



County Technical Assistance Service

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Legal Framework for Purchasing

Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

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

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Legal Framework for Purchasing

Reference Number: CTAS-189

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

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

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

- The County Purchasing Law of 1983, T.C.A. § 5-14-201 *et seq.*
- Title 49 of the *Tennessee Code Annotated*
- The County Uniform Highway Law, T.C.A. § 54-7-113
- The County Purchasing Law of 1957, T.C.A. § 5-14-101 *et seq.*
- The County Financial Management System of 1981, T.C.A. § 5-21-101 *et seq.*

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

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

County Purchasing Laws Table

County	General	Highway	Schools
Anderson	1981	1981	1981
Bedford	1981	1981	1981
Benton	1939 Priv. Act Ch 541	1943 Priv. Act Ch. 250/ CUHL	49-2-203
Bledsoe	1983	1941 Priv. Act Ch. 153/ CUHL	49-2-203
Blount	1957	1957	1957
Bradley	1951 Priv. Act Ch. 313	1947 Priv. Act Ch. 354/ CUHL	49-2-203
Campbell	1981	1981	1981
Cannon	1983	1933 Priv. Act Ch. 788/ CUHL	49-2-203
Carroll ¹	1975 Priv. Act Ch. 23	1975 Priv. Act Ch. 23/1986 Priv. Act Ch. 148/CUHL	1975 Priv. Act Ch. 23/49-2-203
Carter	1981	1981	1981

Cheatham	1933 Priv. Act Ch. 250/1983	1933 Priv. Act Ch. 250/1945 Priv. Act Ch. 309/CUHL	49-2-203
Chester	1983	1951 Priv. Act Ch. 68/CUHL	49-2-203
Claiborne	1981	1981	1981
Clay	1983	1951 Priv. Act Ch. 565/ CUHL	49-2-203
Cocke	1957	1957	49-2-203
Coffee	1957	1957	49-2-203
Crockett	1983	1933 Priv. Act Ch. 26/CUHL	49-2-203
Cumberland	1981	1981	1981
Davidson	Metro Charter	Metro Charter	Metro Charter
Decatur	1983	CUHL	49-2-203
DeKalb	1979 Priv. Act Ch. 63	1979 Priv. Act Ch. 63/CUHL	1979 Priv. Act Ch. 63/49-2-203
Dickson ²	1957	1957	1951 Priv. Act Ch. 16/49-2-203
Dyer	1983	1929 Priv. Act Ch. 421/ CUHL	49-2-203
Fayette	1983	1974 Priv. Act Ch. 234/ CUHL	49-2-203
Fentress	1981	1981	1981
Franklin	1981	1981	1981
Gibson	1983	1929 Priv. Act Ch. 111/ CUHL	49-2-203
Giles	1981	1981	1981
Grainger	1983	1980 Priv. Act Ch. 232/ CUHL	49-2-203
Greene	1957	1957	49-2-203
Grundy	1983	1939 Priv. Act Ch. 435/ CUHL	49-2-203
Hamblen	1983	1949 Priv. Act Ch. 313/ CUHL	49-2-203
Hamilton	1983 Priv. Act Ch. 90	1983 Priv. Act Ch. 90	1983 Priv. Act Ch. 90/49-2-203
Hancock	1983	1941 Priv. Act Ch. 149/ CUHL	49-2-203
Hardeman	1989 Priv. Act Ch. 90	1989 Priv. Act Ch. 90/CUHL	1989 Priv. Act Ch. 90/49-2-203
Hardin	1983	1997 Priv. Act Ch. 62/CUHL	49-2-203
Hawkins	1957 Priv. Act Ch. 256	1957 Priv. Act Ch. 256/ CUHL	1957 Priv. Act Ch. 256/49-2-203
Haywood	1983	1991 Priv. Act Ch. 24/CUHL	49-2-203

Henderson	1981	1981	1981
Henry	1983 Priv. Act Ch. 137/1995 Private Act Ch. 10/1983	CUHL	49-2-203
Hickman	1981	1981	1981
Houston	1983	1945 Priv. Act Ch. 366/ CUHL	49-2-203
Humphreys	1983	1935 Priv. Act Ch. 634/ CUHL	49-2-203
Jackson	1983	1951 Priv. Act Ch. 111/ CUHL	49-2-203
Jefferson	1981	1981	1981
Johnson	1957	1957	49-2-203
Knox	1980 Priv. Act Ch. 286 (county charter)	1980 Priv. Act Ch. 286	1980 Priv. Act Ch. 286/49-2-203
Lake	1983	1980 Priv. Act Ch. 262/ CUHL	49-2-203
Lauderdale	1983	1929 Priv. Act Ch. 304/ CUHL	49-2-203
Lawrence	1957	1957	49-2-203
Lewis	1983	1937 Priv. Act Ch. 395/ CUHL	49-2-203
Lincoln	1981	1981	1981
Loudon	1957	1957	1957
McMinn	1981	1981	1981
McNairy	1990 Priv. Act Ch. 171	CUHL	49-2-203
Macon	1937 Priv. Act Ch. 161/1983	1965 Priv. Act Ch. 234/ CUHL	49-2-203
Madison	1981	1981	1981
Marion	1983	1933 Priv. Act Ch. 24/CUHL	49-2-203
Marshall	1965 Priv. Act Ch. 69/1983	1965 Priv. Act Ch. 69/1955 Priv. Act Ch. 238/CUHL	49-2-203
Maury	2018 Priv. Act Ch. 47	2018 Priv. Act Ch. 47/CUHL	49-2-203
Meigs	2007 Priv. Act Ch. 28	2007 Priv. Act Ch. 28/CUHL	49-2-203
Monroe	1981	1981	1981
Montgomery	1957	1957	49-2-203
Moore	Metro Charter	Metro Charter	Metro Charter
Morgan	1981	1981	1981
Obion	1983	CUHL	49-2-203

Overton	1957	1957	49-2-203
Perry	1983	1977 Priv. Act Ch. 18/CUHL	49-2-203
Pickett	1983	1957 Priv. Act Ch. 104/ CUHL	49-2-203
Polk	1957	1957	49-2-203
Putnam	1981 Priv. Act Ch. 63	1989 Priv. Act Ch. 122/ CUHL	49-2-203
Rhea	1981	1981	1981
Roane	1957	1957	1933 Priv. Act Ch. 477/49-2-203 (schools informally use 1957)
Robertson	1981	1981	1981
Rutherford	2017 Priv. Act Ch. 17	1951 Priv. Act CH. 55/CUHL	49-2-203
Scott	1981	1981	1981
Sequatchie	1983	CUHL	49-2-203
Sevier	1983	1969 Priv. Act Ch. 133/ CUHL	49-2-203
Shelby	1974 Priv. Act Ch. 260	1974 Priv. Act Ch. 260	1974 Priv. Act Ch. 260/49-2-203
Smith	1957	1957	49-2-203
Stewart	1983	1951 Priv. Act Ch. 171/ CUHL	49-2-203
Sullivan	1947 Priv. Act Ch. 261	1947 Priv. Act Ch. 261/ CUHL	1947 Priv. Act Ch. 261/49-2-203
Sumner	2002 Priv. Act. Ch. 113	2002 Priv. Act. Ch. 113/ CUHL	2002 Priv. Act Ch. 113
Tipton	1941 Priv. Act Ch. 518	1973 Priv. Act Ch. 114/ CUHL	49-2-203
Trousdale	Metro Charter	Metro Charter	Metro Charter
Unicoi	1983	1949 Priv. Act Ch. 678/ CUHL	49-2-203
Union	1981	1981	1981
Van Buren	1983	1951 Priv. Act Ch. 460/1986 Priv. Act Ch. 111/CUHL	49-2-203
Warren	1981	1981	1981
Washington	1957	1957	49-2-203
Wayne	1983	1941 Priv. Act Ch. 32/CUHL	49-2-203
Weakley	1981	1981	1981
White	1981	1981	1981
Williamson	1957	1957	49-2-203

Wilson	1981	1981	49-2-203
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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

County Purchasing vs. Private Sector Purchasing

Reference Number: CTAS-894

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

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

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

Similarities

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

Differences

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

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

Centralized Purchasing in Counties

Reference Number: CTAS-895

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

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

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

“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.³
- Allowing the purchasing office and its personnel to accumulate a solid foundation of knowledge and experience about purchasing, marketing trends, prices, and vendors. This knowledge and expertise saves the county money on prices and allows a more efficient purchasing process.⁴

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

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

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

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

²McCue, 23.

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

⁴Williamson County, Texas, *Purchasing Manual Policies*, (Revised 2001), 10.

County Purchasing Law of 1957

Reference Number: CTAS-896

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

- Is codified in T.C.A. §§ 5-14-101 *et seq.*
- May be adopted by the majority of voters in a referendum or by two-thirds vote of the county legislative body. T.C.A. § 5-14-102.
- Is one of three companion Fiscal Control Acts of 1957: the County Budgeting Law of 1957 (budgeting), the County Fiscal Procedure Law of 1957 (accounting), and the County Purchasing Law of 1957 (purchasing). The county may enact any or all three acts; however, it is difficult to implement less than all three acts because each refers to certain provisions of the others. For example, T.C.A. § 5-14-109 states that purchases and contracts are not to be awarded until it has been certified by the director of accounts and budgets, or other county official or employee in charge of the central accounting records of the county, and that the unencumbered balance in the appropriation chargeable with the purchase obligations is sufficient to cover the cost of the order or contract.

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

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

Purchasing Agent

Reference Number: CTAS-897

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

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

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

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

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

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

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

Duties of the Purchasing Agent

- Purchase all supplies, materials, equipment, and contractual services;
- Arrange for rental of all machinery, buildings, and equipment;
- Transfer materials, supplies, and equipment between county departments; and
- Supervise the central storeroom. T.C.A. § 5-14-105.
- Classify the requirements of the county government for supplies, materials, and equipment;
- Adopt as standards the smallest number of quantities, sizes, and varieties of such supplies, materials, and equipment consistent with the successful operation of the county government; and

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

County Purchasing Commission

Reference Number: CTAS-898

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

Rules and Regulations

Reference Number: CTAS-899

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

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

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

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

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

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

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

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

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

Competitive Bidding under the 1957 Law

Reference Number: CTAS-900

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

Bid Thresholds—Sealed bids must be solicited after public advertisement if the amount of the expenditure or sale is expected to exceed \$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 under the 1957 Law

Reference Number: CTAS-901

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

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

Additional Statutory Provisions

Reference Number: CTAS-902

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

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

Conflict of Interest under the 1957 Law

Reference Number: CTAS-903

The County Purchasing Law of 1957 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.

County Financial Management System of 1981

Reference Number: CTAS-904

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

- Is found in T.C.A. §§ 5-21-101 through 5-21-130.

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

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

Department of Finance

Reference Number: CTAS-905

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

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

Financial Management Committee

Reference Number: CTAS-906

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

Director of Finance

Reference Number: CTAS-907

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

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

Qualifications—The finance director must have a minimum of a bachelor of science degree, with a minimum of 18 quarter hours in accounting; however, the committee may select a person who does not have

the foregoing qualifications if the person has at least two years of acceptable experience in a related position or an equivalent number of related courses. T.C.A. 5-21-106.

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

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

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

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

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

Purchasing System

Reference Number: CTAS-908

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

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

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

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

- Contracting, purchasing, or obligating the county for supplies, material, equipment, contractual services, rental of machinery, buildings, or equipment. T.C.A. § 5-21-118(b)(1).

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

Competitive Bidding under the 1981 Law

Reference Number: CTAS-909

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

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

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

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

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

Checks and Balances under the 1981 Law

Reference Number: CTAS-910

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

- The finance director must verify budget appropriations before authorizing a purchase. T.C.A. § 5-21-119(b)(6)(B).
- The finance director must establish a system of preaudit of invoices, purchase orders, or other documents, including a comparison with any encumbrance document previously posted or filed authorizing the obligation. T.C.A. § 5-21-115(b)(2).
- The finance director approves for payment only those invoices that are properly authorized and do not exceed the unencumbered balance of the allotments or appropriations against which they are chargeable. T.C.A. § 5-21-115(b)(2).
- Before any obligation against the county can be paid or any disbursement warrant or voucher issued, a detailed invoice, receivable copy of the purchase order, or other document indicating receipt of the merchandise or service is to be approved by the head of the office, department, or agency for which the obligation was made and be filed with the finance director. T.C.A. § 5-21-115(b)(1).
- The county is liable for payment of all purchases and supplies, materials, equipment and contractual service made in accordance with the provisions of the CFMS of 1981, but is not liable

for payment of such purchases made contrary to it unless such item is specifically approved by the financial management committee. T.C.A § 5-21-120(c).

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

Conflict of Interest under the 1981 Law

Reference Number: CTAS-911

The County Financial Management System of 1981 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, equipment or contractual services for the county. No firm, corporation, partnership, association or individual furnishing any such supplies, materials, equipment or contractual services, 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

Reference Number: CTAS-912

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

Centralized Purchasing by Private Act

Reference Number: CTAS-913

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

Non-centralized Purchasing

Reference Number: CTAS-914

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

County Purchasing Law of 1983

Reference Number: CTAS-915

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

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

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

- Purchases costing less than \$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.

County Uniform Highway Law

Reference Number: CTAS-916

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

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

- All purchases of \$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.

Purchasing in County Education Departments

Reference Number: CTAS-917

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

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

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

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

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 the purchasing division periodically advertises in a newspaper of general circulation in the county for vendors and updates the list of vendors after the advertisement. T.C.A. § 49-2-203(a)(3)(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 that are to be procured through a request for proposals process stating the service requirements and factors used for evaluating the proposals. The factors to be considered include the construction manager's qualifications and experience on similar projects, qualifications of personnel assigned to the project, fees, and any other criteria deemed relevant. Cost cannot be the sole criterion. Construction managers cannot perform actual construction work except in instances where bids have been solicited twice and no bids have been submitted. A school system can perform work on its project with its own employees and have a construction manager perform the coordination and oversight of the project. Actual construction work under the direction of the construction manager must be competitively bid. Construction management for school construction or additions may be performed by (1) a 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.

Dollar Threshold Requirements

Reference Number: CTAS-918

Purchasing Law	Formal Bids	Informal Bids	Statute
County Purchasing Law of 1983	Public advertising & competitive bidding for purchases of \$10,000 & over. CLB authorized to lower dollar amounts of competitive bidding. This act does not apply to counties with private acts if the private act provides for advertising & competitive bidding in excess of \$10,000 or a lesser amount established by private act.	Any purchase costing less than \$10,000 may be made without competitive bids & public advertisement, but whenever possible be based on three (3) competitive bids.	Formal Bids - 5-14-204 Informal Bids - 5-14-205 CLB authorized to lower dollar amount: 5-14-206
CFMS of 1981	The finance committee authorizes the dollar limits for competitive bids but not to exceed amount authorized by state law for the highway & education departments or other amounts established by law.		5-21-120(a)
County Purchasing Law of 1957	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 (\$10,000 for the highway department).	All purchases or sales not requiring bid solicitation may be made without competitive bids & public advertisement, but whenever possible be based on three (3) competitive bids.	Formal Bids - 5-14-108(c)(1) Informal Bids - 5-14-108(d)(1)
County Uniform Highway Law (CUHL)	Public advertising & competitive bidding for purchases of \$10,000 & over except for repair of heavy road building machinery or other heavy equipment or emergencies.	Any purchase costing less than \$10,000 may be made without competitive bids & public advertisement, but whenever possible be based on three (3) competitive bids.	Formal Bids - 54-7-113 Informal Bids - 54-7-113
Education	Public advertising & competitive bidding for purchases of \$10,000 & over except for emergencies. Contracts for construction or additions of existing buildings in excess of \$10,000 made by competitive bids with at least 10 days advance public notice.	Any purchase costing less than \$10,000 may be made without competitive bids & public advertisement, but whenever possible be based on three (3) competitive bids.	Formal Bids - 49-2-203(a)(4)(A), 49-2-203(a)(4)(C)(1) Informal Bids - 49-2-203
Counties over 150,000	Competitive sealed bids or proposals for non-emergency or non-propriety purchases for \$10,000 and above. These counties may retain their present competitive bidding conditions or establish different limits by private act or charter provision.	Authorized to make purchases under \$10,000 without competitive bids.	12-3-1007

Purchasing Law	Formal Bids	Informal Bids	Statute
Counties with Centralized Purchasing Authority & Full-Time Purchasing Agent	Any county municipality, utility district, LEA, or other local government entity with centralized purchasing authority and a full-time purchasing agent is authorized to increase, by resolution or ordinance, the formal bid threshold to an amount not to exceed \$25,000, notwithstanding any charter provision, private act, or other law to the contrary.	Requires at least 3 written quotations when possible for purchases between the bid threshold and 40% of the bid threshold (or a lower amount established by the governing body).	12-3-1212

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