LEGAL FRAMEWORK FOR PURCHASING IN TENNESSEE COUNTIES

PURCHASING: BASIC PRINCIPLES AND TECHNIQUES

THE PROCUREMENT PROCESS

SPECIFICATIONS AND STANDARDS

OTHER PURCHASING AREAS

PROCUREMENT’S RELATION TO OTHER FINANCIAL FUNCTIONS AND DEPARTMENTS

ETHICS IN PURCHASING

TRENDS IN COUNTY PURCHASING

DOLLAR THRESHOLD IN COUNTIES

COUNTY PURCHASING

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COUNTY PURCHASING

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CHAPTER ONE:

INTRODUCTION
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Introduction

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

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

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

Spending taxpayers' money requires that all goods and services purchased by

¹ County Market, Texas Association of Counties, Austin, TX, 1, March, 2005, http://www.county.org./market/purchasing/guide.
county government must be purchased in a fair and equitable manner. Responsible bidders must be given a fair opportunity to compete for the county’s business. It is imperative that those who participate in the procurement process perform with a high standard of professional ethics. This applies to the county officials, department heads, and employees of county government.

**Purpose of the Manual**

The purpose of this manual is to provide elected officials, department heads, and others with a basic understanding of procurement activities in county government. This manual offers a pragmatic “nuts-and-bolts” approach to county purchasing for both non-procurement professionals as well as department heads or employees who work daily in the purchasing or finance office. It covers such basic topics as purchasing techniques, the procurement process (e.g., purchasing cycle), the purchase order, specification development, organization of the Invitation to Bid (ITB), county records disposition relating to purchasing documents, ethics in purchasing, dollar limit thresholds for county purchasing, general laws for county purchasing, general laws of local application for county purchasing, and many other purchasing areas and topics.

The concept used in developing this manual was to try to give as much basic and practical information as possible, while keeping it fundamentally simple. No single manual can cover every possible situation or topic. Hopefully, the topics covered in this manual will be of benefit to you and your organization.

**Learning Objectives**

When you have completed this manual, you should be able to

- Describe the objectives of purchasing.
- Explain the legal framework for purchasing in Tennessee counties.
- Describe the three principles of public purchasing.
- Describe the stages of procurement.
- Explain each method of source selection (purchasing).
- Explain the role and nature of the purchasing department.
- Explain the purchasing process including such areas as the purchasing cycle, the requisition process, the purchase order, and the receiving report.
• Explain the characteristics of a good specification, the types of specifications, and the steps to specification development.

• Describe how to organize an Invitation to Bid (ITB) or Request for Proposal (RFP).

• Explain other purchasing areas such as emergency purchases, cooperative purchasing, bonds, procurement cards, electronic procurement, records management for purchasing documents, and the disposition of surplus property.

• Understand procurement’s relation to other financial functions and other county departments.

• Understand the importance of ethics in the procurement process.

• Explain the trends in county purchasing.

• Explain the dollar thresholds in county purchasing.

• Explain the difference and similarities of county purchasing and private sector purchasing.

• Describe the benefits of centralization of the purchasing functions.

• Understand the general laws of local application that enable counties to centralize their purchasing functions (the Purchasing Law of 1957 and the CFMS of 1981).

• Understand the basic purchasing process for the County Purchasing Law of 1983, the County Uniform Highway Law (CUHL), and purchasing for education departments.
CHAPTER TWO:

LEGAL FRAMEWORK FOR PURCHASING IN TENNESSEE COUNTIES
CHAPTER TWO

LEGAL FRAMEWORK FOR PURCHASING IN TENNESSEE COUNTIES

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

Purchasing laws for county government are codified in the *Tennessee Code Annotated* (T.C.A.). The purchasing laws contained in the T.C.A. provide the legal and procedural framework for purchasing in county governments. County purchasing activities are also governed by common and case law, and where applicable, by the federal laws and the Uniform Commercial Code. Generally, the purchasing laws place an emphasis on control, price, openness, and accountability.²

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

**The County Purchasing Law of 1983, found at T.C.A. § 5-14-201 et seq.,** governs purchases from the general fund unless the county operates under a county or metropolitan government charter or a private act governing purchasing, or has adopted the County Financial Management System of 1981 or the County Purchasing Law of 1957.

**Title 49 of the Tennessee Code Annotated** contains provisions governing purchasing in the county education department, most importantly T.C.A. § 49-2-203 (a)(3), but these laws are largely superseded in those counties that adopt the County Financial Management System of 1981. Further, in counties that have adopted the County Purchasing Law of 1957, the county board of education may or may not operate within the central county purchasing system depending upon the approval of the State Commissioner of Education.

The County Uniform Highway Law, at T.C.A. § 54-7-113, provides a purchasing law for the county highway department when purchasing for the department is not governed by private act, the County Purchasing Law of 1957, or the County Financial Management System of 1981. The purchasing provisions of the County Uniform Highway Law do not apply to Shelby, Davidson, Knox, and Hamilton counties.3

The County Purchasing Law of 1957, found at T.C.A. § 5-14-101 et seq., is an optional general law that becomes effective in a county upon approval by two-thirds vote of the county legislative body or approval by the voters in a referendum. This law is commonly referred to as the “1957 Law” and it creates a centralized purchasing system for all county departments except the department of education unless the local board of education asks to be included and the state commissioner of education approves.

The County Financial Management System of 1981, found at T.C.A. § 5-21-101 et seq., is another optional general law that becomes effective in a county upon approval by two-thirds vote of the county legislative body or approval by the voters in a referendum. This law is commonly referred to as the “1981 Act” and it creates a centralized system of finance and purchasing for the entire county, which includes the department of education unless the department of education applies for withdrawal based on the finance/purchasing department’s neglect and receives approval of the withdrawal from the state commissioner of education.

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

Newly elected and appointed county officials should examine which purchasing law(s) applies to their particular county. A more detailed explanation of the purchasing laws appears in Chapter Eleven.

3The University of Tennessee, Tennessee County Government Handbook, County Technical Assistance Service, (August 2003), 120.
CHAPTER THREE

PURCHASING - BASIC PRINCIPLES AND TECHNIQUES

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

A. To obtain the right materials or services (meeting quality requirements) in the right quantity for delivery at the right time (to take advantage of seasonal pricing or special price concessions) to the right place (ensure availability to customers) from the right source (a responsive and responsible supplier) with the right service (to ensure quality) at the right price.

B. To supply end users with an uninterrupted flow of goods and services.

C. To purchase competitively.

D. To place emphasis on quality and best value.\(^4\)

Spending county taxpayers’ money requires the purchase of goods and services to be purchased in a fair, equitable, and efficient manner. The purpose is to ensure that the public monies are spent properly, legally, and that the best possible value is received for the money. Therefore, the essential objective of the county procurement function is to furnish operating departments with the goods and services they need in the right quantity, right quality, right time, as efficiently as possible, and at the lowest overall cost. The county procurement objective, by law, is to supply


responsible bidders a fair and equal opportunity to compete for county business. This is accomplished by complying with statutory requirements and by the county’s purchasing policy and procedures.  

3.1 **Public Purchasing—Three Principles**

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

1. **Maximization of Competition**—Specifications are written to allow the purchasing process to be as open as possible to a number of qualified vendors.

2. **Equal and Fair Competition**—Each vendor is provided the same information regarding product or service needs/specifications.

3. **Best Value at the Lowest Price**—The purchase must be made at the lowest price for the product or service that best meets the needs of the requisitioner.

3.2 **What is Procurement in the Public Sector?**—Procurement in the county is a process through which offices acquire the goods and services needed to perform their specific tasks. However, county procurement can only be conducted in ways that are specifically allowed by law.

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

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

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8 *Welcome to County Procurement*, 4.
activities to conform to budgetary objectives.

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

1. **Competitive Sealed Bids**—In this method the government issues an invitation to/for bids (ITB, IFB). These documents usually include a standard form on which vendors respond by filling out their bid—which is the offer to provide the requested goods or services for a flat price or fixed unit cost. Bids are submitted sealed, and opened in public at a predetermined time. The award is made to the vendor submitting the lowest bid—assuming the vendor is responsive to the solicitation and is made by a responsive bidder. Competitive sealed bids are the preferred method for purchases that exceed the statutory small purchase limit thresholds. Competitive sealed bids are generally used when the following conditions are met:
   
   a. Clear specifications are available
   
   b. The item or service is available from more than one source
   
   c. There are reproducible test methods
   
   d. An award can be made to the bidder who meets the requirements of the solicitation and has submitted the lowest price.

2. **Competitive Sealed Proposals**—The competitive sealed proposal method is used for goods and services above the small purchase threshold where the specifications cannot be

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9 Watt, 1.

10 ibid, 35.

11 ibid, 35.

12 Welcome to Public Procurement, 17.
developed so that they are sufficiently able to make a selection solely based on price. In the competitive sealed proposal process, the county government issues a request for proposal (RFP) describing, as best it can, the needs of the county with regard to the goods and/or services to be purchased and invites interested vendors to make proposals. A “proposal” is an offer by a vendor to provide the requested goods or services as he/she understands and recommends it at a suggested price or unit cost. Proposals are evaluated according to the criteria described in the RFP. The award is made to the proposal that is most favorable to the government considering price and the other evaluation criteria.  

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

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

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

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13 Watt, 35.

14 General Public Purchasing, 4-13.

15 Watt, 36.

16 ibid, 1.
emphasizes the quality of the product(s) and the qualifications of the vendors.\textsuperscript{17}

The Request for Qualifications (RFQ) is a procurement process whereby service providers are selected on the basis of qualifications for a particular project, rather than solely on price factors. The prospective vendor that has the best qualifications is offered the contract, and fee is considered and negotiated (e.g., see 6.27 Professional Service Contracts and T.C.A. § 12-4-106 (a) (2) (A), (B) and (C) concerning the selection of an architect and engineer services).\textsuperscript{18} This process is generally used for professional services, and cannot be used when competitive sealed bids are required.

3.4 The Role of the Purchasing Department

The role of the purchasing department is:

- To provide all materials, supplies, tools, equipment, and services required for the organization’s operations—at the time and place needed in the proper quantity and quality.

- To secure materials, supplies, equipment, and services at the lowest possible cost, consistent with prevailing economic conditions, while establishing and maintaining a reputation for fairness and integrity.

- To furnish members of management with timely information.

- To obtain the greatest possible revenue from the disposal of by-products and of surplus, damaged, scrap, or obsolete materials and equipment.\textsuperscript{19}

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


\textsuperscript{18} ibid, 223.

\textsuperscript{19} General Public Purchasing, 1-3, 1-5.
• Building, organizing, and maintaining formal lists of potential suppliers.

• Assisting end users to design, research, and prepare written competitive solicitations and to evaluate the offers received in response to them.

• Ensuring continuity of supply through coordinated planning and scheduling, term contracts, and inventory.

• Assuring the quality of purchased goods and services through standardization, inspection, and contract administration.

• Participating in decisions to make or buy (i.e., contract out for) services.

• Documenting purchasing actions (issuing and monitoring purchase orders) and making pricing and other nonproprietary data reasonably available to those who request it.²⁰

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

CHAPTER FOUR:

THE PROCUREMENT PROCESS
CHAPTER FOUR

THE PROCUREMENT PROCESS

As stated earlier in the text, procurement in the county is a “process through which offices acquire the goods and services needed to perform their specific tasks.” Procurement includes the stages of planning and scheduling, source selection (purchasing), and contract administration. Within the stages of procurement dwell the activities from planning, preparation and processing of the requisition, solicitation, award and contract information, to receipt and acceptance of delivery, payment, inventory tracking (if a county has a central warehouse), and property disposition (surplus property). Following are some points that need to be considered when making any purchase:

• The commencing of the purchasing process is to identify the need and product or service that will best fulfill that need.

• Develop specifications that describe the characteristics of a product or service being sought. Specifications should be written to encourage, not discourage competition. The goal is to invite maximum reasonable competition.

• Requisitions should be prepared with accurate and complete information.

• Seek bids in accordance with applicable statutes. Seek price quotations (for purchases below the sealed bid limit requirement) in accordance with applicable statutes and/or local purchasing policies and procedures.

• Award should go to the lowest responsive bidder who meets the specifications of the product or services requested.

• Contracting for the product or service should be in accordance with applicable statutes.

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21 The Acquisition Process, State of Idaho, Purchasing Division, 3-1.

22 ibid, 3-1.

23 ibid, 3-1.
• Receive the product or service and verify that it meets the requirements of the purchase order or contract.  

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

**Sample Purchasing Cycle (Basic Steps)**  

1. Need is recognized by the user department.  

2. User department develops purchase requisition, keeps a copy and forwards original to purchasing (or central finance in 1981 CFMS counties).  

3. Purchasing reviews requisition for accuracy and completeness.  

4. If accurate, the purchasing department checks to see if funds are available to purchase the goods or services. The finance department verifies availability of funds.  

5. The purchasing department checks if goods are available in stock or excess (surplus).  

6. If funds are available, the purchasing department determines method of purchasing—decision of whether regulations require bids to be solicited.  

7. If purchase exceeds the small purchasing threshold, purchasing requests quotations through ITB, IFB, or RFP.  

8. The purchasing department receives and tabulates bid quotations.  

9. If bids are approved, the purchase order is processed and mailed.  

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24 *The Acquisition Process*, 3-1  


19
10. Vendor supplies the ordered goods or services, and submits the invoice to the purchasing department or to central finance/accounting.

11. Receiving report is routed to central finance/accounting.

12. Central finance/accounting verifies that the purchase order and invoice coincide (agree), and pays the invoice.

13. Disposition of surplus, salvage, or scrap goods.

An example of a purchasing cycle flowchart is illustrated in Figure 1.0 on page 21.

4.1 **The Requisitioning Process**—Requisitioning is the formal request for a purchase to be made. It is the first step after the need for goods or services is recognized. The user department’s purchase requisition authorizes the purchasing department to enter into a contract with a vendor to purchase goods or services.\(^{26}\) The purpose of the requisition is to inform the purchasing department of the department’s needs, and to correctly identify the item(s) or services required.\(^{27}\) In most counties that have a centralized finance/purchasing system, a pre-printed purchasing requisition form is used to convey the purchase request to the purchasing department.

The purchase requisition should contain accurate and complete information describing the goods or services needed for the on-going operations of the user department. The purchase requisition should fully describe to the purchasing department what to buy, when it is required, and where the goods are to be delivered or the services are to be performed.\(^{28}\) Many pre-printed purchase requisition forms have an area where the user department can enter a budget account line item number to utilize for their requested purchase. This allows the purchasing department to check for available budget fund balances before making the purchase determination.

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\(^{26}\) *Welcome to County Procurement*, 12

\(^{27}\) *General Public Purchasing*, 4-3

\(^{28}\) *Welcome to County Procurement*, P. 12
Figure 1.0 Example Purchasing Flowchart. Note: Some information for this flowchart is from Hci Consulting Company, and may be found at its Web site at www.hci.com.au/hcisite/toolkit/flowchart.htm
Figure 2.0 Example Purchasing (Including Accounts Payable) Flowchart. Note: Some information for this flowchart is from Hci Consulting Company, and may be found at its Web site at www.hci.com.au/hcisite/toolkit/flowchart.htm
Preparation of the requisition should be performed far enough ahead of the date that the goods or services are needed to allow the purchasing department and the vendor to do their jobs properly, including:

- Advertising for bids, if necessary (including allowing adequate time for specification writing).
- Obtaining bids, proposals, or price quotations.
- Processing bids or proposals, placing purchase orders, or concluding contracts.
- Allowing delivery of goods or services.\(^{29}\)

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

- The date of the requisition (month, day, year)
- Name of the department
- Requisition number
- Departmental contact and telephone number
- Date required/requested
- Delivery destination
- Budget account number(s)
- Estimated cost (unit price and total)
- Vendor identification
- Quantity required, including unit of issue
- Description—clearly describe the item needed, including any technical requirements. The department may need to include detailed specifications and other required

information as a separate attachment to the requisition.\textsuperscript{30}

- Signature of department head or person authorized to sign requisition.

After the purchasing department receives the purchase requisition, it reviews the purchase requisition for completeness and adequate or inadequate information (e.g., recommended necessary specification changes, signature of person authorized to sign requisition, etc.). If the requisition is prepared with complete and adequate information, the purchasing department determines the appropriate purchasing method based on the cost of the purchase, the goods and services to be purchased, the existing contracts for goods and services, and other relevant factors.\textsuperscript{31} One of the main purposes of the purchase requisition is that it provides a record that can be inspected and audited. A sample purchase requisition is shown in Appendix A.

4.2 \textbf{The Purchase Order}—The purchase order is the written evidence of a contract between the buyer and supplier for the purchase of goods or services at an agreed price and delivery date.\textsuperscript{32} The purchase order is a vehicle by which the buyer formalizes the contract with the supplier. It is the supplier’s authority to ship and charge for the goods specified in the order.\textsuperscript{33} It is the purchaser's commitment for the value of the goods ordered.\textsuperscript{34} It is a legal document and must therefore contain all the elements of the contract.\textsuperscript{35} It should cover clearly and precisely the essential elements of the purchase to be made in a manner that minimizes any confusion between the buyer and seller.\textsuperscript{36} Most counties use preprinted forms that contain general instructions, standard terms and conditions (generally referred to as “\textit{boilerplate}” and often printed on the

\textsuperscript{30} Purchasing Manual Policies, 2.

\textsuperscript{31} ibid, 12.


\textsuperscript{34} \textit{The Purchasing Handbook}, Third Edition, 3-36.

\textsuperscript{35} ibid, Fifth Edition, 90.

\textsuperscript{36} ibid, Fifth Edition, 88.
back of the purchase order or on a separate preprinted sheet and incorporated by reference), and adequate space to fully define the specific agreement. At a minimum, the purchase order form may be used to describe the essential elements of description, quantity, and price of the goods or services to be purchased; purchase order date and number; supplier’s name and address; delivery date(s) and shipping information; payment terms and buyer’s name, and signature—most organizations also include standard terms and conditions. Special terms and conditions, detailed specifications and drawings, and additional supporting information and documents that are part of a particular procurement can be incorporated in the purchase agreement by reference on the purchase order.

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

40 ibid, Fifth Edition, 95.
41 ibid, Fifth Edition, 95.
CHAPTER FIVE:

SPECIFICATIONS AND STANDARDS
CHAPTER FIVE

SPECIFICATIONS AND STANDARDS

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

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

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

5.0.3 Characteristics of a Good Specification

A good specification has four (4) characteristics:

1. *It should set the minimum acceptability of the good or service.* The vendor must know the minimum standard to

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43 ibid, 51.

44 ibid, 51.

determine what to provide. A standard which is too high means tax dollars may be wasted. Conversely, a standard which is too low means the goods or services will not meet the expectations of the user.

2. *It should promote competitive bidding.* The maximum number of responsive vendors should be able to bid to the specification. Restrictive specifications decrease competition.

3. *It should contain provisions for reasonable tests and inspections for acceptability for the good or service.* The specification should permit tendered goods or services to be evaluated against defined criteria by examination, trial, test or documentation. The methods and timing of testing and inspecting must be indicated in the specification.

4. *It should provide for an equitable award to the lowest responsive bidder.* The buyer obtains goods or services that will perform to expectations, and the vendor is able to provide the goods or services at an equitable agreed upon price.\(^{46}\)

5.1 **Types of Specifications**

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

5.1.1 **Performance Specification**—A type of specification in which the goods and/or services are described in terms of required performance. They may include such details as required power, strength of material, test methods, and standards of acceptability and recommended practices.\(^{47}\) Performance specifications define the task or desired result by focusing on what is to be achieved (e.g., truck or airplane). \(^{48}\)

5.1.2 **Design Specification**—These are detailed descriptions of a good or service, including such things as details of construction or

\(^{46}\) *Purchasing Manual Policies*, 51


\(^{48}\) Kalms, 4.
production, dimensions, chemical composition, physical properties, materials, ingredients and other details needed for the provider to produce an item of minimum acceptability. Design specifications are usually required for construction projects and custom produced items and for many services.\textsuperscript{49} Architects and engineers typically prepare design specifications for construction and manufactured products (e.g., buildings, highways, or other public works projects).

5.1.3 **Combination Specification**—This type of specification includes elements of both design and performance specifications.\textsuperscript{50}

5.1.4 **Brand Name or Equal**—This type of specification is used to describe a commodity of a fairly common nature. It states a detailed description and a manufacturer and catalog or model number which meets the description and has been determined to be acceptable.\textsuperscript{51} Competition among brands is usually attained by specifying “brand A or equal” in the specification.\textsuperscript{52}

5.1.5 **Industry Standard**—In this type of specification, all goods made to an industry standard are identical, regardless of manufacturer, and will result in acquisition of goods of uniform quality. An example is the UIL standard for electrical products.\textsuperscript{53}

5.2 **Specification Development**

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

\textsuperscript{49} Purchasing Manual Policies, 52.

\textsuperscript{50} ibid, 52.

\textsuperscript{51} ibid, 52.


\textsuperscript{53} *Welcome to County Procurement*, 10.
Developmental Phase

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

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

Step 3: Writing the Specification—Some writing tips:
- Use simple, clear language.
- Define terms, symbols and acronyms (include a glossary of terms).
- Be concise.
- Do not explain the same requirement in more than one section.
- Adopt a user friendly format.
- Number the sections and paragraphs.
- Discuss the draft and refine it.

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

Post Development Phase

Step 5: Issuing the Specification—Distribute to potential offerors.

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

Step 7: Revising and Storing the Specification—The specification should be reviewed at the end of the purchasing activity to ensure that it effectively defined the goods or services that were actually bought. If areas for improvement are identified,
revise the specification with the benefit of hindsight.\textsuperscript{54}

5.3 **Organization of the ITB/IFB/RFP (Specification)**

In the article “A Syllabus for Development of Specifications and Boilerplates”, the author (McCurdy) maintains that the ITB/RFP may be organized and consist of the following:\textsuperscript{55}

- **Part I:** Invitation/Request Cover Sheet (Title Page)
- **Part II:** Bidder’s Profile (Business Vital Statistics)
- **Part III:** Contractual Requirements/General Instructions & Conditions (Boilerplate)
- **Part IV:** Special Instructions & Conditions (Relative only to this item)
- **Part V:** Evaluation & Award (Objective Evaluation & Award Criteria)
- **Part VI:** Contract Administration (Who’s Responsible for what)
- **Part VII:** Technical Specifications (The Meat & Potatoes-or-What Makes it Tick)
- **Part VIII:** Exhibits & Attachments, if applicable (Schedules, Tables, Charts, List)
- **Part IX:** Bid/Proposal Form (The How much it Cost Sheet)
- **Part X:** Check List (And Don’t Forget)

**Descriptions of each part (section) is listed as follows:**

- **Part I:** Invitation/Request Cover Sheet—This part is a title page noting the bidding authority, general classification/description of the goods or service and any other introductory cover information.\textsuperscript{56}

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

\textsuperscript{54} Kalms, 7-10.

\textsuperscript{55} Charles S. McCurdy, CPPO, *A Syllabus for Development of Specifications and Boilerplates*, Mississippi Public Service Commission, 1-5.

\textsuperscript{56} McCurdy, 1.
Part III. Contractual Requirements/General Instructions and Conditions (Boilerplate)—This clause of the ITB/RFP is designed primarily for contractual clauses, general conditions and instructions (boilerplate). These clauses or general conditions and instructions provide the potential bidder with the necessary information to complete and submit the bid, and understand the shipping, delivery, performance, and other legal positions needed to minimize the liability of the unit of government and spell out the rights and remedies under the contract for the government as well as the contractor. The author (McCurdey) states that if you (or a designee) cannot monitor, supervise, or evaluate the performance and/or compliance to a specific clause/requirement in the “Boilerplate,” do not use it.

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

Part V. Evaluation and Award—This part of the ITB/RFP is designed to inform the bidder of the specific qualifications and criteria used to evaluate the bid and the bidder, as well as, the specific qualifications and identified criteria used in making the award.

Part VI. Contract Administration—This section of the ITB/RFP is designed to identify the individuals responsible for addressing any questions as to the bid and the contact for administration of awarded contract. This component also clarifies the administrative qualifications of the awarded...
Part VII. Technical Specifications—This component of the specification is the technical description of the goods or services. This part ensures that the specification issued is qualified, quantified, and/or structured to secure the best economic advantage or value (identifies the minimum needs of the department required to accomplish its objectives without any drawbacks or additional cost). The requirements are clearly stated and measurable by recognized standards or reproducible test methods. Technical specifications should be contractually sound, unbiased, non-prejudicial towards the bidders, and should foster maximum open competition while providing for an equitable award at the lowest possible cost.  

Part VIII. Exhibits and Attachments—This part of the ITB/RFP is used to incorporate information and requirements related to technical specification and may include schematics, installation site plan, layouts, statistical data standards, and test/scientific certifications.  

Part IX. Bid/Proposal Form—This part of the ITB/RFP is designed for the convenience of the bidder, and especially for the unit of government by establishing a universal pricing format (everybody sings from the same sheet of music, and ease of calculation). This form includes all tangible and measurable cost-related bid items/proposal functions.  

Part X. Checklist—This is an optional component of the ITB/RFP packets. This section is to act as a guide for the bidding firm through the various components they must complete. It also acts as a guide for additional data they must submit, and/or address specific sections to ensure their bid will be

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61 ibid, 2.
62 ibid, 2.
63 ibid, 3.
64 ibid, 4.
considered responsive and responsible.\textsuperscript{65}
CHAPTER SIX:

OTHER PURCHASING AREAS
CHAPTER SIX

OTHER PURCHASING AREAS

6.0 Emergency Purchases

Emergency Purchase (Sample Definition)—The National Institute of Governmental Purchasing defines an emergency purchase as “a purchase made in an exigency (emergency), often made under special procedures, designed to meet the emergency.”

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

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

The County Purchasing Law of 1983 (the “general law” which governs purchasing for the county general fund unless the county has adopted the 1981 CFMS, the County Purchasing Law of 1957, a private act, or a county or metropolitan form of government) exempts emergency purchases from public advertisement and competitive bidding requirements. The special provision for emergency purchasing is found in T.C.A. § 5-14-204(3), as follows:


68 ibid, 137.

69 ibid, 137.
T.C.A. § 5-14-204. Except as hereinafter provided, all purchases and leases or lease-purchase agreements shall be made or entered into only after public advertisement and competitive bid, except as follows:

(3) - Purchases or leases of any supplies, materials or equipment for immediate delivery in actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work;

(A) A record of any emergency purchase shall be made by the person or body authorizing such emergency purchase, and shall specify the amount paid, the items purchased, from whom the purchase was made and the nature of the emergency;

(B) A report of any emergency purchase shall be made as soon as possible to the county governing body and the chief executive officer of the county, and shall include all items of information as required in the record.

The County Purchasing Law of 1957 (an optional general law) provides for emergency purchasing in T.C.A. § 5-14-110 as follows:

T.C.A. § 5-14-110. Emergency Purchases - (a) The county purchasing agent may authorize any department or agency of the county government to purchase in the open market, without filing requisition or estimate, any supplies, materials or equipment for immediate delivery in actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work; but such emergencies shall not include conditions arising from neglect or indifference in anticipating normal needs.

(b) (1) Such direct emergency purchases, however, may only be made by department or agency heads at times when the office the county purchasing agent is closed.

(2) At all other times, only the county purchasing agent shall make these purchases.

(3) A report of such emergency purchase, when made by a department or agency head, together with a record of the competitive bids secured and upon which it was based, shall be submitted in writing to the county purchasing agent before the close of the next working day following the date of such purchase, by the head of the county department or agency concerned, together with a full and complete account of the circumstances of such emergency.

(4) Such report shall be kept on file and shall be open to public inspection.

The County Financial Management System of 1981 (an optional general law) requires that procedures be established for emergency purchases in T.C.A. § 5-21-119 (b)(7), which procedures must provide for the following:

T.C.A § 5-21-119(b)(7) - Emergency purchases, total cost bidding, blanket purchases for small orders, grouping of purchases of the various departments, and other methods for receiving the most competitive price and best bid. Emergency purchases shall be limited to needs arising which are not normally foreseeable. Emergency purchases shall not be permissible if a department or agency fails to properly plan for the need, proper purchasing procedures, and delivery time.
The County Uniform Highway Law (CUHL) refers to the exemption from public advertisement and competitive bidding requirements in actual emergency purchases arising from unforseen causes in T.C.A. § 54-7-113 (c)(1)(C). A report of such emergency purchases must be kept, specifying each purchase, the amount paid, the items purchased, from whom the items were purchased, and the nature of the emergency. T.C.A. § 54-7-113 (c)(1)(C).

6.1 **Sole Source Purchase**

**Sole Source Purchase (Sample Definition)**—The National Institute of Governmental Purchasing defines a sole source purchase as “a contract for the purchase of goods and services entered into after soliciting and negotiating with only one source, usually because of the technology or uniqueness required.”

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

The County Purchasing Law of 1983 contains the following provision exempting sole source purchases from competitive bidding in counties that are governed by this law:

T.C.A. § 5-14-204. Bidding. – Except as hereinafter provided, all purchases and leases or lease-purchase agreements shall be made or entered into only after public advertisement and competitive bid, except as follows:

(2) Any goods or services which may not be procured by competitive means because of the existence of a single source of supply or because of a proprietary product;

(A) A record of all such sole source or proprietary purchases shall be made by the person or body authorizing such purchases and shall specify the amount paid, the items purchased, and from whom the purchases were made;

(B) A report of such sole source or proprietary purchases shall be made as soon as possible to the county governing body and the chief executive officer of the county and shall include all items of information as required in the record;

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71 ibid, 50.
72 George Street, *County Purchasing*, The University of Tennessee, CTAS, 38.
6.2 **Cooperative Purchasing**

**Cooperative Purchasing (Sample Definition)—**The National Institute of Governmental Purchasing defines cooperative purchasing as “the combining of requirements of two or more political entities in order to obtain the benefits of volume purchases and/or reduction in administrative expenses.”

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

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

6.2.1 **Forms of Cooperative Purchasing**

6.2.1.1 **Joint-Bid Cooperatives**—The authors of “*Advanced Public Procurement*” assert that joint bid arrangements are a more formal type of intergovernmental cooperative purchasing in which two or more public procurement agencies agree on specifications and contract terms and conditions for a given item or items of common usage and combine their requirements for this item in a single request for

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75 ibid, 16.
competitive sealed bids.\textsuperscript{76} Once the bids have been received and discussed by the participants, each public procurement agency issues and administers its own purchase order(s) and/or contract.\textsuperscript{77} A sponsoring entity or “lead agency” must be determined—usually it is the government entity with the most expertise with the technology or commodity being contracted.\textsuperscript{78}

6.2.1.2 Piggyback Cooperatives—The authors of “Advanced Public Procurement” maintain that piggyback cooperatives are a less formal type of intergovernmental cooperative purchasing in which a large purchaser requests competitive sealed bids, enters into a contract, and arranges, as part of the contract, for other public procurement units to purchase from the selected vendor under the same terms and conditions as itself.\textsuperscript{79} The members of the cooperative simply order from contracts awarded by the sponsoring agency. Members choose to participate independently after the award by the sponsoring entity and place their orders with the consenting supplier.\textsuperscript{80} Purchases by local governments from the Tennessee state-wide purchasing contracts or agreements entered into by the Tennessee Department of General Services (TDGS) are examples of a piggyback cooperative.

6.2.2 Legal Authority for Cooperative Purchasing

\textbf{T.C.A. § 12-3-1001}. This statute authorizes counties, without public advertisement and competitive bidding, to purchase under the provisions of contracts or price agreements entered into by the Tennessee Department of General Services (TDGS). This

\begin{itemize}
  \item \textsuperscript{76} ibid, 17.
  \item \textsuperscript{77} ibid, 17.
  \item \textsuperscript{78} ibid, 17.
  \item \textsuperscript{79} ibid, 19.
  \item \textsuperscript{80} ibid, 19.
\end{itemize}
procedure is commonly known as “buying under state contract.” The Web site for the Department of General Services Purchasing Division is http://www.tn.gov/generalserv/purchasing.

County governments may purchase goods, except motor vehicles, under federal General Services Administration (GSA) contracts, but only to the extent permitted by federal law or regulations. The U.S. GSA has developed a “Frequently Asked Questions (FAQ)” concerning cooperative purchasing at its Web site www.gsa.gov (at the site’s search engine type cooperative purchasing). The FAQ provides information as to its cooperative purchasing statutory authority and how it actually works. Here are questions and answers 1, 2, 3 and 4 from GSA’s Cooperative Purchasing FAQ:

1. Question: What is Cooperative Purchasing?

Answer: Section 211 of the E-Government Act of 2002 (the Act) amended the Federal Property and Administrative Services Act to allow for “Cooperative Purchasing.” Cooperative Purchasing allows for the Administrator of General Services to provide states and localities access to certain items offered through the General Services Administration’s (GSA) Federal Supply Schedule70, Information Technology (IT), and Consolidated (formerly Corporate Contracts) Schedule contracts, containing IT Special Item Numbers (SINs). The information technology available to state and local governments includes automated data processing equipment (including filmware), software, supplies, support equipment and services.

Public Law 110-248, the Local Preparedness Acquisition Act, amended the “Cooperative Purchasing” provisions of the Federal Property and Administrative Services Act to allow the Administrator of General Services to provide states and localities access to certain items offered through GSA’s Federal Supply Schedule 84. Total Solutions for Law Enforcement, Security, Facility Management Systems, Fire, Rescue, Special Purpose Clothing, Marine Craft and Emergency/Disaster Response. The products and services available to state and local governments include alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft, and related equipment, special purpose clothing, and

related services.

2. Question: Can state and local governments purchase from all GSA Schedules?

Answer: No. The Cooperative Purchasing Program only allows for state and local government entities to purchase from contracts awarded under GSA Schedule 70, Information Technology, contracts containing IT SINs awarded under the Consolidated (formerly Corporate Contracts) Schedule, and contracts awarded under GSA Schedule 84, Total Solutions for Law Enforcement, Security, Facility Management Systems, Fire, Rescue, Special Purpose Clothing, Marine Craft, and Emergency/Disaster Response. State and local government entities may not use the Cooperative Purchasing Program to purchase products and services from contracts awarded under any other GSA Schedules.

3. Question: What are the differences between the Cooperative Purchasing Program and the Disaster Recovery Purchasing Program?

Answer: The primary distinctions between the Cooperative Purchasing Program and the Disaster Recovery Purchasing Program involve the particular GSA Schedules authorized for use and the conditions under which products and services may be purchased. The Cooperative Purchasing Program authorizes state and local government entities to purchase products and services from contracts awarded under GSA Schedule 70, the Consolidated Schedule (IT SINs), and Schedule 84. The Cooperative Purchasing Program places no restrictions on how or when the products or services may be used.

The Disaster Recovery Purchasing Program authorizes state and local government entities to purchase products and services from contracts awarded under all GSA Schedules. The products and services purchased under the Disaster Recovery Purchasing Program may be used to facilitate recovery from a major disaster, terrorism, or nuclear, biological, chemical or radiological attack. State and local government entities may use GSA Schedule contracts to purchase products and services in advance of a disaster declared by the president, as well as in the aftermath of an emergency event.

4. Question: Can state and local governments utilize GSA
Governmentwide Acquisition Contracts (GWACs) to purchase information technology under Cooperative Purchasing?

Answer: No. State and local government entities may only purchase information technology from GSA Schedule 70, Information Technology, and Consolidated (formerly Corporate Contracts) Schedule contracts containing IT SINs. GSA Governmentwide Acquisition Contracts (GWACs) are not authorized for use by state and local government entities under section 211 of the E-Government Act of 2002 or the Local Preparedness Acquisition Act.\(^{82}\)

The U.S. General Services Administration (GSA) received new authority to help state and local governments in purchasing homeland security equipment and services under the Local Preparedness Acquisitions Act (HB 3179) signed by President Bush on June 25, 2008. The new law authorizes the GSA Administrator to allow state, local, and tribal governments to buy homeland security goods and services through the cooperative purchasing program. Officials will be able to use GSA’s Schedule 84 to buy items such as: alarm systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, and marine craft.\(^{83}\)

**T.C.A. § 12-3-1004.** This statute authorizes cities, counties, utility districts, and other local governments in Tennessee to purchase equipment under the same terms as a legal bid initiated by any other city, county, utility district, or other local government unit in Tennessee as long as the unit cost of the equipment is $10,000 or less. The equipment may be purchased from a vendor as long as it is at the same price and under the same terms as provided in the contract entered into by the entity that bid the equipment.

Counties and other governmental entities are authorized to make purchases for each other as long as the statutory requirements are met. Local Education Agencies (LEA) may purchase equipment under the same terms of a legal bid initiated by another LEA in

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\(^{82}\) See U.S. General Service Administration, Cooperative Purchasing, Frequently Asked Questions (FAQ), (www.gsa.gov).

\(^{83}\) See U.S. General Services Administration, News Release GSA #10519, GSA Gets New Authority to Help State and Local Governments (www.gsa.gov)
Tennessee. The LEA may purchase directly from the vendor the same equipment, at the same price, and under the same terms provided in the contract entered into by any other LEA in Tennessee.

The statute reads as follows:

12-3-1004. Purchases for Other Governmental Units—(a) Any municipality, county, utility district, or other local governmental unit of the state may, upon request, purchase supplies, equipment, and services for any other municipality, county, utility district, or other local governmental unit.

(1) The purchases shall be made on the same terms and under the same rules and regulations as regular purchases of the purchasing entity.

(2) The cost of the purchase shall be borne by local government for which the purchase was made.

(3) Where the local government making the request is required to advertise and receive bids, it shall be sufficient for those purposes that the purchasing entity comply only with its own purchasing requirements.

(b)(1) Any local education agency (LEA) may purchase equipment under the same terms of a legal bid initiated by any other LEA in Tennessee.

(2)(A) Any LEA may purchase directly from a vendor the same equipment at the same price and under the same terms as provided in a contract for such equipment entered into by any other LEA.

(B) Any LEA which purchases equipment under the provisions of this subsection (b) shall directly handle payment, refunds, returns, and any other communications or requirements involved in the purchase of the equipment without involving the LEA which originated the contract. The originating LEA shall have no liability or responsibility for any purchases made by another LEA under a contract which the originating LEA negotiated and consummated.

(c)(1) Any municipality, county, utility district, or other local governmental unit of the state may purchase equipment, where the individual unit price does not exceed ten thousand dollars ($10,000), under the same terms of a legal bid initiated by any other municipality, county, utility district, or other local governmental unit of the state in Tennessee.

(2)(A) Any municipality, county, utility district, or other local governmental unit of the state may purchase directly from a vendor the same goods and equipment, where the individual unit price does not exceed ten thousand dollars ($10,000), at the same price and under the same terms as provided in a contract for such equipment entered into by any other municipality, county, utility district, or other local governmental unit of the state.

(B) Any municipality, county, utility district, or other local governmental unit of the state which purchases goods and equipment under the provisions of this subsection (c) shall directly handle payment, refunds, returns, and any other communications or requirements involved in the purchase of the equipment without involving the entity which originated the contract. The originating entity shall have no liability or responsibility for any purchases made by another entity under a contract that the originating entity negotiated and consummated.

T.C.A. § 12-3-1008. This statute authorizes county governments to use pricing discounts obtained by the National Association of Counties (NACo) Purchasing Alliance by considering the NACo
price in the same manner as a formal bid (IFB/RFP) or informal quotation (RFQ) under the county’s bidding laws.  

**T.C.A. § 12-3-1009.** This statute provides that counties, municipalities, utility districts, and other local governments may participate in cooperative purchasing agreements for procurement of supplies, services or construction.  

**T.C.A. § 12-3-216.** This statute authorizes the commissioner of general services to enter into cooperative purchasing agreements with local governments, provided that each contract is established through the use of competitive sealed bids.  

**T.C.A. § 12-9-101 et. seq.** The Inter-local Cooperation Act permits any local government of this state to enter into joint agreements to exercise any legitimate governmental function (including purchasing) with any other local government, in Tennessee or in any other state. Participating local governments in another state must have the same blanket authority under that state’s own laws.  

6.3 **Procurement Cards**—According to the authors of “Advanced Public Procurement”, procurement cards are small, thin, plastic debit or credit cards that look very similar to a Visa or MasterCard. They have authorization and spending limitations embedded into a magnetic strip on the card. The majority of procurement cards in use today are credit cards. A major bank usually issues procurement cards, but depending on the transaction volume, a local bank may be able to meet requirements

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84 ibid, 130.  
85 ibid, 130.  
86 Ibid, 14.  
87 The University of Tennessee, Purchasing Guide for Tennessee’s Municipalities, Municipal Technical Advisory Service, (September 2008), 14  
88 *Advanced Public Procurement*, 45.  
89 ibid, 45.  
90 ibid, 45.
with the assistance of a credit card company (Visa, MasterCard, etc.).\textsuperscript{91} The issuing bank provides reporting information to the county in several different ways, i.e., special reports, transaction reports, cardholder activity reports, and audit reports (as provided by the agreement).\textsuperscript{92}

The purpose of the procurement card is to offer county departments a procurement process for purchase and payment of low-dollar, non-inventory, non-capital items. The intent is to streamline the traditional procurement process by reducing the number of requisitions, purchase orders, invoices, and checks.\textsuperscript{93}

Procurement cards are a purchasing tool because they facilitate the purchasing activity. They are also a payment card because they facilitate and often expedite the payment to the vendors. Cards may reduce the cost of doing business while preserving controls and maximizing the audit trail and data captured at the point of sell. The card has historically been used for small purchases that do not require competitive bidding.\textsuperscript{94}

There currently is no state law concerning the subject of procurement cards. However, sound accounting practices require some controls on the usage of such cards be in place prior to their use in counties. The method of adopting these controls will depend on the purchasing laws under which the county operates, as well as the established procedures the county follows relative to purchasing.\textsuperscript{95}

Any county desiring to use procurement cards should consult with its county attorney to determine the appropriate method for authorizing the use of procurement cards and adopting policies and procedures. As a very general guide, CTAS has developed sample documents which a county may use as a starting point for developing its own set of documents authorizing procurement cards and governing their use.\textsuperscript{96} The

\textsuperscript{91} ibid, 45.

\textsuperscript{92} ibid, 46.

\textsuperscript{93} Ronald Cohen, “Review of Internal Controls Over Procurement Card”, Internal Audit Office, Fairfax County, Va, 2.

\textsuperscript{94} Advanced Public Procurement, 45

\textsuperscript{95} The University of Tennessee, CTAS, Spotlight on Current Issues, Purchasing Card Usage in Counties, Executive Director’s Memo, February 7, 2001, 1.

\textsuperscript{96} ibid, 1.
sample documents appear in Appendix D.

6.4 **Purchasing - Records Management**

6.4.1 **Reasons for Records Management** - The CTAS publication entitled *Records Management for County Governments*, lists the following reasons for records management:

- **Space**— In most counties, it is rare for a county office or courthouse to have all of the space it needs. Courthouses are bursting at the seams with old records stuffed into basements, storage closets, attics, and other more creative locations. Thus, it is cost effective for counties to implement a records management program.\(^\text{97}\)

- **Records Serve as a Legal Foundation**—Local governments and the citizens they serve are both dependent upon good documentation to demonstrate their legal status. When disputes arise over legal issues, it is important to have good documentation to rely on. Local governments have an important responsibility to preserve these records. Proper records management will insure these records are preserved and can be found when needed.\(^\text{98}\)

- **Historical Preservation of Documents**—Counties play a vital role in preserving our nation’s history. The documents and records of local governments give us insights into the lives of our ancestors and circumstances of our times. With proper records management, the important records are preserved, the less essential records are destroyed when no longer useful so they do not take up available space. The records are catalogued and organized so that officials and the public can access them. The records are stored under proper conditions to enable long term preservation.\(^\text{99}\)

6.4.2 **Laws that Require Records to be Kept**—Since county governments are instrumentalities of the state, most of the laws regarding what records need to be kept by county officials and how

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\(^{97}\) The University of Tennessee, CTAS, *Records Management for County Government*, September 1999, 3.

\(^{98}\) ibid, 4.

\(^{99}\) ibid, 4.
those records should be managed are found in the *Tennessee Code Annotated* (T.C.A.). County officials should also be aware that federal laws and regulations require them to keep certain records. This is particularly true of payroll information and other employment related records.\(^\text{100}\) Not every record in a government office has a corresponding statute or regulation requiring that record to be kept. Many records are generated simply as an ordinary course of business without any legal authority mandating their creation.\(^\text{101}\)

The publication *Records Management for County Government* provides an excellent explanation pertaining to the legal issues regarding records management, county public records commissions, public access to county records, confidential records, temporary and permanent records, records management and disposal, disaster preparedness, alternative storage formats, and other records areas. Moreover, the publication lists the records retention schedules for each office of county government—although some of the retention schedules are not office specific, e.g., some accounting records.

### 6.4.3 Retention Schedule for Certain Purchasing Records

The following retention schedules for purchasing records are listed in the “*Records Management for County Governments*” publication:\(^\text{102}\)

<table>
<thead>
<tr>
<th>Description of Record</th>
<th>Retention Period</th>
<th>Legal Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>15-006 Bids, Successful (On Equipment and Supplies) - Records showing Bidder’s name, complete description of item(s), delivery date, amount of bid, and any correspondence with the bidder.</td>
<td>Retain 7 years after contract expires then destroy</td>
<td>Based on statute of limitations for legal action based on breach of contract. T.C.A. § 28-3-109.</td>
</tr>
<tr>
<td>15-007 Bids, Unsuccessful (On Equipment and Supplies) - Records showing Bidder’s name, complete description of item(s), delivery date, amount of bid, and any correspondence with the bidder.</td>
<td>Retain for 1 year after audit unless the county is operating under the purchasing provisions of the County Purchasing Law of 1957.</td>
<td>Keep for audit purposes as directed by the Comptroller. T.C.A.§ 10-7-404 (a). [ T.C.A. § 5-14-108 (g) - if under the 1957 Law ].</td>
</tr>
</tbody>
</table>

\(^{100}\)ibid, 9.

\(^{101}\)ibid, 9.

\(^{102}\)ibid, 175 -177.
Description of Record | Retention Period | Legal Authority
--- | --- | ---
15-009 Building Plans - Blueprints and specifications for all county owned buildings. | Permanent record. Consider donating to archive once building is destroyed or no longer possessed by the county. | Need for maintenance and operation of physical plant during the life of the building (plus additional time if litigation could arise from a building’s early demise). Historical record for both existing and demolished structures.

15-013 Contracts - Contracts between county and contractors for services of miscellaneous types. | Retain 7 years or until expiration of guarantees, then destroy. If no guarantees are involved, destroy 7 years after completion of contract. | Based on statute of limitations for breach of contracts T.C.A.§ 28-3-109.

15-023 Leases and Agreements | Destroy 7 years after completion or expiration of lease or agreement. | Based on statute of limitations for breach of contract actions. T.C.A § 28-3-109.

15-024 Minutes - Written accounts of the proceedings of boards, committees and commissions. May also have audio tapes of the proceedings. | Permanent Record | Actions accorded in minutes are effective until superseded or rescinded. Also of historical value.

15-025 Minutes of Bid Openings | Retain 5 years, then destroy. | Necessary in case of challenge to bid award.

15-027 Purchase Orders | Keep 5 years after creation of record, then destroy. | Keep for audit purposes. T.C.A. § 10-7-404 (a).

15-029 Requisitions and Requisitions for Purchase - Records of requests for supplies and equipment in counties. | Keep 5 years then destroy. | Kept for audit purposes. T.C.A. § 10-7-404 (a).

Other retention schedules that may apply to purchasing functions can be found in the *Records Management for County Governments* publication.

### 6.5 Bonds

#### 6.5.1 Bid Bond—The National Institute of Governmental Purchasing (NIGP) defines a bid bond as “a written agreement or check by which a third party guarantees that a bidder will accept a contract as a bid, if it is awarded.”

If the bidder does not accept the award, the bond is forfeited in whole or in part. A bid bond is issued

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103 *The Dictionary of Purchasing Terms*, 3.
most often in an amount equal to 5 percent of the total price of the bid. Some Tennessee statutes or local government policies may require a different amount for certain projects or services; e.g., T.C.A. § 62-6-129 states that “no contract for the services of a construction manager shall be awarded for any public work in this state by any city, county, or state authority, or board of education unless there is posted at the time of submittal of a proposal for services by a construction manager a bid bond equal to ten percent (10%) of the value of the services proposed and the value of the work to be managed, or may at the time of contracting provide payment and performance bonds in amounts equal to the combined monetary value of the services of the construction manager and the value of the work to be so managed.”

6.5.2 **Performance Bond**—The National Institute of Governmental Purchasing (NIGP) defines a performance bond as “a contract of guarantee, executed subsequent to award by a successful bidder to protect the buyer from loss due to the bidder’s inability to complete the contract as agreed.”

A performance bond is issued to the local government by a surety company at the contractor’s request after the contractor has received notice of award; the contract is usually not signed until the local government receives the performance bond. The amount of the performance bond is usually for 100 percent of the contract price; however, some local government’s policies may specify the minimum amount of the bond or use considerable leeway to determine the amount and whether it will be issued as a percentage of the contract price or for a specific sum.

6.5.3 **Payment Bond**—A payment bond guarantees that the contractor will pay all suppliers and subcontractors who assist in the performance of the work. A payment bond, issued in the same

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105 *The Dictionary of Purchasing Terms*, 22.

106 Harney, 61.

107 ibid, 61.

108 ibid, 60-61.
manner as a performance bond, is a surety company’s guarantee that the contractor will pay its subcontractors and the suppliers. Payment bonds are used primarily in construction contracts but are applicable to service contracts under which the contractor contracts all or part of the work to one or more subcontractors. The usual amount of a payment bond is 100 percent of the contract price; however, some Tennessee statutes stipulate the amount of the bond as a percentage of the contract price (e.g., in T.C.A. § 12-4-201 it states that for public works projects for $100,000 or more the bond shall be for 25 percent of the contract price). T.C.A. § 12-4-201 reads as follows:

T.C.A. § 12-4-201. Contractor's duty to execute; securities or cash in lieu of bond.
(a) No contract shall be let for any public work in this state, by any city, county or state authority, until the contractor shall have first executed a good and solvent bond to the effect that the contractor will pay for all the labor and materials used by the contractor, or any immediate or remote subcontractor under the contractor, in such contract, in lawful money of the United States. The bond to be so given shall be for twenty-five percent (25%) of the contract price on all contracts in excess of one hundred thousand dollars ($100,000). Where advertisement is made, the condition of the bond shall be stated in the advertisement; provided, that §§ 12-4-201 - 12-4-206 shall not apply to contracts of one hundred thousand dollars ($100,000) or less.

(b) In lieu of the bond required by subsection (a), the following securities or cash may be substituted at the percentage rate required for such bond:
   (1) United States treasury bonds, United States treasury notes and United States treasury bills;
   (2) General obligation bonds of the state of Tennessee;
   (3) Certificates of deposit or evidence of other deposits irrevocably pledged from:
      (i) A state or national bank having its principal office in Tennessee;
      (ii) A state or federal savings and loan association having its principal office in Tennessee;
      (iii) Any state or national bank, that has its principal office located outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits; or
      (iv) Any state or federal savings and loan association that has its principal office located outside this state and that maintains one

\[109\] ibid, 61.

\[110\] ibid, 61.
(1) or more branches in this state which are authorized to accept federally insured deposits;

(4) A letter of credit from a state or national bank or state or federal savings and loan association having its principal office in Tennessee; or any state or national bank or state or federal savings and loan association that has its principal office outside this state and that maintains one (1) or more branches in this state which are authorized to accept federally insured deposits. The terms and conditions of any letter of credit shall be subject to the approval of the public official named in the contract. The form of such letter of credit shall be provided by the bank or savings and loan association and may be based on either the Uniform Commercial Code, Tennessee Code Annotated, title 47, chapter 5, or the ICC Uniform Customs and Practice for Documentary Credits (UCP 500). All letters of credit shall be accompanied by an authorization of the contractor to deliver retained funds to the bank issuing the letter; or

(5) Cash; provided, that, where cash is posted, the contracting authority shall pay to the contractor interest at the same rate that interest is paid on funds invested in a local government investment pool established pursuant to § 9-4-704, for the contract period.

Under T.C.A. § 12-4-202, it is a Class C misdemeanor offense for a public official whose duty it is to let or award contracts to fail to require a bond in accordance with the above-quoted statute.

6.6 Disposition of Surplus Property

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

When there are no specific requirements imposed by general law or private act, the disposal of county property is within the discretion of the county legislative body. See T.C.A. § 5-7-101 (authorizing the county to dispose of its property) and T.C.A. § 5-1-103 (authorizing the county legislative body to act for the county). The county legislative body would have to act at a meeting that complies with the open meetings law.111

In counties that have adopted the County Financial Management System of 1981 (CFMS of 1981), it is the duty of the county purchasing agent under T.C.A. § 5-21-118 (b) to conduct public sales of county property when the county legislative body declares the personal property surplus, and public sales of real property owned by the county. For property of the board of education, this statute must be interpreted in conjunction with the provisions of T.C.A. §§ 49-6-2006 and 49-6-2007, which give the board of education certain authority over the disposition of its property (see 6.6.1 Disposition of School Surplus Property). In counties that have elected to be governed by the provisions of the County Purchasing Law of 1957, the county purchasing agent must sell surplus real or personal property pursuant to T.C.A. § 5-14-108(o) by public auction or by sealed bid after the county legislative body has declared the property surplus (for property of the board of education, the board would make the determination that the property is surplus, and may conduct the sale if the department of education is not under the 1957 law; see 6.6.1 Disposition of School Surplus Property). The applicable statute reads as follows:

T.C.A. § 5-14-108(o)(1). All sales of county-owned property, real or personal in nature, which has become surplus, obsolete or unusable shall be made by public auction or by sealed bid under this section, in the discretion of the purchasing agent or responsible official. Counties under the County Purchasing Law of 1957 may conduct sales of surplus property by Internet auction, other public auction, or by sealed bid.

Additionally, in counties that have adopted the County Purchasing Law of 1957 (excluding schools unless they have elected to come under the provisions of the County Purchasing Law of 1957) the county purchasing agent, with the assistance of the county purchasing commission, may adopt rules for requiring reports from county departments, of surplus equipment and supplies, and the transfer of surplus equipment and supplies that may be used by other county departments, and rules for the sale, after receipt of competitive bids, of surplus equipment (T.C.A. §§ 5-14-107(5) and 5-14-107(6)).

T.C.A. § 12-3-1005. Transfers of Surplus Personal Property Among Governmental Entities. This statute authorizes counties to transfer surplus personal property to other governmental entities by sale, gift, trade, or barter upon such terms as the county
legislative body may authorize, without public advertisement or competitive bidding, regardless of any other law to the contrary. The approval of the governing bodies of both entities is required. (A similar statute, T.C.A. § 12-9-110, authorizes transfers of both real and personal property among governmental entities, and does not require that the property be declared surplus prior to the transfer.)

6.6.1 Disposition of Surplus Property in the Education Department—The decision to sell surplus property in the education department generally is a decision of the board of education. The board of education has the power to dispose of real property titled in its name, as provided in T.C.A. § 49-6-2006. With respect to personal property of the education department declared surplus by the board of education, T.C.A. § 49-6-2007 requires newspaper advertisement and competitive bidding for items valued at $250 or more.

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

T.C.A. § 49-2-203(b)(10)(A) provides that the board of education has the power to lease or sell buildings or property owned by the board of education which are not being used (and not needed), to any governmental entity, civic group, or community organization in such manner the board of education decides is in the best interest of the school system and community.

In counties that have adopted the County Financial Management System of 1981, it is the duty of the county purchasing agent under T.C.A. § 5-21-118 (b) to conduct public sales of school personal property when the board of education declares the personal property surplus, and sales of real property owned by the board of education when the board calls for a public sale. The purchasing agent should conduct such sales of personal property in accordance with T.C.A. § 49-6-2007, and public sales of real property according to the direction of the board of education.

In counties that have elected to be governed by the County Purchasing Law of 1957 and where schools are included, the provisions of T.C.A. § 49-6-2006 and 49-6-2007 must be read in conjunction with the provisions of T.C.A. § 5-14-108 (o). The statutes should be read together and harmonized to the extent possible. To the extent that these statutes are in direct conflict,
however, the provisions of T.C.A. § 5-14-108 should be followed. Following is an example of how the disposition of surplus property in a school system under the provisions of the County Purchasing Law of 1957 might flow (note that this is an example only):

**Sample Steps:**

1. The school board declares the property surplus and decides whether to sell the property at public auction or sealed bid, or whether to transfer the property to another governmental entity as authorized in T.C.A. § 49-6-2006.

2. If the school board decides to hold a public auction or public sale, then within 60 days thereafter, the purchasing agent advertises a public sale in the newspaper at least seven days prior to the sale (T.C.A. § 49-6-2007(b)).

3. The purchasing agent holds the sale as advertised and sells the items on behalf of the school board.

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

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

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

(a) It is hereby declared unlawful for any county official or employee to purchase from the county any property declared to be surplus by the county except by bid at public auction or competitive sealed bid during the tenure of such person's office or employment, or for six (6) months thereafter.

(b) A purchaser who violates the provisions of this section commits a Class A misdemeanor.

6.6.4 **Sale of Surplus Property by Internet Auction**—Counties are authorized to sell surplus property by internet auction. The relevant statute, T.C.A. §5-1-128, provides as follows:

T.C.A. § 5-1-128. When a county, including any county having a charter or metropolitan form of government, is required by any law or its charter to sell surplus property by public auction, “public auction” includes the sale by Internet auction.

6.7 **Purchasing at Public Auctions**—T.C.A. § 12-3-1006 allows counties to purchase at publicly advertised auctions. This law requires the county legislative body to establish written procedures to govern purchases at public auctions. CTAS has developed a sample set of policies and forms to meet the minimum requirements of the law. The sample polices and forms are shown in Appendix E. The statute reads as follows:

T.C.A. § 12-3-1006. Purchases of Property at Public Auctions - Reporting. - (a) Notwithstanding the requirements of its charter, or any other law, any municipality or county may purchase at any publicly advertised auction new or secondhand articles or equipment or other materials supplies, commodities and equipment without public advertisement and competitive bidding. The governing body shall establish written procedures at publicly advertised auctions. (b) If a municipality or county purchases any materials, supplies, commodities or equipment at a publicly advertised auction pursuant to subsection (a), then the purchasing official shall report the following information to the governing body of the municipality or county making such purchase:

1. A description of the materials, supplies, commodities or equipment that was purchased;
2. The auction where such items were purchased;
3. The purchase price of such items; and
4. The vendor of such materials, supplies, commodities or equipment.

6.8 **Transfer of Assets for Fire Protection**—The statute reads as follows:

12-3-1010. Transfer of Assets for Fire Protection - (a) Notwithstanding any other provision of the law, a county, municipality, and metropolitan government may transfer the ownership of assets for fire protection purchased through or with the proceeds of federal, state or local grants to volunteer fire departments within such county, municipality or metropolitan area; provided, that such volunteer fire departments are registered as non-profit organizations with the office of the secretary of state. (b) This section shall have no effect in a county, municipality or metropolitan area unless it is approved by the appropriate legislative body.

6.9 **Purchase of Certain Insurance**—Counties may purchase tort liability insurance without competitive bidding from the local government insurance pool or any other plan authorized and approved by any organization of governmental entities representing cities and counties. This is true regardless of any public or private act or charter restrictions (T.C.A. § 29-20-407).

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

- Purchasing policies send signals to the taxpayers that their money is being expended carefully;
- Purchasing policies send signals to the business sector that they will be treated fairly and equitably;
- Purchasing policies send signals to the employees that they have support, directions, and protection from their highest
superiors;113

• Purchasing policies foster effective broad-based competition within the free enterprise system to ensure the county will receive the best possible service or product at the lowest possible price;
• Purchasing policies promote accountability for the use of public funds in the acquisition of goods and services.
• Purchasing policies establish guidelines for the acquisition of goods and services;
• Purchasing policies define the responsibilities of the county departments and employees in the purchasing process;
• Purchasing policies standardize and communicate approved purchasing practices;114
• Purchasing policies promote supplier understanding and cooperation;115 and
• Purchasing policies help to train new personnel and guide others in the functions of purchasing.

6.11 **Electronic Procurement**—As demands continue to escalate for local governments to reduce the cost of doing business while improving the timeliness and accuracy of its services, legislation allowing counties to utilize electronic commerce technology for procurement has been passed. Under the “State and Local Purchasing Act of 1999,” county governments may distribute solicitations and receive bids, proposals, and other offers electronically, but cannot require small or minority owned businesses to receive or respond electronically (T.C.A. § 12-3-704). However, this does not satisfy any public advertisement requirements that may apply.116

This law also helps state agencies and local governments to apply the best available technology for procurement by creating a standing advisory committee to monitor all initiatives related to the use of the Internet for purchasing by state agencies and local governments and to advise the

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113 The University of Tennessee, Center for Government Training, *Municipal Purchasing*, 49.


115 ibid, Fifth Edition, 70.

The standing advisory committee consists of eight members as follows:

- One person having technical knowledge of information services and the Internet, to be appointed by the information systems council;
- One person to be appointed by the Tennessee City Manager’s Association;
- Two persons appointed by the Tennessee Association of Public Purchasing;
- One person to be a municipal purchasing officer;
- One person to be a county purchasing officer; and
- One person from the private sector to be appointed by the governor.

The members serve two-year terms and may be re-appointed (T.C.A. § 12-3-1101).

6.12 **Highways and Roads “Buy America” Act—T.C.A. § 54-5-135**—Counties cannot buy any materials that are used for highway or roadway construction, resurfacing, or maintenance from any foreign government, any company wholly owned or controlled by a foreign government, or any agency of a foreign government or company. Materials covered by the act include, but are not limited to, asphalt cement, asphalt emulsion, rock, aggregate, liquid and solid additives, sealers, and oils. This legislation is not applicable if materials made by American companies are of unsatisfactory condition, are not of sufficient quantity, or increase the overall project cost by five percent more than the overall project costs using materials produced by foreign companies.\(^{118}\)

6.13 **Life Cycle Cost and Procurement Act—T.C.A. § 12-3-601 et. seq.**—The Tennessee Department of General Services determines which commodities and products may be bought according to energy efficiency standards. The state is required to adopt rules and regulations relative to energy efficiency standards for major energy consuming products. Life cycle costs are to be used when contracting for major energy-consuming products. In determining life cycle costs, the state may consider the acquisition cost of the product, its energy consumption and the projected cost of energy over the useful life of the product, and the

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\(^{118}\) The University of Tennessee, MTAS, *Purchasing Guide*, 17.
expected resale or salvage value of the product.

Except where prohibited by private act or state law, the county shall adopt the energy efficiency standards and life cycle costing employed by the state. The county may develop and adopt its own energy efficiency standards, provided they are more stringent than the state’s.\textsuperscript{119}

6.14 **Purchasing From Certain Disabled Persons—T.C.A. § 71-4-701**—Counties must purchase services and commodities from qualified nonprofit work centers for the blind or severely disabled if the commodities are available and have been certified by the Board of Standards. This is not mandatory if the service or commodity is available from any state agency or if the Board of Standards determines the service or item does not meet reasonable requirements.\textsuperscript{120}

6.15 **Contractor License Information Requirements**—For construction projects in the amount of twenty-five thousand dollars ($25,000) or more, the license information for the general contractor and certain subcontractors must be placed on the outside of the bid envelope or in the electronic bid submission in accordance with T.C.A. § 62-6-119. When a bid is in excess of $25,000, the name, license number, expiration date and license classification of the contractors applying for the prime contract and for electrical, plumbing, heating, ventilation and air conditioning contracts must appear on the outside of the bid envelope or in the submission of the electronic bid, and 2010 Public Chapter 768 amended T.C.A. § 62-6-119 to require the name, license number, expiration date, and license classification of masonry contractors to be placed on the outside of the envelope containing the bid when the cost of the masonry portion of a construction project exceeds $100,000. Prime contractor bidders who perform the electrical, plumbing, heating, ventilation or air conditioning contracts must be so designated on the outside of the envelope or in the electronic bid. Failure of the bidder to comply renders the bid void. Names of contractors on the outside of envelope or in the electronic bid must be read aloud before bid documents are opened at an official bid opening. The entity or person awarding contract has duty to verify only the completeness of the required licensure information. Prior to awarding a contract, the awarding person or entity and its authorized representatives must verify the accuracy, correctness and completeness of the information required. T.C.A. § 62-6-119.

No invitation to bid may require a subcontractor to be identified until the

\textsuperscript{119} ibid, 17.

\textsuperscript{120} ibid, 17.
final bid submission nor require a contractor to accept the bid of any subcontractor until the final bid submission.

Anyone preparing bid documents is required to include a reference to Tennessee Code Annotated, Title 62, Chapter 6 (the Contractors Licensing Act of 1994), and a specific statement informing bidders that it is necessary for the bidder to provide evidence of compliance with the applicable provisions of Title 62, Chapter 6 before the bid may be considered. T.C.A. § 62-6-119.

Any person who accepts a bid over $25,000 from a contractor who is not licensed, with appropriate classifications and sufficient monetary limitations, or in the case of a limited licensed electrician where the amount is less than $25,000, commits a Class A misdemeanor. T.C.A. § 62-6-120.

2010 Public Chapter 801 reads as follows:

AN ACT to amend Tennessee Code Annotated, Section 62-6-119, relative to certain bid documents.
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:
SECTION 1. Tennessee Code Annotated, Section 62-6-119, is hereby amended by deleting the section in its entirety and substituting the following in lieu thereof. 62-6-119.
(a) Any person or entity preparing plans, specifications or any other documentation for inclusion in an invitation to bid or comparable bid document including any electronic bidding documents, shall reference this chapter in such documentation and a specific statement informing the invited bidder that it is necessary for such bidder to provide evidence of compliance with the applicable provisions of this chapter before such bid may be considered.
(b) The person or entity involved in the preparation of the invitation to bid or comparable bid documents including any electronic bid documents shall direct that the name, license number, expiration date thereof, and license classification of the contractors applying to bid for the prime contract and for the electrical, plumbing, heating, ventilation, and air conditioning contracts, appear on the outside of the envelope containing the bid or in the submission of an electronic bid except when the bid is in an amount less than twenty-five thousand dollars ($25,000). Only one (1) contractor in such classification may be listed. Prime contractor bidders who are to perform the electrical, plumbing, heating, ventilation and air conditioning must be so designated upon the outside of the envelope or in the electronic bid. Failure of any bidder to comply therewith shall void such bid and such bid shall not be considered. It is the duty and responsibility of the awarding person or entity who received the envelope containing the bid or the electronic bid to verify only the completeness of the required licensure information. Prior to the opening of the envelope or acceptance of an electronic bid, the names of all contractors listed thereon or therein shall be read aloud at the official bid opening and incorporated into the bid. Prior to awarding a contract, the awarding person or entity and its authorized representatives shall verify the accuracy, correctness and completeness of the information required hereby. The failure of any bidder to comply with all of the provisions hereof shall automatically disqualify such bid. However, bids administered by the Tennessee department of general
services shall require that the information be furnished within the bid or bid document only. When the bid is less than twenty-five thousand dollars ($25,000), the name of the contractor only may appear on the outside of the envelope containing the bid or in the electronic bid document, and upon opening the envelope or review of the electronic bid, if such bid is in excess of twenty-five thousand dollars ($25,000), the same shall automatically be disqualified.

(c) No invitation to bid may require that:
   (1) Any subcontractor be identified, listed or designated until the final bid submission by the prime contractor; and
   (2) Any prime contractor accept the bid of any subcontractor until the final bid submission by the prime contractor.

(d) Any person or entity, public and private, failing to observe this section shall be penalized in the same manner as any person under §62-6-120 who accepts a bid from a person who is not licensed in accordance with the provisions of this chapter.

(e) Notwithstanding the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, relative to the amount of civil penalties that may be imposed, the board may impose a civil penalty not to exceed five thousand dollars ($5,000) for any violation of this section.

6.16 Employment of Licensed Architect or Engineer on Public Works—If a public works project is expected to cost more than $25,000 and involves architecture, engineering or landscape architecture, the plans, specifications and estimates for the project must be prepared by a registered architect, engineer, or landscape architect.

The relevant statute is T.C.A. § 62-2-107, which reads as follows:

(a) Neither the state, nor any county, city, town or village, or other political subdivision of the state, shall engage in the construction or maintenance of any public work involving architecture, engineering or landscape architecture for which the plans, specifications and estimates have not been made by a registered architect, registered engineer or registered landscape architect.

(b) Nothing in this section shall be held to apply to such public work wherein the contemplated expenditure for the complete project does not exceed twenty-five thousand dollars ($25,000), and such work does not alter the structural, mechanical or electrical system of the project.

(c) For the purposes of this chapter, "public work" does not include construction, reconstruction or renovation of all or any part of an electric distribution system owned or operated directly or through a board by a municipality, county, power district or other subdivision of the state of Tennessee, that is to be constructed, reconstructed or renovated according to specifications established in the American National Standard Electrical Safety Code, the National Electrical Code, or other recognized specifications governing design and construction requirements for such facilities. Notwithstanding the foregoing, "electrical distribution system" does not include any office buildings, warehouses or other structures containing walls and a roof which are to be open to the general public.

6.17 Energy-related Services—Under T.C.A. § 12-4-115, contracts for energy-related services that include both engineering services and
equipment and have as their purpose the reduction of energy costs in public facilities must be awarded on the same basis as professional services (see 6.27 Professional Service Contracts).

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

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

§ 50-9-114. Bids for construction services; required information. (a) The state or any local government, including departments, divisions, or agencies thereof, shall include within any bid or procurement specifications for construction services the following information:
(1) A statement as to whether the governmental entity issuing a construction service bid or other procurement specification operates a drug-free workplace program as certified under this chapter or operates any other programs which provide for testing of employees for workplace use of drugs or alcohol;
(2) If operating such a program, a statement which describes the government entity's drug-free workplace and/or alcohol and drug testing program; and
(3) A statement that all bidders or proposals for construction services are required to submit an affidavit as part of their bid, that attests that such bidder operates a drug-free workplace program or other drug or alcohol testing program with requirements at least as stringent as that of the program operated by the governmental entity.
(b) Unless suit is filed in chancery court, employers shall have seven (7) calendar days to contest a contract entered into by employers subject to the provisions of this section with a local government or state government. Employers that do not contest such contracts within seven (7) calendar days by filing suit in chancery court shall waive their rights to challenge such contracts for violating the provisions of this section. Such contracts shall be contested in chancery court in the county where the contract was entered. The trial of the alleged violation of the provisions of this section shall be expedited by giving it priority over all cases on the trial docket, except workers’ compensation cases.
6.19 **Construction Contracts—Retainage**—T.C.A. § 66-11-144 requires that retainage amounts on construction contracts that exceed $500,000 must be placed in an interest bearing account, with the interest being paid to the contractor with the retainage amount. Under Title 66, Chapter 34, the retainage amounts on public and private construction contracts cannot exceed 5% of the contract amount, and such retainage must be released to the prime contractor within 90 days after completion of the project, or within 90 days after substantial completion of the project for work completed, whichever occurs first.

6.20 **Purchase of Used or Secondhand Goods**—T.C.A. § 12-3-1003 authorizes cities and counties to purchase used or secondhand goods, equipment, materials, supplies, or commodities from private individuals and entities without public advertisement and competitive bidding as long as the purchasing government documents the general range of value of the item through a listing in a nationally-recognized publication or through an appraisal by a licensed appraiser and the price is not more than 5% higher than the highest value of the documented range.

6.21 **Contracts for Purchase of Natural Gas, Propane Gas or Electric Power**—The provisions of this statute are as follows:

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

6.22 **Public Contracts for Social Services**—TCA § 12-4-122 provides that state and local governments shall contract for goods and services provided through the state departments of Human Services, Children’s Services, and Health without discrimination against religious organizations and shall contract with religious organizations on the same basis as any other non-governmental providers without impairing the religious character of the organizations. All programs must be implemented consistent with the First Amendment of the United States Constitution. Any religious organization that contracts with the state or local government shall retain its independence from the government and that the government cannot require the organization to alter its form of governance or remove religious art, icons, scripture or other symbols.  

6.23 **Solid Waste Authorities (Established Under The Solid Waste Authority Act of 1991) Competitively Bidding Contracts for Solid Waste Collection and/or Services**—According to the Tennessee

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Attorney General, when a solid waste authority is contracting for collection and disposal services, it is generally subject to the same purchasing laws, including competitive bidding requirements, that govern the counties and municipalities forming the authority.\footnote{See Op. Tenn. Att’y Gen. 04-104 (July 2, 2004)}

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

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

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

6.27 **Professional Service Contracts**—Under T.C.A. § 12-4-106, contracts for professional services such as attorneys, architects, engineers, and financial advisors “shall not be based on competitive bids, but shall be awarded on the basis of recognized competence and integrity.” However, according to the Tennessee Attorney General this statute does not
preclude the cost of the services from being included in a solicitation of proposals; the cost of the services may be one of the factors used in awarding a contract for professional services as long as it is not the sole determining factor. Similar provisions can be found in the optional general laws. In addition, according to the Tennessee Attorney General, TCA § 12-4-106 construction projects does not apply to general building contractors.123 The general law on professional services contracts provides as follows:

T.C.A. § 12-4-106. Contracts for professional services.- (a)(1) Contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of the state, for legal services, fiscal agent, financial advisor or advisory services, educational consultant services, and similar services by professional persons or groups of high ethical standards, shall not be based upon competitive bids, but shall be awarded on the basis of recognized competence and integrity. The prohibition against competitive bidding in this section shall not prohibit any entity enumerated from interviewing eligible persons or groups to determine the capabilities of such persons or groups.

(2)(A) In the procurement of architectural and engineering services, the selection committee/procurement official may seek qualifications and experience data from any firm or firms licensed in Tennessee and interview such firm or firms. The selection committee/procurement official shall evaluate statements of qualifications and experience data regarding the procurement of architectural and engineering services, and shall conduct discussions with such firm or firms regarding the furnishing of required services and then shall select the firm deemed to be qualified to provide the services required.

(B) The selection committee/procurement official shall negotiate a contract with the qualified firm for architectural and engineering services at compensation which the selection committee/procurement official determines to be fair and reasonable to the government. In making such determination, the selection committee/procurement official shall take into account the estimated value of the services to be rendered, the scope of work, complexity and professional nature thereof.

(C) Should the selection committee/procurement official be unable to negotiate a satisfactory contract with the firm considered to be qualified, at a price determined to be fair and reasonable, negotiations will continue with other qualified firms until an agreement is reached.

(D) A city, county or utility district having a satisfactory existing working relationship for architectural or engineering services may expand the scope of the services; provided, that they are within the technical competency of the existing firm, without exercising the provisions of this section.

(3)(A) For construction of local correctional facility projects or additions to existing correctional facility buildings, a county, city, metropolitan government or town may contract for construction management agent or advisor services. Construction management services that are provided for a fee and that involve preconstruction and construction administration and management services are deemed to be professional services and may be performed by a qualified person licensed under title 62, chapter 6. Construction management services are to be procured for each project through a written request for proposals process through advertisement. The procurement and

advertisement shall be in accordance with laws, regulations, and ordinances of the county, city, metropolitan government or town. The written request for proposals process will invite prospective proposers to participate and will indicate the service requirements and the factors used for evaluating the proposals. These factors shall include the construction manager's qualifications and experience on similar projects, qualifications of personnel to be assigned to the project, fees and costs or any additional factors deemed relevant by the procuring entity for procurement of the service. Cost is not to be the sole criterion for evaluation. The contract for such services shall be awarded to the best qualified and responsive proposer. A construction manager is prohibited from undertaking actual construction work on a project over which the construction manager coordinates or oversees the planning, bid or construction phases of the project, except in instances where bids have been solicited twice and no bids have been submitted. If the construction manager can document that a good faith effort was made in each bid solicitation to obtain bids and no bids were received, then the construction manager may perform the construction work at a price agreed upon by the construction manager, the architect and the owner of the project. A governing body, at its own discretion, may perform work on the project with its own employees and may include the coordination and oversight of this work as part of the services of the construction manager. Sealed bids for actual construction work shall be opened at the bid opening and the names of the contractors and their bid amounts shall be announced.

(B) Construction management agent or advisor services for the construction of local correctional facility projects or additions to existing correctional facility buildings in accordance with subdivision (a)(3)(A) may be performed by:

(i) A general contractor licensed in Tennessee pursuant to title 62, chapter 6; provided, that none of such services performed by a general contractor involve any of the services exempt from the requirements of title 62, chapter 6 as “normal architectural and engineering services” under 62-6-102(3)(B) or (C), unless, with regard to the performance of any services defined as normal architectural and engineering services, the general contractor is also licensed as an architect or engineer under title 62, chapter 2; or

(ii) An architect or an engineer licensed pursuant to title 62, chapter 2; provided, that none of such services performed by an architect or engineer involve any of the services required to be performed by a contractor within the definition of “contractor” 62-6-102(3)(A)(i) unless with regard to the performance of any services included within the definition of contractor, the architect or engineer is also licensed as a contractor under title 62, chapter 6.

(C) Construction work that is under the coordination and oversight of a construction manager shall be procured through competitive bids.

(b) Any person providing fiscal agent, financial advisor or advisory services to any county, city, metropolitan government, town, utility district or other municipal or public corporation shall perform such services only pursuant to a written contract, to be entered into prior to, upon or promptly after the inception of the relationship, specifying the services to be rendered, the costs therefor, and the expenses to be covered under such contract.

(c) Any person providing fiscal agent, financial advisor or advisory services to any county, city, metropolitan government, town, utility district or other municipal or public corporation of this state who desires to bid, directly or indirectly, on any bonds, notes or other obligations of such entity sold pursuant to public, competitive sale shall receive in writing prior to the sale the permission of such entity to bid either directly or indirectly on the obligations. (d) For the purposes of this section, “providing fiscal agent, financial advisor or advisory services” means a relationship that exists when a person renders or enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to a new issue or issues of municipal securities, including advice with
respect to the structure, timing, terms and other similar matters concerning such issue or issues, for a fee or other compensation or in expectation of such compensation for the rendering of such services. Notwithstanding the foregoing provisions of this subsection, a financial advisory relationship shall not be deemed to exist when, in the course of acting as an underwriter, a municipal securities dealer renders advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning a new issue of municipal securities.

(e)(1) Contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of the state for information management services, including, but not limited to, computer program analyst services shall, upon approval by a two-thirds (\(2/3\)) vote of the governing body, be procured through a request for proposals process. The request for proposals process will invite prospective proposers to participate and will indicate the service requirements and the factors used for evaluating the proposals. Such factors shall include cost, vendor's qualifications and any additional factor or factors deemed relevant by the procuring entity for the procurement of the service; cost is not to be the sole criteria for evaluation. The contract for such services will be awarded to the best evaluated, responsive proposer.

(2) The provisions of this subsection shall only apply in counties having a population of not less than four hundred seventy thousand (470,000) nor more than four hundred eighty thousand (480,000) according to the 1980 federal census or any subsequent federal census.

6.28 Construction Management Services—The authors of “Construction Law” (Brunner and O’Connor) submit in Chapter 6 “Project Delivery Methods and Contract Pricing Arrangements” that modern construction management was developed in the 1960s and early 1970s. Brunner and O’Connor describe a construction manager as a “party with construction expertise who comes into the process to protect the interests of the owner and to take the lead in coordinating the design and construction services.” Further, these authors describe in chapter 16 “Governmental Regulation: Licensing and Permitting” that:

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

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The U.S. Department of Labor, Bureau of Labor Statistics states that a construction manager “coordinates and supervises the construction process from the conceptual development stage through final construction, making sure that the project gets completed on time and within budget. They often work with owners, engineers, architects, and others who are involved in the process. Given the designs for buildings, roads, bridges, or other projects, construction managers supervise the planning, scheduling, and implementation of those designs. Construction managers plan, direct, coordinate, and budget a wide variety of construction projects, including the building of all types of residential, commercial, and industrial structures, roads, bridges, wastewater treatment plants, and schools and hospitals”.\textsuperscript{126}

The Tennessee Attorney General describes a “pure” construction manager as “a construction manager who acts primarily as the owner’s agent in administering, managing, and overseeing a construction project, and who consults with the owner in all phases of construction, from planning and design, to construction and post-construction”\textsuperscript{127}. The Tennessee Attorney General further states that “in contrast to the conventional approach to construction projects utilizing a general contractor, a project employing the “pure” construction contract management method of operation generally calls for the owner to contract directly with each of the various trade contractors. The owner employs a construction manager to perform many of the functions, such as coordination and scheduling, traditionally performed by the general contractor. In the “pure” construction management scheme, the construction manager is not in direct contractual privity with any of the trade contractors.”\textsuperscript{128}

The method of procurement for construction management services varies depending on the type of project. Following is a summary of the requirements for solicitation of construction management services for correctional facilities projects, construction management services for education construction projects, and construction management services for construction projects other than correctional facilities and education construction projects.


\textsuperscript{128} ibid, 3
Construction Management Services For Construction Projects Other Than Correctional Facility Construction and Education Construction Projects—Construction management services for correctional facility construction projects are governed by T.C.A. § 12-4-106, and construction management services for education construction projects are governed by T.C.A. § 49-2-203(a)(3)(C)(ii)-(iv). However, construction management services for all other types of projects are not covered by any specific statute and must be competitively bid in accordance with the county’s normal bidding process, regardless of whether they have architects or engineers on staff who will be performing work on the contract.¹²⁹

Construction Management Services for Correctional Facility Construction Projects—Local governments are authorized under T.C.A. § 12-4-106 to contract for construction management services provided for a fee and involving preconstruction and construction administrative management services for the construction of local correctional facility projects or additions. These services are deemed to be professional services which may be performed by licensed general contractors, architects, and engineers. These services are to be procured through advertisement in accordance with the laws, regulations, and ordinances of the local government, through a written request for proposals process. Factors considered in awarding the contract must include the construction manager’s qualifications and experience on similar projects; qualifications of personnel to be assigned to the project; and fees and costs. Cost cannot be the sole criterion for award of the contract. Actual construction work must be procured through competitive bids. A construction manager cannot perform actual construction work on a project he oversees except where bids have been solicited twice and no bids were submitted. The governing body may perform work on the project with its own employees, with the construction manager overseeing this work.¹³⁰

Construction Management Services for Education Construction Projects—Construction management services for education construction projects are deemed to be professional services and are to be procured through a request for proposals process set out in T.C.A. § 49-2-203(a)(3)(C)(ii)-(iv). The factors to be considered include the construction manager’s qualifications and experience on similar projects, qualifications of personnel assigned to the project, fees, and any other criteria deemed relevant. Cost cannot be the sole criterion. Construction managers


cannot perform actual construction work except in instances where bids have been solicited twice and no bids have been submitted. A school system can perform work on its project with its own employees and have a construction manager perform the coordination and oversight of the project. Actual construction work under the direction of the construction manager must be competitively bid. Construction management for school construction or additions may be performed by (1) a licensed general contractor, as long as none of the services performed by the general contractor involve architectural and engineering services, unless, with regard to those services, the general contractor is also licensed as an architect or engineer; or (2) a licensed architect or engineer, as long as none of the services performed by the architect or engineer involve any of the services required to be performed by a contractor, unless, with regard to those services, the architect or engineer is also licensed as a contractor.
Sample Flowchart: Soliciting Const. Mgmt. Services for Projects - Other than Correctional or School Const.

Selects

County (Owner)

Architect/Engineer - designs & develops specifications for project

Construction Manager - Acts as advisor to county in the pre-design & design phase, may coordinate, schedule, & inspect work during const. phase, advises county in post const. phase

Solicits construction work via competitive sealed bids

Sealed bids received?

YES

County enters contract with Contractor or Subcontractors

NO

NO

Sample Flowchart: Soliciting Const. Mgmt. Services for Correctional & School Const. Projects

Selects

County (Owner)

Architect/Engineer - designs & develops specifications for project

Construction Manager - Acts as advisor to county in the pre-design & design phase, may coordinate, schedule, & inspect work during const. phase, advises county in post const. phase

Solicits construction work via competitive sealed bids

Sealed bids received?

YES

County enters contract with Contractor or Subcontractors

NO

Sample Flowchart: Soliciting Const. Mgmt. Services with County Employees Performing Construction Work Projects

Selects

County (Owner)

Architect/Engineer - designs & develops specifications for project

Construction Manager - Acts as advisor to county in the pre-design & design phase, may coordinate, schedule, & inspect work during const. phase, advises county in post const. phase

County solicits bids for construction equipment, materials, & supplies

Sealed bids received?

YES

County employees perform construction work on project

NO

County solicits sealed bids for const. of project - const. mgr. may submit bid to perform construction work on project (T.C.A. §§ 12-4-106; 49-2-203)

Sealed bids received?

NO

County solicits bids for const. of project - const. mgr. may submit bid to perform construction work on project (T.C.A. §§ 12-4-106; 49-2-203)

Figure 3.0 Sample Flowcharts: Soliciting Construction Management Services for County Construction Projects

County solicits bids for construction equipment, materials, & supplies

County employees perform construction work on project
Reverse Auctions—Wikipedia Encyclopedia defines a reverse auction as "a type of auction in which the roles of buyers and sellers are reversed. In an ordinary auction, buyers compete to obtain a good or service, and the price typically increases over time - the seller puts an item up for sale, multiple buyers bid for the item, and one or more of the highest bidders buy the goods at a price determined at the conclusion of the bidding. In a reverse auction, sellers compete to obtain business, and prices typically decrease over time". 

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

In 2009 the Tennessee General Assembly passed Public Chapter 399 (codified in T.C.A. §12-3-1012) to allow local governments to participate in reverse auctions. A summary of Public Chapter 399 is as follows:

"Public Chapter 399 enacts 12-3-1012 to authorize local government units to purchase goods and services through a competitive reverse auction process that allows offerors to bid on specified goods or services electronically and adjust bid pricing during a specified time period. Before initial use of a reverse auction, the local government unit must file a plan with the comptroller stating the technology to be used, whether a third party will conduct the auctions, describing the policies and procedures to be used, documenting internal controls that will ensure the integrity of the process, and stating whether additional operating resources will be needed and if so indicating prior approval of the local governing body. Items and services that cannot be purchased through a reverse auction are: construction services (except maintenance, repairs, and renovations costing less than $25,000); architectural or engineering services; new or unused motor vehicles (except school buses, garbage trucks, fire trucks, ambulances, and other special purpose vehicles); and new or unused construction equipment. The purchasing agent must solicit bids by placing a notice at least once in a newspaper of countywide circulation five days before the first day bids can be submitted. Bids may also be solicited by

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132www.wisegeek.com
6.30 **Local Government Electronic Technology Act (T.C.A. § 5-1-128)**—

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

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

6.31 **Fuel Purchase**—T.C.A. §7-51-911 authorizes fuel stabilization contracts for a maximum term of 24 months. The statute is as follows:

T.C.A. §7-51-911. Contracts for purchase of gasoline and diesel fuel—Notwithstanding any other law to the contrary, a municipality may, with the approval of its governing body, enter into a negotiated contract or contracts, including a joint contract or contracts, with other municipalities, with a bank, investment bank or other similar financial institution for the purpose of stabilizing the net expense of the municipality incurred in the purchase of gasoline, diesel or both gasoline and diesel fuel actually purchased by the municipality. Any contract entered into under this

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section must be for a term of no more than twenty-four (24) months. The authority granted under this section is in addition to, and supplemental to, any existing authority granted a municipality under any other law.
CHAPTER SEVEN:

PROCUREMENT’S RELATION TO OTHER FINANCIAL FUNCTIONS AND DEPARTMENTS
CHAPTER SEVEN

PROCUREMENT'S RELATION TO OTHER FINANCIAL FUNCTIONS AND DEPARTMENTS

7.0 Procurement’s Relation to Other Financial Functions

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

- **Accounting**—After a requisition is prepared, but before a purchase order or contract is completed, many county governments frequently encumber (set aside) a portion of the budget allocation in the accounting system to pay for the purchase. Upon approval of the invoice, payments are made and recorded in the accounting system.\(^{134}\)

- **Budgeting**—Budget development depends on good estimates of the costs and timing for the goods and services. Procurement planning and scheduling should go hand in hand with budget development.\(^{135}\)

- **Materials Management**—When goods are received by a county department, they are received at a designated department or central warehouse (if the county has a central warehouse). The receiving report (if used) is then forwarded to purchasing, central finance, or any other departments needing to know that the material has been received. Good inventory management and buying practices (i.e., re-ordering goods) enhance the efficiency of any purchasing system. Poor inventory management and buying practices (i.e., re-ordering goods) waste the gains of an efficient purchasing system.\(^{136}\)

7.1 Procurement's Relation to Other Departments—The purchasing function is a service. The purchasing department in a county with

\(^{134}\) Watt, 20.

\(^{135}\) ibid, 20.

\(^{136}\) ibid, 20.
centralized finance/purchasing system is a service agency for all other departments in the county. The purchasing department supplies the purchasing needs of all departments as prescribed by a general law of local application (CFMS of 1981 or County Purchasing Law of 1957) or private act. In performing this function the purchasing department is charged with optimizing the quality, service, and price in the purchase of goods and services. The purchasing department is in constant contact with other departments, and cooperation and mutual confidence is absolutely essential. The purchasing department should be knowledgeable of and must be in understanding with the particular requirements of the user departments (departments requesting goods or services), material and equipment needs, and must exercise tact, discretion, and diplomacy to establish harmonious relations with the other departments.\textsuperscript{137}

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

CHAPTER EIGHT:
ETHICS IN PURCHASING
CHAPTER EIGHT

ETHICS IN PURCHASING—PRINCIPLES AND STANDARDS

8.0 Ethics—County officials, department heads, and employees hold a public trust which obligates them, in a special way, to honesty and integrity in fulfilling the responsibilities of the position to which they were elected or appointed. Paramount in that trust is the principle that public office—whether elected or appointed—may not be used for personal gain or private advantage.

Basic to county or any public procurement is the ethical, accountable, responsible, and fully documentable actions of its officers and employees. The behavior of county purchasing personnel (and other people involved in the procurement process) must be above reproach. Everyone who deals with the purchasing department should know that they are being treated fairly and impartially. Public employees must discharge their duties evenhandedly so as to assure fair competitive access to governmental procurement by reasonable contractors. Furthermore, they should conduct themselves in such a manner as to foster public confidence in the integrity of the county’s purchasing organization.

What are ethics? Ethics are the system of moral principles, rules of conduct, and values that we learn and create throughout our lives. Purchasing ethics are “moral principles or code to be respected and followed by purchasing personnel.” Ethics prohibit breach of public trust by any attempt to realize personal gain by a public employee through conduct inconsistent with the proper discharge of the employee’s duties.” Could ethics be as simple as knowing and doing what is right?

A code of ethics may be defined as “written guidelines within which judgements and considerations of professional ethics and behavior should be made for all elected, appointed officials, and employees of a

139 Advanced Public Procurement, 5.
140 The Dictionary of Purchasing Terms, 24.
141 Advanced Public Procurement, 5.
jurisdiction.” Any code of ethics should serve as a yardstick by which the conduct of all who serve the public can be measured. The National Institute for Governmental Purchasing (NIGP) encourages every member employed by any public sector procurement organization to adhere to its code of ethics and affirm that he or she

- *Is governed by the highest ideals of honor and integrity in all public and personal relationships, in order to merit the respect and inspire the confidence of the organization and the public being served.*

- *Believes that personal aggrandizement or personal profit obtained through misuse of public or personal relationships is dishonest and not tolerable.*

- *Identifies and eliminates participation of any individual in operational situations where a conflict of interest may be involved.*

- *Believes that members of the institute and its staff should at no time or under any circumstances, accept directly or indirectly, gifts, gratuities, or other things of value from suppliers.*

The Institute for Supply Management (ISM)—previously the National Association of Purchasing Management (NAPM) - includes the following in its *Principles and Standards of Purchasing Practice:* 

- *To consider, first, the interests of his company in all transactions and to carry out and believe in its established practices.*

- *To buy without prejudice, seeking to obtain the maximum ultimate value for each tax dollar of expenditure.*

- *To subscribe to and work for honesty and truth in buying and selling, and to denounce all forms and manifestations of*

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142 *Advanced Public Procurement*, 6.

143 ibid, 6.

144 Harney, 14.


146 Harney, 14.
Comprehensive Governmental Ethics Reform Act—In 2006 the Comprehensive Governmental Ethics Reform Act was passed by the Tennessee General Assembly. This Act, codified at T.C.A. § 8-17-101 et seq., mandates that governing bodies of counties and municipalities adopt local ethical standards by June 30, 2007. The standards should relate to regulations dealing with disclosure and/or limits on gifts and the disclosure of conflict of interests. The standards do not include personnel, employment or operational regulations of local government offices. Standards apply broadly to include boards, commissions, authorities, corporations or other instrumentalities of a county. The University of Tennessee County Technical Assistance Service (CTAS) and Municipal Technical Advisory Service (MTAS) are directed to draft and distribute model policies to local governments to provide guidance and direction. Policies adopted by a local government are filed with the state ethics commission, or, in the alternative, the local government files a statement that it has adopted a CTAS or MTAS model policy. Enforcement of the new standards remains as provided under current law. Failure to adopt standards by a local governing body subjects its members to ouster. The CTAS model ethics policy maybe viewed and printed by going to the CTAS Web site (http://www.ctas.utk.edu/). The CTAS model ethics policy is also shown in Appendix H.

8.1 Financial Conflicts of Interest

General Law. The basic conflict of interest provision of state law applies in all counties and all departments of the county. This statute prohibits county officials and employees who are involved in purchasing or supervision of contracts from having a financial interest in any contract, purchase or work. This conflict of interest statute, found at T.C.A. § 12-4-101, states in pertinent part:

(a) It is unlawful for any officer, committeeperson, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility districts, human resource agency, or other political subdivision created by statute shall or may be interested, to be directly interested in any such contract. "Directly interested" means any contract with the official personally or with any business in which

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the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling interest" includes the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation....

(b) It is unlawful for any officer, committeeperson, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges such officer’s interest. "Indirectly interested" means any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county....

This statute prohibits conflicts of interest only when the official or employee has a direct financial interest and will be voting for, overlooking, letting out, or in some manner superintending the work or contract. The penalty for violation of this statute is forfeiture of all compensation paid under the contract, dismissal from office, and ineligibility for the same or similar office for 10 years (T.C.A. § 12-4-102).

The disclosure of indirect interests is required by the statute, which calls for "public acknowledgment" of such interests. What is necessary for public acknowledgment is unclear, especially in the context of an official acting independently, as opposed to a member of the county legislative body announcing at a regular meeting that the member has an indirect interest prior to a vote.

Other Statutory Conflict of Interest Provisions. The County Purchasing Law of 1957 and the County Financial Management System of 1981 both contain conflict of interest provisions. These are optional general laws which may or may not be in effect in a particular county.

The County Financial Management System of 1981 contains the most stringent conflict of interest provisions. This statute, found at T.C.A. § 5-21-121, provides as follows:

(a) The director, purchasing agent, members of the committee, members of the county legislative body, or other officials, employees, or members of the board of education or highway commission shall not be financially interested or have any personal beneficial interest, either directly or indirectly, in the purchase of
any supplies, materials or equipment for the county.

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

The broad language of this statute prohibits county officials, officers and employees from having any interest in any purchases or contracts made by any department of the county, regardless of whether the interested person has any authority over the purchasing decision.

A similar situation holds true in those counties under the County Purchasing Law of 1957, but the prohibition does not include county employees. The conflict of interest statute contained in the County Purchasing Law of 1957, found at T.C.A. § 5-14-114, provides as follows:

(a) Neither the county purchasing agent, nor members of the county purchasing commission, nor members of the county legislative body, nor other officials of the county, shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any supplies, materials, equipment or contractual services used by or furnished to any department or agency of the county government.

(b) Nor shall any such persons accept or receive, directly or indirectly, from any person, firm, or corporation to which any contract or purchase order may be awarded, by rebate, gift or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation.

The County Uniform Highway Law also contains a conflict of interest provision which broadly prohibits county legislative body members, the chief administrative officer of the highway department, county highway commissioner(s), and employees of the county road department from contracting with the county highway department. This statute is found at T.C.A. § 54-7-203, and provides as follows:

(a) Neither the chief administrative officer, county highway commissioner, member of the county governing body nor any employee of the county road department shall be financially
interested in or have any personal interest, either directly or indirectly, in the purchase of any supplies, machinery, materials, or equipment for the department or system of roads for the county, nor in any firm, corporation, partnership, association or individual selling or furnishing such machinery, equipment, supplies and materials.

(b) A violation of this section constitutes official misconduct and is a Class C misdemeanor and is grounds for removal from office.

A conflict of interest statute also appears in Title 49 of the Tennessee Code Annotated governing county departments of education. This statute is found at T.C.A. § 49-6-2003, and it provides as follows:

(a) It is unlawful for any teacher, supervisor, commissioner, director of schools, member of a board of education or other school officer in the public schools to have any pecuniary interest, directly or indirectly, in supplying books, maps, school furniture and/or apparatus to the public schools of the state, or to act as agent for any author, publisher, bookseller or dealer in such school furniture or apparatus on promise of reward for such person’s influence in recommending or procuring the use of any book, map, school apparatus or furniture of any kind, in any public school; provided, that nothing in this section shall be construed to include authors of books.

(b) Nothing in this section shall preclude a spouse or family member of a principal, teacher or other school administrative employee from participating in business transactions with the school system where a sealed competitive bid system is used; provided, that the principal, teacher or other school administrative employee does not have discretion in the selection of bids or specifications.

Conflicts Regarding Purchases of Surplus County Property. In addition to conflicts of interest that may arise when a county official or employee sells something to the county, conflicts of interest can arise in the context of the sale of surplus county property. Generally, county officials and employees are prohibited from purchasing surplus county property unless the property is being sold by public auction or by competitive sealed bid. The relevant statute, T.C.A. § 5-1-125, provides as follows:

(a) It is hereby declared unlawful for any county official or employee to purchase from the county any property declared to be
surplus by the county except by bid at public auction or competitive
sealed bid during the tenure of such person's office or employment,
or for six (6) months thereafter.

(b) A purchaser who violates the provisions of this section commits
a Class A misdemeanor.
CHAPTER NINE:

TRENDS IN COUNTY PURCHASING
CHAPTER NINE

TRENDS IN COUNTY PURCHASING

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

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

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

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

In the article *Purchasing Cards Come of Age: A Survey of State and Local Governments* published by Government Finance Review in August 2002, the authors state that procurement card spending by state and local governments more than doubled between 1998 and 2001. Furthermore, the survey expected procurement card spending to grow 92 percent over the next two years, driving up procurement card spending from 4 percent to 7 percent of total city/county spending by 2003 (based

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

- **Electronic Procurement**—With the passage of the State and Local Purchasing Act of 1999, county governments may distribute solicitations and receive bids, proposals, and other offers electronically, but cannot require small or minority owned businesses to receive or respond electronically (T.C.A. § 12-3-704). This law also helps to ensure that state agencies and local governments are enabled to apply the best available technology for procurement by creating a standing advisory committee to monitor all initiatives related to the use of the internet for purchasing by state agencies and local governments and to advise the General Assembly of needed changes in the law (T.C.A. § 12-3-1101).

County government purchasing professionals should understand this relatively new technology available to county governments. The passage of the State and Local Purchasing Act of 1999 will enable counties to stay abreast of evolving business practices and cost-cutting technology.

- **Green Procurement**—“Green procurement” seeks to reduce the environmental impacts of governmental operations and promote environmental stewardship by incorporating environmental performance considerations in the procurement and disposal of equipment, supplies, and materials (e.g., purchasing recycled products, purchasing energy efficient equipment, etc.). Counties continue to look for ways to reduce the volume of waste products that are placed in their landfills or transfer stations, and strive to ensure that their citizens have clean plentiful water. Integrating environmental considerations on the procurement, use and disposal of products will continue to be a trend for county governments.

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149 *Purchasing Cards Come of Age: A Survey of State and Local Governments*, 9.

150 *Purchasing Card Usage in Counties*, 1.

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

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

DOLLAR THRESHOLD IN COUNTIES
<table>
<thead>
<tr>
<th>Purchasing Law</th>
<th>Formal Bids</th>
<th>Informal Bids</th>
<th>Statute</th>
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</thead>
<tbody>
<tr>
<td>County Purchasing Law of 1983</td>
<td>Public advertising &amp; competitive bidding for purchases of $10,000 &amp; over. CLB authorized to lower dollar amounts of competitive bidding. This act does not apply to counties under local option general laws or those with private acts if the private act provides for advertising &amp; competitive bidding in excess of $10,000 or a lesser amount established by private act.</td>
<td>Any purchase costing less than $10,000 may be made without competitive bids &amp; public advertisement, but whenever possible be based on three (3) competitive bids.</td>
<td>Formal Bids: 5-14-204  Informal Bids: 5-14-205 CLB Authorized to Lower Dollar Limit Amt: 5-14-206</td>
</tr>
<tr>
<td>CFMS of 1981</td>
<td>The finance committee authorizes the dollar limits for competitive bids but not to exceed amount authorized by state law for the highway &amp; education departments or other amounts established by law.</td>
<td></td>
<td>5-21-120 (a)</td>
</tr>
<tr>
<td>County Purchasing Law of 1957</td>
<td>If the amount of the expenditure or sale is estimated to exceed $500, sealed bids shall be solicited, unless the CLB by resolution establishes a higher amount not to exceed $10,000.</td>
<td>All purchases or sales not requiring bid solicitation may be made without competitive bids &amp; public advertisement, but whenever possible be based on three (3) competitive bids.</td>
<td>Formal Bids: 5-14-108(c)(1) Informal Bids: 5-14-108(d)(1)</td>
</tr>
<tr>
<td>County Uniform Highway Law (CUHL)</td>
<td>Public advertising &amp; competitive bidding for purchases of $10,000 &amp; over except for repair of heavy road building machinery or other heavy equipment or emergencies. CLB cannot lower amount below $10,000.</td>
<td>Any purchase costing less than $10,000 may be made without competitive bids &amp; public advertisement, but whenever possible be based on three (3) competitive bids.</td>
<td>Formal Bids: 54-7-113 Informal Bids: 54-7-113</td>
</tr>
<tr>
<td>Education</td>
<td>Public advertising &amp; competitive bidding for purchases of $10,000 &amp; over except for emergencies. Contracts for const. or additions of existing bldgs. in excess of $10,000 made by competitive bids with at least 10 days advance public notice.</td>
<td>Any purchase costing less than $10,000 may be made without competitive bids &amp; public advertisement, but whenever possible be based on three (3) competitive bids.</td>
<td>Formal Bids 49-2-203(a)(4)(A) Informal Bids:49-2-203</td>
</tr>
<tr>
<td>Counties over 150,000</td>
<td>Competitive sealed bids or proposals for non-emergency or non-propriety purchases for $10,000 and above. These co’s may retain their present competitive bidding conditions or establish different limits by private act or charter provision.</td>
<td>Authorized to make purchases under $10,000 without competitive bids.</td>
<td>12-3-1007</td>
</tr>
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</table>
CHAPTER ELEVEN:

COUNTY PURCHASING
CHAPTER ELEVEN: COUNTY PURCHASING

11.0 County Purchasing vs. Private Sector Purchasing—The procurement of goods and services is a key function in any county government organization. Virtually everything a county department does depends, to a greater or lesser degree, upon “things.” Every county department uses supplies, equipment, and furniture. Every employee gets a paycheck someone must procure blank checks, the computer system, the toner and paper for the printer, etc. Highway departments need vehicles and equipment, maintenance departments needs building materials and janitorial supplies, and the list goes on and on. In short, the purchasing function, directly or indirectly, touches every aspect of county operations.

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

County purchasing is also different from purchasing in the private sector. While some of the procurement techniques are fundamentally the same for both (a county with a centralized purchasing system is very similar to private sector purchasing), the significant difference is that public sector purchases are made with taxpayer dollars, not individual profits.\(^{152}\) Thus, county procurement is subject to tighter regulations, more intensive scrutiny, and a greater degree of accountability than private sector purchasing (See Appendix F for each county’s purchasing law or private act). Here are some similarities and differences between the private sector purchasing and county purchasing:

**Similarities**

- Counties and private sector organizations attempt to obtain the best possible price for the goods and services at the desired quality level that meets the organization’s needs.

- Counties and private sector organizations strive to make sure there is a

continuing supply for goods and services.

• Counties and private sector organizations seek to have goods and services available where and when they are needed.

• Counties and private sector organizations adhere to high ethical standards for those involved in the purchasing process.

• Many of the same fundamental purchasing principles and techniques are followed; e.g., inventory and warehouse management, transportation of goods, cost and service basis of award, etc.

• Many counties and private sector organizations adhere to professional training for their purchasing personnel.

Differences

• Purchases by county governments are made from taxpayer dollars instead of corporate or individual profits.

• County purchasing records are open records subject to public access.

• The process of purchasing in county government is structured, and is subject to applicable general laws, general laws of local application, private acts, and local purchasing policies.

• There is a statutory dollar threshold requirement for formal sealed bids/proposals for county governments (see Chapter Ten).

• County governments are required to publicly advertise for formal bids exceeding the dollar threshold requirement.

• Sealed bids and proposals exceeding the dollar threshold limit require a public bid opening.

• Responsible bidders must be given fair opportunity to compete for the county’s business.

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

Before delving into the various laws that govern purchasing in county governments, we must define “centralization.” What does it mean for county purchasing to be centralized? In basic terms, centralized purchasing simply describes the type of organization in which there is some form of centralized control over the purchasing function.\(^{153}\)

The Council of State Governments lists some of the benefits of centralization, not the least of which is cost savings.\(^{154}\)

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

Some major benefits of centralized procurement include

- Cost savings—e.g., volume buys.
- Effective control—authority for all procurement is placed in a single entity which establishes uniform procedures and oversight.
- Utilization of a professional purchasing staff to support the many agencies and departments in the county.
- Allowing program/agency personnel to concentrate on their areas of responsibility and expertise while allowing professional purchasing staff to make purchases.\(^{155}\)
- Allowing the purchasing office and its personnel to accumulate a solid


\(^{154}\) McCue, 23.

\(^{155}\) Wellman, 1.
foundation of knowledge and experience about purchasing, marketing trends, prices, and vendors. This knowledge and expertise saves the county money on prices and allows a more efficient purchasing process.\footnote{Purchasing Manual Policies, 10.}

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

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

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

11.2 \textbf{Centralized Purchasing under the County Purchasing Law of 1957}—The County Purchasing Law of 1957 is one of the two optional general law statutes of local application that a county may adopt to centralize the county’s purchasing functions. The County Purchasing Law of 1957

- Is codified in T.C.A. §§ 5-14-101 \textit{et seq.}

- May be adopted by the majority of voters in a referendum or by two-thirds vote of the county legislative body (T.C.A. § 5-14-102).

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

**The Fiscal Control Acts of 1957**

- County Fiscal Procedures Law of 1957 (Accounting)
- County Budgeting Law of 1957 (Budgeting)
- County Purchasing Law of 1957 (Purchasing)

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

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

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

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

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

- **Surety Bond**—The person appointed as purchasing agent must have a corporate surety bond of not less than $10,000 nor more than $25,000. The premium for the bond is paid from the county general fund (T.C.A. § 5-14-103(c)).
Compensation of Purchasing Agent—The salary of the purchasing agent is set annually by the county legislative body. It cannot be in excess of amounts paid to other county officials under T.C.A. § § 8-24-101 and 8-24-102 (T.C.A. § 5-14-103).

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

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

Duties of the Purchasing Agent

• Purchase all supplies, materials, equipment, and contractual services;

• Arrange for rental of all machinery, buildings, and equipment;

• Transfer materials, supplies, and equipment between county departments; and

• Supervise the central storeroom (T.C.A. § 5-14-105).

• Classify the requirements of the county government for supplies, materials, and equipment;

• Adopt as standards the smallest number of quantities, sizes, and varieties of such supplies, materials, and equipment consistent with the successful operation of the county government; and

• Prepare, adopt and promulgate written specifications describing such standards. In preparation and revision of such standards the purchasing agent shall seek advise, assistance and cooperation of the county departments and agencies to ascertain their precise requirements (T.C.A. § 5-14-112).

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

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

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

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

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

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

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

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

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

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

**Competitive Bidding.** The rules concerning bidding are set out in T.C.A. § 5-14-108. The general rule is that competitive bids are required for all purchases of and contracts for supplies, materials, equipment, and contractual services; all contracts for the lease or rental of equipment; and all sales of county-owned property which is surplus, obsolete, or unusable. All sales must be made to the highest responsible bidder (T.C.A. § 5-14-108(d)(3)). All purchases and contracts shall be awarded to the lowest and best bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the county government, and the delivery terms. Any and all bids may be rejected for good cause (T.C.A. § 5-14-108(f)). Bids on purchases are to be based on such standards as are adopted by the county purchasing agent and approved by the county purchasing commission (T.C.A. § 5-14-108(e)).

**Bid Thresholds—**Sealed bids must be solicited after public advertisement if the amount of the expenditure or sale is expected to exceed $500 (but the county legislative body, by resolution, may raise this to any amount not exceeding $10,000). Requisitions for items estimated to cost an amount requiring public notice and sealed bids cannot be split to avoid this requirement (T.C.A. § 5-14-108(d)(2)).

**Informal Bids—**Purchases or sales that are below the county’s bid threshold may be made without public advertisement and sealed bids, but should be based on at least three competitive bids whenever possible (T.C.A. § 5-14-108(c)(1) and (d)).

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

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

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

• Professional service contracts (legal services, auditing by certified public accountants, and similar services) are not to be based on competitive bids but instead must be awarded based on recognized competence and integrity; the county is not prohibited from interviewing eligible persons or groups to determine their capabilities.

• The county may purchase materials, supplies, commodities, and equipment from any federal, state, or local government unit or agency without conforming to the competitive bidding requirements.

• Competitive bids are not required for services for which the rate or price is fixed by a public authority authorized by law to fix such rates or prices.

• The county legislative body, by resolution, may exempt perishable commodities from sealed or competitive bidding requirements when they are purchased in the open market.

• Effective May 26, 2010, Public Chapter 974 authorizes Washington County, subject to a two-thirds vote of the county legislative body, to opt out of bidding requirements of the county purchasing law for
the purchase of group health insurance contracts for county employees and officials.

**Checks and Balances.** This act contains the following provisions which are designed to ensure the integrity of the purchasing system:

- Written requisitions are required before any purchase can be made. Requisitions must be signed by the head of the department, office, or agency requiring the articles or services. Original requisitions must be kept in the office of the purchasing agent (T.C.A. § 5-14-108(k)).

- Except for emergencies, purchases and contracts are not awarded unless first certified by the director of accounts and budgets or other county official or employee in charge of the central accounting records. This certification insures that the encumbered balance in the appropriation is sufficient to cover the expense (T.C.A. § 5-14-109).

- Each purchase order or contract issued or executed must be evidenced by a written order signed by the purchasing agent (T.C.A. § 5-14-111).

- The county is liable for the payment of all purchases made in accordance with the provisions of this act, but shall not be liable for the payment of purchases made contrary to its provisions (T.C.A. § 5-14-113).

**Additional Statutory Provisions.** In addition to the requirements set out above, the County Purchasing Law of 1957 contains specific provisions which must be followed when making purchases on behalf of the county. These provisions, set out in T.C.A. § 5-14-108, are as follows:

- All bids, purchase orders, and other documents pertaining to the award of contracts must be retained for five years (T.C.A. § 5-14-108(g)).

- If all bids received are for the same unit price or total amount, the purchasing agent may reject all bids and purchase the supplies, materials, equipment or contractual services in the open market as long as the price paid does not exceed the bid price (T.C.A. § 5-14-108(h)).

- All contracts must be approved as to form by the county attorney, and the original of long-term contracts must be filed with the county clerk (T.C.A. § 5-14-108(j)).

- Purchases cannot be made from anyone whose business tax or license is delinquent (T.C.A. § 5-14-108(l)).

- Commitments for the purchase of materials, supplies equipment and
contractual services which extend beyond the end of the current fiscal year must be authorized by resolution of the county legislative body (T.C.A. § 5-14-108(m)).

**Conflict of Interest.** This act contains a broad conflict of interest provision that prohibits the purchasing agent, members of the purchasing commission, county legislative body, and other officials of the county from having a financial interest, or having any personal beneficial interest, either directly or indirectly, in any contract or purchase order (T.C.A. § 5-14-114).

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

- Is found in T.C.A. §§ 5-21-101 through 5-21-129.
- Provides for the consolidation of financial functions and establishment of a financial management system for all county funds operated through the county trustee.
- Creates a department of finance to administer the finances of the county and all funds handled by the trustee, in conformance with generally accepted principles of governmental accounting and rules and regulations established by the state comptroller of the treasury, state commissioner of education and state law (T.C.A. § 5-21-103).
- Allows the county to choose between two organizational options for purchasing. These organizational options are displayed in Figure 2.0, which appears on the following page.
Organization Options - “CFMS of 1981"

Option 1

1. County Legislative Body
2. Finance Committee
3. Dir. Of Finance
4. Dep. Dir. Of Finance
5. Accounting
6. Budgeting
7. Cash Mgmt.
8. Payroll
9. Purchasing

Option II (Optional Purchasing Department)

1. County Legislative Body
2. Finance Committee
3. Dir. Of Finance
4. Dep. Dir of Finance
5. Accounting
6. Budgeting
7. Cash Mgmt.
8. Payroll
9. Purchasing Agent

Figure 4.0: Organization Options for “CFMS of 1981”

- Must be installed within 13 months, beginning on July 1 of the fiscal year after its adoption (T.C.A. § 5-21-127).

- Requires approval by a two-thirds vote of the county legislative body or a majority of the voters in a referendum in order to be effective in any county (T.C.A. § 5-21-126).

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

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

- Budgeting—T.C.A §§ 5-21-110 through 5-21-114.
Payroll Account—T.C.A. § 5-21-117.

Purchasing—T.C.A. §§ 5-21-118 through 5-21-120.

Conflict of Interest/Improper Gifts—T.C.A. § 5-21-121.

Compensation of Committee Members—T.C.A. § 5-21-122.

Financial Management Committee. Under this system there is a county financial management committee. The committee consists of the county mayor, supervisor of highways, director of schools, and four (4) members elected by the county legislative body. The four appointed members need not be members of the board of commissioners (T.C.A. § 5-21-104 (a)). The financial management committee establishes and approves policies, procedures, and regulations implementing a sound and efficient financial system for administering the funds of the county (T.C.A. § 5-21-104 (b)). The county legislative body, by resolution, either may create the following committees or it may authorize the financial management committee to assume functions of any or all of the following special committees: (1) budget committee, (2) investment committee, and (3) purchasing committee (T.C.A. §§ 5-21-104 (b) and 5-21-105).

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

Appointment—The finance director is appointed by the county financial management committee (T.C.A. § 5-21-106).

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

Surety Bond—The finance director must have a blanket bond in the amount not less than $50,000 for the faithful performance of the director's duties and of the employees of the department. The premium for this bond is paid from funds appropriated to the finance department for this purpose (T.C.A. § 5-21-109).

Compensation of Director of Finance—The financial management committee establishes the compensation of the director of finance with the approval of the county legislative body T.C.A. § 5-21-106 (c)).
Personnel—The finance director is authorized to hire personnel for the finance department within the amounts provided in the budget. Written job requirements for department personnel are to be recommended by the director and approved by the financial management committee (T.C.A. § 5-21-107(d)). A person employed by the finance department is to be recommended by the finance director and approved by the financial management committee to serve as deputy director of finance. The person employed for this position performs the duties and responsibilities that are assigned by the finance director (T.C.A. § 5-21-108).

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

- Accepting requisitions by the department, agency, or official and if such supplies are not currently on hand, transmitting the requisition to the purchasing agent (T.C.A. § 5-21-119(b)(6)).

- Verifying budget appropriations before authorizing a purchase (T.C.A. § 5-21-119(b)(6)).

- Approving invoices for payment that are properly authorized and do not exceed the unencumbered balance of the allotments or appropriations against which they are chargeable (T.C.A §§ 5-21-115(b)(2) and 5-21-119(b)(6)).

- Paying invoices and obligations of the county as provided by the statutes (T.C.A. § 5-21-119(b)(6)).

- Issuing disbursement warrants for approved obligations (T.C.A. § 5-21-115(b)(3)).

- Establishing a system of preaudit of invoices, purchase orders, or other documents, including a comparison with any encumbrance document previously posted or filed authorizing the obligation (T.C.A § 5-21-115 (b)(2)).

Purchasing Under the County Financial Management System of 1981. All county purchasing is handled centrally under this act. The specific provisions regarding purchasing under the CFMS of 1981 are found in T.C.A. §§ 5-21-118 through 5-21-120.

Purchasing System. The financial management committee, with the assistance of the purchasing agent, is to establish a purchasing system for the county. The
system must provide among other procedures the following: (1) the purchasing agent shall review all contracts or purchases for biddable supplies, materials, equipment, and other needs of the county; (2) no purchase or contract can be made when the bid prices exceed the current market price for the same merchandise or service; (3) purchases and contracts must be awarded based on the lowest and best bid; and (4) specifications development shall be made by the department, agency, or official to receive the merchandise, construction or service (T.C.A § 5-21-119).

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

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

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

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

**Bid Thresholds**—The financial management committee sets the dollar limitation over which formal competitive bids are required. This amount is not to exceed the amount authorized under state law for the highway and education departments or other such amounts as established by law.

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

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

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

**Checks and Balances.** This act contains the following provisions which are designed to ensure the integrity of the purchasing system:

• The finance director must verify budget appropriations before authorizing a purchase (T.C.A § 5-21-119(b)(6)(B)).

• The finance director must establish a system of preaudit of invoices, purchase orders, or other documents, including a comparison with any encumbrance document previously posted or filed authorizing the obligation (T.C.A § 5-21-115(b)(2)).

• The finance director approves for payment only those invoices that are properly authorized and do not exceed the unencumbered balance of the
allotments or appropriations against which they are chargeable (T.C.A § 5-21-115(b)(2)).

• Before any obligation against the county can be paid or any disbursement warrant or voucher issued, a detailed invoice, receivable copy of the purchase order, or other document indicating receipt of the merchandise or service is to be approved by the head of the office, department, or agency for which the obligation was made and be filed with the finance director (T.C.A § 5-21-115(b)(1)).

• The county is liable for payment of all purchases and supplies, materials, equipment and contractual service made in accordance with the provisions of the CFMS of 1981, but is not liable for payment of such purchases made contrary to it unless such item is specifically approved by the financial management committee (T.C.A § 5-21-120(c)).

• The director of finance is required to make a report showing the condition of the budget at the end of each month and present the report to the county legislative body. Each department head, elected official, and board member is furnished copies of monthly reports for their respective departments as soon as they are available (T.C.A § 5-21-114(a)).

Conflict of Interest. This act contains a broad conflict of interest statute which prohibits the finance director, purchasing agent, members of the financial management committee, members of the county legislative body, or other officials, employees, or members of the board of education or highway commission from being financially interested or having any personal beneficial interest, either directly or indirectly, in the purchase of any supplies, materials or equipment for the county. No firm, corporation, partnership, association or individual furnishing any such supplies, materials, or equipment, may give or offer, nor may the director or purchasing agent or any assistant or employee accept or receive, directly or indirectly, from any person, firm, corporation, partnership, or association to whom any contract may be awarded, by rebate, gift, or otherwise, any money or other things of value whatsoever, or any promise, obligation, or contract for future reward or compensation (T.C.A § 5-21-121).

Penalties for Violation of the Act. Any official or employee of the county who fails or refuses to perform the duties required by this act or who otherwise fails to conform to the requirements of the act commits a Class C misdemeanor and is subject to removal from office or position (T.C.A. § 5-21-125).

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

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

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

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

- Purchases costing less than $10,000;
- Goods or services which may not be procured by competitive means because of a single source or because of a proprietary product;
- Supplies, materials or equipment needed in an emergency situation, subject to reporting requirements of the county legislative body and the county mayor;
- Leases or lease-purchase agreements requiring payments of less than $10,000 per year; and
- Fuel and fuel products purchased in the open market by governmental bodies.

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

**Purchasing Agent**—There is no mention of a purchasing agent in the County Purchasing Law of 1983.
11.7 **The County Uniform Highway Law**—The County Uniform Highway Law, at T.C.A. 54-7-113, provides a purchasing law for the county highway department when purchasing for the department is not governed by private act, County Purchasing Law of 1957, or the County Financial Management System of 1981. The purchasing provisions of the County Uniform Highway Law do not apply to Shelby, Davidson, Knox, and Hamilton counties.

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

- All purchases of $10,000 or more must be publicly advertised and competitively bid.

- Leases or lease-purchase arrangements requiring payment of $10,000 or more, or which are for 90 days or more, must be advertised and competitively bid.

- Purchases of like items which individually cost less than $10,000, but which are customarily purchased in lots of two or more, must be publicly advertised and competitively bid if the total purchase price of these items is expected to exceed $10,000 during the fiscal year.

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

- Purchases of less than $10,000 may be made in the open market without newspaper notice, but must wherever possible be based on at least three competitive bids.

- Repair of heavy road building machinery or other heavy machinery need not be bid.

- Purchases may be made without competitive bidding in actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work (but not including neglect or indifference in anticipating normal needs).

- No county road department shall be required to publicly advertise and competitively bid purchases of $10,000 or less, even if such bids are required by public or private act.

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

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

- It is the duty of the local board of education to purchase all supplies, furniture, fixtures, and material of every kind, through the executive committee (T.C.A. § 49-2-203(a)(3)).

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

**Formal Bids**—All expenditures estimated to exceed $10,000 must be made on competitive bids, which must be solicited by advertisement in a newspaper of general circulation in the county, except that the newspaper advertisement may be waived in the event of an emergency (T.C.A. § 49-2-203(a)(3)(A)).

**Informal Bids**—All purchases less than $10,000 may be made in the open market without newspaper notice, but shall whenever possible be based upon at least three competitive bids (T.C.A. § 49-2-203(a)(3)(B)).

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

**Construction Contracts**—Contracts for construction of or additions to existing school buildings in excess of $10,000 are to be made by competitive bids with
public notice at least 10 days in advance of accepting bids for the construction, and the board must award the contract to the lowest and best bidder. If no bid is within the budgetary limits set by the board for construction, the board may negotiate with the lowest and best bidder to bring the cost of construction within the funds available, with the approval of the commissioner of education (T.C.A. § 49-2-203(a)(3)(C)(i)).

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

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

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

11.9 **Chapter Summary**—One matter is abundantly clear: the laws regarding purchasing for county governments are not uniform. Counties have several options available for their purchasing operations—adopt general laws of local application (CFMS of 1981 or the County Purchasing Law of 1957), adopt a private act to centralize their purchasing functions, or remain non-centralized (sometimes referred to as decentralized) in terms of their purchasing functions and operations. This chapter discussed the following:

**County Options for Centralization of Purchasing Functions**

1. The County Purchasing Law of 1957 (optional general law of local application)

2. The County Financial Management System of 1981 (optional general law of local application)

3. Adoption of a private act to centralize purchasing

**The County Purchasing Law of 1983** (General Law)

**Other Purchasing Laws:**

- County Uniform Highway Law (highway departments)

- Purchasing Laws in County Education Departments

It is essential that each county official and department head become knowledgeable of the purchasing laws that are applicable to their county and department. Specific questions that may arise pertaining to county purchasing laws should be reviewed with the county attorney.
CHAPTER TWELVE:

PROFESSIONAL PURCHASING ORGANIZATIONS AND PUBLICATIONS
CHAPTER TWELVE

PROFESSIONAL PURCHASING ORGANIZATIONS AND PUBLICATIONS

Professional Purchasing Organizations

The National Institute of Governmental Purchasing (NIGP)
web site: http://www.nigp.org/

**NIGP Chapters in Tennessee**
- Tennessee Association of Public Purchasing (TAPP - Statewide Chapter)
- Middle Tennessee Public Purchasing Association (MTPPA)
- East Tennessee Purchasing Association (ETPA)

The Tennessee Association of Public Purchasing (TAPP)
web site: http://tappnews.com/

The National Association of State Procurement Officials (NASPO)
web site: http://www.naspo.org/

Institute for Supply Management (ISM) (Note: previously National Association of Purchasing Managers NAPM), web site: http://www.ism.ws/

East Tennessee Purchasing Association (ETPA),
web site: http://www.etpanews.org

Middle Tennessee Public Purchasing Association (MTPPA)
web site: http://mtppa.net

Publication

**Tennessee Purchasing Laws Annotated**

Published by
Lexis Publishing
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Albany, N.Y. 12204-2694
Phone: 1-800-542-0957  web site: www.lexis.com

The Tennessee Purchasing Laws Annotated is a compilation of the purchasing laws for state, county, and municipal governments. The publication is updated annually after the general assembly session is completed.
CHAPTER THIRTEEN:
CLOSING REMARKS
CHAPTER THIRTEEN

CLOSING REMARKS

Purchasing is a service function that is vital to the efficient operation of county government. The purchases of goods and services account for the second largest expenditure of taxpayer dollars in county government. Spending taxpayers’ money requires that all goods and services purchased by county government must be purchased in a fair and equitable manner. Responsible bidders must be given a fair opportunity to compete for the county’s business. We are absolutely sure that it is imperative that those who participate in the procurement process perform with a high standard of professional ethics.

A reader of this purchasing manual is cognizant of the fact the General Assembly passed legislation allowing counties to adopt general laws of local application to centralize their financial and purchasing functions—the Fiscal Control Acts of 1957 (which includes the Purchasing Law of 1957) and the County Financial Management System of 1981. The reader of this purchasing manual is also aware that since the General Assembly passed these acts, the trend in the last few decades is for counties to centralize their financial and purchasing functions by adopting either of these acts.

This manual cites that there are some similarities and differences between county purchasing and private sector purchasing. In Tennessee, all county government purchases must be made within the legal framework provided in the statutes. We also are aware that adhering to the numerous purchasing laws, and the separate county’s local policies and procedures (and possibly assisting in the requesting department’s development of a complicated specification), can make the county purchasing process a complex function. We have discerning knowledge that automation of the purchasing operations has changed the way the county’s purchasing department provides the day-to-day services to its customers. Lastly, we are utterly confident that sound purchasing practices are indispensable to good governance.

Conclusion

When we began researching and developing ideas for topics to be written for the county purchasing course manual, we recognized that the subscriber to this course may or may not be a purchasing professional. Thus, we undertook to furnish the reader with basic information concerning various purchasing topics that would cultivate his/her knowledge of county purchasing. The course manual began with the legal framework for purchasing and covered such fundamental
topics as the procurement process, the requisition process, the purchase order, specification development, organization of the ITB, emergency purchases, disposition of surplus property, county purchasing records disposition, dollar limit thresholds, ethics in purchasing, and finished with county purchasing. This course sought to enlighten the participant to the pragmatic (and often systematic) “nuts-and-bolts” realm of county purchasing. This intent remains our primary objective for the county purchasing course.
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BIBLIOGRAPHY


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www. wisegeek.com, February 2010


APPENDIX:

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Appendix B—Sample Receiving Report Form
Appendix C—Sample Record of Bid Solicitation Form
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  2. Sample Resolution Authorizing the Use of Purchasing Cards and Approving General Policies Governing Their Use
  3. Sample General Policies Governing the Use of Procurement Cards
  4. Sample Cardholder Agreement
  5. A Sample Letter to be Sent to Any Retailer Who May Have Been Issuing Unauthorized Purchasing Cards to Employees of Your County
Appendix E—Sample Policies and Forms for Purchasing at Public Auctions
Appendix F—Table of Purchasing Laws
Appendix G—Drug Free Workplace Affidavit
Appendix H—Model Ethics Policy Under The Ethics Reform Act of 2006
“SAMPLE” REQUISITION FOR PURCHASE

Appendix A

____________, COUNTY, TENNESSEE

Original Copy to___________Office  Requisition No. A000

Department: ___________________  Date Issued: ____________

Office/Division: ___________________  Deliver by: ____________

Deliver to: ________________

Names and Addresses of Suggested Vendors:

1. ___________________  2. ___________________  3. ___________________

________________________________  ____________________  ____________________

To the county purchasing agent: Please purchase or supply as specified herein the following goods or services:

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Acct. No.</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Extended Price</th>
<th>Vendor</th>
<th>P.O #</th>
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</tbody>
</table>

Total $ ________________

Requested By: ________________  Department Head Approval: ________________

Date: ________________  Date: ________________
Appendix B

“SAMPLE” MATERIAL RECEIVING REPORT FORM

Receiving Report

County of ____________________, Tennessee

Department:____________________

Purchase Order No:______________
Requisition No:______________

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Extension</th>
</tr>
</thead>
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</table>

Freight Charge:______________

Total:______________

“I hereby certify that the material or services has been received, inspected and found satisfactory for the purpose for which they were purchased:"

__________________________  ____________________________
Date Received  Inspector
Appendix C  “Sample” Record of Bid Solicitation Form

Fund  Function  Object Code

Type of Solicitation: Formal  Informal

Date Bids Requested  Opened

Requisitioned By  Dept.

Item(s) Requested:

Vendors Solicited  Bid Price

Contract Awarded To:

Purchase Order #: 

Basis for Awarding Contract:

Approved:  Date:
Executive Director’s Memo
February 7, 2001

PURCHASING CARD USAGE IN COUNTIES

In recent months, CTAS has received a number of inquiries about the use of purchasing (credit) cards in counties. It seems that at least one large retail establishment has stopped accepting purchase orders and instead has been distributing purchasing cards to any county employees who make purchases on behalf of the county, which has prompted several counties to look into this issue.

Although there is no state law on this subject, sound accounting practices require that some controls on the usage of such cards be in place prior to their use in counties. The method of adopting these controls will depend on the purchasing laws under which your county operates, as well as the established procedures your county follows relative to purchasing.

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

1. A sample resolution to be passed by the county legislative body authorizing the use of purchasing cards and approving general policies governing their usage.
2. Sample general policies governing the use of purchasing cards.
3. A sample cardholder agreement which should be signed by any county official or employee to whom a purchasing card is issued.
4. A sample letter to be sent to any retailer who may have been issuing unauthorized purchasing cards to employees of your county.

These four sample documents are attached. As you can see, the existence of a “purchasing agent” is assumed in the examples. If your county does not have a purchasing agent, the documents will need modification to reflect the purchasing framework in your county. These documents are to be used ONLY AS GUIDES for developing appropriate documents tailored to the specific needs of each county. We hope they will be useful to you in developing your own purchasing card program.

If you have questions, please contact your CTAS county government consultant.
RESOLUTION NO. _____

TO AUTHORIZE THE USE OF PURCHASING CARDS (CREDIT CARDS) FOR SMALL PURCHASES BY VOLUNTEER COUNTY, AND TO ESTABLISH WRITTEN PROCEDURES GOVERNING THE USE OF SUCH CARDS

WHEREAS, it appears that the implementation of a purchasing card program on behalf of Volunteer County would increase the efficiency of the Volunteer County Purchasing Department and provide a more efficient and cost-effective alternative for making supply-type purchases below the County’s bid amount; and

WHEREAS, the county legislative body desires to approve the use of purchasing cards for small purchases within established guidelines;

NOW, THEREFORE, BE IT RESOLVED by the county legislative body of Volunteer County, meeting in __________ session at ______________, Tennessee, on the _____ day of __________, 20___, that:

Section 1. The use of purchasing cards (credit cards) by Volunteer County is hereby approved.

Section 2. The Volunteer County Purchasing Card Policy governing the use of purchasing cards is attached hereto as EXHIBIT A and is hereby adopted.

Section 3. The use of purchasing cards shall be governed by the Purchasing Card Policy hereby adopted, together with such rules and regulations the Purchasing Agent may adopt pursuant to such Policy. The Volunteer County Purchasing Agent is hereby authorized and directed to adopt policies limiting purchases made with purchasing cards to ensure that purchases made with such cards do not exceed the current monetary limit beyond which sealed competitive bids are required.

BE IT FURTHER RESOLVED, that a copy of this Resolution, together with EXHIBIT A hereto, be distributed by the County Clerk to each county official and department head in Volunteer County.

This resolution shall take effect upon adoption, the public welfare requiring it.

APPROVED: ATTEST:

___________________________________  ___________________________________
County Executive County Clerk
[EXHIBIT A to Resolution]

VOLUNTEER COUNTY
PURCHASING CARD POLICY

The use of purchasing cards is strictly limited to Volunteer County officials and employees. All purchasing cards must be approved in advance by the Volunteer County Purchasing Agent. Volunteer County officials and employees must receive prior approval to use a purchasing card and must sign a Cardholder Agreement before using a Volunteer County purchasing card.

Applications for purchasing cards must be submitted to the Volunteer County Purchasing Agent. All applications for issuance of a Volunteer County purchasing card must be signed by the appropriate county official or department head under whose direction the applicant works.

All purchasing cards will be issued in the name of the individual employee or official who is responsible for the use of the card. The card will also have the County’s name and tax exempt number embossed on the card. The official or employee whose name appears on the card is responsible for ensuring that all purchases made using that card are in accordance with all policies, rules and regulations of Volunteer County.

The person whose name appears on the card may be held personally liable for any unauthorized purchases made with the card, including purchases exceeding the purchasing limits.

**Single purchases shall not exceed One Thousand Dollars ($1,000.00).** Monthly purchasing card total purchases shall not exceed $______________ per card and $______________ per department.

Each county official or department head will be responsible for ensuring that the purchasing limit is not exceeded in any one month, or for any single purchase, with respect to all purchases using purchasing cards issued to the official or department head and to any employees of that office or department.

All purchases will be reconciled monthly by the person whose name appears on the card. Monthly reconciliations for all cards issued to the office or department, with the appropriate county official or department head’s signature, will be submitted monthly to the Purchasing Agent.

The Volunteer County Purchasing Agent shall adopt such rules and regulations as the Purchasing Agent deems necessary to implement this Policy.

Purchasing cards which are used in any manner inconsistent with this Policy are subject to immediate revocation by the Volunteer County Purchasing Agent.
VOLUNTEER COUNTY PURCHASING CARD PROGRAM

CARDHOLDER AGREEMENT

As part of your employment with Volunteer County, you are being entrusted with a purchasing card to enable you
to make purchases on behalf of Volunteer County. You are authorized to use this card ONLY upon the terms and
conditions stated below. Sign this agreement only after reading and agreeing to each of the numbered statements
below.

1 – This card is issued in my name, and I am the only person authorized to use this card. I will not allow anyone
else to use the card without written authorization from ________________.

2 – I understand that I will be making financial commitments on behalf of Volunteer County and I will strive
to obtain the best value for Volunteer County.

3 – I have read and will follow the Purchasing Card Policy for Volunteer County.

4 – Under no circumstances will I allow this card to be used to make personal purchases, either for myself or
others. I understand that personal purchases using this card may be considered misappropriation of
Volunteer County funds. If this card is used to make personal purchases, I agree that I am financially
responsible for payment of those charges and any fees related to the collection of those charges.

5 – This card is the property of ________________ and Volunteer County.

6 – If the card is lost or stolen, I will notify ________________ immediately by telephone at (___)_______, and I will also notify ________________, the Volunteer County
____________, immediately by telephone at (___)_______.

7 – I will obtain receipts and maintain detailed information for each card transaction. It is my responsibility to
match receipts to each transaction.

8 – I will receive a monthly statement reporting all purchasing activity with the card during the statement period.
I will review the statement for accuracy and sign the statement to certify that all charges are appropriate and
in conformance with Volunteer County policies and procedures. I will be responsible for resolving any
discrepancies on the statement by contacting the merchant/supplier.

9 – I understand that I may be subject to disciplinary action, up to and including termination of my employment
with Volunteer County, for any violation of this Agreement.

I HAVE READ AND UNDERSTAND THE FOREGOING, AND I AGREE TO THESE TERMS AND
CONDITIONS.

Employee Name (print): ________________________________ Department: ________________

Employee Signature: ________________________________ Date: ____________________

[DATE]
Attention: Accounting Department

Re: Unauthorized purchasing cards

Please be advised that Volunteer County will not be responsible for payment of invoices for purchases made using purchasing cards issued in the name of Volunteer County without prior written authorization from this office. We are returning herewith [number] cards which were issued to employees of Volunteer County without proper authorization. If other cards have been issued without our written authorization, please deactivate those cards immediately.

We appreciate your cooperation in this matter. Should you have any questions, please contact the undersigned at (____) _____________.

Sincerely,

_______________________________
Director of Purchasing
Volunteer County
RESOLUTION NO. _____

TO ESTABLISH WRITTEN PROCEDURES GOVERNING PURCHASES AT PUBLICLY ADVERTISED AUCTIONS

WHEREAS, T.C.A. § 12-3-1006 authorizes counties to purchase new or secondhand articles or equipment or other materials, supplies, commodities and equipment at any publicly advertised auction without the necessity of using the public advertisement and competitive bidding process; and

WHEREAS, T.C.A. § 12-3-1006 requires the county legislative body to establish written procedures to govern purchases at public auctions;

NOW, THEREFORE, BE IT RESOLVED by the county legislative body of __________ County, meeting in session at ______________, Tennessee, on the _____ day of __________, 20___, that the following procedures are established to govern purchases at publicly advertised auctions:

1. When used herein, "purchasing agent" shall mean the person authorized under applicable law to make purchases for a county department.

2. All purchases at public auction must be initiated by the county official having responsibility for the department for which the purchase is to be made. The county official must complete a "Request for Purchase at Public Auction", the form of which is attached to this resolution as Attachment A and made a part of this resolution. A copy of the public advertisement of the auction must be attached to the form. The completed form must be approved by the purchasing agent (if different from the county official) for the department for which the purchase is to be made.

3. The county official (and the purchasing agent, if different from the county official) must certify the unencumbered balance available in the line item account from which the proposed purchase is to be taken.

4. The Request for Purchase at Public Auction must be delivered to the County Executive at least five (5) working days before the auction.

5. No tax shall be paid on any item purchased at public auction, except to the extent that no exemption is available to the county under applicable law.

6. Purchases shall be made only by county warrant or county check.

7. The auction must be conducted by an auctioneer who is licensed to conduct auctions in the State of Tennessee. Any item purchased at public auction shall be accompanied by the vendor's certification that the item is free from any liens or encumbrances.

8. The purchasing agent, or another person designated by the purchasing agent, shall act as bidder for the county at the auction. The bidder is prohibited from submitting any bid above the unencumbered balance available in the line item account from which the proposed purchase is to be taken, as certified in the Request for Purchase at Public Auction, and the total successful...
bids by the county shall not exceed such unencumbered balance. If the county is the successful bidder, the bidder must complete and sign a "Certification of Purchase at Public Auction", the form of which is attached to this resolution as Attachment B and is made a part of this resolution.

9. The Request for Purchase at Public Auction and the Certification of Purchase at Public Auction, properly completed and signed, shall be filed with the purchasing agent as soon as reasonably possible after the auction. The purchasing agent shall mail or deliver copies to the chairman of the county legislative body within a reasonable time thereafter.

10. All applicable conflict of interest laws shall apply to purchases at public auction.

BE IT FURTHER RESOLVED, that a copy of this resolution be distributed by the County Clerk to each county official and department head in __________ County.

This resolution shall take effect upon adoption, the public welfare requiring it.

APPROVED:

___________________________________
County Executive

ATTEST:

___________________________________
County Clerk
REQUEST FOR PURCHASE AT PUBLIC AUCTION

Date and place of auction:

Auction Company/Auctioneer:

After having made proper inquiry, the undersigned hereby certify that the purchase of items at the above described auction will be taken from line item account number ______________ and that the unencumbered balance available in said line item account is $____________________________ as of the date of the auction.

___________________________________ ___________________________________
County Official Purchasing Agent

TOTAL BIDS FOR ALL ITEMS TO BE PURCHASED AT AUCTION SHALL NOT EXCEED THE AMOUNT CERTIFIED ABOVE.
CERTIFICATION OF PURCHASE AT PUBLIC AUCTION

Date and place of auction:

Auction Company/Auctioneer:

The following items were purchased by the county at the auction:

<table>
<thead>
<tr>
<th>Item</th>
<th>Actual Bid Price</th>
<th>Check or Warrant #</th>
<th>Vendor</th>
<th>Receipt No.</th>
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</thead>
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(Use additional pages if necessary)

TOTAL PRICE OF ALL ITEMS PURCHASED BY COUNTY: $

Copies of all sales receipts and the vendor's warranty that all items are free of any liens or encumbrances must be attached to this certification.

CERTIFICATION OF BIDDER AND AUCTIONEER

The undersigned hereby certify that the above information is complete, true and correct. No rebates, gifts, money or anything else of value were given or received in connection with the purchases described above.

___________________________________ ________________________________
Auctioneer Bidder for County

__________________________________
License Number
### Appendix F

#### Table of Purchasing Laws for Tennessee County Governments

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<tr>
<th>COUNTY</th>
<th>GENERAL</th>
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1Carroll County - 1975 Priv. Act Ch. 23 is applicable to schools, but only for transportation purchases.

2Dickson County - 1951 Priv. Act Ch. 16 does not apply to bridges or school buildings.

Source: Tennessee County Government Handbook
CONSTRUCTION CONTRACTORS MUST SUBMIT AFFIDAVIT STATING COMPLIANCE WITH DRUG-FREE WORKPLACE PROGRAM AT TIME OF BID SUBMISSION

Under the provisions of Tennessee Code Annotated § 50-9-113 enacted by the General Assembly last year, employers with five (5) or more employees who contract with either the state or a local government to provide construction services are required to submit an affidavit stating that they have a drug free workplace program that complies with Title 50, Chapter 9, in effect at the time of submission of a bid at least to the extent required of governmental entities. The statute imposes other requirements on the contractor, but the county’s responsibility is specifically limited in section (b) of the statute as follows:

(b) A written affidavit by the principal officer of a covered employer provided to a local government at the time such bid or contract is submitted stating that the employer is in compliance with this section shall absolve the local government of all further responsibility under this section and any liability arising from the employer’s compliance or failure of compliance with the provisions of this section.

This statute went into effect on January 1, 2001. As stated in the statute, the county is only required to obtain an affidavit stating that the contractor is in compliance with T.C.A. § 50-9-113. The affidavit must be submitted with the bid or contract for construction services, so you will need to revise your bid documents to reflect this change in the law. Local governments are not to enter into a contract for construction services with any employer who is not in compliance with the provisions of T.C.A. § 50-9-113.

On the following page is a sample affidavit that can be used to comply with the minimum requirements of T.C.A. § 50-9-113(b), quoted above. Of course, an affidavit submitted by a contractor which is more extensive than the attached affidavit is also acceptable. If you have any questions, please contact your CTAS county government consultant.
DRUG FREE WORKPLACE AFFIDAVIT

STATE OF ___________________

COUNTY OF ___________________

The undersigned, principal officer of ____________________________, an employer of five (5) or more employees contracting with __________________ County government to provide construction services, hereby states under oath as follows:

1. The undersigned is a principal officer of ____________________________, (hereinafter referred to as the “Company”), and is duly authorized to execute this Affidavit on behalf of the Company.

2. The Company submits this Affidavit pursuant to T.C.A. § 50-9-113, which requires each employer with no less than five (5) employees receiving pay who contracts with the state or any local government to provide construction services to submit an affidavit stating that such employer has a drug-free workplace program that complies with Title 50, Chapter 9, of the Tennessee Code Annotated.

3. The Company is in compliance with T.C.A. §§ 50-9-113 and 50-9-114.

Further affiant saith not.

Principal Officer

STATE OF ___________________

COUNTY OF ___________________

Before me personally appeared ____________________________, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the foregoing affidavit for the purposes therein contained.

Witness my hand and seal at office this ____________ day of ____________________, 20____.

Notary Public

My commission expires:_______________________
The General Assembly passed the “Comprehensive Governmental Ethics Reform Act of 2006” in February of this year, which is codified in T.C.A. § 8-17-101 et seq. Among other requirements, the Ethics Reform Act requires local governments to adopt ethical standards related to the acceptance of gifts and disclosure of conflicts of interest, and directs CTAS to develop a model policy. This Spotlight sets out the requirements of the new law with regard to ethical standards for local governments and explains the model policy developed by CTAS.

**Important Points in the Legislation**

1. Local ethics policies must be adopted by the county legislative body in each county by June 30, 2007.
2. The policies are required to cover two things: (1) disclosure and/or limits on gifts and (2) disclosure of conflict of interests.
3. The policies cannot include personnel, employment or operational regulations of local government offices.
4. The policies apply broadly to all officials and employees in all offices, agencies, and departments of the county and to the members, officers, and employees of all boards, commissions, authorities, corporations, or other instrumentalities of a county.
5. CTAS is required to draft and distribute a model policy to counties to provide guidance and direction. The county may choose to adopt the model or draft standards of its own.
6. The policies are filed with the State Ethics Commission. If the county adopts the CTAS model policy, then instead of filing the policy the county simply notifies the State Ethics Commission in writing that the county adopted the CTAS model policy.
7. Enforcement remains as provided under current law.
8. A failure or refusal to adopt standards by a local governing body by the deadline subjects its members to ouster.
OVERVIEW OF CTAS MODEL POLICY

Section 1 – This section defines three terms used in the policy. The definition of "County" under the model policy uses the same definition required under the Ethics Reform Act. This definition includes all boards, committees, commissions, and other instrumentalities created by the county, specifically including the county school board, the county election commission, the county health department, and utility districts in the county. The Act provides that if a board, commission, authority, corporation, or other instrumentality is created by two or more local government entities, the creating entities are to amend the inter-local agreement creating the joint instrumentality to designate the ethical standards that govern the joint instrumentality. Special school districts do not fall under the county's policy but instead must adopt their own policy.

The definition of "officials and employees" who are covered by the policy is very broad and includes elected and appointed county officials, county employees, and members and employees of county boards, agencies, commissions, authorities, and corporations regardless of whether they are paid or not. This broad definition is required under the Ethics Reform Act.

The Ethics Reform Act requires counties to provide for disclosure of "personal interests that impact or appear to impact" the discretion of officials and employees. Under the model policy, a "personal interest" that must be disclosed publicly is defined as a financial interest of the official or employee (as broadly defined above), or a financial interest of a spouse or child who lives in the same household with the official or employee. This is one way to define personal interest, but a county may choose to define it in another way that also meets the requirements of the Act.

Section 2. This section deals with the disclosure of personal interests by persons whose duty it is to vote on county matters. Officials and employees (as broadly defined) must publicly disclose any personal interest (as defined above) they may have in a matter to be voted upon if that personal interest affects the person’s vote or if it would lead a reasonable person to believe it affects the person’s vote. The disclosure must be made at the meeting before the vote takes place and it is to be included in the minutes of the body.

The Ethics Reform Act requires counties to provide for “reasonable and systematic disclosure” of “personal interests that impact or appear to impact” the discretion of officials and employees. This section of the CTAS model policy is one way to meet these requirements, but a county may choose another method.

Section 3. This section deals with matters where a vote is not involved but which require the exercise of discretion. Officials and employees (as broadly defined) must
publicly disclose any personal interest (as defined above) that affects or would lead a reasonable person to believe it affects the person’s exercise of discretion. The disclosure is to be made on a disclosure form which is attached to the model policy, and the form is to be filed in the office of the county clerk. The form is to be filed before the exercise of discretion, if possible.

The Ethics Reform Act requires counties to provide for “reasonable and systematic disclosure” of “personal interests that impact or appear to impact” the discretion of officials and employees. This section of the CTAS model policy is one way to meet these requirements, but a county may choose another method.

Section 4. This section prohibits officials and employees (as broadly defined) from accepting gifts. Under this section, neither the official or employee, nor the spouse or minor child who lives in the same household as the official or employee, may accept any gift, money, gratuity, or other consideration or favor of any kind from anyone except the county for the performance of official duties. Officials, employees, and their spouses and minor children living in the same household also cannot accept any such gift, money, gratuity, or other consideration or favor of any kind that a reasonable person would believe was intended to influence the vote, official action, or judgment of the official or employee in executing county business.

The Ethics Reform Act requires counties to provide “limits on and/or reasonable and systematic disclosure of gifts or other things of value received by officials and employees that impacts or appear to impacts their discretion.” The model policy is one way to meet this requirement, but the county may choose another method.

Section 5. This section creates a five-member County Ethics Committee to receive and investigate complaints of violations of the policy and to refer matters to the appropriate person or agency for further action under existing laws if appropriate. The committee consists of three county commissioners, one constitutional county officer (or another county commissioner if no official is willing to serve), and either one member of a board, committee, commission or other instrumentality governed by the policy or another county commissioner, all appointed by the county mayor. The committee is to elect a chair and a secretary from among its members. Records of the committee are to be filed in the office of the county clerk, where they are open to public inspection.

The Ethics Reform Act does not contain any provisions regarding enforcement of the ethical standards or specific penalties, but instead provides that violations of ethical standards are to be enforced under existing law. While it is not required under the Ethics Reform Act, the model policy creates a local ethics committee as a mechanism for filing complaints of violations of the policy and maintenance of records. Although the CTAS model policy provides for the creation of a local ethics committee, the Ethics Reform Act does not mandate the creation of an ethics committee or the designation of any other local office to receive complaints.

Section 6. This section lists and briefly summarizes most of the state laws currently in effect governing ethics in county government. While the Ethics Reform Act does not require that these laws be included in the policy, officials and employees need to be made aware of these laws. Some of the laws apply only in those counties that have adopted their provisions by resolution of the county legislative body, and some counties
may have additional requirements that have been imposed by private acts, so the applicable laws may vary from county to county.

These state laws operate regardless of the code of ethics a county adopts; policies adopted under the Ethics Reform Act do not suspend the operation of these state laws. The Act specifically provides that the policies cannot be less restrictive than the provisions of any applicable general law of statewide application, general law of local application, local option law, or private act that addresses the same issue.

Adoption of Ethics Policy

Adoption of the CTAS model policy is not required. You are free to develop your own policy, but if you adopt something other than the model policy you must file the entire policy with the State Ethics Commission. If you adopt the model policy as it is written with no changes, you may simply notify the State Ethics Commission in writing that you adopted the model policy.

If your county chooses to adopt the CTAS model policy, we have provided a sample resolution which can be used for this purpose. The sample resolution requires the county clerk to mail the resolution to the State Ethics Commission. The county clerk is also directed to send a copy of the resolution and the code of ethics to each county office that will be governed by the policy. We recommend that the county clerk consult with the county attorney to ensure that all offices that are subject to the policy receive a copy of the policy.

After your policy has been filed, any amendments or modifications to your policy must be filed with the State Ethics Commission as soon as practical after they have been adopted by the county legislative body.

Where to File Your Policy (or written statement of adoption of the model policy)

By June 30, 2007, each county must file with the State Ethics Commission a copy of the ethical standards adopted in that county. If the county adopts the CTAS model policy, a written statement to that effect may be filed instead of filing the entire policy. The commission’s mailing address and telephone numbers are:

Tennessee Ethics Commission  
312 8th Avenue North  
8th Floor Snodgrass Tower  
Nashville, TN 37243  
(615) 253-8634  
(800) 416-4730

If you have questions or need assistance with the adoption of your policy, please contact your county attorney and/or your CTAS county government consultant.

CODE OF ETHICS  
______________ COUNTY, TENNESSEE
Section 1. Definitions.
(1) "County" means ________ County, which includes all boards, committees, commissions, authorities, corporations or other instrumentalities appointed or created by the county or an official of the county, and specifically including the county school board, the county election commission, the county health department, and utility districts in the county.

(2) "Officials and employees" means and includes any official, whether elected or appointed, officer, employee or servant, or any member of any board, agency, commission, authority or corporation (whether compensated or not), or any officer, employee or servant thereof, of the county.

(3) "Personal interest" means, for the purpose of disclosure of personal interests in accordance with this Code of Ethics, a financial interest of the official or employee, or a financial interest of the official’s or employee’s spouse or child living in the same household, in the matter to be voted upon, regulated, supervised, or otherwise acted upon in an official capacity.

Section 2. Disclosure of personal interest in voting matters. An official or employee with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and to be included in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official’s or employee’s vote on the measure. In addition, the official or employee may, to the extent allowed by law, recuse himself or herself from voting on the measure.

Section 3. Disclosure of personal interest in non-voting matters. An official or employee who must exercise discretion relative to any matter other than casting a vote and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on the attached disclosure form and file the disclosure form with the county clerk. In addition, the official or employee may, to the extent allowed by law, recuse himself or herself from the exercise of discretion in the matter.

Section 4. Acceptance of gifts and other things of value. An official or employee, or an official’s or employee’s spouse or child living in the same household, may not accept, directly or indirectly, any gift, money, gratuity, or other consideration or favor of any kind from anyone other than the county:

(1) For the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; or

(2) That a reasonable person would understand was intended to influence the vote, official action, or judgment of the official or employee in executing county business.

It shall not be considered a violation of this policy for an official or employee to receive entertainment, food, refreshments, meals, health screenings, amenities, foodstuffs, or beverages that are provided in connection with a conference sponsored by an
established or recognized statewide association of county government officials or by an umbrella or affiliate organization of such statewide association of county government officials.

Section 5. Ethics Complaints. A County Ethics Committee (the “Ethics Committee”) consisting of five members shall be appointed to one-year terms by the County Mayor with confirmation by the county legislative body, to be appointed each year at the same time as internal committees of the county legislative body. At least three members of the committee shall be members of the county legislative body; one member shall be a constitutional county officer or, should no constitutional county officer be willing to accept appointment, an additional member of the county legislative body; and the remaining member may be either a member of a board, committee, commission, authority, corporation, or other instrumentality governed by this policy, or an additional member of the county legislative body. The Ethics Committee shall convene as soon as practicable after their appointment and elect a chair and a secretary. The records of the Ethics Committee shall be maintained by the secretary and shall be filed in the office of the county clerk, where they shall be open to public inspection.

Questions and complaints regarding violations of this Code of Ethics or of any violation of state law governing ethical conduct should be directed to the chair of the Ethics Committee. Complaints shall be in writing and signed by the person making the complaint, and shall set forth in reasonable detail the facts upon which the complaint is based.

The County Ethics Committee shall investigate any credible complaint against an official or employee charging any violation of this Code of Ethics, or may undertake an investigation on its own initiative when it acquires information indicating a possible violation, and make recommendations for action to end or seek retribution for any activity that, in the Committee’s judgment, constitutes a violation of this Code of Ethics. If a member of the Committee is the subject of a complaint, such member shall recuse himself or herself from all proceedings involving such complaint.

The Committee may:

(1) refer the matter to the County Attorney for a legal opinion and/or recommendations for action;

(2) in the case of an official, refer the matter to the county legislative body for possible public censure if the county legislative body finds such action warranted;

(3) in the case of an employee, refer the matter to the official responsible for supervision of the employee for possible disciplinary action if the official finds discipline warranted;

(4) in a case involving possible violation of state statutes, refer the matter to the district attorney for possible ouster or criminal prosecution;

The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this Code of Ethics. When a violation of this Code of Ethics also constitutes a violation of a personnel policy or a civil service policy, the
violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this Code of Ethics.

Section 6. Applicable State Laws. In addition to the ethical principles set out in this Code of Ethics, state laws also provide a framework for the ethical behavior of county officials and employees in the performance of their duties. Officials and employees should familiarize themselves with the state laws applicable to their office or position and the performance of their duties. To the extent that an issue is addressed by state law (law of general application, public law of local application, local option law, or private act), the provisions of that state law, to the extent they are more restrictive, shall control.

Following is a brief summary of selected state laws concerning ethics in county government. For the full text of these statutes, see the Tennessee Code Annotated (T.C.A.) sections indicated.

Campaign finance – T.C.A. Title 2, Chapter 10. Part One (campaign financial disclosure) requires candidates for public office to disclose contributions and contributors to their campaigns. Part Three (campaign contribution limits) limits the total amount of campaign contributions a candidate may receive from an individual and sets limits on the amount a candidate may receive in cash.

Conflict of interest – T.C.A. § 12-4-101 is the general conflict of interest statute that applies in all counties. It prohibits anyone who votes for, lets out, or in any manner supervises any work or contract from having a direct financial interest in that contract, purchase or work, and it requires disclosure of indirect financial interests by public acknowledgment.

Conflict of interest – T.C.A. § 49-6-2003 applies to the department of education in all counties and prohibits direct and indirect conflicts of interest in the sale of supplies for use in public schools.

Conflict of interest – T.C.A. § 5-1-125 applies in all counties and prohibits county officials and employees from purchasing surplus county property except where it is sold by public bid.

Conflict of interest – T.C.A. § 54-7-203 applies in all counties that are governed by the County Uniform Highway Law. It prohibits officials and employees in the highway department and members of the county legislative body from having any personal interest in purchases of supplies, materials, machinery, and equipment for the highway department.

Conflict of interest –T.C.A. § 5-14-114 applies in counties that have adopted the County Purchasing Law of 1957. It prohibits the purchasing agent, members of the purchasing commission, and all county officials from having any financial or other personal beneficial interest in any contract or purchase of goods or services for any department or agency of the county.

Conflict of interest – T.C.A. § 5-21-121 applies in counties that have adopted the County Financial Management System of 1981. It prohibits all county officials and
employees from having any financial or other personal beneficial interest in the purchase of any supplies, materials or equipment for the county.

Conflict of interest – T.C.A. §§ 5-5-102 and 12-4-101 govern disclosures and abstentions from voting due to conflicts of interest of members of county legislative bodies.

Conflict of interest disclosure statements – T.C.A. § 8-50-501 and the following sections require candidates and appointees to local public offices to file a disclosure statement with the state ethics commission listing major sources of income, investments, lobbying activities, professional services provided, bankruptcies, certain loans, and other information, and to keep these statements up to date.

Gifts – T.C.A. § 5-14-114 applies in counties that have adopted the County Purchasing Law of 1957. It prohibits the purchasing agent, members of the purchasing commission, and all county officials from receiving anything of value, directly or indirectly, from anyone who may have or obtain a contract or purchase order with the county.

Gifts – T.C.A. § 5-21-121 applies in counties that have adopted the County Financial Management System of 1981. It prohibits the finance director, purchasing agent, and employees in those departments from accepting anything of value, directly or indirectly, from anyone who furnishes supplies, materials or equipment to the county.

Honoraria – T.C.A. § 2-10-116 prohibits elected officials from accepting an honorarium (including money or anything of value, but not including reimbursement for actual expenses) for an appearance, speech, or article in their official capacity.

Private use of public property – T.C.A. § 54-7-202 applies in counties that are governed by the County Uniform Highway Law. It prohibits the private use of equipment, rock, and other highway materials.

Court sales – T.C.A. § 39-16-405 prohibits judges, clerks of court, court officers, and employees of court, from bidding on or purchasing any property sold through the court for which such person discharges official duties.


Fee statutes – T.C.A. §§ 8-21-101, 8-21-102, and 8-21-103 set out circumstances where fees are authorized, prohibit officials from requiring payment of fees in advance of performance of services except where specifically authorized, and set penalties for charging excessive or unauthorized fees.

Consulting fee prohibition for elected county officials – T.C.A. §§ 2-10-122 and 2-10-124 prohibit officials from receiving compensation for advising or assisting a person or entity in influencing county legislative or administrative action.
Crimes involving public officials—T.C.A. § 39-16-101 and the following sections prohibit bribery, soliciting unlawful compensation, and buying and selling in regard to offices.

Official misconduct—T.C.A. § 39-16-402 applies to public servants and candidates for office and prohibits unauthorized exercise of official power, acting in an official capacity exceeding the servant's power, refusal to perform a duty imposed by law, violating a law relating to the servant's office or employment, and receiving a benefit not provided by law.

Official oppression—T.C.A. § 39-16-403 prohibits abuse of power by a public servant.


Misuse of official information—T.C.A. § 39-16-404 prohibits a public servant from attaining a benefit or aiding another person in attaining a benefit from information which was obtained in an official capacity and is not available to the public.

Ouster law—T.C.A. § 8-47-101 sets out conduct which is punishable by ouster from office, including misconduct in office and neglect of duty.
Instructions: This form is for reporting personal interests required to be disclosed under Section 3 of the Code of Ethics of this county. Officials and employees are required to disclose personal interests in matters that affect or would lead a reasonable person to infer that it would affect the exercise of discretion of an official or employee.

1. Date of disclosure: _________________________________

2. Name of official or employee: _________________________________

3. Office and position: _________________________________

4. Description of personal interest (describe below in detail):

__________________________________________________________

Signature of official or employee

__________________________________________________________

Witness Signature

__________________________________________________________

Printed name of witness
RESOLUTION NO. _____

TO ADOPT A CODE OF ETHICS FOR OFFICIALS AND EMPLOYEES OF ____________ COUNTY GOVERNMENT

WHEREAS, Section 49 of the Comprehensive Governmental Ethics Reform Act of 2006, 2006 Public Chapter 1 (1st Ex. Sess.), (the “Ethics Reform Act”) requires county legislative bodies to adopt certain ethical standards by resolution on or before June 30, 2007; and

WHEREAS, the County Technical Assistance Service (CTAS) is directed to prepare and disseminate a model of ethical standards which may be adopted by counties in compliance with the Ethics Reform Act; and

WHEREAS, ____________ County desires to adopt the CTAS model of ethical standards as the Code of Ethics for ____________ County;

NOW THEREFORE, BE IT RESOLVED by the ____________ County legislative body meeting in _________ session at _________________, Tennessee, on this ______ day of ________________, 200__, that:

SECTION 1. The model of ethical standards developed by CTAS and attached to this resolution is hereby adopted as the Code of Ethics for ____________ County.

SECTION 2. Upon approval of this resolution, the County Clerk is directed to:

(a) Mail a copy of this resolution to the State Ethics Commission; and

(b) Mail a copy of this resolution and the attached Code of Ethics to each county office governed thereby, including all boards, committees, commissions, authorities, corporations or other instrumentalities appointed or created by the county or an official of the county, and specifically including the county school board, the county election commission, the county health department, and utility districts in the county; and

(c) Post a copy of the Code of Ethics on each public bulletin board in the county courthouse.

SECTION 3. This resolution shall take effect upon its passage and approval, the public welfare requiring it.

ADOPTED this ____ day of ________________, 200__.

APPROVED: ATTEST:

________________________ _________________________________
County Mayor County Clerk
In cooperation with the Tennessee County Services Association and the County Officials Association of Tennessee