

Other General Laws related to Purchasing

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 municipal 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 MTAS website material.

Sincerely,

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Other General Laws related to Purchasing

Reference Number: MTAS-2006

There are other general laws apart from the charter and the 1983 Municipal Purchasing Law that can influence purchasing policies and procedures. Following is a list of legislation which should be considered in the buying process of municipal governments.

Municipal Purchasing Law of 1983 Summary

Reference Number: MTAS-148

The Municipal Purchasing Law of 1983 establishes minimum requirements for all cities that do not have very specific charter provisions governing competitive bidding and purchasing.

Municipalities that have charter provisions dealing with competitive bidding and either establishing bid limits in the charter itself or allowing bid limits to be set by ordinance but setting a maximum may continue to operate under the charter provisions, but the municipality must by charter or ordinance establish general bid procedures, including public advertising, securing and opening bids, and any exemptions from competitive bidding. Exemptions must be substantially similar to those in T.C.A. § 6-56-304.

For municipalities with charter provisions that deal with competitive bidding but that set no bidding limits, the municipality may by ordinance set a limit not exceeding \$25,000 over which public advertisement and competitive bidding must precede purchases. These municipalities must also by ordinance set a dollar limit not exceeding 40 percent of this bid limit amount over which the municipality need not advertise but when possible must obtain three competitive bids and below which no advertisement or competitive bidding is required. The ordinance also must establish procedures for public advertising, securing and opening bids, and any exemptions from competitive bidding, which must be substantially similar to those in T.C.A. § 6-56-304.

Although constitutionally questionable, T.C.A. § 6-56-306(a) allows municipalities with a population of 40,000 to 42,500 and municipalities with a population over 150,000 to set the dollar amount required for public advertisement and competitive bidding up to \$25,000 as long as purchases between \$10,000 and \$25,000, when possible, are based upon at least three competitive bids.

The act requires public advertising and competitive bids for all purchases, leases, and lease-purchases except:

- purchases through state contracts;
- investments in or purchases from the Local Government Investment Pool (LGLP);
- purchases from instrumentalities created by two or more cooperating governments;
- goods and services purchased from non-profit corporations formed to specifically serve municipalities;
- purchases, leases, or lease-purchases of real property;
- purchases, leases, or lease-purchases from other governments;
- when there is only one source of supply or proprietary product;
- emergency purchases (complete documentation and a report to the municipality's governing body and chief executive are required for each emergency purchase);
- leases or lease-purchase agreements requiring payments of less than \$2,500 during a fiscal year;
- purchases of perishable commodities when approved by the governing body and subject to certain documentation and reporting requirements;
- fuel and fuel products, which may be purchased on the open market;

- purchases, leases, or lease purchases of secondhand articles or equipment, etc., from federal, state, or local government units or agencies;
- any contract for purchasing natural or propane gas for resale; and
- purchases under \$2,500, although cities may adopt an ordinance increasing the purchase amount to \$10,000 before advertising and competitive bids are required.

Purchases between \$1,000 and the amount established for advertising and competitive bids may be made without advertising on the open market but "wherever possible" must be based on three competitive bids. This \$1,000 limit may be increased by ordinance to 40 percent of the amount established for purchases requiring advertisement and competitive bidding. Purchases of less than \$1,000 or the amount set by ordinance do not require advertising or competitive bidding. T.C.A. §§ 6-56-301, *et seq.* [1]

Ordinance to Increase Purchasing Limits

Reference Number: MTAS-1685

An Ordinance Establishing a Maximum Amount for Purchases Without Public Advertisement and Competitive Bidding

WHEREAS, the City/Town of _____ is subject to the provisions of the "Municipal Purchasing Law of 1983," and

WHEREAS, this law permits municipalities to increase the dollar amount of purchases requiring public advertisement and competitive bidding, and,

WHEREAS, the (*governing body*) has determined that it is in the best interest of the City/Town of _____ to increase said amount.

NOW THEREFORE, BE IT ORDAINED BY THE (*governing body*) of the City/Town of _____, THAT:

Section 1. Public advertisement and competitive bidding shall be required for the purchase of all goods and services exceeding an amount of _____ dollars (\$00,000) except for those purchases specifically exempted from advertisement and bidding by the Municipal Purchasing Act of 1983.

Section 2. Three written quotations are required whenever possible for purchases costing less than the _____ (\$00,000) bid threshold adopted for competitive bidding and public advertisement, but more than ____% of the threshold amount.

Section 2. This ordinance shall take effect from and after its final passage, the public welfare requiring it.

NOTES:

1. **Each municipality should add the appropriate provisions for readings or passages and signatures.**
2. **Municipalities subject to the Municipal Purchasing Law of 1983 that do not have a full time purchasing agent and centralized purchasing authority are authorized to increase the dollar amount required for complete bidding and public advertisement from two thousand five hundred _____ dollars (\$2,500) to a maximum of ten thousand dollars (\$10,000), by ordinance. See exceptions in Tenn. Code Ann. Section 6-56-306.**
3. **Municipalities that are subject to the Municipal Purchasing Law of 1983 that do have a full time purchasing agent and centralized purchasing authority are authorized to increase the dollar amount required for competitive bidding and public advertisement from ten thousand dollars (\$10,000) to a maximum of twenty-five thousand dollars (\$25,000), by ordinance.**
4. **Three written quotations are required whenever possible for purchases that are less than the competitive bidding and public advertisement bid threshold, but more than forty percent (40%) of it. Municipalities may also require three written quotations whenever possible for purchases that are less than forty percent (40%) of the competitive bidding and public advertisement bid threshold.**

Laws Related to Purchasing in City Manager-Commission Charter

Reference Number: MTAS-1687

6-19-104. Purchasing and contract procedures —

(a) The city manager shall be responsible for all city purchasing, but the city manager may delegate the duty to make purchases to any subordinate appointed by the city manager.

(b) Competitive prices for all purchases and public improvements shall be obtained whenever practicable and in accordance with regulations established by ordinance, and the purchase made from or the contract awarded to the lowest and best bidder; provided that the city may reject any and all bids.

(c) Formal sealed bids shall be obtained in all transactions involving the expenditure of an amount to be set by ordinance. The amount set shall be equal to or greater than the amount set in chapter 56, part 3 of this title, but may not be greater than ten thousand dollars (\$10,000). The transaction shall be evidenced by written contract. In cases where the board indicates by unanimous resolution of those present at the meeting, based upon the written recommendation of the manager, that it is clearly to the advantage of the city not to contract with competitive bidding, it may authorize noncompetitive contracts.

(d) The city manager may reject all bids and authorize the making of public improvements or accomplishment of any other city work by any city department.

(e) Purchasing and contract procedures not prescribed by this charter or other law may be established by ordinance.

(f) The board of commissioners may by ordinance delegate to the city manager the authority to enter into binding contracts on behalf of the city, without specific board approval, in routine matters and matters having insubstantial long-term consequences. The ordinance shall enumerate the types of matters to which the city manager's authority extends and may place other limitations on the city manager's authority under this subsection (f). As used in this subsection (f) "routine matters and matters having insubstantial long-term consequences" means any contract for which expenditures during the fiscal year will be less than ten thousand dollars (\$10,000).

6-21-108. Powers and duties of manager — The powers and duties of the city manager are to:

(1) See that the laws and ordinances are enforced, and upon knowledge or information of any violation thereof, see that prosecutions are instituted in the city court;

(2) Except as otherwise provided in this charter, appoint, promote, demote, suspend, transfer, remove, and otherwise discipline all department heads and subordinate employees at any time, subject only to any personnel rules and regulations adopted by ordinance or resolution by the commission. Any hearings on, or appeals from, the city manager's personnel decisions provided for in the personnel rules and regulations shall be exclusively before the city manager or a hearing officer designated by the city manager;

(3) Supervise and control the work of the recorder, the chief of police, the city attorney, treasurer, and all other officers, and of all departments and divisions created by this charter or which hereafter may be created by the board of commissioners;

(4) See that all terms and conditions imposed in favor of the city or its inhabitants in any public utility or franchise are faithfully done, kept and performed, and, upon knowledge or information of any violation thereof, call the same to the attention of the city attorney, who is hereby required to take such steps as are necessary to enforce the same;

(5) Attend all meetings of the board, with the right to take part in the discussion, but not to vote;

(6) Recommend to the board for adoption such measures as the city manager deems necessary or expedient;

(7) Act as budget commissioner and keep the board fully advised as to the financial condition and need of the city;

(8) Act as purchasing agent for the city and to purchase all material, supplies and equipment for the proper conduct of the city's business as provided in §6-19-104;

(9) Execute contracts on behalf of the city when this authority is delegated to the city manager by ordinance; and

(10) Perform such other duties as may be prescribed by this charter or required of the city manager by resolution or ordinance of the board.

6-22-128. Certification of availability of funds to meet contract obligations — No contract, agreement, or other obligation involving the expenditure of money shall be entered into, nor shall any ordinance, resolution or order for the expenditure of money be passed by the board of commissioners or be authorized by any officer of the city, unless the finance director shall first certify to the board or the proper officer, as the case may be, that the money required for such contract, agreement, obligation or expenditure, is in the treasury or safely assured to be forthcoming and available in time to comply with, or meet such contract, agreement, obligation or expenditures, and no contract, agreement or other obligation involving the expenditure of money payable from the proceeds of bonds of the city, shall be entered into until the issuance and sale of such bonds have been duly authorized in accordance with the provisions of this charter in reference to city bonds.

Ordinance to Establish Purchasing Limits in City Manager-Commission Chartered Cities

Reference Number: MTAS-1688

AN ORDINANCE OF THE CITY OF _____ TO ESTABLISH PURCHASING LIMITS

WHEREAS, T. C.A. § 6-19-104 provides that competitive prices for all purchases and public improvements shall be obtained whenever practicable and in accordance with regulations established by ordinance, and that formal sealed bids shall be obtained in all transactions involving expenditures of an amount to be set by ordinance, provided that the amount set shall be equal to or greater than the amount set in T.C.A., Title 6, Chapter 56, part 3 (\$2,500) but not to exceed \$10,000;

WHEREAS, T.C.A. § 6-19-104 provides that the city manager shall be responsible for all city purchasing, and T.C.A. § 6-21-101 provides that one of the duties of the city manager is to act as the purchasing agent for the city and to purchase all material, supplies and equipment for the proper conduct of the city's business as provided in T.C.A. § 6-19-104;

WHEREAS, It is in the best interest of the city to authorize the purchase by the city manager, without formal sealed bid, of material, supplies and equipment costing in excess of the amount set by T.C.A., Title 6, Chapter 56, Part 3, (\$10,000) and to give the city manager flexibility to make purchases on behalf of the city;

NOW THEREFORE, BE IT ORDAINED BY THE (*governing body*), **as follows:**

Section 1. In accordance with T.C.A. § 6-19-104 the purchase of all material, supplies, equipment and services purchased under the authority of this ordinance shall, unless otherwise provided by law, be purchased in accordance with the following regulations:

(a) Purchases not exceeding (not to exceed \$10,000). The city manager is authorized to make the following purchases whose estimated costs do not exceed \$_____ without formal sealed bids and written specifications: commonly used items of material, supplies, equipment and services used in the ordinary course of maintaining and repairing the city's real or personal property; building or maintaining stocks of city material, supplies and equipment used in the ordinary course of city operations; and minor construction, repair or maintenance services. However a record of all such purchases shall be maintained describing the material, supplies, equipment or service purchased, the person or business from whom it was purchased, the date it was purchased, the purchase cost, and any other information from which the general public can easily determine the full details of the purchase. Each purchase shall be supported by invoices and/or receipts and any other appropriate documentation signed by the person receiving payment.

(b) Purchases in excess of (not to exceed \$10,000). The city manager is required to make purchases in excess of \$_____ based on written specifications, awarded by written contract let to the lowest responsive and responsible bidder following advertisement for, and the submission of, sealed bids.

(c) Exceptions to bidding requirement. The city manager is authorized to make the following purchases whose estimated cost is in excess of \$_____ (not to exceed \$10,000) without written specifications or bids:

(1) Emergency purchases of material, supplies, equipment or services. However, a report of the emergency purchase, including the nature of the emergency, the materials, supplies, equipment or services purchased, and the appropriate documentation similar to that required under the first subsection above shall be filed with the city commission at its next regular meeting.

(2) The purchase of unique, special, or proprietary material, supplies, equipment or services the city manager determines is in the best interest of the city to acquire. However, a report of the purchase, including a full description of the material, supplies, equipment or services purchased; the reason the same is unique, special or proprietary; the interest of the city served by the purchase; and from whom the purchase will be made shall be filed with the city commission at its regular meeting prior to purchase.

(3) Purchases of equipment which, by reason of training of city personnel or an inventory of replacement parts maintained by the city, are compatible with the existing equipment owned by the city. However, a full report of the purchase, including a full description of the equipment, an outline of the municipal training or parts inventory factors that made the purchase economically advantageous to the city, and from whom the purchase will be made shall be filed with the city commission at its regular meeting prior to purchase.

(4) Purchases that can be made only from a sole source. The minimum geography for determining the "sole source" shall be the municipal limits. However, the city manager shall have the discretion to enlarge the geography of the sole source to whatever extent he determines is in the economic interest of the city. A full report of the purchase, including a full description of the purchase, evidence that the purchase was made legitimately a sole source purchase, and from whom the purchase will be made shall be filed with the city commission at its regular meeting prior to purchase.

Section 2. This ordinance shall take effect from and after its final passage, the public welfare requiring it.

NOTE: City should add its appropriate provisions for readings or passages and signatures.

Laws Related to Purchasing in Modified City Manager-Council Chartered Cities

Reference Number: MTAS-1689

6-35-205. Purchasing —

(a) Except as provided in § 6-36-115, the manager shall be responsible for all city purchasing but he may delegate such duty to any subordinate appointed by the manager.

(b)

(1) Competitive prices for all purchases and public improvements shall be obtained whenever practicable and in accordance with regulations established by ordinance, and the purchase made from or the contract awarded to the lowest responsible bidder, provided that the city shall have the power to reject any and all bids.

(2) Formal sealed bids shall be obtained in all transactions involving the expenditure of ten thousand dollars (\$10,000) or more, and the transaction shall be evidenced by written contract submitted to and approved by the council; provided that in cases where the council indicates by formal unanimous resolution of those present at the meeting, based upon the written recommendation of the manager, that it is clearly to the advantage of the city not to contract with competitive bidding, it may authorize noncompetitive contracts.

(3) The council may also authorize the making of public improvements or the performing of any other city work by any city department or agency without competitive bidding.

(c) Purchasing and contract procedures not prescribed by this charter or other law may be established by ordinance.

6-35-206. Management of city property and equipment — Lease of property and equipment to contractors for city services —

(a) The management of all city property and equipment except school property and equipment shall be the responsibility of the city manager who shall prepare for the approval of the council regulations governing the acquisition, custody, use and disposal of all such property and equipment. Such

regulations shall provide for a regular inventory, appraisal and marking of all such property and shall require that the disposal of any city property and equipment valued at more than five hundred dollars (\$500), provided that any sale for more than one thousand dollars (\$1,000), or any sale of real estate shall be subject to the approval of the city council.

6-36-115. Purchases and contracts —

(a) All materials, supplies and equipment shall be purchased by the director of schools in accordance with procedures approved by the board of education, except that centralized purchasing with the city administration may be utilized where it is mutually agreed upon by the council and board or their delegated representatives.

(b) The board of education or director of schools, in making purchases and contracts, shall be subject to the provisions of this charter relating to purchases and contracts by the city council and city manager, with the board of education standing in the stead of the council and the director of schools standing in the stead of the city manager.

(c) No purchase, expenditure or contract shall be made in excess of available school funds.

Contracts for Professional Services

Reference Number: MTAS-2007

Professional services include legal services, fiscal agent, financial advisor or advisory services, educational consultant services, architectural services, engineering services, and similar services by professional people or groups with “*high ethical standards.*” Only contracts for services performed within the professional’s field of expertise are to be considered professional service contracts. For example, leasing office space from an attorney or purchasing computer services from an accountant are not professional services and will require competitive bids.

T.C.A. § 12-3-1209 requires a contract to be awarded on the basis of recognized competence and integrity, rather than on competitive solicitations. This does not stop a municipality from requesting proposals from eligible service providers and deciding the capabilities of each. Although cost must be considered in choosing the service provider, it must not be the sole factor.

When the service provider is chosen, the municipality and the provider must enter into a written contract specifying 1) the service and 2) the cost and expenses covered under the contract.

Any fiscal agent, financial advisor or advisory service that serves a municipality must meet the requirements of the Comptroller’s Office of State and Local Finance regarding conflict of interest in purchasing municipal debt.

T.C.A. § 12-4-107 includes additional requirements for governmental entities in the procurement of architectural and engineering professional services.

The municipality may seek qualifications from any firm or firms licensed in the state and interview any or all. The qualifications and experience of all firms under consideration will be evaluated. The successful firm deemed most qualified will meet with the municipality in an attempt to negotiate a contract, the compensation of which is fair and reasonable to the government. Should the municipality and the firm be unable to negotiate a contract with a satisfactory price, negotiations will continue with other qualified firms until a satisfactory agreement is reached.

In the event a municipality has an existing satisfactory relationship with a qualified firm, the government may continue to exercise that relationship without seeking qualifications from other licensed firms.

For local construction projects or additions to existing buildings, a local government may contract for a construction management agent or advisory services or construction manager at-risk services. Construction management services may be performed by a qualified person licensed under the Contractors Licensing Act of 1994 or by a licensed architect or engineer.

Construction management services are to be procured for each project through a written request for proposals (RFPs) process through advertisement. RFPs will indicate the service requirements and the factors used for evaluating the proposals. A governing body 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 a construction manager agent or advisor.

All construction work under the coordination and oversight of the construction manager shall be procured through competitive bid.

The T.C.A. citations for this topic are T.C.A. § 12-3-1209 and § 12-4-107.

Energy-related Services

Reference Number: MTAS-2008

Contracts by local governments for energy-related services that include both engineering services and equipment for the purpose of reducing energy costs in public facilities shall award contracts on the same basis as contracts for professional services.

The T.C.A. citation for this topic is T.C.A. § 12-4-110.

Purchase of Certain Insurance Summary

Reference Number: MTAS-2026

Municipalities may purchase any of the insurance authorized and approved by any organization of governmental entities representing cities and counties without having to go through competitive bidding. This is true regardless of any public or private act or charter restrictions.

The T.C.A. citation for this topic is T.C.A. § 29-20-407.

Purchases Through State Contract Summary

Reference Number: MTAS-2027

The central procurement office may, upon request, purchase goods and services for any local governmental unit of this state. The cost of any purchase shall be borne by the local government unit concerned.

Local governments may, without public advertisement or competitive bidding, make purchases of goods or services included in federal general services administration contracts or other applicable federal open purchase contracts. Excluded from this authorization are motor vehicles other than those manufactured for a special purpose as defined in T.C.A. § 12-3-1208.

Municipalities may take advantage of so-called "state prices" regardless of any charter or general law requirements without public advertisement and competitive bidding.

Not all prices quoted to the state are available to local governments. Unless restricted by local or private act, charter or general law, municipalities may purchase any item from local sources if:

1. The item is available for purchase through contracts or price agreements entered into by the central procurement office;
2. The item must also be available at the same or lower cost from such local sources;
3. And the local government is not permitted to purchase from an existing contract established by the department.

The items, along with price and vendor information, are available electronically from the purchasing division of the Tennessee Department of General Services, Central Procurement Office.

The T.C.A. citation for this topic is T.C.A. § 12-3-1201.

Purchases from Other Governments and Private Entities Summary

Reference Number: MTAS-2028

Any municipality may buy secondhand items from any other government. These purchases may be made without competitive soliciting and public advertisement, regardless of charter requirements.

Any municipality may buy used or secondhand items from any private individual or entity without public advertisement and competitive soliciting if the municipality documents the general range of value of the purchased item through a nationally recognized publication or through an appraisal by a licensed appraiser. The price paid must be no more than 5 percent of the highest value of the documented range.

The T.C.A. citation for this topic is T.C.A. § 12-3-1202.

Purchases for Other Local Governments Summary

Reference Number: MTAS-2029

A municipality may buy supplies, equipment, and services for any other local government entity (i.e., other municipalities, counties, utility districts or other local government units). The purchase must be made on the terms of the purchaser. The cost of the purchase shall be borne by the local government for which the purchase was made. All competitive bidding and public advertisement requirements of the local government making the request are met if the purchasing government complies with its own purchasing requirements.

Any local education agency (LEA) may purchase equipment under the same terms of a legal bid initiated by any other LEA in Tennessee. Any LEA may purchase directly from a vendor the same equipment at the same price and under the same terms in a contract entered into by any other LEA. The originating LEA will have no liability or responsibility for any purchases made by another LEA and all payments, refunds, returns, and any other communications will be handled without involving the LEA originating the contract.

A municipality may purchase supplies, goods, equipment and services from a vendor under the same price and terms of a legal bid initiated by any other local government unit of this state. The purchase shall be made on the terms of the purchaser. The local government that purchases does so without involving the original purchasing entity. The original entity shares no liability or responsibility for any purchases made by another local government. Any local or private act, charter, or general law requirements for public advertisement or competitive bidding are met in accordance with this section. This subsection shall not apply to:

1. Purchases of new or unused motor vehicles unless the motor vehicles are manufactured for a special purpose as defined in T.C.A. § 12-3-1208; and
2. Purchases related to any transportation infrastructure project including, but not limited to, projects for the construction or improvements of streets, highways, bridges, tunnels, or any roadway related facility.

The T.C.A. citation for this topic is T.C.A. § 12-3-1203.

Cooperative Purchasing Agreements (State) Summary

Reference Number: MTAS-2030

This agreement authorizes the central procurement office to enter into cooperative purchasing agreements with other states or local governments, provided that each contract is established through the use of full and open competition and pursuant to policies or rules approved by the procurement commission.

The T.C.A. citation for this topic is T.C.A. § 12-3-512.

Cooperative Purchasing Agreements (Local) Summary

Reference Number: MTAS-2031

T.C.A. § 12-3-1205 (a) authorizes any local government of the state to participate in, sponsor, conduct, or administer a cooperative purchasing agreement with one or more other Tennessee local governments to procure supplies, services, or construction in accordance with an agreement entered into between the participants. This includes, but is not limited to, a multi-party contract. Where a city is required to advertise and receive bids, it is sufficient that the purchasing entity comply only with its own purchasing requirements.

T.C.A. § 12-3-1205 (b) (1) authorizes any local government of the state to participate in a cooperative purchasing agreement with one or more governmental entities outside this state to the extent allowed by the other state's laws for the procurement of goods, supplies, services, or equipment. Any local government of the state may participate in a cooperative purchasing agreement with an agency of the United States, to the extent allowed by federal law, in accordance with an agreement entered into between or among the participants. Such goods, supplies, services, or equipment must be procured in a manner that constitutes competitive bidding and were advertised, evaluated, and awarded by a governmental entity and made available for use by other governmental entities.

T.C.A. § 12-3-1205 (b) (2) authorizes any local government in this state to participate in a master agreement by adopting a resolution accepting its terms. If a participant to the master agreement is required to advertise and receive bids, it is sufficient that the purchasing entity complied with its own requirements. The participant is required to acquire and maintain documentation that the purchasing entity complied with its own purchasing requirements.

T.C.A. § 12-3-1205 (b) (4) lists the Items that are excluded under this authorization to include:

- 1) Purchases of new or used motor vehicles (unless manufactured for a special purpose as defined in TCA § 12-3-1208). Under this section, motor vehicle does not include farm tractor, mower, earth-moving machinery, construction machinery, or other similar machinery or equipment;
- 2) Purchases of construction, engineering or architectural services, construction materials. Construction materials does not include materials used in the operation of a municipal utility system;
- 3) Purchases of fuel or fuel products and lubricating oils.

T.C.A. § 12-3-1205 (b) (5) states that the authorization for exercising joint purchasing authority with an agency of the United States under T.C.A. § 12-3-1205 (b) (1) does not include the authority to purchase construction machinery utilized in construction or on construction sites.

T.C.A. § 12-3-1205 (c) states that the chief procurement officer may collect information from local governments concerning procurements acquired under cooperative purchasing agreements.

The T.C.A. citation for this topic is T.C.A. § 12-3-1205.

Interlocal Cooperation Act Summary

Reference Number: MTAS-2032

The Inter-local Cooperation Act permits any local government in Tennessee 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 blanket authority under that state's own laws.

The T.C.A. citation for this topic is T.C.A. § 12-9-101.

Electronic Bidding Summary

Reference Number: MTAS-2033

Local governments may satisfy any requirement for mailing by distributing invitations to bid, requests for proposals, and other solicitation electronically. Local governments are authorized to receive bids, proposals, and other offers electronically.

Local governments are not authorized to require small businesses and minority-owned businesses to receive or respond to bids, proposals or other solicitations electronically.

The T.C.A. citation for this topic is T.C.A. § 12-4-116.

Recognition of Electronic Contracting Summary

Reference Number: MTAS-2034

This statute allows contracts to be executed electronically with electronic records and electronic signatures.

The T.C.A. citation for this topic is T.C.A. § 47-10-107.

Competitive Solicitation Summary

Reference Number: MTAS-2035

Municipalities with a population of greater than 150,000 have state-established regulations governing competitive solicitation.

The T.C.A. citation for this topic is T.C.A. § 12-3-1204.

Purchase of Property at Public Auctions Summary

Reference Number: MTAS-2036

This statute authorizes a municipality to establish written procedures governing purchases at publicly advertised auctions. It also establishes fixed reporting requirements for the purchasing official.

The T.C.A. citation for this topic is T.C.A. § 12-2-421.

Reverse Auctions by Local Governments Summary

Reference Number: MTAS-2037

A local government may purchase goods or 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.

This authorization shall not apply to:

- Construction services other than those relating to maintenance, repairs and renovations costing less than \$25,000;
- Architectural or engineering services;
- New or unused motor vehicles unless manufactured for a special purpose; or
- New or unused construction equipment.

Other rules and restrictions apply.

The T.C.A. citation for this topic is T.C.A. § 12-3-1208.

Purchase from State Industries Summary

Reference Number: MTAS-2038

Municipalities must buy all items produced, re-packaged, assembled, warehoused, or manufactured by the labor of inmates from the Tennessee Rehabilitative Initiative in Correction (TRICOR) program provided the articles have been certified pursuant to procedures as provided by the procurement commission as being in satisfactory quality, of reasonable cost, and available.

Municipalities may not evade the intent of the law by slightly changing the variations from standards adopted by TRICOR when articles have been certified. After notice from the governor, continued intentional violations by any municipality constitute wrongdoing in office and subject the officers or agents responsible for the violation to suspension or removal from office.

The T.C.A. citation for this topic is T.C.A. §§ 41-22-119–121.

"Buy America" Act Summary

Reference Number: MTAS-2039

Municipalities may not buy any materials used for highway or roadway construction, re-surfacing, or maintenance from any:

- Foreign government,
- Company wholly owned or controlled by a foreign government, or
- Agency of such foreign government or company.

Materials include, but are not limited to, asphalt cement, asphalt emulsion, rock, aggregate, liquid and solid additives, sealers, and oils.

This statute does not apply if materials made by American companies are considered in unsatisfactory quality, found unavailable in sufficient quantity, or priced at an amount that will increase the overall project cost by 5% more than the overall project costs using materials produced by foreign companies.

The T.C.A. citation for this topic is T.C.A. § 54-5-135.

Purchasing Motor Oil Summary

Reference Number: MTAS-2040

Standard specifications for buying lubricating motor oil must include re-refined or recycled lubricating motor oil, unless circumstances or equipment require specialized treatment. If specialized treatment is necessary, documented evidence to substantiate this exclusion must be submitted to the procurement commission or the appropriate purchasing agency of the political subdivision.

Municipalities may purchase re-refined or recycled lubricating motor oil through the central procurement office. This department compiles and publishes a list of businesses that commercially distribute re-refined or recycled lubricating motor oil. Prior to accepting competitive bids for a contract concerning lubricating motor oil, the municipality must notify each business entity on the list concerning such a proposed contract.

The T.C.A. citation for this topic is T.C.A. § 12-3-807.

Life Cycle Cost and Procurement Act Summary

Reference Number: MTAS-2041

The state chief procurement officer will determine which commodities and products may be bought according to energy efficiency standards. The state must adopt rules and regulations relative to energy efficiency standards for major energy-consuming products. Life cycle costs are to be used in contracting for major energy-consuming products. In determining life cycle costs, the state may consider:

- Acquisition cost of the product,
- Energy consumption and projected cost of energy over the useful life of the product, and
- The expected re-sale or salvage value of the product.

Except where prohibited by private act or state law, the municipality must adopt the energy efficiency standards and life cycle costing employed by the state. The municipality may develop and adopt its own energy efficiency standards, provided they are more stringent than the state standards.

The T.C.A. citation for this topic is T.C.A. §§ 12-3-901 *et. seq.*

The Iran Divestment Act

Reference Number: MTAS-3003

With the passage of Public Chapter No. 817 and effective July 1, 2016, the General Assembly of the State of Tennessee added an additional chapter to the Tennessee Code Annotated cited as the "Iran Divestment Act". Codified in T.C.A. §12-12-101 *et. seq.*, the General Assembly implemented the authority granted under federal law, specifically Section 202 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195).

This title requires the state chief procurement officer to publish a list of persons and entities determined to be engaged in investment activities with Iran on the state's website. Those included on this list are prohibited from contracting with any political subdivision of this state and any contract entered into shall be void. The list adopted by the Tennessee Department of General Services, Central Procurement Office can be found at the link in Appendix A.

In addition, when competitive bidding is required, every bid or proposal made to a political subdivision of the state shall contain the following statement affirmed by the bidder as true under the 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."

The affirmation by each bidder may be submitted electronically. No bid shall be considered for award where this condition is not met, except under very narrow limitations stated in the act.

The T.C.A. citation for this topic is T.C.A. § 12-12-101 *et. seq.*

Purchasing from Certain Disabled Persons Summary

Reference Number: MTAS-2042

Municipalities must purchase services and commodities from qualified non-profit work centers for the blind or severely disabled if the commodities are available and that are certified pursuant to procedures approved by the state procurement commission. This is not mandatory if the service or commodity is available from any state agency or if the procurement commission determines that the service or item does not meet reasonable requirements.

The T.C.A. citation for this topic is T.C.A. § 71-4-701.

Purchase of Confiscated Property from the State Summary

Reference Number: MTAS-2043

A municipality may buy a motor vehicle that has been confiscated by the state by any city officer, employee, or agent. The motor vehicle must be purchased in the name of the city and acquired for municipal use.

The T.C.A. citation for this topic is T.C.A. § 12-2-201.

Multi-Year Contracts for Maintenance of Water Storage Tanks Summary

Reference Number: MTAS-2044

Multi-year contracts for painting and maintenance of water storage tanks may be purchased through a request for proposals process. The RFP document must include the categories used for evaluating the proposals and the relative weight given to each category. The categories should at least include factors such as:

- Qualifications
- Experience on similar projects
- Availability of workers
- Technical approach
- Minority participation
- Cost
- Any other factors deemed relevant by the procuring governmental entity

Cost is not the sole factor for evaluation. Proposers have at least thirty (30) days from public advertisement of the request for proposals to submit their proposals. The governmental entity may also require multi-year contracts to be competitively bid.

The T.C.A. citation for this topic is T.C.A. § 12-4-112.

Conveyance of Real or Personal Property Among Public Agencies Summary

Reference Number: MTAS-2045

Any municipality or other public agency or agencies may convey or transfer real or personal property to any other public agency or agencies by contract, regardless of any requirements in any budget or purchasing act. The transferring municipality is not required to declare the property surplus prior to the transfer. The receiving public agency or agencies must use the conveyed property for a public purpose. In addition, the governing body of every public agency involved in the conveyance or transfer must agree that the terms and conditions are appropriate.

The T.C.A. citation for this topic is T.C.A. § 12-9-110.

Transfer of Assets for Fire Protection Summary

Reference Number: MTAS-2046

A local 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 if the volunteer fire departments are registered with the secretary of state as non-profit organizations.

The T.C.A. citation for this topic is T.C.A. § 12-3-1206.

Purchasing Through Competitive Sealed Proposals Summary

Reference Number: MTAS-2047

Municipalities may make purchases using competitive sealed proposals rather than competitive sealed bids when the governing body determines that competitive sealed bidding is either not practicable or not advantageous to the municipality. This act places these restrictions and requirements on purchasing through competitive sealed proposals:

- The governing body must adopt a procurement code by ordinance before purchases may be made through competitive sealed proposals. MTAS, in conjunction with the comptroller's office, will develop a code that municipalities may adopt.
- The governing body must follow the procurement code; this code must contain criteria and procedures for making purchases.
- Purchases using competitive sealed proposals may be made only in instances when qualifications, experience, and competence are more important than price.
- These purchases may be made only when there is either:
 - More than one solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution, or
 - No readily identifiable solution to a purchasing issue and competitive sealed proposals will assist in identifying one or more solutions.
- Adequate public notice must be given for the request for proposals in the same manner as for requests for competitive sealed bids.
- The request for proposals must state the relative importance of price and other factors.
- Proposals must be opened in a manner that avoids disclosure of contents to competing respondents during the later negotiations. Proposals must be open to public inspection when the intent to award the contract to a particular respondent is announced.
- Discussions for clarification may be conducted with responsible respondents who submit proposals that have been determined by the purchasing agent to be viable for selection. These respondents must be given fair treatment relative to discussion and revision of proposals. Revisions to submitted proposals are permitted before the intent to award to a particular respondent is announced.
- In the discussions, the purchasing agent and other municipal personnel may not disclose information derived from competing proposals.
- The award must be made to the responsible respondent whose proposal the governing body determines is most advantageous to the municipality. The purchasing agent must place in the file a statement containing the basis on which the award was made.

The T.C.A. citation for this topic is T.C.A. § 12-3-1207.

Interest of Officer in Municipal Contracts Summary

Reference Number: MTAS-2048

No one holding a municipal office, elected or appointed, can contract with the municipality for any work that is to be paid for out of the treasury. That same person cannot also hold or have any direct interest in such a contract. Direct interest is defined as any business in which the official is the sole proprietor, a partner, or the person who has the controlling interest. Controlling interest means the person with the ownership or control of the largest number of outstanding shares owned by any individual or corporation.

No municipal officer can be indirectly interested in any contract with the municipality unless the officer publicly acknowledges his interest. "Indirectly interested" is defined as any contract in which the officer is interested, but not directly. It includes contracts where the officer is directly interested, but is the sole supplier of goods or services in the municipality.

The T.C.A. citation for this topic is T.C.A. § 6-54-107.

Personal Interest of Officers Prohibited Summary

Reference Number: MTAS-2049

It is unlawful for any person whose duty is to vote for or to supervise any contract with a municipality to be directly interested in such a contract. No municipal officer or other person whose duty is to superintend any contract with a municipality shall be indirectly interested in any such contract unless the officer or person publicly acknowledges his interest.

The T.C.A. citation for this topic is T.C.A. § 12-4-101.

Ordinance Establishing Office Of Purchasing Agent

Reference Number: MTAS-1716

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING THE OFFICE OF PURCHASING AGENT AND PROVIDING FOR PURCHASING PROCEDURES FOR THE CITY OF _____, TENNESSEE AS PROVIDED BY THE MUNICIPAL PURCHASING LAW OF 1983 AS AMENDED (*Tennessee Code Annotated* 6-56-301, *et seq.*)

WHEREAS the governing body of the *(city)/(town)* of *(city or town)*, Tennessee desires to establish the position of purchasing agent and provide for the duties of said office;

NOW, THEREFORE, BE IT ORDAINED by the *(governing body)* of the *(city)/(town)* of _____, Tennessee as follows:

Section 1. As provided in T.C.A. § 6-56-301 *et seq.*, the office of purchasing agent is hereby created and the *(mayor, city manager, city administrator, city recorder or city clerk)* shall faithfully discharge the duties of said office or appoint an individual to make purchases for the *(city)/(town)*. Purchases shall be made in accordance with the Municipal Purchasing Law of 1983 and amendments thereto, this ordinance and purchasing procedures approved by the governing body.

Section 2. The purchasing agent, or designated representative, as provided herein, shall purchase materials, supplies, services and equipment, provide for leases and lease-purchases and dispose of surplus property in accordance with purchasing procedures approved by the governing body by resolution and filed with the *(city recorder)/(city clerk)*.

Section 3. After initial approval by resolution of the governing body of this *(city)/(town)*, changes or revisions to the purchasing procedures shall be made only by resolution by the governing body.

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed and this ordinance shall be effective upon date of adoption.

NOTE: City should add its appropriate provisions for readings or passages and signatures.

NOTE: City attorney should review this ordinance for charter compliance.

Links:

[1] <http://www.mtas.tennessee.edu/node/1686>

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Source URL (retrieved on 08/21/2019 - 1:51pm): <http://www.mtas.tennessee.edu/reference/other-general-laws-related-purchasing>

