



County Technical Assistance Service

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County Purchasing Law of 1957

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

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

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Capitol Blvd. Suite 400
Nashville, TN. 37219
615-532-3555 phone
615-532-3699 fax
ctas@tennessee.edu
www.ctas.tennessee.edu

Table of Contents

County Purchasing Law of 1957	3
Purchasing Agent	3
County Purchasing Commission	4
Rules and Regulations	4
Competitive Bidding under the 1957 Law	5
Checks and Balances under the 1957 Law	6
Additional Statutory Provisions	6
Conflict of Interest under the 1957 Law	6

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. Tenn. Code Ann. § 5-14-114(a) prohibits the county purchasing agent, members of the county purchasing commission, members of the county legislative body, and other officials of the county, from being financially interested or having 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. An official who violates this statute commits a Class D Felony. While the Tennessee Court of Criminal Appeals found this penalty to be unenforceable, *State v. Whitehead*, 43 S.W.3d 921 (Tenn.Crim.App. 2000), a violation could constitute official misconduct. See *Op. Tenn. Atty. Gen. 94-073* (June 16, 1994).

In *Garner v. Blount County*, 2000 WL 116026 (Tenn Ct. App., 2000), the court found that a contract between a county building authority and a corporation in which a county commissioner owned an interest was unlawful under T.C.A. § 5-14-114. See also *Op. Tenn. Atty. Gen. 98-218* (November 25, 1998); *Op. Tenn. Atty. Gen. 00-152* (October 6, 2000) (county commissioner prohibited under T.C.A. § 5-14-114(a) from working part-time as independent contractor for department of county government); *Op. Tenn. Atty. Gen. 07-141* (October 10, 2007) T.C.A. § 5-14-114 prohibits a shareholder of a bank that conducts business with the county from serving as county commissioner, member of the county budget committee, or county purchasing commission).

The statute does not define the term, “personal beneficial interest.” However, in *State v. Whitehead*, 43 S.W.3d 921 (Tenn.Crim.App., 2000) the Court of Criminal Appeals found that the County Purchasing Law of 1957:

prohibits a county official from having any personally favorable interest in a county contract, regardless of whether that interest is direct or circuitous. While the statute prohibits a broad range of conduct by county officials, it is not so vague that the prohibited conduct cannot be ascertained.

Id. at 929 (emphasis added).

Further, T.C.A. § 5-14-114(b) prohibits the same group of individuals from accepting or receiving, 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. See *Op. Tenn. Atty. Gen. 94-073* (June 16, 1994) (in counties that have adopted the County Purchasing Law of 1957, there is a blanket prohibition against the acceptance of gifts of any value by county officials from any company to which a contract may be awarded; depending upon the circumstances, the acceptance of such gifts may constitute the criminal offense of official misconduct).

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