



MTAS Purchasing Guide

**Stephanie O'Hara, MTAS Legal Consultant
Elisha Hodge, MTAS Legal Consultant
Melissa Ashburn, MTAS Legal Consultant**

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Introduction

Tennessee has many general laws that govern purchasing by municipalities including the 1983 Municipal Purchasing Law, the Competitive Sealed Proposals provisions under T.C.A. § 12-3-1207, the Contracts for Professional Services provisions under T.C.A. § 12-3-1209 and § 12-4-107, the Interlocal Cooperation Act, the Iran Divestment Act, etc. The MTAS Purchasing Guide provides a general overview and citations for those general laws, and the accompanying MTAS Sample Purchasing Procedures contain best practices for implementing the state and federal regulations.

Municipal Purchasing Law of 1983

The Municipal Purchasing Law of 1983 is contained in title 6, chapter 56, part 3 of the Tennessee Code and establishes minimum requirements for all cities that do not have very specific charter provisions governing competitive bidding and purchasing.

Municipalities that have charter provisions establishing the bid threshold or that have passed an ordinance authorized by charter establishing the bid thresholds 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. § 6-56-302, § 6-56-304, and § 12-3-1201. A summary of these exemptions can be found below under “Exceptions to Bids, Proposals, and Professional Services.”

The authority contained in the Municipal Purchasing Law for increasing competitive thresholds was preempted in 2022 by T.C.A. § 12-3-1212, and in 2024, the General Assembly clarified this preemption by amending the Municipal Purchasing Law to cite the maximum thresholds established pursuant to T.C.A. § 12-3-1212. This statutory section allows all municipalities to establish a bid threshold of up to \$25,000 or, under certain conditions, up to \$50,000 by ordinance. The details for establishing these thresholds can be found below under the heading “Competitive Sealed Bids.”

Purchasing requirements depend on the category of purchase. Major purchasing categories are competitive sealed bids, competitive sealed proposals, contracts for professional services, requests for proposals, and specific statutory exceptions to these major categories.

Competitive Sealed Bids

According to the 1983 Purchasing Law, municipal purchases, leases, and lease-purchases that exceed the municipality's bid threshold must be made only after public advertisement and competitive bid. For municipalities that do not have charter provisions setting a bid limit, the Municipal Purchasing Law of 1983 establishes a competitive bid threshold of \$2,500. See T.C.A. § 6-56-304. All purchases that cost between \$1,000 and \$2,500 may be made without public advertisement but shall be based on at least three competitive quotes. This limit may be lowered by the governing body through an ordinance. See T.C.A. § 6-56-305.

In addition, T.C.A. § 12-3-1212 expressly preempts the authority contained in the Municipal Purchasing Law for establishing competitive thresholds. T.C.A. § 12-3-1212 allows all municipalities to establish a bid threshold of up to \$25,000 or, under certain conditions, up to \$50,000.

Purchases, leases, and lease-purchases totaling an amount that exceeds the municipality's bid threshold during the fiscal year must be competitively bid. This also includes purchases, leases, and lease-purchases of like or related items usually acquired by two or more buys during the fiscal year.

Some exceptions to the competitive sealed bid requirements are found in T.C.A. § 6-56-302, § 6-56-304, and § 12-3-1201. A summary of these exemptions can be found below under "Exceptions to Bids, Proposals, and Professional Services."

Establishing Competitive Bid Thresholds

Due to the preemptive language in the statute "notwithstanding another law to the contrary," T.C.A. § 12-3-1212, effective May 11, 2022, preempts most other language establishing bid thresholds:

(a) Notwithstanding another law to the contrary, a county, municipality, utility district, or other local governmental entity having centralized purchasing authority with a full-time purchasing agent may, by resolution or ordinance of its governing body, increase the threshold over which public advertisement and sealed competitive bids or proposals are required to an amount not to exceed fifty thousand dollars (\$50,000) for nonemergency, nonproprietary purchases.

(b) Notwithstanding another law to the contrary, a county, municipality, utility district, or other local governmental entity having non-centralized purchasing authority may, by resolution or ordinance of its governing body, increase the

threshold over which public advertisement and sealed competitive bids or proposals are required to an amount not to exceed twenty-five thousand dollars (\$25,000) for nonemergency, nonproprietary purchases.

(c) At least three (3) written quotations are required when possible for purchases costing less than the bid threshold established under subsection (a) or (b), but more than forty percent (40%) of such bid threshold or some lower amount as may be established by the governing body in a resolution.

Purchases of like items must be aggregated for purposes of the bid threshold.

(d) For purposes of this section, a “full-time purchasing agent” means a person who devotes the whole of the person’s working time to the demands and duties of the office of purchasing agent.

Based on this amended language, a municipality does not need central purchasing authority in order to increase the competitive bid threshold to \$25,000 by ordinance. However, the municipality does need a “full-time purchasing agent” for the municipality as a whole in order to raise the bid threshold to \$50,000 by ordinance. “Full-time purchasing agent” is defined in the statute to be “a person who devotes the whole of the person’s working time to the demands and duties of the office of purchasing agent.” If the municipality does not have “centralized purchasing authority” and the municipality’s full-time purchasing agent does not serve the municipality as a whole, the agent would not meet the requirements of T.C.A. § 12-3-1212 to raise the bid threshold to \$50,000 for the municipality as a whole.

For purchases costing less than the threshold but more than 40% of the threshold or some lower amount set by the governing body, three written quotations are required whenever possible. For purposes of the bid threshold, purchases of like items are to be aggregated.

The Municipal Electric Plant Law provides specific purchasing authority for utilities created under the Law. A municipal utility created under the Municipal Electric Plant Law may follow the bid limit set by T.C.A. § 7-52-117(d):

(d) The superintendent shall let all contracts, subject to the approval of the supervisory body, but may, without such approval, obligate the electric plant on purchase orders up to an amount to be fixed by the supervisory body, but not to exceed one hundred thousand dollars (\$100,000). Any work or construction exceeding in cost the amount specified in this subsection (d) shall, before any contract is let or work done, be advertised by the superintendent for bids, but the supervisory body shall have power to reject any and all bids.

This provision does not align with the thresholds and requirements contained in T.C.A. § 12-3-1212. While T.C.A. § 12-3-1212 is not contained within the Municipal Purchasing Law, the Attorney General has opined that the specificity in the Electric Plant Law would govern bid requirements over the Municipal Purchasing Law because the Electric Plant Law is more specific:

The Electric Plant Law and the Purchasing Law both govern advertising and bidding requirements for city owned electric systems. In Opinion 83-308, this Office concluded that where the Electric Plant Law and the Purchasing Law could not both be applied:

the Electric Plant Law of 1935 ... should be applied because there was no express repeal of it, and repeals by implication are not favored; and the 1935 Law is special in dealing at Tennessee Code Annotated § 7-52-117(d) only with purchases of municipal electric systems, whereas the Municipal Purchasing Law of 1983 is general in dealing with purchases throughout municipal governments, and applicable special statutes prevail over general statutes.

See Tenn. Op. Att'y Gen. No. 96-043 (Mar. 13, 1996) (citing Tenn. Op. Att'y Gen. No. 83-308; Watts v. Putnam County, 525 S.W.2d 488, 492 (Tenn. 1975); and Hatler v. Stout, 434 S.W.2d 329 (Tenn. 1968)). The language of T.C.A. § 12-3-1212 preempts the bid threshold authority in the Municipal Purchasing Law, but the utility department of a municipality does not meet the definition of “a county, municipality, utility district, or other local governmental entity” within the preemption language of T.C.A. § 12-3-1212. Therefore, T.C.A. § 7-52-114 is not preempted by T.C.A. § 12-3-1212, and assuming the utility was created under the Municipal Electric Plant Act, the supervisory body of the utility (as defined in T.C.A. § 7-52-114, attached) may establish a bid threshold up to \$100,000 for the utility department.

Competitive Sealed Proposals

T.C.A. § 12-3-1207 authorizes municipalities to use, under certain circumstances, competitive sealed proposals to purchase goods and services rather than competitive sealed bids and requires that a municipality adopt by ordinance a procurement code before purchases may be made as authorized.

As provided in T.C.A. § 12-3-1207:

The procurement code shall provide that competitive sealed proposals may be

used only when qualifications, experience, or competence are more important than price in making the purchase and:

- (1) When there is more than one (1) solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution; or
- (2) When there is no readily identifiable solution to a purchasing issue and the competitive sealed proposals will assist in identifying one (1) or more solutions.

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 the following 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, developed 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.

MTAS and the Tennessee State Comptroller are required by state law (T.C.A. § 12-3-1207(d)) to "develop a model procurement code that may be adopted by any municipality to guide the governing body and purchasing agent in making purchases through requests for competitive sealed proposals. The model procurement code shall contain provisions allowing an aggrieved respondent to protest the intended award to another respondent if the protest is filed within seven (7) calendar days after the intended award is announced. The protest shall be filed with and decided by the municipal governing body." A model ordinance, developed by MTAS in conjunction with the Comptroller's Office and updated in response to Public Acts of 2022, Chapter No. 779 (effective April 8, 2022), satisfies this statutory requirement. A copy of the model can be found the following link:

<https://www.mtas.tennessee.edu/knowledgebase/model-procurement-code-amendment-purchases-through-competitive-sealed-proposals>

Contracts for Professional Services

Professional services include legal services, fiscal agent, financial advisor or advisory services, services from an insurance provider, educational consultant services, architectural services, engineering services, and similar services by professional people or groups with "high ethical standards." See T.C.A. § 12-3-1209 and § 12-4-107. 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 qualifications 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 architectural or engineering firm, the municipality may expand the scope of the services without seeking qualifications from other licensed firms. T.C.A. § 12-4-107(a)(1)(D).

The Qualifications Based Selection Guide for procuring professional design services was created through the cooperative effort of the Qualifications Based Selection (QBS) Working Group, a group consisting of representatives from various State agencies, professional societies, and private individuals. A copy of the guide can be found at the following link:

<https://www.mtas.tennessee.edu/knowledgebase/qualification-based-selection-guide-procuring-design-professional-services-tennessee>

Request for Proposals

The Tennessee Code provides express authority for municipalities to use a “request for proposal process” only under specific circumstances. These request for proposal processes are in addition to the authority of a municipality to adopt and utilize a competitive sealed proposal process. Those specific sections are summarized in this section.

Construction Management Services

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. T.C.A. § 12-4-107.

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. T.C.A. § 12-4-107.

All construction work under the coordination and oversight of the construction manager shall be procured through competitive bid. T.C.A. § 12-4-107.

Information Management Services in Davidson County

For cities in Davidson County, information management services, including computer program analyst services, shall be procured through a request for proposals process if approved by a two-thirds (2/3) vote of the governing body. The request for proposals process must evaluate factors such as cost, the vendor's qualifications, and any additional factor or factors deemed relevant by the procuring entity for the procurement of the service. However, cost may not be the sole criterion for evaluation. The contract for information management services under a request for proposal must be awarded to the best evaluated, responsive respondent. T.C.A. § 12-3-1209.

Multi-Year Contracts for Maintenance of Water Storage Tanks

T.C.A. § 12-4-112 permits cities to enter into multi-year contracts for painting and maintenance of water storage tanks 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.

Exceptions to Bids, Proposals, and Professional Services

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

- Purchases through state contracts (T.C.A. § 12-3-1201).
- Investments in or purchases from the Local Government Investment Pool (LGIP) (T.C.A. § 6-56-302).
- Purchases from instrumentalities created by two or more cooperating governments (T.C.A. § 6-56-302).
- Purchases of goods and services from nonprofit corporations formed to specifically serve municipalities (T.C.A. § 6-56-302).
- Purchases, leases, or lease-purchases of real property (T.C.A. § 6-56-304).
- Emergency purchases (complete documentation and a report to the municipality's governing body and chief executive are required for each emergency purchase) (T.C.A. § 6-56-304).
- Purchases of perishable commodities and fuel and fuel products when purchased on the open market (T.C.A. § 6-56-304); purchases of natural gas and propane for re-sale (T.C.A. § 6-56-304).
- Purchases, leases, or lease purchases of secondhand articles or equipment, etc., from federal, state, or local government units or agencies (T.C.A. § 6-56-304).
- Purchases under \$2,500, unless a municipality adopts an ordinance increasing the purchase amount to \$25,000, when the municipality does not have centralized purchasing authority and a full-time purchasing agent (T.C.A. § 12-3-1212).
- Purchases under \$2,500, unless a municipality adopts an ordinance increasing the purchase amount to \$50,000, when the municipality has centralized purchasing authority and a full-time purchasing agent (T.C.A. § 12-3-1212).
- Purchases of goods and services from a sole source (T.C.A. § 6-56-304).
- Purchases of materials, supplies, commodities, and equipment at public auction (T.C.A. § 12-2-421).
- Purchases of goods and services through a reverse auction (T.C.A. § 12-3-1208).
- Purchases of energy-related services through contracts (T.C.A. § 12-4-110).
- Purchases of professional service through contracts and contracts for architects, engineers, and construction services (T.C.A. § 12-3-1209 and §

- 12-4-107).
- Purchases for information management services through contracts in counties with a population of no less than 470,000 and no more than 480,000 according to the 1980 census or any subsequent federal census (T.C.A. § 12-3-1209).
 - Purchases of motor vehicles and intoxicating beverages seized and confiscated by the State (T.C.A. 12-2-201).
 - Purchases of supplies, equipment, and services by another governmental entity at the request of a municipality (T.C.A. § 12-3-1203).
 - Purchases made through cooperative purchasing agreements (T.C.A. § 12-3-1205 and § 12-9-101 et seq).
 - Purchases of any of the insurance as provided in Tennessee Code Annotated, title 29, chapter 20 (T.C.A. § 29-20-407).
 - Purchases of articles from TRICOR (T.C.A. § 41-22-119 through 121).
 - Purchases of gasoline or diesel fuel in bulk amounts in the open market after obtaining at least three competitive quotes or through the general services contract (T.C.A. § 12-3-1214).

Ordinance to Increase Purchasing Limits

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 3. 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 competitive bidding and public advertisement from two thousand five hundred dollars (\$2,500) to a maximum of twenty-five thousand dollars (\$25,000), by ordinance. See exceptions in T.C.A. § 12-3-1212.*
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 twenty-five thousand dollars (\$25,000) to a maximum of fifty thousand dollars (\$50,000), 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.*

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

AN ORDINANCE OF THE CITY/TOWN 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/town manager shall be responsible for all city/town purchasing, and T.C.A. § 6-21-108 provides that one of the duties of the city/town manager is to act as the purchasing agent for the city/town and to purchase all material, supplies and equipment for the proper conduct of the city's/town's business as provided in T.C.A. § 6-19-104;

WHEREAS, it is in the best interest of the city/town to authorize the purchase by the city/town 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/town manager flexibility to make purchases on behalf of the city/town;

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/town 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/town's real or personal property; building or maintaining stocks of city/town material, supplies and equipment used in the ordinary course of city/town 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/town 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/town 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 materials, 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/town commission at its next regular meeting.
 - (2) The purchase of unique, special, or proprietary material, supplies, equipment or services the city/town manager determines is in the best interest of the city/town 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/town served by the purchase; and from whom the purchase will be made shall be filed with the city/town commission at its regular meeting prior to purchase.
 - (3) Purchases of equipment which, by reason of training of city/town personnel or an inventory of replacement parts maintained by the city/town, are compatible with the existing equipment owned by the city/town. 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/town, and from whom the purchase will be made shall be filed with the city/town 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/town manager shall have the discretion to enlarge the geography of the sole source to whatever extent he/she determines is in the economic interest of the city/town. 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/town 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: Municipality should add its appropriate provisions for readings or passages and signatures.

Purchases by Boards of Education

T.C.A. § 49-2-203 provides that boards of education are required by law to perform certain duties. One of those duties requires the board of education to “[p]urchase all supplies, furniture, fixtures and material of every kind through the executive committee.” T.C.A. § 49-2-203(a)(3). The board of education may follow the purchasing procedures of the local governing body, but if the board of education chooses not to follow the local governing body’s purchasing procedures, all expenditures over \$10,000 must be publicly advertised and competitively bid. T.C.A. § 49-2-203(a)(3)(A).

Energy-related Services and Life Cycle Cost and Procurement Act

Energy-related Services

T.C.A. § 12-4-110 provides that 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 be awarded on the same basis as contracts for professional services.

Life Cycle Cost and Procurement Act

T.C.A. §§ 12-3-901 et. Seq. requires the state chief procurement officer to determine, to the maximum extent possible, 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. When energy efficiency standards are established, 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, local governments must adopt the energy efficiency standards and life cycle costing employed by the state within procurement policies. A municipality may develop and adopt its own energy efficiency standards, provided they are more stringent than the state standards.

Purchase of Certain Insurance

T.C.A. § 29-20-407 provides that 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.

Purchases Through State Contracts

T.C.A. § 12-3-1201 authorizes the central procurement office, upon request, to 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.

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. Regardless of any 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 is also available at the same or lower cost from such local sources;
3. The local government is not permitted to purchase from an existing contract established by the central procurement office; and
4. The procedure is approved by a two-thirds vote of the local legislative body and such approval is filed with the comptroller of the treasury.

The items authorized for purchase from a state contract along with price and vendor information, are available electronically from the purchasing division of the

Tennessee Department of General Services, Central Procurement Office.

Purchases Through Federal Contracts

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.

Purchases from Other Governments and Private Entities

T.C.A. § 12-3-1202 authorizes a municipality to buy secondhand items from any other government. These purchases may be made without competitive soliciting and public advertisement, regardless of charter requirements.

A 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 five percent (5%) higher than the highest value of the documented range.

Purchases for Other Local Governments

T.C.A. § 12-3-1203 provides that 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 making the purchase 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.

Local Cooperative Purchasing Agreements

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 local governments to procure supplies, services, or construction. The participants must enter into an agreement. This authority includes, but is not limited to, a multi-party contract between local governments. Where a municipality 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 out-of-state governmental entities or with any agency of the United States to the extent allowed by the other state's laws or federal law for the procurement of goods, supplies, services, or equipment. The participants must enter into an agreement. Such goods, supplies, services, or equipment must be procured in a manner that constitutes competitive bidding and are 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. the purchase 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, or 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.

A municipality may participate in a cooperative purchasing agreement with the Central Procurement Office and a public institution of higher education to procure goods and services. This type of cooperative purchasing must be awarded through full and open competition. T.C.A. § 12-3-512.

State Cooperative Purchasing Agreements

T.C.A. § 12-3-512 authorizes the state's central procurement office to enter into cooperative purchasing agreements with other states or local governments, provided that each contract is awarded through full and open competition and pursuant to policies or rules approved by the procurement commission.

Purchase of Confiscated Property from the State

Often, the State will dispose of seized and confiscated vehicles at public sale. As authorized by T.C.A. § 12-2-201, a municipality may buy a motor vehicle that has been

confiscated by the state. The motor vehicle must be purchased in the name of the municipality and acquired for municipal use. The municipality should determine the fair market value prior to purchase.

Interlocal Cooperation Act

T.C.A. §§ 12-9-101 et seq. codify the Interlocal Cooperation Act. The 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 laws.

Electronic Bidding, Records, and Signatures

Electronic Bidding

T.C.A. § 12-4-116 provides that 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 invitations to bid, request for proposals or other solicitations electronically.

Electronic Records and Signatures

T.C.A. § 47-10-107 allows contracts to be executed electronically with electronic signatures.

Purchase of Property at Public Auctions

T.C.A. § 12-2-421 authorizes local governments to purchase new or used equipment, materials, supplies, and commodities at publicly advertised auctions without public advertisement and competitive bidding.

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.

Reverse Auctions by Local Governments

T.C.A. § 12-3-1208 authorizes local governments to 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 does 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.

Purchase from State Industries

State law, found at T.C.A. §§ 41-22-119 through 122, provides that 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.

This law requires that TRICOR publish an annual catalogue describing all articles and supplies manufactured and provided by the program, copies of which shall be sent to local governments. At least thirty (30) days before the commencement of each fiscal year, the proper municipal official shall report to TRICOR estimates of the kind and amount of articles and supplies required by the municipality for the ensuing year, referring to the catalogue issued by the TRICOR board. T.C.A. § 41-22-122.

Exceptions to the mandatory purchases from TRICOR may be made if in the opinion of the procurement commission, which consists of the commissioners of general services and finance and administration, and the comptroller of the treasury, the articles do not meet the reasonable requirements of the municipality. 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. T.C.A. § 41-22-120.

"Buy America" Act

T.C.A. § 54-5-135 prohibits municipalities from buying 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 of 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.

Purchasing Motor Oil

T.C.A. § 12-3-807 provides that 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 proposed contract.

The Iran Divestment Act

The "Iran Divestment Act", codified in T.C.A. § 12-12-101 through §12-12-113, implements 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 act 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 with such persons or entities shall be void. The list adopted by the Tennessee Department of General Services Central Procurement Office can be found by following this link:

[https://www.tn.gov/content/dam/tn/generalservices/documents/cpo/library/2022/
List_of_persons_pursuant_to_Tenn._Code_Ann._12-12-
106_Iran_Divestment_Act_updated_with%20NY05.04.22.pdf](https://www.tn.gov/content/dam/tn/generalservices/documents/cpo/library/2022/List_of_persons_pursuant_to_Tenn._Code_Ann._12-12-106_Iran_Divestment_Act_updated_with%20NY05.04.22.pdf)

Under the act, 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. Every bid or proposal submitted to a political subdivision after July 1, 2016, where competitive bidding is required, must contain the following statement 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.”

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.

See T.C.A. § 12-12-111(c).

Israel Boycott Statement

T.C.A. § 12-4-119 prohibits local governments from entering into contracts with persons or entities that participate in boycotts of Israel. Entities contracting with local governments must certify that they are not currently engaged in a boycott of Israel and will refrain from engaging in such a boycott for the duration of the contract. This definition is used in the law:

“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:

- (A) In compliance with, or adherence to, calls for a boycott of Israel, or
- (B) 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

T.C.A. § 12-4-119.

This statute does not apply to contracts for which the total potential value is less than \$250,000 or to contractors with less than 10 employees. A contract entered into in violation of this law is void.

Purchasing from Certain Disabled Persons

Commodities and Services

T.C.A. §§ 71-4-701, et seq. authorize municipalities to 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.

Vending Facilities

T.C.A. §§ 71-4-501, et seq. require vending services contracts for all public buildings

be offered to blind vendors first before a municipality may contract with other vendors. This definition is used in the law:

(5) "Vending facility" means a location or structure or space that may sell foods, beverages, confections, newspapers, periodicals, tobacco products, and other articles and services that are dispensed automatically by a machine or manually by sales personnel or attendants and that may be prepared on or off the premises in accordance with applicable health laws. A "vending facility" may consist, exclusively or in appropriate combination as determined by the department, of automatic vending machines, cafeterias, snack bars, catering services, food concession vehicles, cart services, shelters, counters, and any appropriate equipment necessary for the sale of articles or services described in this subdivision (5). A "vending facility" may encompass more than one (1) building on a public property.

T.C.A. § 71-4-501.

When such a contract expires or a new contract is needed for a new building, the municipality must notify the Department of Human Services, which will investigate the public place and determine if it is suitable for a vending facility. The department may establish the vending facility and equip and staff the facility or may determine vending machines are more suited to the location. The space for the facility or vending machines must be provided to the department at no cost. All proceeds from such vending services are paid to the Department of Human Services and are used for the benefit of blind vendors.

Conveyance of Real or Personal Property Among Public Agencies

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

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.

Interest of Officer in Municipal Contracts

T.C.A. § 6-54-107 provides that 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. T.C.A. § 12-4-101 provides 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.

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. A person has a controlling interest when the person has ownership or control of the largest number of outstanding shares owned by any individual or corporation. *See T.C.A. §§ 6-54-107 and 12-4-101.*

No municipal officer can be indirectly interested in any contract with the municipality unless the officer publicly acknowledges the 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 a municipality. McQuillin’s Law of Municipal Corporations provides the following on sole source suppliers of goods and services:

[C]ompetitive bidding laws may exempt contracts let to “sole source” suppliers. For a company to be a “sole source,” its product or service must be unique; the uniqueness must be substantially related to the intended purpose, use, and performance of the good or service sought; and the supplier seeking to be declared a sole source must show that other similar goods or services cannot perform the government’s desired objectives.

§ 29:37. Applicability to particular contracts—“Sole source” bids, 10 McQuillin Mun. Corp. § 29:37 (3d ed.) (citing General Elec. Co. v. City of Mobile, 585 So. 2d 1311 (Ala. 1991)).

Ordinance Identifying Purchasing Agent

ORDINANCE NO. _____

AN ORDINANCE IDENTIFYING A PURCHASING AGENT AND PROVIDING FOR PURCHASING PROCEDURES FOR THE CITY/TOWN OF _____, TENNESSEE

WHEREAS the governing body of the (city)/(town) of (city or town), Tennessee desires to identify a purchasing agent and delegate duties for the purchasing agent;

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

Section 1. The (mayor, city manager, city administrator, city recorder or city clerk) is hereby designated as purchasing agent for the (city)/(town). The (mayor, city manager, city administrator, city recorder or city clerk) shall faithfully discharge all purchasing duties or appoint an individual to make purchases for the (city)/(town). Purchases shall be made in accordance with state law, 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: Municipality should add its appropriate provisions for readings or passages and signatures.

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

Sample Invitation to Bid

INVITATION TO BID

Sealed bids will be received at the office of the (mayor, city/town manager, city administrator, purchasing agent, city/town recorder or city clerk, etc.), City Hall; River, Tenn.; 116 Creek Street; until 10 a.m. Friday; May 24, 2013, at which time they will be opened for the following:

One (1) Police Automobile

Specifications are available and on file at the office of the (mayor, city/town manager, city/town administrator, purchasing agent, city/town recorder or city/town clerk, etc.), City/Town Hall, River, Tennessee. Specifications may be provided electronically to bidders. Bidders may request printed copies of the specifications.

The (governing body) reserves the right to reject any and all bids and to waive formalities.

Only qualified bidders should submit bids. The city/town will comply with all nondiscrimination laws.

John Doe
Purchasing Agent

NOTE: The purpose of this exhibit is to display the information normally required for advertising in a newspaper. Specifications do not have to be advertised, but a location where they may be found does. You should get a publisher's affidavit from the newspaper and keep it on file.

Purchasing Procedures Resolution

RESOLUTION NO. _____

A RESOLUTION ADOPTING PURCHASING PROCEDURES FOR THE CITY/TOWN OF _____, TENNESSEE

WHEREAS, the governing body of this (city)/(town) desires to establish methods to comply with state law and to provide for a more formal process for the procurement of equipment, services, and materials for the operation of municipal government, and

WHEREAS, such action is authorized by the Municipal Purchasing Law of 1983, T.C.A. 6-56-301, et seq.

NOW, THEREFORE, BE IT RESOLVED BY THE (governing body) OF THE (city)/(town) OF _____, TENNESSEE, AS FOLLOWS:

Section 1. The purchasing procedures attached hereto and made a part hereof are hereby adopted.

Section 2. The purchasing agent, as previously designated by Ordinance No. ___ shall be responsible for the enforcement of the procedures hereby adopted.

Section 3. Changes or revisions to the procedures hereby adopted shall be made only by resolution of the (governing body) of this (city)/(town).

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



Municipal Technical Advisory Service
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