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Purchasing in County Education Departments

Dear Reader:

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

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

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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The county education department has its own purchasing law, found in T.C.A. § 49-2-203 (a)(3), but this law is largely superseded or modified in those counties that adopt the statutes of the County Financial Management System of 1981.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.

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