids have been submitted. A school system can perform work on its project with its own employees and have a construction manager perform the coordination and oversight of the project. Actual construction work under the direction of the construction manager must be competitively bid. Construction management for school construction or additions may be performed by (1) a general contractor licensed in Tennessee, as long as none of the services performed by the general contractor involve architectural and engineering services, unless, with regard to those services, the general contractor is also licensed as an architect or engineer; or (2) a licensed architect or engineer, as long as none of the services performed by the architect or engineer involve any of the services required to be performed by a contractor, unless, with regard to those services, the architect or engineer is also licensed as a contractor. T.C.A. § 49-2-203(a)(3)(C)(ii)-(iv).

Sale of Surplus Property—Surplus real and personal property are disposed of in accordance with T.C.A. §§ 49-6-2006 and 49-6-2007, respectively. With regard to real property, the board of education may dispose of any real property to which it holds title. Surplus personal property is to be sold, within 90 days of being declared surplus, to the highest bidder after advertising in a newspaper of general circulation at least seven days prior to the sale. T.C.A. § 49-6-2007(b).

Conflict of Interest—The conflict of interest provision found in T.C.A. § 49-6-2003 prohibits any teacher, supervisor, commissioner, director of schools, member of the board of education, or other school officer in the public schools to have any pecuniary interest, directly or indirectly, in supplying books, maps, school furniture, and/or apparatus to the public schools of the state, or to act as agent for any author, publisher, bookseller, or dealer in school furniture or apparatus on promise of reward for such person's influence in recommending or procuring the use of any book, map, school apparatus, or furniture of any kind, in any public school (except being the authors of books). This does not preclude the spouse or family member of a principal, teacher, or other school administrative employee from participating in business transactions with the school system if sealed competitive bids are used as long as the principal, teacher, or other school administrative employee is not involved in the selection of bids or preparation of specifications.

## Sealed Competitive Bids and Public Advertising Threshold

Reference Number: CTAS-2481

Tenn. Code Ann. § 12-3-1212 allows counties, municipalities, utility districts, local education agencies, or other local government entities having centralized purchasing and a full-time purchasing agent, by resolution of the governing body, to increase the threshold amount over which public advertisement and sealed competitive bids or proposals are required to \$50,000 for nonemergency, nonproprietary

purchases. The law provides that a full-time purchasing agent is someone that devotes 100% of the person’s working time to purchasing.

In addition, counties, municipalities, utility districts, local education agencies, and other local government entities with non-centralized purchasing or centralized purchasing without a full-time purchasing agent, by resolution of the governing body, may increase the threshold over which public advertisement and sealed competitive bids or proposals are required to \$25,000 for nonemergency, nonproprietary purchases.

Purchases of like items must be aggregated for the purpose of the applicable threshold.

The law requires local governments to get at least three written quotes, when possible, for purchases costing less than the bid threshold but more than 40% of such bid threshold or a lower amount as may be established by the governing body in a resolution.

## Dollar Threshold Chart

Reference Number: CTAS-918

Purchasing Law	Formal Bids	Informal Bids	Statute
County Purchasing Law of 1983	Public advertising & competitive bidding for purchases costing over the maximum applicable amount established in T.C.A. § 12-3-1212 (\$25,000 in counties with non-centralized purchasing). Exceptions include emergency purchases, sole-source purchases, fuel products, and lease or lease purchase agreements costing less than the maximum amount.	Any purchase costing less than the maximum applicable amount established in T.C.A. § 12-3-1212 may be made without competitive bids & public advertisement, but whenever possible be based on three (3) competitive bids.	Formal Bids — § 5-14-204 Informal Bids — § 5-14-205 CLB authorized to lower dollar amount — § 5-14-206
CFMS of 1981	The finance committee authorizes the dollar limits for competitive bids but not to exceed amount authorized by state law for the highway & education departments or other amounts established by law (up to \$50,000 in counties having centralized purchasing and a full-time purchasing agent pursuant to T.C.A. § 12-3-1212).	Any purchase costing less than the applicable maximum amount established in T.C.A. § 12-3-1212 may be made without competitive bids & public advertisement, but whenever possible be based on three (3) competitive bids.	§ 5-21-120(a)
County Purchasing Law of 1957	If the amount of the expenditure or sale is estimated to exceed the maximum applicable amount established in T.C.A. § 12-3-1212 (up to \$50,000 in counties with centralized purchasing and a full-time purchasing agent) sealed bids shall be solicited. Several exceptions apply. See T.C.A. § 5-14-108.	All purchases or sales not requiring bid solicitation may be made without competitive bids & public advertisement, but whenever possible be based on three (3) competitive bids.	Formal Bids — § 5-14-108(c)(1) Informal Bids — § 5-14-108(d)(1)
County Uniform Highway Law (CUHL)	Public advertising & competitive bidding for purchases of \$25,000 & over except for repair of heavy road building machinery or other heavy equipment or emergencies.	Any purchase costing less than \$25,000 may be made without competitive bids & public advertisement, but whenever possible be based on three (3) competitive bids.	Formal Bids — § 54-7-113 Informal Bids — § 54-7-113
Education	If an LEA chooses not to follow the local governing body's purchasing procedure, all purchases of supplies, furniture, fixtures and materials of every kind estimated to exceed the maximum applicable amount established in T.C.A. § 12-3-1212 (up to \$50,000 for LEAs with centralized purchasing and a full-time purchasing agent) must be made on competitive bids, which must be solicited by advertisement in a newspaper of general circulation in the	Purchases costing less than the maximum applicable threshold established in T.C.A. § 12-3-1212 (up to \$50,000 for LEAs with centralized purchasing and a full-time purchasing agent) may be made in the open market without newspaper notice, but must, whenever possible, be based upon at	Formal Bids — §§ 49-2-203(a)(3)(B), 49-2-203(a)(3)(B)(iii) Informal Bids — § 49-2-203(a)(3)(C) Construction Contracts — § 49-2-203(a)(3)(D)

**Purchasing Law** **Formal Bids**

county. Newspaper advertisement may be waived in the event of emergency.

If the LEA chooses not to follow the local governing body's purchasing procedures, the board shall contract, following open bids, for the construction of or additions to school buildings in excess of applicable amounts established in T.C.A. § 12-3-1212. Competitive sealed bids or proposals for non-emergency or non-propriety purchases that exceed the maximum applicable amount established in T.C.A. § 12-3-1212 (up to \$50,000 in counties with centralized purchasing and a full-time purchasing agent). These counties may retain their present competitive bidding conditions or establish different limits by private act or charter provision.

Counties over 150,000

**Informal Bids**

least three (3) competitive bids. T.C.A. 49-2-203(a)(3)(C).

Authorized to make purchases under the maximum applicable amount established in T.C.A. § 12-3-1212 (up to \$50,000 in § 12-3-1204 counties with centralized purchasing and a full-time purchasing agent) without competitive bids.

**Statute**

## Purchasing Principles and Techniques

Reference Number: CTAS-196

### County Procurement Objectives

The National Institute of Purchasing (NIGP), a national organization of public purchasing professionals, asserts that all procurement functions have essentially the same goal: "Obtaining maximum value for the tax dollar."<sup>1</sup>In the procurement professional's attempt to obtain the goods and services at the lowest price and at the necessary quality level, he/she strives to fulfill certain objectives in the day-to-day endeavors related to the purchasing functions. What then are the objectives in purchasing? The National Institute of Public Purchasing maintains that the objectives of purchasing are—

- To obtain the *right materials or services* (meeting quality requirements) in the *right quantity* for delivery at the *right time* (to take advantage of seasonal pricing or special price concessions) to the *right place* (ensure availability to customers) from the *right source* (a responsive and responsible supplier) with the *right service* (to ensure quality) at the *right price*.
- To supply end users with an uninterrupted flow of goods and services.
- To purchase competitively.
- To place emphasis on quality and best value.<sup>2</sup>

Spending county taxpayers' money requires the purchase of goods and services to be purchased in a fair, equitable, and efficient manner. The purpose is to ensure that the public monies are spent properly, legally, and that the best possible value is received for the money. Therefore, the essential objective of the county procurement function is to furnish operating departments with the goods and services they need in the right quantity, right quality, right time, as efficiently as possible, and at the lowest overall cost. The county procurement objective, by law, is to supply responsible bidders a fair and equal opportunity to compete for county business. This is accomplished by complying with statutory requirements and by the county's purchasing policy and procedures.<sup>3</sup>

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<sup>1</sup>National Institute of Governmental Purchasing, *General Public Purchasing*, (Falls Church, VA: 1991) 1-25.

<sup>2</sup>National Institute of Governmental Purchasing, *Welcome to Public Procurement*, (Herndon, VA: 2001) 4.

<sup>3</sup>*Welcome to County Procurement*, Texas Purchasing Association, 4, January 2004,

## Principles of Public Purchasing

## Reference Number: CTAS-919

Purchasing is one of the most common activities of county government. The adoption of purchasing policies and procedures are important because purchasing policies—

- Send signals to the taxpayers that their money is being expended carefully;
- Send signals to the business sector that they will be treated fairly and equitably;
- Send signals to the employees that they have support, directions, and protection from their highest superiors;<sup>1</sup>
- Foster effective broad-based competition within the free enterprise system to ensure the county will receive the best possible service or product at the lowest possible price;
- Promote accountability for the use of public funds in the acquisition of goods and services;
- Establish guidelines for the acquisition of goods and services;
- Define the responsibilities of the county departments and employees in the purchasing process;
- Standardize and communicate approved purchasing practices;<sup>2</sup>
- Promote supplier understanding and cooperation;<sup>3</sup> and
- Help to train new personnel and guide others in the functions of purchasing.

The efficiency and effectiveness of any program depend on good, sound principles of management. Purchasing is no different. There are common, basic principles of purchasing which can be applied to any purchasing program to make it operate to the best advantage of the county government. Here are three (3) basic principles of public purchasing:

- Maximization of Competition—Specifications are written to allow the purchasing process to be as open as possible to a number of qualified vendors.
- Equal and Fair Competition—Each vendor is provided the same information regarding product or service needs/specifications.
- Best Value at the Lowest Price—The purchase must be made at the lowest price for the product or service that best meets the needs of the requisitioner.<sup>4</sup>

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<sup>1</sup>The University of Tennessee, Center for Government Training, *Municipal Purchasing*, 49.

<sup>2</sup>Harold E. Fearon, et al., *The Purchasing Handbook*, Fifth Edition, (New York, NY, McGraw-Hill 1992), 70.

<sup>3</sup>ibid, Fifth Edition, 70.

<sup>4</sup>Maricopa Purchasing Guide, Maricopa, AZ, 1, January 2004, 1.

## What is Procurement in the Public Sector?

### Reference Number: CTAS-920

Procurement in the county is a *process* through which offices acquire the goods and services needed to perform their specific tasks. However, county procurement can only be conducted in ways that are specifically allowed by law.<sup>1</sup>

The terms “purchasing” and “procurement” are often used interchangeably. Nevertheless, “purchasing” is only one stage of procurement. The *stages of procurement* are

A. Planning and Scheduling—Good planning ensures that goods and services are delivered timely to meet operational needs. County governments should plan and schedule procurement activities to conform to budgetary objectives.

B. Source Selection (Purchasing)—The process through which solicitations are issued, advertisements run, offers are made, contracts awarded, and goods and services received.<sup>2</sup> Patricia C. Watt in “*An Elected Official’s Guide to Procurement*”, lists the methods of source selection (purchasing) as:

1. Competitive Sealed Bids—In this method the government issues an invitation to/for bids (ITB, IFB). These documents usually include a standard form on which vendors respond by filling out their bid which is the offer to provide the requested goods or services for a flat price or fixed unit cost. Bids are submitted sealed, and opened in public at a predetermined time. The award is made

to the vendor submitting the lowest bid assuming the vendor is responsive to the solicitation and is made by a responsive bidder.<sup>3</sup>Competitive sealed bids are the preferred method for purchases that exceed the statutory small purchase limit thresholds.<sup>4</sup>Competitive sealed bids are generally used when the following conditions are met:

- Clear specifications are available
- The item or service is available from more than one source
- There are reproducible test methods
- An award can be made to the bidder who meets the requirements of the solicitation and has submitted the lowest price.<sup>5</sup>

2. Competitive Sealed Proposals—The competitive sealed proposal method is used for goods and services above the small purchase threshold where the specifications cannot be developed so that they are sufficiently able to make a selection solely based on price. In the competitive sealed proposal process, the county government issues a request for proposal (RFP) describing, as best it can, the needs of the county with regard to the goods and/or services to be purchased and invites interested vendors to make proposals. A “proposal” is an offer by a vendor to provide the requested goods or services as he/she understands and recommends it at a suggested price or unit cost. Proposals are evaluated according to the criteria described in the RFP. The award is made to the proposal that is most favorable to the government considering price and the other evaluation criteria.<sup>6</sup>

3. Informal Quotes — Informal quotes are issued to a minimum number of vendors who then submit quotes (prices). A “quote” is less formal than a bid, and may be verbal. Informal quotes are usually done by non-advertised mail, or telephone, faxes, or by e-mail for small dollar purchases as set by the county’s policy and procedures.<sup>7</sup>The award is given to the vendor who provides the lowest quote for the specified item. Informal quotes should be fully documented.

C. Contract Administration—The process of ensuring the terms of the purchase agreement are enforced, goods and services delivered satisfactorily, and the bills are paid.<sup>9</sup>

<sup>1</sup>*Welcome to County Procurement*, Texas Purchasing Association, 4, January 2004, 4.

<sup>2</sup>Patricia C. Watt, *An Elected Official’s Guide to Procurement*, (Government Finance Officers Association), 1.

<sup>3</sup>*ibid*, 35.

<sup>4</sup>*ibid*, 35.

<sup>5</sup>National Institute of Governmental Purchasing, *Welcome to Public Procurement*, (Herndon, VA: 2001), 17.

<sup>6</sup>Watt, 35. *See also, Waste Services of Decatur, LLC v. County of Lawrence*, 2012 WL 3329621 (Tenn. Ct. App. 2012), noting that an RFP is generally appropriate, for example, when the public authority is incapable of completely defining the scope of work, when the service may be provided in different ways, or when qualifications and quality are considered primary over cost.

<sup>7</sup>National Institute of Governmental Purchasing, *General Public Purchasing*, (Falls Church, VA: 1991), 4-13.

<sup>8</sup>Watt, 36.

<sup>9</sup>*ibid*, 1.

## Request for Qualifications (RFQ)

Reference Number: CTAS-921

Request for Qualifications (RFQ) is a process that is used to obtain a statement of qualifications from proposers. Proposers are asked to submit resumes, certifications, references, previous experience, and other qualifications as they relate to criteria established and set forth in the specifications portion of the RFQ document. This procedure may be used to select the most qualified individual or firm to provide technical expertise (e.g., architectural and/or engineering services). The Request for Qualifications approach emphasizes the quality of the product(s) and the qualifications of the vendors.<sup>1</sup>

The Request for Qualifications (RFQ) is a procurement process whereby service providers are selected on the basis of qualifications for a particular project, rather than solely on price factors. The prospective vendor that has the best qualifications is offered the contract, and fee is negotiated.<sup>2</sup> This process is generally used for professional services (see T.C.A. § 12-4-107 concerning the selection of architects and engineers), and cannot be used when competitive sealed bids are required.

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<sup>1</sup>Yuhua Qiao and Glenn Cummings, "The Use of Qualifications - Base Selection Public Procurement: A survey Research", *Journal of Public Procurement*, 2003, Volume 3, Issue 2, 216.

<sup>2</sup>ibid, 223.

## The Role of the Purchasing Department

Reference Number: CTAS-922

The role of the purchasing department is—

- To provide all materials, supplies, tools, equipment, and services required for the organization's operations—at the time and place needed in the proper quantity and quality.
- To secure materials, supplies, equipment, and services at the lowest possible cost, consistent with prevailing economic conditions, while establishing and maintaining a reputation for fairness and integrity.
- To furnish members of management with timely information.
- To obtain the greatest possible revenue from the disposal of by-products and of surplus, damaged, scrap, or obsolete materials and equipment.<sup>1</sup>

Public purchasing is regarded as a service function since it relieves the rest of the organization from performing a function that is common to all. Some *additional roles* that the purchasing department performs in support of its objective is to furnish operating departments with the goods and services they need by—

- Building, organizing, and maintaining formal lists of potential suppliers.
- Assisting end users to design, research, and prepare written competitive solicitations and to evaluate the offers received in response to them.
- Ensuring continuity of supply through coordinated planning and scheduling, term contracts, and inventory.
- Assuring the quality of purchased goods and services through standardization, inspection, and contract administration.
- Participating in decisions to make or buy (i.e., contract out for) services.
- Documenting purchasing actions (issuing and monitoring purchase orders) and making pricing and other nonproprietary data reasonably available to those who request it.<sup>2</sup>

The purchasing department buys a vast amount of different goods and services throughout the fiscal year as requested by county departments. These goods and services run the gamut from the purchase of computer equipment, food, motor vehicles, school equipment and supplies, law enforcement supplies, highway construction supplies and equipment, janitorial and office supplies, to professional services.

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<sup>1</sup>National Institute of Governmental Purchasing, *General Public Purchasing*, (Falls Church, VA: 1991), 1-3, 1-5.

<sup>2</sup>Harold E. Fearon, et al., *The Purchasing Handbook*, Fifth Edition, (New York, NY, McGraw-Hill 1992), 823.

## Procurement Process

Reference Number: CTAS-195

Procurement in the county is a *process through which offices acquire the goods and services needed to perform their specific tasks.* Procurement includes the stages of planning and scheduling, source selection, and contract administration. Within the stages of procurement dwell the activities from planning, preparation and processing of the requisition, solicitation, award and contract information, to



receipt and acceptance of delivery, payment, inventory tracking (if a county has a central warehouse), and property disposition (surplus property).<sup>1</sup> Following are some points that should be considered when making any purchase:

- The commencing of the purchasing process is to identify the need and product or service that will best fulfill that need.<sup>2</sup>
- Develop specifications that describe the characteristics of a product or service being sought. Specifications should be written to encourage, not discourage competition. The goal is to invite maximum reasonable competition.<sup>3</sup>
- Requisitions should be prepared with accurate and complete information.
- Seek bids in accordance with applicable statutes. Seek price quotations (for purchases below the sealed bid limit requirement) in accordance with applicable statutes and/or local purchasing policies and procedures.
- Award should go to the lowest responsive bidder who meets the specifications of the product or services requested.
- Contracting for the product or service should be in accordance with applicable statutes.
- Receive the product or service and verify that it meets the requirements of the purchase order or contract.<sup>4</sup>

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<sup>1</sup>*The Acquisition Process, State of Idaho, Purchasing Division, 3-1.*

<sup>2</sup>*ibid, 3-1.*

<sup>3</sup>*ibid, 3-1.*

<sup>4</sup>*ibid, 3-1.*

## The Purchasing Cycle

Reference Number: CTAS-923

The purchasing cycle encompasses all phases of procuring goods and services essential to maintaining and enhancing operations of county government. A series of consecutive activities constitutes the basic steps in the purchasing cycle. A "sample purchasing cycle (centralized financial management system)" in county government is illustrated below:<sup>1</sup>

### Sample Purchasing Cycle (Basic Steps)

1. Need is recognized by the user department.
2. User department develops purchase requisition, keeps a copy and forwards original to purchasing (or central finance in 1981 CFMS counties).
3. Purchasing reviews requisition for accuracy and completeness.
4. If accurate, the purchasing department checks to see if funds are available to purchase the goods or services. The finance department verifies availability of funds.
5. The purchasing department checks if goods are available in stock or excess (surplus).
6. If funds are available, the purchasing department determines method of purchasing decision of whether regulations require bids to be solicited.
7. If purchase exceeds the small purchasing threshold, purchasing requests quotations through ITB, IFB, or RFP.
8. The purchasing department receives and tabulates bid quotations.
9. If bids are approved, the purchase order is processed and mailed.
10. Vendor supplies the ordered goods or services, and submits the invoice to the purchasing department or to central finance/accounting.
11. Receiving report is routed to central finance/accounting.
12. Central finance/accounting verifies that the purchase order and invoice coincide (agree), and pays the invoice.
13. Disposition of surplus, salvage, or scrap goods.

Purchasing cycle flowchart examples.

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<sup>1</sup>See Lincoln University of Missouri, *Purchasing Cycle*,(November 2003) 1 and Blount County, Tennessee, *Purchasing Policies and Procedures*.

## The Requisitioning Process

Reference Number: CTAS-924

Requisitioning is the formal request for a purchase to be made. It is the first step after the need for goods or services is recognized. The user department's purchase requisition authorizes the purchasing department to enter into a contract with a vendor to purchase goods or services.<sup>1</sup>The purpose of the requisition is to inform the purchasing department of the department's needs, and to correctly identify the item(s) or services required.<sup>2</sup>In most counties that have a centralized finance/purchasing system, a pre-printed purchasing requisition form is used to convey the purchase request to the purchasing department.

The purchase requisition should contain accurate and complete information describing the goods or services needed for the on-going operations of the user department. The purchase requisition should fully describe to the purchasing department what to buy, when it is required, and where the goods are to be delivered or the services are to be performed.<sup>3</sup>Many pre-printed purchase requisition forms have an area where the user department can enter a budget account line item number to utilize for their requested purchase. This allows the purchasing department to check for available budget fund balances before making the purchase determination.

Preparation of the requisition should be performed far enough ahead of the date that the goods or services are needed to allow the purchasing department and the vendor to do their jobs properly, including-

- Advertising for bids, if necessary (including allowing adequate time for specification writing);
- Obtaining bids, proposals, or price quotations;
- Processing bids or proposals, placing purchase orders, or concluding contracts; and
- Allowing delivery of goods or services.<sup>4</sup>

*The requisition should contain, among other things, the following information:*

- The date of the requisition (month, day, year).
- Name of the department.
- Requisition number.
- Departmental contact and telephone number.
- Date required/requested.
- Delivery destination.
- Budget account number(s).
- Estimated cost (unit price and total).
- Vendor identification.
- Quantity required, including unit of issue.
- Description—clearly describe the item needed, including any technical requirements. The department may need to include detailed specifications and other required information as a separate attachment to the requisition.<sup>5</sup>
- Signature of department head or person authorized to sign requisition.

After the purchasing department receives the purchase requisition, it reviews the purchase requisition for completeness and adequate or inadequate information (e.g., recommended necessary specification changes, signature of person authorized to sign requisition, etc.). If the requisition is prepared with complete and adequate information, the purchasing department determines the appropriate purchasing method based on the cost of the purchase, the goods and services to be purchased, the existing contracts for goods and services, and other relevant factors.<sup>6</sup>One of the main purposes of the purchase requisition is that it provides a record that can be inspected and audited.

Sample purchase requisition.

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<sup>1</sup>Welcome to County Procurement, Texas Purchasing Association, January 2004, 12.

<sup>2</sup>National Institute of Governmental Purchasing, *General Public Purchasing*, (Falls Church, VA: 1991), 4-3

<sup>3</sup>Welcome to County Procurement, P. 12

<sup>4</sup>Williamson County, Texas, Purchasing Manual Policies, (Revised 2001) 2.

<sup>5</sup>ibid, 2.

<sup>6</sup>ibid, 12.

## The Purchase Order

Reference Number: CTAS-925

The purchase order is the written evidence of a contract between the buyer and supplier for the purchase of goods or services at an agreed price and delivery date.<sup>1</sup> The purchase order is a vehicle by which the buyer formalizes the contract with the supplier. It is the supplier's authority to ship and charge for the goods specified in the order.<sup>2</sup> It is the purchaser's commitment for the value of the goods ordered.<sup>3</sup> It is a legal document and must therefore contain all the elements of the contract.<sup>4</sup> It should cover clearly and precisely the essential elements of the purchase to be made in a manner that minimizes any confusion between the buyer and seller.<sup>5</sup> Most counties use preprinted forms that contain general instructions, standard terms and conditions (generally referred to as "*boilerplate*" and often printed on the back of the purchase order or on a separate preprinted sheet and incorporated by reference), and adequate space to fully define the specific agreement.<sup>6</sup> At a minimum, the purchase orderform may be used to describe the essential elements of description, quantity, and price of the goods or services to be purchased; purchase order date and number; supplier's name and address; delivery date(s) and shipping information; payment terms and buyer's name, and signature. Most organizations also include standard terms and conditions.<sup>7</sup> Special terms and conditions, detailed specifications and drawings, and additional supporting information and documents that are part of a particular procurement can be incorporated in the purchase agreement by reference on the purchase order.<sup>8</sup>

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<sup>1</sup>Harold E. Fearon, et al., *The Purchasing Handbook*, Fifth Edition, (New York, NY, McGraw-Hill 1992), 88.

<sup>2</sup>George W. Alijan, et al., *The Purchasing Handbook*, Third Edition, (New York, NY, McGraw- Hill 1973) 3-36.

<sup>3</sup>ibid, Third Edition, 3-36.

<sup>4</sup>ibid, Fifth Edition, 90.

<sup>5</sup>ibid, Fifth Edition, 88.

<sup>6</sup>ibid, Fifth Edition, 88.

<sup>7</sup>ibid, Fifth Edition, 88.

<sup>8</sup>ibid, Fifth Edition, 88.

## The Receiving Report

Reference Number: CTAS-926

After goods or services have been received, the final action required (in counties that utilize receiving reports) by the receiving department is to confirm the receipt of the goods or services. The receiving department matches the items actually received, the packing list provided by the supplier of the shipment, and the receiving copy of the purchase order. The goods and/or services received is recorded on a receiving report, with any discrepancies and partial shipments noted. This information is forwarded to purchasing, central finance, or any other departments needing to know that the material has been received.<sup>1</sup>To save time and paperwork, some organizations use the packing slip from the shipment as a material receipt form.<sup>2</sup>

Sample receiving report.

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<sup>1</sup>Harold E. Fearon, et al., *The Purchasing Handbook*, Fifth Edition, (New York, NY, McGraw-Hill 1992), 95.

<sup>2</sup>ibid, Fifth Edition, 95.

## Procurement's Relation to Other Financial Functions

Reference Number: CTAS-927

Every purchase activity produces financial transactions that are firmly connected to accounting and budgeting functions. Patricia C. Watt, in *An Elected Official's Guide to Procurement*, lists the following examples:

- Accounting—After a requisition is prepared, but before a purchase order or contract is completed, many county governments frequently encumber (set aside) a portion of the budget allocation in the accounting system to pay for the purchase. Upon approval of the invoice, payments are made and recorded in the accounting system.<sup>1</sup>
- Budgeting—Budget development depends on good estimates of the costs and timing for the goods and services. Procurement planning and scheduling should go hand in hand with budget development.<sup>2</sup>
- Materials Management—When goods are received by a county department, they are received at a designated department or central warehouse (if the county has a central warehouse). The receiving report (if used) is then forwarded to purchasing, central finance, or any other departments needing to know that the material has been received. Good inventory management and buying practices (i.e., re-ordering goods) enhance the efficiency of any purchasing system. Poor inventory management and buying practices (i.e., re-ordering goods) waste the gains of an efficient purchasing system.<sup>3</sup>

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<sup>1</sup>Patricia C. Watt, *An Elected Official's Guide to Procurement*, (Government Finance Officers Association), 20.

<sup>2</sup> ibid, 20.

<sup>3</sup> ibid, 20.

## Procurement's Relation to Other Departments

Reference Number: CTAS-928

The purchasing function is a service. The purchasing department in a county with centralized finance/purchasing system is a service agency for all other departments in the county. The purchasing department supplies the purchasing needs of all departments as prescribed by a general law of local application (CFMS of 1981 or County Purchasing Law of 1957) or private act. In performing this function the purchasing department is charged with optimizing the quality, service, and price in the purchase of goods and services. The purchasing department is in constant contact with other departments, and cooperation and mutual confidence is absolutely essential. The purchasing department should be knowledgeable of and must be in understanding with the particular requirements of the user departments (departments requesting goods or services), material and equipment needs, and must exercise tact, discretion, and diplomacy to establish harmonious relations with the other departments.<sup>1</sup>

The purchasing department is the real link between other departments in the county government and its potential and existing suppliers. How well the purchasing department coordinates and performs its duties has a great influence on the performance of other county departments.

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<sup>1</sup>George W. Alijan, et al., *The Purchasing Handbook*, Third Edition, (New York, NY, McGraw- Hill 1973), 3-21.

## Purchasing Specifications and Standards

Reference Number: CTAS-194

[Why Specifications are so Important](#)

Specifications are used throughout our lives, in ways you probably never thought about. A recipe for a cake or a cookie is a form of specification. All well written specifications are the product of concentrated group effort and are worth preserving. They represent the fruits of lengthy deliberation and study, combined with past experiences, and are essential to any efficient purchasing program.<sup>1</sup>

**Specification Definition**—A specification (part of an ITB/IFB or RFP solicitation) is a concise description of a good or service that an entity seeks to buy, and the requirements the vendor must meet in order to be considered for the award. A specification may include requirements for testing, inspection or preparing an item for delivery, or preparing or installing it for use, requirements for samples, descriptive literature, warranty, and packaging. *The specification is the total description of the purchase.*<sup>2</sup>

**Specification Purpose**—The purpose of any specification is to provide purchasing personnel with clear guidelines to purchasing, and to provide vendors with firm criteria of minimum product or service acceptability.<sup>3</sup> Success of the purchasing activity relies on the specification being a true and accurate statement of the buyer's requirements.<sup>4</sup>

**Characteristics of a Good Specification**—A good specification has four (4) characteristics:

1. *It should set the minimum acceptability of the good or service.* The vendor must know the minimum standard to determine what to provide. A standard which is too high means tax dollars may be wasted. Conversely, a standard which is too low means the goods or services will not meet the expectations of the user.
2. *It should promote competitive bidding.* The maximum number of responsive vendors should be able to bid to the specification. Restrictive specifications decrease competition.
3. *It should contain provisions for reasonable tests and inspections for acceptability for the good or service.* The specification should permit tendered goods or services to be evaluated against defined criteria by examination, trial, test or documentation. The methods and timing of testing and inspecting must be indicated in the specification.
4. *It should provide for an equitable award to the lowest responsive bidder.* The buyer obtains goods or services that will perform to expectations, and the vendor is able to provide the goods or services at an equitable agreed upon price.<sup>5</sup>

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<sup>1</sup>Williamson County, Texas, *Purchasing Manual Policies*, (Revised 2001), 51.

<sup>2</sup>ibid, 51.

<sup>3</sup>ibid, 51.

<sup>4</sup>Bryan Kalms, *Developing Specifications for Purchasing*, Queensland Government, Department of Public Works, July 2003, 3.

<sup>5</sup>*Purchasing Manual Policies*, 51

## Types of Purchasing Specifications

Reference Number: CTAS-929

There are several of types of specifications that are commonly used. The following are some of the most common forms:

- **Performance Specification**—A type of specification in which the goods and/or services are described in terms of required performance. They may include such details as required power, strength of material, test methods, and standards of acceptability and recommended practices.<sup>1</sup> Performance specifications define the task or desired result by focusing on what is to be achieved (e.g., truck or airplane).<sup>2</sup>
- **Design Specification**—These are detailed descriptions of a good or service, including such things as details of construction or production, dimensions, chemical composition, physical properties, materials, ingredients and other details needed for the provider to produce an item of minimum acceptability. Design specifications are usually required for construction projects and custom produced items and for many services.<sup>3</sup> Architects and engineers typically prepare design specifications for construction and manufactured products (e.g., buildings, highways, or other public works projects).
- **Combination Specification**—This type of specification includes elements of both design and

performance specifications.<sup>4</sup>

- Brand Name or Equal—This type of specification is used to describe a commodity of a fairly common nature. It states a detailed description and a manufacturer and catalog or model number which meets the description and has been determined to be acceptable.<sup>5</sup> Competition among brands is usually attained by specifying “brand A or equal” in the specification.<sup>6</sup>
- Industry Standard—In this type of specification, all goods made to an industry standard are identical, regardless of manufacturer, and will result in acquisition of goods of uniform quality. An example is the UIL standard for electrical products.<sup>7</sup>

<sup>1</sup>Williamson County, Texas, *Purchasing Manual Policies*, (Revised 2001), 52.

<sup>2</sup>Bryan Kalms, *Developing Specifications for Purchasing*, Queensland Government, Department of Public Works, July 2003, 4.

<sup>3</sup>*Purchasing Manual Policies*, 52.

<sup>4</sup> *ibid*, 52.

<sup>5</sup> *ibid*, 52.

<sup>6</sup>Jim Pregler, C.P.M., *Specification Development: An Overview*, NIGP Technical Bulletin, (July 2003), 4.

<sup>7</sup>*Welcome to County Procurement*, Texas Purchasing Association, January 2004, 10.

## Purchasing Specification Development

Reference Number: CTAS-930

In the article entitled “*Guide to Specification Writing*”, the author (Kalms) describes a sample process (steps) to develop the specification. The process consists of two phases: a *development phase* and a *post development phase*. Within these two phases, Kalms outlined seven steps in developing the specification. Here are the seven steps:

### Developmental Phase

Step 1: Planning and Analysis Foundation of a good specification.

Step 2: Consultation and Information Gathering Valuable information and advice may be obtained through discussions with other departments, agencies, or governments (federal, state, and local), companies, purchasing officers, finance officers, other users of the goods and services, and associations. The more complex the project, the greater the need for additional expertise.

Step 3: Writing the Specification Some writing tips:

- Use simple, clear language.
- Define terms, symbols and acronyms (include a glossary of terms).
- Be concise.
- Do not explain the same requirement in more than one section.
- Adopt a user friendly format.
- Number the sections and paragraphs.
- Discuss the draft and refine it.

Step 4: Vetting the Specification and Obtaining Approvals After writing the specification, ask a colleague who is unfamiliar with the requirement to critique it from a potential supplier’s view.

### Post Development Phase

Step 5: Issuing the Specification Distribute to potential offerors.

Step 6: Managing Amendments to the Specification Should a need arise to amend the specification during the “ITB or RFP” process, the amendment should be authorized by the person authorized to approve the amendment. The amended specification should be noted in the project files and all offerors or potential offerors must be given reasonable opportunity to offer to the new specification.

Step 7: Revising and Storing the Specification The specification should be reviewed at the end of

the purchasing activity to ensure that it effectively defined the goods or services that were actually bought. If areas for improvement are identified, revise the specification with the benefit of hindsight.<sup>1</sup>

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<sup>1</sup>Bryan Kalms, *Developing Specifications for Purchasing*, Queensland Government, Department of Public Works, July 2003, 7-10.

## Organization of the ITB/IFB/RFP (Specification)

Reference Number: CTAS-931

In the article "A Syllabus for Development of Specifications and Boilerplates", the author (McCurdy) maintains that the ITB/RFP *may* be organized and consist of the following:<sup>1</sup>

Part I: Invitation/Request Cover Sheet (Title Page)—This part is a *title page* noting the bidding authority, general classification/description of the goods or service and any other introductory cover information.<sup>2</sup>

Part II: Bidder's Profile (Business Vital Statistics)—This part of the ITB/RFP lists the goods/service to be bid, the bid file number, the bid opening date, address and time, department contact and phone number, and where the vendor is to mail/deliver bids. Also to be included is the name, mailing and physical address, phone and officials of firm submitting bid. Likewise, information asking the vendor where orders are to be placed and where the county is to send payments should be included.<sup>3</sup>

Part III: Contractual Requirements/General Instructions & Conditions (Boilerplate)—This clause of the ITB/RFP is designed primarily for contractual clauses, general conditions and instructions (boilerplate). These clauses or general conditions and instructions provide the potential bidder with the necessary information to complete and submit the bid, and understand the shipping, delivery, performance, and other legal positions needed to minimize the liability of the unit of government and spell out the rights and remedies under the contract for the government as well as the contractor.<sup>4</sup> The author (McCurdy) states that if you (or a designee) cannot monitor, supervise, or evaluate the performance and/or compliance to a specific clause/requirement in the "Boilerplate," do not use it.

Part IV: Special Instructions & Conditions (relative only to this item)—This section of the ITB/RFP is designed to inform the bidder of what information shall be submitted with the bid/proposal, and any and all special instructions and conditions relative only to the competitive process for the particular invitation/request. No requirements related to the technical specification or the general conditions should be included in this component.<sup>5</sup>

Part V: Evaluation & Award (Objective Evaluation & Award Criteria)—This part of the ITB/RFP is designed to inform the bidder of the specific qualifications and criteria used to evaluate the bid and the bidder, as well as, the specific qualifications and identified criteria used in making the award.<sup>6</sup>

Part VI: Contract Administration (Who's Responsible for What)—This section of the ITB/RFP is designed to identify the individuals responsible for addressing any questions as to the bid and the contact for administration of awarded contract. This component also clarifies the administrative qualifications of the awarded contract.<sup>7</sup>

Part VII: Technical Specifications (The Meat & Potatoes-or-What Makes it Tick)—This component of the specification is the technical description of the goods or services. This part ensures that the specification issued is qualified, quantified, and/or structured to secure the best economic advantage or value (identifies the minimum needs of the department required to accomplish its objectives without any drawbacks or additional cost). The requirements are clearly stated and measurable by recognized standards or reproducible test methods. Technical specifications should be contractually sound, unbiased, non-prejudicial towards the bidders, and should foster maximum open competition while providing for an equitable award at the lowest possible cost.<sup>8</sup>

Part VIII: Exhibits & Attachments, if applicable (Schedules, Tables, Charts, List)—This part of the ITB/RFP is used to incorporate information and requirements related to technical specification and may include schematics, installation site plan, layouts, statistical data standards, and test/scientific certifications.<sup>9</sup>

Part IX: Bid/Proposal Form (The How Much It Costs Sheet)—This part of the ITB/RFP is designed for the convenience of the bidder, and especially for the unit of government by establishing a universal pricing format (everybody sings from the same sheet of music, and ease of calculation). This form includes all

tangible and measurable cost-related bid items/proposal functions.<sup>10</sup>

Part X: Check List (And Don't Forget)—This is an optional component of the ITB/RFP packets. This section is to act as a guide for the bidding firm through the various components they must complete. It also acts as a guide for additional data they must submit, and/or address specific sections to ensure their bid will be considered responsive and responsible.<sup>11</sup>

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<sup>1</sup>Charles S. McCurdy, CPPO, *A Syllabus for Development of Specifications and Boilerplates*, Mississippi Public Service Commission, 1-5.

<sup>2</sup>McCurdy, 1.

<sup>3</sup>ibid, 1.

<sup>4</sup>ibid, 1.

<sup>5</sup>ibid, 2.

<sup>6</sup>ibid, 2.

<sup>7</sup>ibid, 2.

<sup>8</sup>ibid, 2.

<sup>9</sup>ibid, 3.

<sup>10</sup>ibid, 4.

<sup>11</sup>ibid, 4.

## Legal Authority for Specific Purchasing Issues

Reference Number: CTAS-193

### Emergency Purchases

Reference Number: CTAS-932

The National Institute of Governmental Purchasing defines an emergency purchase as “a purchase made in an exigency (emergency), often made under special procedures, designed to meet the emergency.”<sup>1</sup>

Emergencies of one kind or another are the most common situations for which requirements for competitive sealed bidding or competitive sealed proposals may be waived.<sup>2</sup> Emergencies exist when there is a threat to health, welfare, or safety of the people and/or property.<sup>3</sup> Although poor planning, overlooked requirements, inaccurate usage history, or inadequate forecasting may cause “emergency situations” and the need for expedited purchasing, these are not bona fide emergencies but poor management.<sup>4</sup>

Purchases under true emergency situations generally may be made without the necessity of following the county’s normal purchasing procedures. The Tennessee Code Annotated (T.C.A.) provides for emergency purchases in the following statutes:

The County Purchasing Law of 1983 exempts emergency purchases from public advertisement and competitive bidding requirements. The special provision for emergency purchasing is found in T.C.A. § 5-14-204(3).

The County Purchasing Law of 1957 provides for emergency purchasing in T.C.A. § 5-14-110.

The County Financial Management System of 1981 requires that procedures be established for emergency purchases in T.C.A. § 5-21-119 (b)(7).

The County Uniform Highway Law (CUHL) refers to the exemption from public advertisement and competitive bidding requirements in actual emergency purchases arising from unforeseen causes in T.C.A. § 54-7-113 (c)(1)(C).

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<sup>1</sup>National Institute of Governmental Purchasing, *The Dictionary of Purchasing Terms*, 11.

<sup>2</sup>National Institute of Governmental Purchasing, *Public Purchasing and Materials Management*, (Reston, VA : 1983) 137.

<sup>3</sup>ibid, 137.

<sup>4</sup>ibid, 137.



## Sole Source Purchases

Reference Number: CTAS-933

The National Institute of Governmental Purchasing defines a sole source purchase as "a contract for the purchase of goods and services entered into after soliciting and negotiating with only one source, usually because of the technology or uniqueness required."<sup>1</sup>

Sole source purchases are goods and services available from only one supplier. There may be just one vendor because of patents or copyrights or simply because the vendor is the only one which supplies the good or service.<sup>2</sup> These types of purchases should require written justification and documentation (e.g., is the product available from only one source and not merchandised through wholesalers, jobbers, or retailers or is the product or service unique and easily established as one of a kind?).<sup>3</sup>

The County Purchasing Law of 1983 contains a provision exempting sole source purchases of goods or services from competitive bidding in counties that are governed by this law. Under T.C.A. § 5-14-204, the person authorizing a sole source purchase is required to make a record specifying the items purchased, the amount paid, and from whom the items were purchased, and this information must be reported to the county mayor and the county legislative body.

The County Financial Management System of 1981 defines "biddable items" in T.C.A. § 5-21-120 as any need of the county where more than one bidder or contractor in the county's trade area can provide the material or service, but any specific requirements for the purchase of sole source items would be found in the local purchasing policies and procedures in counties governed by that law. Counties operating under the County Purchasing Law of 1957 should also look to their local policies and procedures for guidance on sole source purchases.

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<sup>1</sup>National Institute of Governmental Purchasing, *Public Purchasing and Materials Management*, (Reston, VA : 1983), 28.

<sup>2</sup>ibid, 50.

<sup>3</sup>George Street, *County Purchasing*, The University of Tennessee, CTAS, 38.

## Cooperative Purchasing

Reference Number: CTAS-934

The National Institute of Governmental Purchasing defines cooperative purchasing as "the combining of requirements of two or more political entities in order to obtain the benefits of volume purchases and/or reduction in administrative expenses."<sup>1</sup>

Cooperative purchasing requires individual purchasing units in multiple government environments to have a willingness to look beyond individual preferences with regard to detailed specifications, preferred product brand names, etc.<sup>2</sup> A variety of arrangements can be used whereby two or more units purchase from the same supplier using a single IFB/RFP as the basis of the contract documents or cooperative pricing agreements.<sup>3</sup> Some possible objectives of cooperative purchasing are:

- Lower prices from competition for larger volumes.
- Reduced administrative costs—one organization handles bidding process.
- Combined expertise of many purchasing professionals.
- More favorable terms and conditions (e.g., possible lower freight costs)

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<sup>1</sup>National Institute of Governmental Purchasing, *The Dictionary of Purchasing Terms*, 8.

<sup>2</sup>National Institute of Governmental Purchasing, *Advanced Public Procurement*, (Herndon, VA: 2001) 16-17.

<sup>3</sup>ibid, 16.

## Forms of Cooperative Purchasing

Reference Number: CTAS-935

Joint-Bid Cooperatives—The authors of "*Advanced Public Procurement*" assert that joint bid arrangements are a more formal type of intergovernmental cooperative purchasing in which two or more public procurement agencies agree on specifications and contract terms and conditions for a given item or items of common usage and combine their requirements for this item in a single request for competitive sealed bids.<sup>1</sup> Once the bids have been received and discussed by the participants, each public procurement agency issues and administers its own purchase order(s) and/or contract.<sup>2</sup> A sponsoring entity or "lead agency" must be determined. Usually it is the government entity with the most expertise with the technology or commodity being contracted.<sup>3</sup>

Piggyback Cooperatives—The authors of "*Advanced Public Procurement*" maintain that piggyback cooperatives are a less formal type of intergovernmental cooperative purchasing in which a large purchaser requests competitive sealed bids, enters into a contract, and arranges, as part of the contract, for other public procurement units to purchase from the selected vendor under the same terms and conditions as itself.<sup>4</sup> The members of the cooperative simply order from contracts awarded by the sponsoring agency. Members choose to participate independently after the award by the sponsoring entity and place their orders with the consenting supplier.<sup>5</sup> Purchases by local governments from the Tennessee state-wide purchasing contracts or agreements entered into by the Tennessee Department of General Services (TDGS) are examples of a piggyback cooperative.

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<sup>1</sup>National Institute of Governmental Purchasing, *Advanced Public Procurement*, (Herndon, VA: 2001), 17.

<sup>2</sup>ibid, 17.

<sup>3</sup>ibid, 17.

<sup>4</sup>ibid, 19.

<sup>5</sup>ibid, 19.

## Legal Authority for Cooperative Purchasing

Reference Number: CTAS-936

T.C.A. § 12-3-1201 (formerly § 12-3-1001). This statute authorizes counties, without public advertisement and competitive bidding, to purchase under the provisions of contracts or price agreements entered into by the Tennessee Department of General Services (TDGS) Central Procurement Office (CPO). This procedure is commonly known as "buying under state contract."

County governments may purchase goods, except motor vehicles (other than those manufactured for a special purpose as defined in T.C.A. § 12-3-1208), under federal General Services Administration (GSA) contracts, but only to the extent permitted by federal law or regulations. Op. Tenn. Att'y Gen. 04-121 (July 22, 2004). For more information about purchasing goods under GSA contracts, visit GSA's website at State and Local Governments | GSA.

T.C.A. § 12-3-1203 (formerly § 12-3-1004). This statute authorizes in-state "piggyback" contracts whereby cities, counties, utility districts, and other local governments in Tennessee may purchase supplies, goods, equipment, and services under the same terms as contracts or price agreements entered into by any other local governmental unit of this state. New motor vehicles (except special purpose vehicles such as school buses and ambulances) and purchases related to transportation infrastructure projects are excluded.

This statute also authorizes local education agencies (LEAs) to purchase equipment under the same terms of a legal bid initiated by another LEA in Tennessee. The LEA may purchase directly from the vendor the same equipment, at the same price, and under the same terms provided in the contract entered into by any other LEA in Tennessee.

This statute also authorizes counties and other governmental entities to make purchases on behalf of each other as long as the statutory requirements are met.

T.C.A. § 12-3-1205 (formerly § 12-3-1009). This statute authorizes both in-state and out-of-state cooperative purchasing agreements. A city, county, utility district, or other local government may participate in, sponsor, conduct or administer an in-state cooperative purchasing agreement for procurement of any supplies, services, or construction.

A city, county, utility district, or other local government also may participate in, sponsor, conduct, or administer a cooperative purchasing agreement with one or more other governmental entities outside

Tennessee, including authorized federal agencies, for the purchase of goods, supplies, services and equipment. The master agreement for out-of-state cooperatives must be approved by the local legislative body and the items must be purchased by a governmental entity in accordance with its purchasing procedures and made available for use by other governmental entities. Out-of-state cooperatives cannot be used for purchasing motor vehicles other than special purpose vehicles; construction, architectural, and engineering services; construction materials; or fuel, fuel products and lubricating oils. Note that the definition of "motor vehicle" for purposes of this exemption does not include farm tractors, mowers, earth-moving machinery, construction machinery, or other similar machinery or equipment, so these items may be purchased using out-of-state cooperatives. However, construction machinery cannot be purchased using joint purchasing with federal agencies.

T.C.A. § 12-3-512 (formerly § 12-3-216). This statute authorizes the state's central procurement office to enter into cooperative purchasing agreements with local governments, provided that each contract is established through full and open competition and pursuant to policies approved by the state procurement commission.

T.C.A. § 12-9-101 et seq. The Interlocal Cooperation Act permits any local government of this state to enter into joint agreements to exercise any legitimate governmental function (including purchasing) with any other local government, in Tennessee or in any other state. Participating local governments in another state must have the same authority under that state's own laws. See Op. Tenn. Att'y Gen. 09-55 (April 9, 2009).

T.C.A. § 7-86-129. This statute allows any emergency communications district to purchase equipment under the same terms of a legal bid initiated by any other district, and to purchase directly from a vendor the same goods and equipment at the same price and under the same terms as provided in a contract for equipment entered into by any other district.

## Procurement Cards

Reference Number: CTAS-937

According to the authors of "*Advanced Public Procurement*", procurement cards are small, thin, plastic debit or credit cards that look very similar to a Visa or MasterCard.<sup>1</sup> They have authorization and spending limitations embedded into a magnetic strip on the card.<sup>2</sup> The majority of procurement cards in use today are credit cards.<sup>3</sup> A major bank usually issues procurement cards, but depending on the transaction volume, a local bank may be able to meet requirements with the assistance of a credit card company (Visa, MasterCard, etc.).<sup>4</sup> The issuing bank provides reporting information to the county in several different ways, i.e., special reports, transaction reports, cardholder activity reports, and audit reports (as provided by the agreement).<sup>5</sup>

The purpose of the procurement card is to offer county departments a procurement process for purchase and payment of low-dollar, non-inventory, non-capital items. The intent is to streamline the traditional procurement process by reducing the number of requisitions, purchase orders, invoices, and checks.<sup>6</sup>

Procurement cards are a purchasing tool because they facilitate the purchasing activity. They are also a payment card because they facilitate and often expedite the payment to the vendors. Cards may reduce the cost of doing business while preserving controls and maximizing the audit trail and data captured at the point of sale. The card has historically been used for small purchases that do not require competitive bidding.<sup>7</sup>

There currently is no state law concerning the subject of procurement cards. However, sound accounting practices require some controls on the usage of such cards be in place prior to their use in counties. The method of adopting these controls will depend on the purchasing laws under which the county operates, as well as the established procedures the county follows relative to purchasing.<sup>8</sup>

Any county desiring to use procurement cards should consult with its county attorney to determine the appropriate method for authorizing the use of procurement cards and adopting policies and procedures. As a *very general guide*, CTAS has developed sample documents which a county may use as a starting point for developing its own set of documents authorizing procurement cards and governing their use.

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<sup>1</sup>National Institute of Governmental Purchasing, *Advanced Public Procurement*, (Herndon, VA: 2001), 45.

<sup>2</sup>*ibid*, 45.

<sup>3</sup>ibid, 45.

<sup>4</sup>ibid, 45.

<sup>5</sup>ibid, 46.

<sup>6</sup>Ronald Cohen, "Review of Internal Controls Over Procurement Card", Internal Audit Office, Fairfax County, Va, 2.

<sup>7</sup>Advanced Public Procurement, 45.

<sup>8</sup>The University of Tennessee, CTAS, Spotlight on Current Issues, *Purchasing Card Usage in Counties*, Executive Director's Memo, February 7, 2001, 1.

## Purchasing-Records Management

Reference Number: CTAS-938

### Reasons for Records Management

**Space**—In most counties, it is rare for a county office or courthouse to have all of the space it needs. Courthouses are bursting at the seams with old records stuffed into basements, storage closets, attics, and other more creative locations. Thus, it is cost effective for counties to implement a records management program.

**Records Serve as a Legal Foundation**—Local governments and the citizens they serve are both dependent upon good documentation to demonstrate their legal status. When disputes arise over legal issues, it is important to have good documentation to rely on. Local governments have an important responsibility to preserve these records. Proper records management will insure these records are preserved and can be found when needed.

**Historical Preservation of Documents**—Counties play a vital role in preserving our nation's history. The documents and records of local governments give us insights into the lives of our ancestors and circumstances of our times. With proper records management, the important records are preserved, the less essential records are destroyed when no longer useful so they do not take up available space. The records are catalogued and organized so that officials and the public can access them. The records are stored under proper conditions to enable long term preservation.

### Laws that Require Records to be Kept

Since county governments are instrumentalities of the state, most of the laws regarding what records need to be kept by county officials and how those records should be managed are found in the *Tennessee Code Annotated* (T.C.A.). County officials should also be aware that federal laws and regulations require them to keep certain records. This is particularly true of payroll information and other employment related records. Not every record in a government office has a corresponding statute or regulation requiring that record to be kept. Many records are generated simply as an ordinary course of business without any legal authority mandating their creation.

For more information, see the Records Management topic.

Retention Schedule for Certain Purchasing Records

## Disposition of Surplus Property

Reference Number: CTAS-940

County governments frequently need to sell or convey equipment or property which is no longer needed for county purposes. The disposition of surplus property is the final step in the county's purchasing cycle. County officials and department heads should become familiar with the various laws and/or private acts that govern the sale and/or transfer of surplus property for their respective county. A review of the laws pertaining to the disposition of surplus property follows.

**General Law.** When there are no specific requirements imposed by general law or private act, the disposal of county property is within the discretion of the county legislative body. See T.C.A. § 5-7-101 (authorizing the county to dispose of its property) and T.C.A. § 5-1-103 (authorizing the county legislative body to act for the county). The county legislative body would have to act at a meeting that complies with the open meetings law. See *Op. Tenn. Att'y Gen.* U86-112 (August 1, 1986), *Op. Tenn. Att'y Gen.* 03-131 (October 3, 2003). Counties are authorized to lease real property owned by them under T.C.A. § 5-7-116.

**County Financial Management System of 1981.** In counties that have adopted the County Financial Management System of 1981 (1981 Act), it is the duty of the finance director under T.C.A. § 5-21-118(b) to conduct public sales of county property when the county legislative body declares the property surplus. In a county operating under the 1981 Act, all sales of county surplus property must be by public sale. *Op.*

*Tenn. Att'y Gen.* 13-84 (October 31, 2013). For property of the board of education, this statute must be interpreted in conjunction with the provisions of T.C.A. §§ 49-6-2006 and 49-6-2007, which give the board of education certain authority over the disposition of its property. See *Disposition of Surplus Property in the Education Department*.

County Purchasing Law of 1957. In counties that have elected to be governed by the provisions of the County Purchasing Law of 1957, the county purchasing agent must sell surplus real or personal property pursuant to T.C.A. § 5-14-108(o) by public auction or by sealed bid after the county legislative body has declared the property surplus (for property of the board of education, the board would make the determination that the property is surplus, and may conduct the sale if the department of education is not under the 1957 law; see *Disposition of Surplus Property in the Education Department*). The county purchasing agent, with the assistance of the county purchasing commission, may adopt rules for requiring reports from county departments of surplus equipment and supplies, and the transfer of surplus equipment and supplies that may be used by other county departments, and rules for the sale, after receipt of competitive bids, of surplus equipment (T.C.A. §§ 5-14-107(5) and 5-14-107(6)). In these counties, the county legislative body is authorized under T.C.A. § 5-14-108(o) to establish by 2/3 vote a procedure whereby the purchasing agent, upon request of the county mayor, may dispose of surplus personal property with an estimated value of \$1,000 or less by selling on the open market or by gift, trade, or barter to a nonprofit or charitable organization.

Transfers of Surplus Property Among Governmental Entities. There are two statutes that authorize counties to transfer surplus property to other governmental entities. Under T.C.A. § 12-2-420 (formerly T.C.A. § 12-3-1005), counties may transfer surplus personal property to other governmental entities by sale, gift, trade, or barter upon such terms as the county legislative body may authorize, without public advertisement or competitive bidding, regardless of any other law to the contrary. The approval of the governing bodies of both entities is required. A similar statute, T.C.A. § 12-9-110, authorizes public agencies, including county legislative bodies and boards of education, to convey or transfer both real property and personal property to other public entities without sale or competitive bidding. The conveyance may be made by an agreement between the governing bodies of the public agencies authorizing the conveyance and determining that the terms and conditions are appropriate. The public agency or agencies receiving the conveyance or transfer must use the property for a public purpose. This provision may be used without declaring property surplus, and it supersedes any contrary requirements in any other general law or private act. T.C.A. § 12-9-110.

County Officials and Employees Prohibited from Privately Purchasing Surplus County Property—Under T.C.A. § 5-1-125, county officials and employees are prohibited from purchasing surplus county property unless the property is being sold by public auction or by competitive sealed bid.

Sale of Surplus Property by Internet Auction—Under T.C.A. § 5-1-128, counties are authorized to sell surplus property by internet auction.

Sale of Historic or Scenic Property. Under T.C.A. § 12-2-501, counties may sell real or personal property by private negotiation and sale if (1) the property is significant for architectural, archaeological, artistic, cultural, or historical purposes or for its open, natural, or scenic condition, and (2) the property is sold to a nonprofit corporation or trust in furtherance of its preservation or conservation purposes, and (3) a preservation or conservation agreement is placed in the deed and the nonprofit may only dispose of the property subject to covenants promoting preservation or conservation. or if applicable, securing the right of public access.

Disposition of Confiscated Property or Property Acquired at Tax Sales. These types of property are not considered surplus county property that can be disposed of using the methods outlined above, but rather are governed by their own procedures which are covered elsewhere.

Sale of Real Property to Certain § 501(c)(3) Entities. Notwithstanding any rule, regulation or other law to the contrary, any county, upon two-thirds (2/3) vote of the county legislative body, may dispose of real property at a nominal cost by private negotiation and sale to a nonprofit corporation incorporated under the laws of this state that has received a determination of exemption from the Internal Revenue Service pursuant to 26 U.S.C. § 501(c)(3), and whose purpose includes providing educational and vocational training services to children and adults with disabilities, or whose purpose includes providing educational services to youth in areas including health, science, agriculture, and civic engagement through in-school and after-school programs and school and community clubs and camps. T.C.A. § 5-7-119.

Property Taken by Eminent Domain. If a condemning entity determines that property taken by eminent domain is not used for the purpose for which it was condemned, or for some other authorized public use, or if the condemning entity decides to sell the property within 10 years of taking the property, then the condemning entity must first offer the property for sale to the persons from which the property was taken. Such persons may purchase the property for not less than fair market value plus costs and have

30 days to sign a purchase agreement for the property. If the former owner does not purchase the property within the 30 days, then the property may be sold in any commercially reasonable manner for not less than fair market value plus costs. T.C.A. § 29-17-1005.

Property Brought in after Delinquent Tax Sale. Property brought in by the county after a delinquent tax sale is not considered county surplus property but instead is sold in accordance with T.C.A. § 67-5-2507. See Disposition of Property Purchased by County at Tax Sale.

Surplus First Responder Two-Way Radios. Following notice to the commissioner, the department of safety may transfer surplus first responder two-way radios to a county designated as distressed by the Appalachian Regional Commission. After the transfer of the surplus two-way radio to a distressed county, other radios may be transferred to other county governments in need that submit proof to the department that the county cannot purchase the equipment. However, two-way radios obtained by the federal government must be transferred in accordance with federal law. T.C.A. §12-2-403.

## Disposition of Surplus Property in the Education Department

Reference Number: CTAS-941

The decision to sell surplus property in the education department generally is a decision of the board of education. The board of education has the power to dispose of real property titled in its name, as provided in T.C.A. § 49-6-2006. With respect to personal property of the education department declared surplus by the board of education, T.C.A. § 49-6-2007 requires newspaper advertisement and competitive bidding for items valued at \$500 or more.

The board of education has the power to lease or sell buildings and property or the portions of buildings or property it determines are not being used or are not needed by the public school system in the manner deemed by the board to be in the best interest of the school system and the community that the system serves, under T.C.A. § 49-2-203(b)(10). That statute also provides that a local board of education may dispose of surplus property under T.C.A. §§ 49-6-2006 and 49-6-2007, it being the stated legislative intent that a local board at its discretion may dispose of surplus property to private owners as well as civic or community groups.

Under T.C.A. § 49-6-2006(c), the board of education may dispose of property upon which it has constructed a building under its vocational education program by public sale or negotiated contract, notwithstanding the provisions of any other law to the contrary.

Under T.C.A. § 49-6-2006(d), the board of education may elect to transfer surplus real or personal property to the county or to any municipality within the county for public use, without the requirement of competitive bidding or sale.

Under T.C.A. § 49-6-2007(f), the board may donate computers that have been removed from inventory in its schools to low-income families in the school district, or they may dispose of computers by selling or trading them to computer vendors or manufacturers as part of the proposal to purchase new computers for the LEA.

School systems dispose of their surplus textbooks under T.C.A. § 49-6-2208, which provides for sale by public auction, sealed bids, internet auction, or negotiated contract for sale (by reference to T.C.A. § 12-2-403(a)(1)-(4)), or by other methods that are approved by the local board of education.

In counties that have adopted the County Financial Management System of 1981, it is the duty of the county purchasing agent under T.C.A. § 5-21-118(b) to conduct public sales of school real and personal property when the board of education declares the property surplus and determines that the property should be sold. See *Op. Tenn. Att'y Gen.* 13-84 (October 31, 2013). The purchasing agent should conduct such sales of personal property in accordance with T.C.A. § 49-6-2007, and public sales of real property according to the direction of the board of education.

In counties that have elected to be governed by the County Purchasing Law of 1957 and where schools are included, the provisions of T.C.A. §§ 49-6-2006 and 49-6-2007 must be read in conjunction with the provisions of T.C.A. § 5-14-108 (o). The statutes should be read together and harmonized to the extent possible. To the extent that these statutes are in direct conflict, however, the provisions of T.C.A. § 5-14-108 should be followed.

Following is an example of how the disposition of surplus property in a school system under the provisions of the County Purchasing Law of 1957 or the County Financial Management System of 1981 might flow (note that this is an example only):

### Sample Steps:

1. The school board declares the property surplus and decides whether to sell the property at

- public auction or sealed bid, or whether to transfer the property to another governmental entity as authorized in T.C.A. § 49-6-2006.
2. If the school board decides to hold a public auction or public sale, the purchasing agent advertises a public sale in the newspaper at least seven days prior to the sale. T.C.A. § 49-6-2007(b).
  3. The purchasing agent holds the sale as advertised and sells the items on behalf of the school board.

## Disposition of Surplus Property in the Highway Department

Reference Number: CTAS-942

Under the County Uniform Highway Law (CUHL), the road superintendent has "supervision and control over and is responsible for all the machinery, equipment tools, supplies, and materials owned or used by the county in the construction, reconstruction, repair, and maintenance of county roads and bridges." T.C.A. § 54-7-112. This is a basic grant of custodial power over equipment to the road superintendent. The county legislative body has general control over county property and its disposition. T.C.A. § 5-7-101. Road superintendents often transfer/trade surplus equipment with other counties, with the approval of both governing bodies, pursuant to T.C.A. § 12-2-420 (formerly T.C.A. § 12-3-1005). If the authority of T.C.A. § 12-2-420 is not used, in counties that have elected to be governed by the provisions of the County Purchasing Law of 1957, it is the duty of the county purchasing agent under T.C.A. § 5-14-108 to sell by public auction or sealed bid any surplus county property (both personal and real property) when the county legislative body declares the property surplus. The county purchasing agent, with the assistance of the county purchasing commission, may adopt rules for requiring reports from county departments (including highway department), of surplus equipment and supplies, and the transfer of surplus equipment and supplies that may be used by other county departments, and rules for the sale, after receipt of competitive bids, of surplus equipment. T.C.A. §§ 5-14-107(5) and 5-14-107(6).

In counties that have adopted the County Financial Management System of 1981 (CFMS of 1981), it is the duty of the county purchasing agent under T.C.A. § 5-21-118 (b) to conduct public sales of county property (including highway department) when the county legislative body declares the personal property surplus, and public sales of real property owned by the county. T.C.A. § 5-21-118(b).

## Purchasing at Public Auctions

Reference Number: CTAS-943

Under T.C.A. § 12-2-421 (formerly § 12-3-1006), counties are authorized to purchase new or secondhand articles, including materials, supplies, commodities, and equipment, at publicly advertised auctions without public advertisement and competitive bidding. This law requires the county legislative body to establish written procedures to govern purchases at public auctions. CTAS has developed a sample set of policies and forms that a county may use as an example in developing its own procedures. Each county's procedures should be tailored to the purchasing laws under which that particular county operates.

If a county purchases any materials, supplies, commodities, or equipment at a publicly advertised auction, the statute requires that the purchasing official report the following information to the county legislative body:

1. Description of materials, supplies, commodities, or equipment purchased
2. Auction where items were purchased
3. Purchase price of items
4. Vendor of items

## Transfer of Assets for Fire Protection

Reference Number: CTAS-944

T.C.A. § 12-3-1206 (formerly § 12-3-1010) states, "Notwithstanding any other provision of the law, a county, municipality, and metropolitan government may transfer the ownership of assets for fire protection purchased through or with the proceeds of federal, state or local grants to volunteer fire departments within such county, municipality or metropolitan area; provided, that such volunteer fire departments are registered as non-profit organizations with the office of the secretary of state. This section shall have no effect in a county, municipality or metropolitan area unless it is approved by the appropriate legislative body." The application of this statute is discussed in *Op. Tenn. Att'y Gen.* 07-87

(6/5/07).

## Purchase of Insurance

Reference Number: CTAS-945

Under T.C.A. § 29-20-407, counties may purchase tort liability insurance without competitive bidding from the local government insurance pool or any other plan authorized and approved by any organization of governmental entities representing cities and counties, regardless of any general law, private act or charter restrictions. However, this statute only applies to liability insurance purchased from pools or plans described in the statute. When purchasing other insurance, counties must follow applicable competitive bidding laws. Insurance products do not fall within the definition of professional services in T.C.A. § 12-3-1209, which exempts professional services from competitive bidding. Op. Tenn. Att'y Gen. 13-65 (8/23/13).

## Electronic Procurement

Reference Number: CTAS-946

Electronic Bidding—Notwithstanding any law, rule or regulation to the contrary, local governments may satisfy any requirement for mailing by distributing invitations to bid, requests for proposals and other solicitations electronically. In addition, local governments may receive bids, proposals, and other offers electronically. In order to assure the fullest possible participation of small businesses and minority-owned businesses, local governments shall not require such small businesses and minority-owned businesses to receive or respond to invitations to bid, requests for proposals, or other solicitations electronically. T.C.A. § 12-4-116.

Electronic Contracts, Signatures and Records—Electronic contracts, signatures, and records cannot be denied legal effect or enforceability solely because they are in electronic format. If a law requires a record to be in writing, an electronic record is sufficient. If a law requires a signature, an electronic signature satisfies the law. T.C.A. § 47-10-107.

Local Government Electronic Technology Act (T.C.A. § 4-30-103)—This statute encourages local governments to use current electronic technology to perform the business functions of their offices. A local government must file a plan with the comptroller of the treasury for comments, prior to the local government implementing any new electronic technology associated with: the disbursement of public funds; purchasing; the sale of local government assets; or the collection of various taxes, fines, fees or payments. The plan must be filed at least 30 days prior to implementation. The plan must contain the following information:

1. A description of the business process and the technology to be utilized;
2. A description of the policies and procedures related to the implementation;
3. Documentation of internal controls that will ensure the integrity of the business process; and
4. The estimated implementation cost and a statement as to whether the implementation of the new electronic technology will be implemented within the existing operating resources of the office or indicate prior approval of the governing body if additional operating resources are needed.

## Highways and Roads "Buy America" Act

Reference Number: CTAS-947

Counties cannot buy any materials that are used for highway or roadway construction, resurfacing, or maintenance from any foreign government, any company wholly owned or controlled by a foreign government, or any agency of a foreign government or company. Materials covered by the act include, but are not limited to, asphalt cement, asphalt emulsion, rock, aggregate, liquid and solid additives, sealers, and oils. This legislation is not applicable if materials made by American companies are of unsatisfactory condition, are not of sufficient quantity, or increase the overall project cost by five percent more than the overall project costs using materials produced by foreign companies. T.C.A. § 54-5-135.

## Life Cycle Cost and Procurement Act

Reference Number: CTAS-948



The Tennessee Department of General Services determines which commodities and products may be bought according to energy efficiency standards. The state is required to adopt rules and regulations relative to energy efficiency standards for major energy consuming products.

Life cycle costs are to be used when contracting for major energy-consuming products. In determining life cycle costs, the state may consider the acquisition cost of the product, its energy consumption and the projected cost of energy over the useful life of the product, and the expected resale or salvage value of the product.

Except where prohibited by private act or state law, the county shall adopt the energy efficiency standards and life cycle costing employed by the state. The county may develop and adopt its own energy efficiency standards, provided they are more stringent than the state's. T.C.A. § 12-3-901 *et seq.* (formerly § 12-3-601 *et seq.*)

## Purchasing from Disabled Persons

Reference Number: CTAS-949

Political subdivisions may purchase services and commodities from individuals with severe disabilities through the central nonprofit agency as long as commodities or services purchased by political subdivisions are certified by the chief financial officer of the political subdivision. T.C.A. § 71-4-703.

## Construction Projects

Reference Number: CTAS-951

Contractor License Information Requirements—For construction projects, the license information for the general contractor and certain subcontractors must be placed on the outside of the bid envelope or in the electronic bid submission in accordance with T.C.A. § 62-6-119. The following information must appear on the outside of the envelope containing the bid or in the submission of the electronic bid: (1) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the prime contract; (2) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the masonry contract where the total cost of the materials and labor for the masonry portion of the construction project exceeds one hundred thousand dollars (\$100,000); (3) The name, license number, expiration date thereof, and license classification of the contractor applying to bid for the electrical, plumbing, heating, ventilation, or air conditioning contracts except when such contractor's portion of the construction project is less than twenty-five thousand dollars (\$25,000); and (4) For each vertical closed loop geothermal heating and cooling project, the company name, department of environment and conservation license number, classification (G, L or G,L) and the expiration date, except when the geothermal portion of the construction project is in an amount less than twenty-five thousand dollars (\$25,000). Prime contractor bidders who are to perform the masonry portion of the construction project which exceeds one hundred thousand dollars (\$100,000), materials and labor, the electrical, plumbing, heating, ventilation or air conditioning or the geothermal heating and cooling must be so designated. Only one (1) contractor in each of the listed classifications shall be written on the bid envelope or provided within the electronic bid document.

Failure of any bidder to comply with these requirements voids the bid and the bid cannot be considered. Upon opening the envelope or acceptance of an electronic bid, the names of all listed contractors must be read aloud at the official bid opening and incorporated into the bid. Prior to awarding a contract, the awarding person or entity and its authorized representatives must verify the accuracy, correctness and completeness of the required information. Any discrepancies found in the spelling of names of bidders, transposition of license numbers, or other similar typographical errors or omissions may be corrected within forty-eight (48) hours after the bid opening excluding weekends and state-recognized holidays.

For design/bid/build procurements where cost is the primary criterion for the contract award, no invitation to bid may require that a subcontractor be identified until the final bid submission, nor require that a contractor accept the bid of any subcontractor until the final bid submission.

Anyone preparing bid documents is required to include a reference to Tennessee Code Annotated, Title 62, Chapter 6 (the Contractors Licensing Act of 1994), and a specific statement informing bidders that it is necessary for the bidder to provide evidence of compliance with the applicable provisions of Title 62, Chapter 6 before the bid may be considered.

Any person who awards a bid to a contractor who is not licensed in accordance with Title 62, Chapter 6, commits a Class A misdemeanor. T.C.A. § 62-6-119 and -120.

Discrimination against Contractors Licensed by the State—Under T.C.A. § 62-6-111, counties and cities cannot discriminate against contractors licensed by the state of Tennessee on the basis of the licensee's

nonresidency within the county or municipality. See Op. Tenn. Att'y Gen. 15-69 (October 1, 2015).

Income or Residency Requirements Prohibited---Counties and cities cannot require companies bidding or contracting on public construction projects to employ individuals residing within their jurisdiction or within a specific income range, unless otherwise required by federal law. T.C.A. § 12-4-117.

Employment of Licensed Architect or Engineer on Public Works—If a public works project is expected to cost more than \$50,000 and involves architecture, engineering or landscape architecture, the plans, specifications and estimates for the project must be prepared by a registered architect, engineer, or landscape architect. T.C.A. § 62-2-107.

Drug-free Workplace Requirements for Construction Contracts—Private employers with five or more employees who contract with the county to provide construction services must submit an affidavit stating that they have a drug-free workplace program in effect at the time of submission of a bid, in accordance with T.C.A. § 50-9-113. As long as the county obtains a written affidavit from the principal officer of the covered employer stating that the employer is in compliance with T.C.A. § 50-9-113, the county has no further liability. The form of the affidavit is not prescribed by statute. An example of an affidavit.

The county is required to include certain information in bid specifications for construction services as set out in T.C.A. § 50-9-114, including a statement as to whether the county operates a drug-free workplace program or drug testing program, a statement describing the program, and a statement requiring bidders to submit an affidavit as part of their bid that the bidder operates a drug-free workplace program at least as stringent as the county's. Any construction contract that does not meet these requirements is subject to challenge in chancery court if such challenge is filed within seven days.

Contractors and Public Contracts— Unless required by federal or state law, T.C.A. § 50-3-109 prohibits local governments, as part of a contract to improve real estate, from requiring a contractor or remote contractor to: (i) obtain, gather, or disclose personnel information of the contractor's employees; (ii) provide personnel information of the contractor's employees to a person or entity; (iii) adhere to safety and health standards in excess of those required by OSHA and TOSHA; (iv) provide access to the worksite to anyone who would not otherwise have legal access to the worksite; (v) provide access to personnel information of anyone furnishing labor or materials on the worksite to a third party unless the third party is a certified public accountant performing an audit for the contract; (vi) require written contracts for labor and materials; (vii) be responsible for another party's compliance agreement to the improvement; or (viii) offer employment to a temporary laborer regardless of the length of service. Local governments are not authorized to prohibit a contractor from bidding, proposing, or accepting a contract unless the contractor has committed a willful violation of federal or state law. T.C.A. § 50-3-109.

Local Government Requirements On Private Employers— Local governments are prohibited from requiring, as a condition to doing business or contracting with a local government, a private employer to pay its employees an hourly wage in excess of minimum wage required under applicable federal or state law, and may not impose a wage or employment benefit mandate on a private employer. T. C. A. § 50-2-112. Except as provided by state or federal law, local governments may not, as a condition to doing business with the local government, require private employers to establish a leave policy that changes the state requirements such as those authorized under § 4-21-408; provide health insurance benefits to persons employed by such employer; request any information on an application for employment or during the process of hiring a new employee; or imposing a requirement upon an employer pertaining to hours worked, schedule that an employer is required to provide employees, or employee output during work hours. T. C. A. § 7-51-1802.

T. C. A. § 50-2-112 further provides that local governments are prohibited from seeking to control or affect the wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the local government. A local government is prohibited from the use of evaluation factors, qualifications of bidders, or otherwise award preferences on the basis of wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the local government. With respect to construction contracts, a local government has no authority to require a prevailing wage be paid in excess of the wages established

by the prevailing wage commission for state highway construction projects in accordance with title 12, chapter 4, part 4 or the Tennessee occupational wages prepared annually by the department of labor and workforce development, employment security division, labor market information for state building projects. If compliance with T. C. A. § 50-2-112 by a local government relative to a specific contract, project, or program would result in the denial of federal funds that would otherwise be available to the local government, then the local government may require a private employer to pay its employees a wage necessary to meet the federal requirements to obtain the federal funds, but only relative to such contract, project, or program.

Construction Contracts Retainage—Retainage on construction contracts is governed by Title 66, Chapter 34. Retainage amounts on public and private construction contracts cannot exceed 5% of the contract amount, and retainage must be released to the prime contractor within 90 days after completion of the project or within 90 days after substantial completion of the project for work completed, whichever occurs first. The prime contractor must pay all retainages due to any remote contractor within ten days after receiving the owner's retainages. Any remote contractor receiving the retainage from the prime contractor must pay to any lower-tier remote contractor all retainages due within ten days after receipt of the retainages T.C.A. § 66-34-103.

When the prime contract is \$500,000 or more for real property improvement, retainage amounts must be placed in a separate interest-bearing account with a third party. The account must be established upon the withholding of any retainage. At the time of the withholding, the funds become the separate property of the prime or remote contractor, subject to the person's rights withholding the retainage in the event the prime or remote contractor defaults on or does not complete its contract. Every time funds are withheld from a contractor's application for payment, the contractor must be notified of the name of the financial institution holding the escrow, the account number, and the amount of funds deposited into the account from that payment. T.C.A. § 66-34-104.

Immediately following satisfactory completion of the contract, all funds with interest must be paid to the prime or remote contractor to whom the funds are owed. If the owner, prime contractor, or remote contractor fail to release the funds, then the prime or remote contractor may seek equitable relief, including injunctive relief provided in T.C.A. § 66-34-602. Upon written agreement of all parties, other claims may be settled by arbitration according to the Uniform Arbitration Act. Compliance with the statute is mandatory and may not be waived by contract. T.C.A. § 66-34-104.

If an owner or prime contractor withholds retainage used for the benefit of the prime contractor or remote contractor pursuant to T.C.A. § 66-34-104(a) and (b), then neither the remote contractor nor any of the remote contractors are required to deposit additional retainage funds into the escrow account. T.C.A. § 66-34-103(d).

## Bonds on Construction Projects

Reference Number: CTAS-939

Bid Bond—The National Institute of Governmental Purchasing (NIGP) defines a bid bond as "a written agreement or check by which a third party guarantees that a bidder will accept a contract as a bid, if it is awarded."<sup>1</sup> If the bidder does not accept the award, the bond is forfeited in whole or in part. A bid bond is issued most often in an amount equal to 5 percent of the total price of the bid.<sup>2</sup> Some Tennessee statutes or local government policies may require a different amount for certain projects or services; e.g., T.C.A. § 62-6-129 states that "*no contract for the services of a construction manager shall be awarded for any public work in this state by any city, county, or state authority, or board of education unless there is posted at the time of submittal of a proposal for services by a construction manager a bid bond equal to ten percent (10%) of the value of the services proposed and the value of the work to be managed, or may at the time of contracting provide payment and performance bonds in amounts equal to the combined monetary value of the services of the construction manager and the value of the work to be so managed.*"

Performance Bond—The National Institute of Governmental Purchasing (NIGP) defines a performance bond as "a contract of guarantee, executed subsequent to award by a successful bidder to protect the buyer from loss due to the bidder's inability to complete the contract as agreed."<sup>3</sup>

A performance bond is issued to the local government by a surety company at the contractor's request after the contractor has received notice of award; the contract is usually not signed until the local

government receives the performance bond.<sup>4</sup> The amount of the performance bond is usually for 100 percent of the contract price; however, some local government's policies may specify the minimum amount of the bond or use considerable leeway to determine the amount and whether it will be issued as a percentage of the contract price or for a specific sum.<sup>5</sup>

Payment Bond—A payment bond guarantees that the contractor will pay all suppliers and subcontractors who assist in the performance of the work.<sup>6</sup> A payment bond, issued in the same manner as a performance bond, is a surety company's guarantee that the contractor will pay its subcontractors and the suppliers. Payment bonds are used primarily in construction contracts but are applicable to service contracts under which the contractor contracts all or part of the work to one or more subcontractors.<sup>7</sup> The usual amount of a payment bond is 100 percent of the contract price;<sup>8</sup> however, some Tennessee statutes stipulate the amount of the bond as a percentage of the contract price (T.C.A. § 12-4-201 states that for public works projects over \$100,000 the bond shall be for at least 25 percent of the contract price).

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<sup>1</sup>National Institute of Governmental Purchasing, *The Dictionary of Purchasing Terms*, 3.

<sup>2</sup>Donald F. Harney, *Service Contracting: A Local Government Guide*, ICMA (Washington D.C.: 1992), 61.

<sup>3</sup>*The Dictionary of Purchasing Terms*, 22.

<sup>4</sup>Harney, 61.

<sup>5</sup>*ibid*, 61.

<sup>6</sup>*ibid*, 60-61.

<sup>7</sup>*ibid*, 61.

<sup>8</sup>*ibid*, 61.

## Professional Services Contracts

Reference Number: CTAS-952

Under T.C.A. § 12-3-1209 (formerly § 12-4-106), "contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of the state, for legal services, fiscal agent, financial advisor or advisory services, services from an insurance producer, as that term is defined in § 56-6-102, educational consultant services, and similar services by professional persons or groups of high ethical standards, shall not be based upon competitive solicitations, but shall be awarded on the basis of recognized competence and integrity. The prohibition against competitive soliciting in this section shall not prohibit any entity enumerated from interviewing eligible persons or entities to determine the capabilities of such persons or entities." Similar language in the former statute had been interpreted by the Tennessee Attorney General not to preclude the mention of cost in solicitations as long as cost was not the sole determining factor. Op. Tenn. Att'y Gen. 89-17 (February 13, 1989).

Architectural and engineering services are procured under T.C.A. § 12-4-107 (formerly § 12-4-106), which provides for procurement by a request for qualifications/experience process and selection of a "firm deemed to be qualified to provide the services required." A fair and reasonable price is to be negotiated taking into account "the estimated value of the services to be rendered, the scope of work, complexity and professional nature thereof." If satisfactory contract cannot be negotiated, "negotiations will continue with other qualified firms until an agreement is reached." If the county has a satisfactory existing working relationship for architectural or engineering services, the scope of services may be expanded without following the procedures set out in this statute as long as the services are within the technical competency of the firm.

In counties operating under the County Financial Management System of 1981, the board of education does not have the authority to enter into contracts for professional services such as architectural and engineering services. Ops. Tenn. Att'y Gen. 89-76 and 06-139. The same would hold true in counties operating under the County Purchasing Law of 1957 with schools included.

Under T.C.A. § 12-4-110 (formerly § 12-4-115), contracts for energy-related services that include both

engineering services and equipment and have as their purpose the reduction of energy costs in public facilities must be awarded on the same basis as professional services.

The purchase of insurance is not considered professional services within the meaning of T.C.A. § 12-3-1209, but under T.C.A. § 29-20-407 local governments are authorized to purchase liability insurance through a plan authorized and approved by any organization of governmental entities representing cities and counties without the necessity of competitive bidding. Op. Tenn. Att'y Gen. 13-65 (August 23, 2013).

## Construction Management Services

Reference Number: CTAS-953

The authors of "*Construction Law*" (Brunner and O'Connor) submit that modern construction management was developed in the 1960s and early 1970s. Brunner and O'Connor describe a construction manager as a "party with construction expertise who comes into the process to protect the interests of the owner and to take the lead in coordinating the design and construction services".<sup>1</sup> Further, these authors describe—

*"The duties and responsibilities of a construction manager vary greatly from contract to contract. Under some construction management contract models, the construction manager functions as an agent to the owner. Under this contractual scheme, the construction manager's relationship to the owner is similar to that of the architect, although the construction manager performs different services—such as coordination and scheduling of the work—rather than preparing plans and specifications."*<sup>2</sup>

The U.S. Department of Labor, Bureau of Labor Statistics states that a construction manager "*coordinates and supervises the construction process from the conceptual development stage through final construction, making sure that the project gets completed on time and within budget. They often work with owners, engineers, architects, and others who are involved in the process. Given the designs for buildings, roads, bridges, or other projects, construction managers supervise the planning, scheduling, and implementation of those designs. Construction managers plan, direct, coordinate, and budget a wide variety of construction projects, including the building of all types of residential, commercial, and industrial structures, roads, bridges, wastewater treatment plants, and schools and hospitals*".<sup>3</sup>

The Tennessee Attorney General describes a "pure" construction manager as "a construction manager who acts primarily as the owner's agent in administering, managing, and overseeing a construction project, and who consults with the owner in all phases of construction, from planning and design, to construction and post-construction". The Tennessee Attorney General further states that "*in contrast to the conventional approach to construction projects utilizing a general contractor, a project employing the "pure" construction contract management method of operation generally calls for the owner to contract directly with each of the various trade contractors. The owner employs a construction manager to perform many of the functions, such as coordination and scheduling, traditionally performed by the general contractor. In the "pure" construction management scheme, the construction manager is not in direct contractual privity with any of the trade contractors.*" See Op. Tenn. Att'y Gen. 08-16 (January 31, 2008).

The method of procurement for construction management services varies depending on the type of project. Following is a summary of the requirements for solicitation of construction management services.

Construction Management Services for County Projects—Counties are authorized to contract for construction managers and construction managers at-risk under T.C.A. § 12-4-107 (formerly § 12-4-106) using a written request for proposals (RFP) process with public advertisement in accordance with the county's purchasing laws, rules and regulations. The RFP must indicate the service requirements and factors that will be used to evaluate the proposals. Factors may include the construction manager's qualifications and experience on similar projects, qualifications of personnel to be assigned to the project, fees and costs, or any additional factors deemed relevant by the procuring entity. Construction management may be performed by (1) a licensed general contractor, as long as none of the services performed by the general contractor involve architectural and engineering services, unless, with regard to those services, the general contractor is also licensed as an architect or engineer; or (2) a licensed architect or engineer, as long as none of the services performed by the architect or engineer involve any of the services required to be performed by a contractor, unless, with regard to those services, the architect or engineer is also licensed as a contractor. Actual construction work performed under the coordination and oversight of a construction manager must be procured through competitive bids. A construction manager is prohibited from undertaking actual construction work on a project over which the construction manager coordinates or oversees the planning, bid, or construction phases of the project, except when bids have been solicited twice and no bids have been submitted. If the construction manager can document that a good faith effort was made in each bid solicitation to obtain bids and no bids were

received, then the construction manager may perform the construction work at a price agreed upon by the construction manager, the architect, and the owner of the project. The county governing body, at its discretion, may perform work on the project with its own employees and may include the coordination and oversight of this work as part of the services of the construction manager.

Construction Management Services for Education Construction Projects—Construction management services for education construction projects are deemed to be professional services and are to be procured through a request for proposals process set out in T.C.A. § 49-2-203(a)(3)(C). The factors to be considered include the construction manager’s qualifications and experience on similar projects, qualifications of personnel assigned to the project, fees, and any other criteria deemed relevant. Cost cannot be the sole criterion. Construction managers cannot perform actual construction work except in instances where bids have been solicited twice and no bids have been submitted. A school system can perform work on its project with its own employees and have a construction manager perform the coordination and oversight of the project. Actual construction work under the direction of the construction manager must be competitively bid. Construction management for school construction or additions may be performed by (1) a licensed general contractor, as long as none of the services performed by the general contractor involve architectural and engineering services, unless, with regard to those services, the general contractor is also licensed as an architect or engineer; or (2) a licensed architect or engineer, as long as none of the services performed by the architect or engineer involve any of the services required to be performed by a contractor, unless, with regard to those services, the architect or engineer is also licensed as a contractor.

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<sup>1</sup>Philip L. Bruner and Patrick J. O’Connor, Jr., “Project Delivery Methods and Contract Pricing Arrangements”, *Construction Law*, November 2009, 6:57.

<sup>2</sup>Philip L. Bruner and Patrick J. O’Connor, Jr., “Governmental Regulation: Licensing and Permitting” *Construction Law*, November 2009, 16:15.

<sup>3</sup>U.S. Department of Labor, Bureau of Labor Statistics,

## Purchase of Used or Secondhand Goods

Reference Number: CTAS-954

T.C.A. § 12-3-1202 (formerly § 12-3-1003) authorizes cities and counties to purchase used or secondhand goods, equipment, materials, supplies, or commodities from private individuals and entities without public advertisement and competitive bidding as long as the purchasing government documents 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 5% higher than the highest value of the documented range. For a discussion of what constitutes a nationally-recognized publication under this statute, see Op. Tenn. Att’y Gen. 13-44 (June 10, 2013).

This statute also authorizes cities and counties to purchase used or secondhand goods, equipment, materials, supplies, or commodities from any federal, state, or local governmental unit without public advertisement or competitive solicitations. Also see T.C.A. §12-2-420 (formerly T.C.A. § 12-3-1005) regarding transfer of surplus property among governmental entities.

## Contracts for Purchase of Natural Gas, Propane Gas or Electric Power

Reference Number: CTAS-955

Notwithstanding any law to the contrary, any contract for the purchase for resale or municipal use of natural gas, propane gas or electric power may be made without complying with competitive bidding requirements. T.C.A. § 7-51-910.

## Public Contracts for Social Services

Reference Number: CTAS-956

TCA § 12-3-308 (formerly § 12-4-122) provides that state and local governments shall contract for goods and services provided through the state departments of Human Services, Children’s Services, and Health without discrimination against religious organizations and shall contract with religious organizations on the same basis as any other non-governmental providers without impairing the religious character of the organizations. All programs must be implemented consistent with the First Amendment of the United

States Constitution. Any religious organization that contracts with the state or local government shall retain its independence from the government and that the government cannot require the organization to alter its form of governance or remove religious art, icons, scripture or other symbols. See *Op. Tenn. Att’y Gen.* 04-067 (April 20, 2004).

## Solid Waste Authorities Competitively Bidding Contracts

Reference Number: CTAS-957

According to the Tennessee Attorney General, when a solid waste authority (established under the Solid Waste Authority Act of 1991) is contracting for collection and disposal services, it is generally subject to the same purchasing laws, including competitive bidding requirements, that govern the counties and municipalities forming the authority. See *Op. Tenn. Att’y Gen.* 04-101 (July 2, 2004).

## Purchases from State Industries

Reference Number: CTAS-958

Under T.C.A. §§ 41-22-119 through 41-22-122, state and local government agencies are required to purchase all items produced, re-packaged, assembled, warehoused or manufactured by inmates in the Tennessee Rehabilitative Initiative in Correction (TRICOR) program if the articles have been certified by the board of standards as being of satisfactory quality, reasonably priced, and available. TRICOR publishes and distributes annually a catalogue of products containing the description of all articles and supplies produced by it, and this catalog identifies the articles that are certified by the board of standards. State and local agencies may not evade the intent of the law by slight variations from standards adopted by TRICOR when articles have been certified. Continued intentional violations, after notice from the governor, constitute wrongdoing in office and may subject the officers or agents responsible for the violation to suspension or removal from office.

## Purchase of Confiscated Vehicles and Surplus State Property

Reference Number: CTAS-959

A county may purchase from the department of general services a motor vehicle that has been confiscated by the state alcoholic beverage commission, department of safety, or wildlife resources agency, including those seized by a county sheriff, deputy sheriff, or constable, for violations of the laws relating to intoxicating liquors, or narcotics and contraband drugs, or certain game and fish laws. The purchase must be made in the name of the county and for county government use. T.C.A. § 12-2-201. Counties may purchase other state surplus property in accordance with the provisions of T.C.A. § 12-2-407.

## Reverse Auctions

Reference Number: CTAS-960

Wikipedia Encyclopedia defines a reverse auction as *"a type of auction in which the roles of buyers and sellers are reversed. In an ordinary auction, buyers compete to obtain a good or service, and the price typically increases over time - the seller puts an item up for sale, multiple buyers bid for the item, and one or more of the highest bidders buy the goods at a price determined at the conclusion of the bidding. In a reverse auction, sellers compete to obtain business, and prices typically decrease over time"*.<sup>1</sup>

In a reverse auction the buyer advertises a need for an item or service. The sellers then place bids for the amount they expect to be paid in order to perform such a service or provide such an item. During the online reverse auction, suppliers/sellers submit anonymous bids against each other until the time expires - the bidding of an online reverse auction is generally captured as it takes place ("real time" bidding).<sup>2</sup> The buyer then would select the lowest responsive, responsible bidder.

Local governments may participate in reverse auctions under T.C.A. § 12-3-1208 (formerly § 12-3-1012), which authorizes local government units to 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. Before initial use of a reverse auction, the local government unit 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 that will ensure the integrity of the process, 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. The purchasing agent must solicit bids by placing a notice at least once in a newspaper of countywide circulation five days before the first day bids can be submitted. Bids may also be solicited by mail or electronically. Invitations to bid must contain a general description of the goods or services to be purchased and the time and place for bid opening. The local government is directed to provide a mechanism to facilitate participation of small and minority owned businesses. Bid responses must be made public at the time and place announced in the invitation to bid. The award must be made to the lowest responsible and responsive bidder. Bids must be preserved for 5 years.

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<sup>131</sup>Wikipedia Encyclopedia, Definition of Reverse Auction, January 2010.

<sup>132</sup>www. wisegeek.com

## Fuel Purchase

Reference Number: CTAS-961

T.C.A. § 12-3-1214 allows a county, municipality, metropolitan government, utility district, local education agency, or other local government entity to purchase gasoline or diesel fuel in bulk amounts in the open market without public advertisement or competitive bidding provided that such entities shall, whenever possible, obtain at least three documented quotes. Gasoline or diesel fuel may also be purchased from the department of general services' contract where available.

Additionally, T.C.A. § 7-51-911 authorizes fuel stabilization contracts for a maximum term of 24 months. The statute states that "notwithstanding any other law to the contrary, a municipality may, with the approval of its governing body, enter into a negotiated contract or contracts, including a joint contract or contracts, with other municipalities, with a bank, investment bank or other similar financial institution for the purpose of stabilizing the net expense of the municipality incurred in the purchase of gasoline, diesel or both gasoline and diesel fuel actually purchased by the municipality. Any contract entered into under this section must be for a term of no more than twenty-four (24) months. The authority granted under this section is in addition to, and supplemental to, any existing authority granted a municipality under any other law."

## Addenda to Bid Documents

Reference Number: CTAS-1995

Under T.C.A. § 12-4-113 (formerly § 12-4-126), no addendum to the bid documents is permitted within less than forty-eight (48) hours of the bid opening date, excluding weekends and legal holidays designated in § 15-1-101, unless the bid deadline is extended for a reasonable time as determined by the purchasing agent, which shall not be less than forty-eight (48) hours excluding weekends and legal holidays designated in § 15-1-101, to allow for any necessary changes to the bid documents and to allow bidders to resubmit their bids if necessary. Any questions concerning the bid documents must be received by the designer no less than ninety-six (96) hours before bid opening date. These provisions do not apply to contracts funded in whole or in part with state or federal highway funds.

## Blind Vendors Program

Reference Number: CTAS-2123

Blind vendors are entitled to a statutory preference in the operation of vending facilities on most public property in Tennessee (commonly known as the Blind Vendors Program) under T.C.A. § 71-4-501 *et seq.* Under this law, the Department of Human Services (DHS) has the right of first refusal and the exclusive right to the operation of any and all vending machines on public property that it determines are capable of being operated by a blind individual that it licenses. T.C.A. § 71-4-502. When a new building or facility has been constructed on public property, or when existing contracts have expired or been changed in any way, the public property manager is required to notify DHS, and DHS will determine whether the property is suitable for being operated by a blind vendor. If it is, DHS handles the selection process for the blind vendor and the property manager must cooperate and provide the space and utilities (but not phone service) at no cost. T.C.A. § 71-4-503 and Op. Tenn. Att'y Gen. 04-083 (4/30/04). If DHS determines not to exercise the privilege at that location, then the property manager may contract with a private vendor. T.C.A. § 71-4-503.

"Public property" is broadly defined and includes all property owned or leased by the county, with the



exception of primary and secondary schools and airports. This includes the sheriff's department and the jail commissary. Op. Tenn. Att'y Gen. 07-91 (6/8/07). The blind vendor is not required to have the capability to manage the jail's inmate trust fund accounting system, but the property manager could request that DHS provide someone with that capability. Op. Tenn. Att'y Gen. 01-128 and 06-156. It also includes property owned or leased by a public entity even if it is operated as a joint venture with a nonprofit corporation. Op. Tenn. Att'y Gen. 11-39 (4/28/11). Local government fire stations are within the preference even if the vending machines serve only the fire station employees. Op. Tenn. Att'y Gen. 06-037 (2/21/06).

The statutory definition of a "vending facility" gives DHS discretion to determine the services that it will, or will not, perform while still retaining the statutory priority to other vending facility services. Op. Tenn. Att'y Gen. 06-156.

The public property management must want to have vending services before DHS can place the vending machines on the property; DHS has no authority to require the county to have vending machines, and the county may have all vending machines removed from its property. Op. Tenn. Att'y Gen. 04-083 (4/30/04).

Tennessee Business Enterprises (TBE) is a unit of DHS' Services for the Blind and Visually Impaired Division which administers the statutory program that gives blind vendors priority in providing vending services on public property under the Randolph Sheppard Act, 20 U.S.C. § 107 *et seq.*, and T.C.A. § 71-4-501 *et seq.* TBE may contract with a private vending machine management company to arrange for third-party vending and to collect commissions from the operation of vending machines on its behalf. Op. Tenn. Att'y Gen. 04-083 (4/30/04) and 04-166 (11/19/04).

## Iran Divestment Act

Reference Number: CTAS-2461

Under the Iran Divestment Act, T.C.A. §§ 12-12-101--12-12-113, political subdivisions in Tennessee are prohibited from entering into any procurement or contract over \$1,000 with a person who engages in investment activities in Iran. The state's chief procurement officer is required under T.C.A. § 12-12-106 to create a list of persons who engage in investment activities in Iran. Any person who is on the list is ineligible to contract with any political subdivision of this state, and any such contract is declared void *ab initio* under § 12-12-110. The list is published on the Department of General Services' Public Information Library page.

On or after July 1, 2016, every bid or proposal submitted to a political subdivision where competitive bidding is required must contain the following statement, submitted by the bidder under penalties of perjury: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to § 12-12-106."

Under T.C.A. § 12-12-111, a bid shall not be considered nor any award made where the required statement has not been submitted. If the bidder cannot make the certification, the bidder must so state and must furnish with the bid a signed statement setting forth in detail the reasons. A political subdivision may award a bid to a bidder who cannot make the certification, on a case-by-case basis, if:

(1) The investment activities in Iran were made before July 1, 2016, the investment activities in Iran have not been expanded or renewed on or after July 1, 2016, and the person has adopted, publicized, and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran; or

(2) The political subdivision makes a determination that the goods or services are necessary for the political subdivision to perform its functions and that, absent such an exemption, the political subdivision would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

## Non-boycott of Israel

Reference Number: CTAS-2480

Tenn. Code Ann. § 12-4-119 prohibits public entities (including counties) from entering into a contract for services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in, and will not be engaged in for the duration of the contract, a

boycott of Israel. Any contract entered into on or after July 1, 2022 that fails to comply with the law is void. The law does not apply to contracts with a value of less than \$250,000 or in contracts where the supplier has less than ten employees.

According to the law, a boycott of Israel means engaging in refusals to deal, terminating business activities, or other commercial actions that are intended to limit commercial relations with Israel, or companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or persons or entities doing business in Israel, when such actions are taken: (1) In compliance with, or adherence to, calls for a boycott of Israel, or (2) In a manner that discriminates on the basis of nationality, national origin, religion, or other unreasonable basis, and is not based on a valid business reason. Tenn. Code Ann. § 12-4-119.

Counties can comply with the law by including the following language in every agreement or requiring all contractors to submit the certification linked below.

Boycott of Israel. The Contractor certifies that it is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel as defined by Tenn. Code Ann. § 12-4-119. This provision shall not apply to contracts with a total value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.

Sample Non-Boycott of Israel Certification (Updated 09.19.2022)

## Purchase of Drones

Reference Number: CTAS-2487

Local governments and law enforcement agencies are prohibited from purchasing or acquiring a drone, as defined in the federal National Defense Authorization Act of 2019 (Pub. L. No. 115-232), produced by a manufacturer banned under Section 889 of the National Defense Authorization Act of 2019, as amended. A contract or agreement for the purchase or acquisition of a drone in violation of this section is void and unenforceable. § 12-4-120.

## Trends in County Purchasing

Reference Number: CTAS-191

County purchasing has gone through many changes in the last few decades. Counties have witnessed the passage of general laws of local application to centralize the purchasing functions into one county purchasing or finance department. Purchasing automation has changed the way a purchasing department operates the daily functions of the office (increased efficiency and effectiveness), and has required the purchasing professional to learn new skills in this high technology field. Here are a few trends in county purchasing.

Centralization of Purchasing Activities—In the past two decades, a number of counties have chosen to centralize their purchasing activities under one purchasing department by passing a general law of local application (CFMS of 1981 or the Purchasing Law of 1957) or a private act. This trend will probably continue in order to meet the requirements of accountability and budgetary fiscal controls.

Automation (Computerization) of Purchasing Activities—Most (if not all) counties that have centralized their purchasing activities utilize a computer software program that enables them to process purchasing data, information, and perform routine tasks. Certainly, this trend will continue.

Procurement Cards—Counties have been moving slowly toward the usage of procurement cards. Counties implement the use of procurement cards to try to streamline the traditional procurement process by reducing the number of requisitions, purchase orders, invoices, and checks. Traditionally, procurement card usage has been for small purchases below the competitive bidding threshold.

In the article *Purchasing Cards Come of Age: A Survey of State and Local Governments* published by Government Finance Review in August 2002, the authors state that procurement card spending by state and local governments more than doubled between 1998 and 2001.<sup>1</sup> Furthermore, the survey expected

procurement card spending to grow 92 percent over the next two years, driving up procurement card spending from 4 percent to 7 percent of total city/county spending by 2003 (based on their survey methodology).<sup>2</sup>

There currently is no state law concerning the subject of procurement cards. In addition, sound accounting practices require some controls on the usage of such cards be in place prior to their use in counties. The method of adopting these controls will depend on the purchasing laws under which the county operates, as well as the established procedures the county follows relative to purchasing.<sup>3</sup> Any county desiring to use procurement cards should consult with its county attorney to determine the appropriate method for authorizing the use of procurement cards and adopting policies and procedures.

**Electronic Procurement**—County government purchasing professionals should keep up-to-date with developments in technology available to county governments and stay abreast of evolving business practices and cost-cutting technology.

**Green Procurement**—“Green procurement” seeks to reduce the environmental impacts of governmental operations and promote environmental stewardship by incorporating environmental performance considerations in the procurement and disposal of equipment, supplies, and materials (e.g., purchasing recycled products, purchasing energy efficient equipment, etc.).<sup>4</sup>

Counties continue to look for ways to reduce the volume of waste products that are placed in their landfills or transfer stations, and strive to ensure that their citizens have clean plentiful water. Integrating environmental considerations on the procurement, use and disposal of products will continue to be a trend for county governments.

**Cooperative Purchasing**—In today’s economy many county governments are forced to reduce expenses and cut or delay major capital projects. Counties are faced with the reality of having to “do more with less.” Looking to reduce costs while at the same time provide an efficient service to its citizens, counties are increasingly utilizing a procurement strategy in the form of cooperative purchasing to help trim costs for their local government. Counties have continued to keep costs down by “piggybacking” on contracts and price agreements through the Tennessee Department of General Services. Also, counties have purchased from cooperative purchasing agreements through NACO and U.S. Communities Cooperative Purchasing Program, and have entered into joint agreements with other local governments to purchase equipment, materials and supplies. Counties will continue to use cooperative purchasing methods to increase their purchase volume, and aspire to obtain the benefit of cost savings for their local government.

**Professionalization of Purchasing**—Purchasing agents hired to perform the duties of purchasing in county government have recognized the need to stay abreast of new laws and regulations, potential cost saving measures (e.g., cooperative purchasing), sound purchasing methodologies to help in their procurement duties, and the need to stay abreast of new purchasing strategies and techniques. County purchasing agents have continued to receive training through the National Institute of Purchasing (NIGP), and many have received their “Certified Professional Purchasing Buyer (CPPB)” and/or “Certified Public Purchasing Officer (CPPO)” credentials. Membership in professional organizations such as the Tennessee Association of Public Purchasing (TAPP), the East Tennessee Purchasing Association (ETPA), and the Middle Tennessee Public Purchasing Association (MTPPA) provide an opportunity for training and the sharing of ideas with other purchasing professionals who have common procurement objectives.

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<sup>1</sup>Richard J. Palmer, et al., *Purchasing Cards Come of Age: A Survey of State and Local Governments*, Government Finance Review, August 2002, 6.

<sup>2</sup>*Purchasing Cards Come of Age: A Survey of State and Local Governments*, 9.

<sup>3</sup>The University of Tennessee, County Technical Assistance Service, Spotlight on Current Issues, Purchasing Card Usage in Counties, Executive Director’s Memorandum, February 2001, 1.

<sup>4</sup>See Public Works and Government Services, Canada, www. pwgsc.ca

## Professional Purchasing Organizations and Publications

Reference Number: CTAS-190

### **Professional Purchasing Organizations**

The National Institute of Governmental Purchasing (NIGP)

#### **NIGP Chapters in Tennessee**

- Tennessee Association of Public Purchasing (TAPP - Statewide Chapter)

- Middle Tennessee Public Purchasing Association (MTPPA)
- East Tennessee Purchasing Association (ETPA)

The Tennessee Association of Public Purchasing (TAPP)

The National Association of State Procurement Officials (NASPO)

Institute for Supply Management (ISM) (Note: previously National Association of Purchasing Managers NAPM),

East Tennessee Purchasing Association (ETPA)

Middle Tennessee Public Purchasing Association (MTPPA)

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