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Purchasing Guide for Tennessee Municipalities (2008)

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PURCHASING GUIDE FOR TENNESSEE MUNICIPALITIES

Prepared by J. Ralph Cross, Finance and Accounting Consultant,
and M. Michael Tallent, Assistant Director
March 2003

Revised by Richard A. Whitehead, Management Consultant
September 2008

THE UNIVERSITY of TENNESSEE
MUNICIPAL TECHNICAL ADVISORY SERVICE

In cooperation with the Tennessee Municipal League

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The Municipal Technical Advisory Service (MTAS) was created in 1949 by the state legislature to enhance the quality of government in Tennessee municipalities. An agency of the University of Tennessee Institute for Public Service, MTAS works in cooperation with the Tennessee Municipal League and affiliated organizations to assist municipal officials.

By sharing information, responding to client requests, and anticipating the ever-changing municipal government environment, MTAS promotes better local government and helps cities develop and sustain effective management and leadership.

MTAS offers assistance in areas such as accounting and finance, administration and personnel, fire, public works, law, ordinance codification, and wastewater management. MTAS houses a comprehensive library and publishes scores of documents annually.

MTAS provides one copy of our publications free of charge to each Tennessee municipality, county and department of state and federal government. There is a $10 charge for additional copies of "Purchasing Guide for Tennessee Municipalities."

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FOREWORD

City officials must stay up to date on changes in legislation that affect buying policies. There have been several amendments to municipal purchasing laws since the *Purchasing Guide for Tennessee Municipalities* was published in July 1984. For example, the 1983 Municipal Purchasing Law has been amended, and state legislation has been passed that directly affects other forms of municipal government. Purchasing is a tricky area, and mistakes can be costly. This guide is designed to clear up questions and to save cities money.

There are four primary forms of municipal government in Tennessee: mayor-aldermanic, commission-manager, modified city manager-council, and those created by private act charters or home rule charters. The general laws addressed in this manual apply to all forms of municipal government unless there is a specific exclusion, but purchasing requirements regulating metropolitan governments are not covered. Sample ordinances, resolutions and forms are included.

Sample procedures included in this manual are adaptable to any form of government. Good purchasing methods are important to make sure taxpayers know how their money is being spent, city workers are adequately protected from unwarranted criticism, and vendors have equal opportunity to solicit city business, all of which allow the municipality to make the best use of its funds.

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CHAPTER 1: MAYOR-ALDERMANIC (GENERAL LAW) CHARTERS

(T.C.A. §§ 6-1-101 *et seq.*)

APPLICABLE PURCHASING LAW

There are no clear-cut purchasing requirements in the mayor-aldermanic (general law) charter. Since there are no provisions in the charter regulating competitive bidding and public advertisement, the 1983 Municipal Purchasing Law applies. However, the governing body of the municipality is authorized to increase or decrease the amount specified in the law concerning public advertising and competitive bidding.

All acquisitions made under this law must be purchased within the limits of the approved budget and appropriations for the department, office or agency for which the purchase is made.

ORGANIZATIONS EXEMPT FROM THE PURCHASING LAW

When a city buys from any of the following organizations, the purchase is exempt from the 1983 Municipal Purchasing Law:

1. Agencies created by two or more cooperating governments such as those established under the Inter-local Cooperation Act (T.C.A. §§ 12-9-101 *et seq.*);
2. Nonprofit corporations, such as the Local Government Data Processing Corporation, that provide goods or services specifically to municipalities; and
3. Federal, state, and local governmental units or agencies when purchasing second-hand supplies, commodities and equipment.

PURCHASES EXEMPT BY THE PURCHASING LAW

The following city purchases are exempt from competitive bidding and public advertisement requirements according to the 1983 Municipal Purchasing Law:

1. Products and services available only from a single source of supply and those of a proprietary nature (brand name products made and marketed by one having the exclusive right to manufacture and sell);
2. Purchases, leases and lease-purchases of real property;
3. Emergency purchases; however, there are certain reporting requirements when this exemption is used;
4. Purchases, leases, and lease-purchases of $1,000 or less in any fiscal year do not require public advertisement or competitive bidding. Although not required, it is recommended that you try to get the best deal by soliciting price quotes; and

5. Purchases, leases, and lease-purchases of more than $1,000 but less than $2,500 do not require public advertisement but do require, whenever possible, at least three competitive quotes. The $2,500 threshold may be lowered or increased up to $10,000 by the municipality's governing body.

COMPETITIVE BIDS/PROPOSALS

According to the 1983 Purchasing Law, municipal purchases, leases, and lease-purchases that cost between $1,000 and $2,500, must be based on at least three competitive bids (quotes).[1]

However, the municipality may, by ordinance, increase the $1,000 limit to a maximum of 40 percent of the amount established by the governing body as authorized by law for purchases requiring public advertisement and competitive bidding.

Purchases, leases, and lease-purchases totaling $2,500 or more during the fiscal year must be competitively bid. This also includes purchases, leases, and lease-purchases of like or related items usually acquired by two or more buys during the fiscal year. The amount may be lowered or increased up to $10,000 by the municipality's governing body.[1]

"Competitive sealed bids" generally include both sealed bids and sealed proposals. Sealed proposals should be used if the criteria for vendor selection can be clearly defined, the selection process will benefit the municipality, and the process is approved by the municipality. For more information see "Sealed Bids or Proposals" (Exhibit 30) in the sample purchasing procedures at the end of this guide.

A city may exempt a buy of perishable goods from competitive bidding requirements when the items are bought in the open market. The person or body authorizing the acquisition must prepare a record specifying the amount paid, the items purchased and the vendor. This purchase record must be reported at least monthly to the chief executive officer and governing body of the municipality.

Purchases of natural gas and propane for re-sale are exempt from competitive bidding.

PUBLIC ADVERTISEMENT

Purchases, leases and lease-purchases of less than $2,500 do not have to be publicly advertised.

According to the 1983 Municipal Purchasing Law, unless specifically exempt, all purchases, leases, and lease-purchases of like or related items usually bought alone or by two or more purchases totaling $2,500 or more during the fiscal year must be publicly advertised. The amount may be lowered or increased up to $10,000 by the municipality's governing body.[1]

The municipality may exempt perishable goods from public advertisement requirements when the items are bought in the open market. Whoever authorizes the purchase must prepare a record specifying the amount paid, the items purchased and the vendor. This record must be provided at least monthly to the chief executive officer and the municipality's governing body.

The municipality also may exempt fuel and fuel products from advertising requirements when the items are bought in the open market. Fuel and fuel products may be bought from the state general services contract where available. Purchases of natural gas and propane for re-sale do not have to be advertised.

EMERGENCY PURCHASES

Purchases and leases of supplies, materials, or equipment may be made immediately in emergencies without competitive bidding and public advertisement. Emergencies, or unexpected trouble, might include delays by contractors, delays in transportation or an unexpected amount of work.

Once an emergency buy is made, the person or body who authorized it must prepare a record specifying the amount paid, the items purchased, the vendor and the nature of the emergency. As with other purchase records, this log must be provided as soon as possible to the chief executive officer and the municipality's governing body.

AUTHORITY OF THE GOVERNING BODY

Under the 1983 Purchasing Law, a municipality has the power to set its own purchasing procedures. The city's governing body may lower the $2,500 minimum required for competitive bidding and public advertisement or raise the requirement to a maximum of $10,000.[1]

The municipality also may exempt perishable goods bought in the open market from competitive bidding and public advertisement. But remember, there are certain reporting requirements if this exemption is made.

OTHER GENERAL LAWS

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

- Professional service contracts (T.C.A. § 12-4-106);
- Certain insurance (T.C.A. § 29-20-407);
- Purchases through state - general services (T.C.A. § 12-3-1001);
- Purchases from other governments (T.C.A. § 12-3-1003);
- Cooperative purchasing agreements (local) (T.C.A. § 12-3-1009);
- Cooperative purchasing agreements (state) (T.C.A. § 12-3-216);
- Cooperative purchasing agreements (local in state and local out of state) (T.C.A. § 12-9-101);
- Electronic bidding, invitations to bid, requests for proposals and other solicitations (T.C.A. § 12-3-704);
- Electronic recognition of records (T.C.A. § 47-10-107);
- Purchases for other local governments (T.C.A. § 12-3-1004);
- Transfer of personal property among governments (T.C.A. § 12-3-1005);
- Purchases of property at public auctions — reporting. (T.C.A. § 12-3-1006);
- Competitive bidding (T.C.A. § 12-3-1007);

[1]Cities with populations of not less than 40,000 nor more than 42,500 or populations over 150,000, according to the 2000 federal census or any subsequent census may increase the minimum dollar amount required for public advertisement and competitive bidding to $25,000, provided that purchases between $10,000 and $25,000 are based upon three competitive bids (quotes).

- Purchases from state industries (T.C.A. §§ 41-22-119 — 121);
- "Buy America" Act (T.C.A. § 54-5-135);
- Purchasing motor oil (T.C.A. § 12-3-531);
- Life Cycle Cost and Procurement Act (T.C.A. §§ 12-3-601 *et seq.*);
- Purchasing from certain handicapped persons (T.C.A. § 71-4-701);
- Purchase of confiscated property from the state (T.C.A. § 12-2-201);
- Interest of officer in municipal contracts (T.C.A. § 6-54-107);
- Personal interest of officers prohibited (T.C.A. § 12-4-101);
- Multi-year contracts for maintenance of water storage tanks (T.C.A. § 12-4-123);
- Conveyance of real or personal property among public agencies (T.C.A. § 12-9-110);
- Purchasing of secondhand goods from private entities (T.C.A. § 12-3-1003); and
- Purchasing through competitive sealed proposals (T.C.A. § 12-3-10).

CHAPTER 2: CITY MANAGER-COMMISSION (GENERAL LAW) CHARTERS

(T.C.A. §§ 6-18-101 *et seq.*)

APPLICABLE PURCHASING LAW

The city manager-commission (general law) charter sets specific buying requirements for municipalities so governed. Purchasing and contract procedures not established by the charter or other general laws may be established by ordinance.

The city manager, or his or her designee, is responsible for all municipal purchasing and is authorized to act as purchasing agent for the community.

Before a municipality enters into a purchasing contract or agreement, the finance director must assure the board of commissioners that the funds are available. Until the finance director certifies that the money is available, the board must not authorize the expense by ordinance, resolution, or order.

ORGANIZATIONS EXEMPT BY THE CHARTER

There are no vendor organizations exempt from competitive bidding requirements.

PURCHASES EXEMPT BY THE CHARTER

The charter does not exempt any purchases and/or public improvements from competitive bidding.

COMPETITIVE BIDS/PROPOSALS

Competitive prices for all purchases and public improvements must be obtained whenever possible in accordance with regulations established by ordinance. Acquisitions and contracts must be given to the lowest and best bidder, and a municipality may reject any bids.

Formal sealed bids must be taken in all transactions involving an expense amount to be set by ordinance. The amount must not be less than $2,500 or more than $10,000. A written contract must be entered into once the deal is made.

The charter authorizes the board of commissioners, upon written recommendation of the city manager and by unanimous resolution of those present at the meeting, to authorize noncompetitive contracts where it is clearly to the advantage of the municipality not to contract with competitive bidding.

The city manager may reject all bids and assign public improvements or any other municipal work to a municipal department.

"Competitive sealed bids" generally means both sealed bids and sealed proposals.

The charter authorizes the board of commissioners to delegate by ordinance to the city manager the authority to enter into binding contracts on behalf of the city, without specific board approval, in routine matters and matters not having substantial long-term consequences.

Sealed proposals should be used if the criteria for vendor selection can be clearly defined, the selection process will benefit the municipality, and the process is approved by the municipality's board of commissioners. For more information, see "Sealed Bids or Proposals" in the sample purchasing procedures (Exhibit 30).

PUBLIC ADVERTISEMENT

The general law city manager-commission charter does not set any rules about public advertisement for purchases and public improvements. Regulations governing public advertisement should be established by ordinance.

EMERGENCY PURCHASES

The general law city manager-commission charter also doesn't address emergency purchases. Regulations governing emergency purchases should be established by ordinance.

AUTHORITY OF THE GOVERNING BODY

According to the charter, the board of commissioners must set (by ordinance) regulations governing all purchases and public improvements. The board also must set the minimum cost of acquisitions and public improvements that triggers the requirement for formal sealed bids. The municipality may reject any bids.

Based on written recommendation of the city manager, and by unanimous resolution of those at the meeting, the board may authorize non-competitive contracts if it is clearly to the advantage of the city not to contract with competitive bidding.

The charter authorizes the board of commissioners to delegate by ordinance to the city manager the authority to enter into binding contracts on behalf of the city, without specific board approval, in routine matters and matters not having substantial long-term consequences.

The board may establish (again, by ordinance) all purchasing and contract procedures not addressed in the charter or other legislation.

OTHER GENERAL LAWS

There are other general laws apart from the charter that may influence purchasing policies. The following is a listing of legislation from Tennessee Code Annotated, discussed later in this guide, which should be considered:

- Professional service contracts (T.C.A. § 12-4-106);
- Certain insurance (T.C.A. § 29-20-407);
- Purchases through state — general services (T.C.A. § 12-3-1001);
- Purchases from other governments (T.C.A. § 12-3-1003);
- Cooperative purchasing agreements (local) (T.C.A. § 12-3-1009);
- Cooperative purchasing agreements (state) (T.C.A. § 12-3-216);
- Cooperative purchasing agreements (local in state and local out of state) (T.C.A. § 12-9-101);
- Electronic bidding, invitations to bid, requests for proposals and other solicitations (T.C.A. § 12-3-704);
- Recognition of electronic contracting (T.C.A. § 47-10-107);
- Purchases for other local governments (T.C.A. § 12-3-1004);

- Transfer personal property among governments (T.C.A. § 12-3-1005);
- Purchases of property at public auctions — reporting. (T.C.A. § 12-3-1006);
- Competitive bidding (T.C.A. § 12-3-1007);
- Purchases from state industries (T.C.A. §§ 41-22-119-121);
- "Buy America" Act (T.C.A. § 54-5-135);
- Purchasing motor oil (T.C.A. § 12-3-531);
- Life Cycle Cost and Procurement Act (T.C.A. §§ 12-3-601 *et seq.*);
- Purchasing from certain handicapped persons (T.C.A. § 71-4-701);
- Purchase of confiscated property from the state (T.C.A. § 12-2-201);
- Interest of officer in municipal contracts (T.C.A. § 6-54-107);
- Personal interest of officer prohibited (T.C.A. § 12-4-101);
- Multi-year contracts for maintenance of water storage tanks (T.C.A. § 12-4-123);
- Conveyance of real or personal property among public agencies (T.C.A. § 12-9-110);
- Purchasing of second-hand goods from private entities (T.C.A. § 12-3-1003); and
- Purchasing through competitive sealed proposals (T.C.A. § 12-3-10).

CHAPTER 3: MODIFIED CITY MANAGER-COUNCIL (GENERAL LAW) CHARTERS

(T.C.A. §§ 6-30-101 *et seq.*)

APPLICABLE PURCHASING LAW

The modified city manager-council (general law) charter sets specific buying requirements for municipalities so governed. Purchasing and contract procedures not prescribed by charter or other general laws may be established by ordinance.

The city manager is responsible for preparing regulations governing the acquisition, custody, use, and disposal of all property and equipment. The city council must approve these rules.

The city manager, or his or her designee, is responsible for all purchasing for the municipality except for schools. The school superintendent must take care of purchasing for schools; however, purchases and contracts for schools are subject to provisions of this charter. No purchase, expenditure, or contract shall be made in excess of available school funds.

Centralized buying may be used where it is mutually agreed upon by the council and the board of education or their delegated representatives.

ORGANIZATIONS EXEMPT BY THE CHARTER

According to the general law modified city manager-council charter, there are no vendor organizations exempt from competitive bidding requirements.

PURCHASES EXEMPT BY THE CHARTER

The charter does not exempt any purchasing or public improvements from competitive bidding.

COMPETITIVE BIDS/PROPOSALS

Competitive prices for all acquisitions and public improvements must be obtained whenever possible, in accordance with regulations, which must be established by ordinance. The lowest responsible bidder must receive contracts or purchases. The municipality may reject any and all bids.

Formal sealed bids must be taken in all transactions of $10,000 or more. These transactions must be confirmed by written contract submitted to and approved by the council.

The charter authorizes the council, upon written recommendation of the city manager and by unanimous resolution of those present at the meeting, to authorize non-competitive contracts where it is clearly to the advantage of the municipality not to contract with competitive bidding.

The council may authorize public improvements or other municipal work to be done by any municipal department or agency without competitive bidding.

"Competitive sealed bids" generally means both sealed bids and sealed proposals. Sealed proposals should be used if the criteria for vendor selection can be clearly defined, the selection process will benefit the municipality, and the process is approved by the municipality's board of commissioners. See "Sealed Bids or Proposals" (Exhibit 30).

PUBLIC ADVERTISEMENT

The general law modified city manager-council charter contains no rules about public advertising for buying and public improvements. Regulations about public advertisement should be established by ordinance.

EMERGENCY PURCHASES

The charter also is silent on emergency purchases. Regulations about emergency purchases should be established by ordinance as well.

AUTHORITY OF THE GOVERNING BODY

According to the charter, council must set by ordinance the regulations concerning all acquisitions and public improvements. The municipality may reject any and all bids.

If there is unanimous agreement of those present at the council meeting and the city manager has provided a written recommendation, council may authorize non-competitive contracts where it is clearly to the advantage of the municipality not to contract with competitive bidding.

The council may authorize public improvements or any municipal work done by a municipal department or agency without competitive bidding.

The council also may establish by ordinance all purchasing and contract procedures not addressed in the charter or other legislation.

The board of education and superintendent of schools are subject to the conditions of the charter when making purchases and contracts for schools. The board of education stands in place of the council and the superintendent of schools in place of the city manager.

The municipal administration and the schools may centralize buying when it is agreed upon by the council and board of education.

OTHER GENERAL LAWS

There are other general laws apart from the charter that can, and do, influence buying policies of municipal governments. The following is a list of legislation, discussed later, that should be considered:

- Professional service contracts (T.C.A. § 12-4-106);
- Certain insurance (T.C.A. § 29-20-407);
- Purchases through state — general services (T.C.A. § 12-3-1001);
- Purchases from other governments (T.C.A. § 12-3-1003);
- Cooperative purchasing agreements (local) (T.C.A. § 12-3-1009);
- Cooperative purchasing agreements (state) (T.C.A. 12-3-216);

- Cooperative purchasing agreements (local in state and local out of state) (T.C.A. 12-9-101);
- Electronic bidding, invitations to bid, requests for proposals and other solicitations (T.C.A. § 12-3-704);
- Recognition of electronic contracting (T.C.A. § 47-10-107);
- Purchases for other local governments (T.C.A. § 12-3-1004);
- Transfer of personal property among governments (T.C.A. § 12-3-1005);
- Purchases of property at public auctions — reporting. (T.C.A. § 12-3-1006);
- Competitive bidding (T.C.A. § 12-3-1007);
- Purchases from state industries (T.C.A. §§ 41-22-119 — 121);
- "Buy America" Act (T.C.A. § 54-5-135);
- Purchasing motor oil (T.C.A. § 12-3-531);
- Life cycle cost and procurement act (T.C.A. §§ 12-3-601 *et seq.*);
- Purchasing from certain handicapped persons (T.C.A. § 71-4-701);
- Purchasing of confiscated property from the state (T.C.A. § 12-2-201);
- Interest of officer in municipal contracts (T.C.A. § 6-54-107);
- Personal interest of officers prohibited (T.C.A. § 12-4-101);
- Multi-year contracts for maintenance of water storage tanks (T.C.A. § 12-4-123);
- Conveyance of real or personal property among public agencies (T.C.A. § 12-9-110);
- Purchasing of second-hand goods from private entities (T.C.A. § 12-3-1003); and
- Purchasing through competitive sealed proposals (T.C.A. § 12-3-10).

CHAPTER 4: PRIVATE ACT CHARTERS OR HOME RULE CHARTERS

APPLICABLE PURCHASING LAW

Since private act charters and home rule charters are different, a great deal of careful reading is necessary to determine purchasing rules for each type of municipality. If the charter does not mention purchasing and competitive bidding, buying for the municipality is governed by the 1983 Municipal Purchasing Law.

Generally, if the charter has provisions governing competitive bidding and purchasing, the municipality is governed by the charter. However, due to the vagueness of some charter provisions, it may be difficult to know if a municipality is exempt from the 1983 Municipal Purchasing Law. Each municipality must make a decision about this.

IF GOVERNED BY THE 1983 MUNICIPAL PURCHASING LAW

Refer to the requirements governing general law mayor-aldermanic charters in Chapter 1 of this guide when the 1983 Municipal Purchasing Law is the controlling purchasing statute.

IF GOVERNED BY THE CHARTER

Municipalities that have charter provisions dealing with competitive bidding and either establish bid limits in the charter itself or allow bid limits to be set by ordinance but setting a maximum should operate under the charter provisions. Here, however, the municipality must establish, via charter or ordinance, general bid procedures, including public advertising, securing and opening bids, and any exemptions from competitive bidding.

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

When private act charters or home rule charters control buying, it is important to know which organizations and purchases, if any, are exempt. Exemptions must be substantially similar to those found in T.C.A. § 6-56-304.

You must determine what authority the municipal governing body has concerning establishing policy and procedures for the buying process.

OTHER GENERAL LAWS

There are other general laws and regulations apart from the charter and the 1983 Municipal Purchasing Law that influence purchasing policies. Following is a list of legislation, discussed later in this document, which should be considered and woven into the purchasing process of municipal governments:

- Professional service contracts (T.C.A. § 12-4-106);
- Certain insurance (T.C.A. § 29-20-407);
- Purchases through state-general services (T.C.A. § 12-3-1001);
- Purchases from other governments (T.C.A. § 12-3-1003);
- Cooperative purchasing agreements (local) (T.C.A. § 12-3-1009);
- Cooperative purchasing agreements (state) (T.C.A. § 12-3-216);
- Cooperative purchasing agreements (local in state and local out of state) (T.C.A. § 12-9-101);
- Electronic bidding, invitations to bid, requests for proposals and other solicitations (T.C.A. § 12-3-704);
- Electronic contracting (T.C.A. § 47-10-107);
- Purchases for other local governments (T.C.A. § 12-3-1004);
- Transfer personal property among governments (T.C.A. § 12-3-1005);
- Purchases of property at public auctions — reporting. (T.C.A. § 12-3-1006);
- Competitive bidding (T.C.A. § 12-3-1007);
- Purchases from state industries (T.C.A. §§ 41-22-119 — 121);
- "Buy America" Act (T.C.A. § 54-5-135);
- Purchasing motor oil (T.C.A. § 12-3-531);
- Life cycle cost and procurement act (T.C.A. §§ 12-3-601 *et seq.*);
- Purchasing from certain handicapped persons (T.C.A. § 71-4-701);
- Interest of officer in municipal contracts (T.C.A. § 6-54-107);
- Purchase of confiscated property from the state (T.C.A. § 12-2-201);
- Personal interest of officers prohibited (T.C.A. § 12-4-101);
- Multi-year contracts for maintenance of water storage tanks (T.C.A. § 12-4-123);
- Conveyance of real or personal property among public agencies (T.C.A. 12-9-110);
- Purchasing of second-hand goods from private entities (T.C.A. § 12-3-1003); and
- Purchasing through competitive sealed proposals (T.C.A. § 12-3-10).

CHAPTER 5: OTHER GENERAL LAWS

Throughout this guide there are several references to "other general laws" that can be applied to municipal buying in addition to charter provisions and the 1983 Municipal Purchasing Law. The charter provisions and the purchasing law are applicable to the individual municipality and may be applied uniquely, within legislative constraints, in each municipality.

These "other general laws" apply equally to all municipalities within the state and should be interpreted consistently. The person responsible for purchasing should become familiar with the current legislation and be alert for new and changing statutes.

PROFESSIONAL SERVICE CONTRACTS (T.C.A. § 12-4-106)

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

According to the legislation, a contract will be awarded on the basis of recognized competence and integrity, rather than on competitive bids. This does not stop a municipality from requesting proposals from eligible service providers, then deciding about the capabilities of each. Although cost must be considered in choosing the service provider, it must not be the sole factor.

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

Any fiscal agent, financial advisor or advisory service that serves a municipality and wants to bid — directly or indirectly — on any debt obligation of the municipality being sold to the public at a competitive sale must have prior written permission from the municipality. A financial advisory relationship is not considered to exist when the advisor acts as an underwriter. A municipal securities dealer renders advice to the municipality concerning structure, timing, terms and other similar matters concerning a new obligation issue.

CERTAIN INSURANCE (T.C.A. § 29-20-407)

Municipalities may purchase tort liability insurance, without competitive bidding, from the Tennessee Municipal League or any other plan authorized by any organization of governmental entities representing cities and counties. This is true regardless of any public or private act or charter restrictions.

PURCHASE THROUGH STATE-GENERAL SERVICES (T.C.A. § 12-3-1001)

Municipalities may take advantage of so-called "state prices" regardless of any charter or general law requirements. In addition, not withstanding any local or private act, charter or general law restrictions, municipalities may purchase any item from local sources if such item is available for purchase under the provisions of contracts or price agreements entered into by the department of general services, and such item is available at the same or lower cost from such local sources, and the local governmental entity is

not permitted to purchase from an existing contract established by the department. Not all prices quoted to the state are available to local governments. The items, price and vendor information are available electronically from the purchasing division of the Department of General Services at http://www.state.tn.us/generalserv/purchasing/kont.htm.

PURCHASES FROM OTHER GOVERNMENTS (T.C.A. § 12-3-1003)

Any municipality may buy second-hand items or equipment or other materials, supplies, commodities, and equipment from any other government. These purchases may be made without competitive bidding and public advertisement, regardless of charter requirements.

PURCHASES FOR OTHER LOCAL GOVERNMENTS (T.C.A. § 12-3-1004)

A local governmental entity may buy supplies, equipment and services for any other local governmental body. Examples of governmental entities include municipalities, counties and utility districts.

The acquisition must be made on the terms of the entity making the purchase. Obviously, the cost will be borne by the entity for which the purchase was made.

All competitive bidding and public advertisement requirements of the requesting entity are met if the purchasing body complies with its own buying requirements. In the bid, it's a good idea for the purchasing entity to identify the requesting entity, especially when services, not supplies and equipment, are being bought.

COOPERATIVE PURCHASING AGREEMENTS (LOCAL) (T.C.A. § 12-3-1009)

Authorizes any local government to participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any supplies, services or construction with one or more other local governments in accordance with an agreement entered into between the participants.

Where the participants in a joint or multi-party contract are required to advertise and receive bids, it shall be sufficient for those purposes that the purchasing entity comply only with its own purchasing requirements.

COOPERATIVE PURCHASING AGREEMENTS (STATE) (T.C.A. § 12-3-216)

This agreement 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.

COOPERATIVE PURCHASING (LOCAL IN STATE AND LOCAL OUT OF STATE) (T.C.A. § 12-9-101)

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.

ELECTRONIC BIDDING, INVITATIONS TO BID, REQUESTS FOR PROPOSALS AND OTHER SOLICITATIONS (T.C.A. § 12-3-704)

Allows municipalities to satisfy any requirement for mailing by distributing invitations to bid, requests for proposals and other solicitations electronically. Municipalities also may receive bids, proposals and offers electronically. Municipalities shall not require small businesses and minority-owned businesses to receive or respond to invitations to bid, requests for proposals, or other solicitations electronically.

ELECTRONIC CONTRACTING (T.C.A. § 47-10-107)

Establishes legal recognition of electronic records, electronic signatures and electronic contracts.

PURCHASES OF PROPERTY AT PUBLIC AUCTIONS - REPORTING (T.C.A. § 12-3-1006)

Authorizes a municipality to establish written procedures governing purchases at publicly advertised auctions. Establishes fixed reporting requirements for the purchasing official.

REGULATIONS FOR COMPETITIVE BIDDING (T.C.A. § 12-3-1007)

Establishes regulations governing competitive bidding for municipalities with a population of greater than 150,000.

TRANSFER PERSONAL PROPERTY AMONG GOVERNMENTS (T.C.A. § 12-3-1005)

On approval of the governing bodies involved, counties, municipalities, and metropolitan governments may purchase, trade, or receive as a gift any used or surplus personal property from another county, municipality, metropolitan government, state government, federal government or any division of such, regardless of any laws regulating competitive bidding and public advertisement.

Any county, municipality, or metropolitan government may, by resolution or ordinance of its governing body, establish a procedure for disposing of its surplus personal property by sale, gift, trade, or barter to other areas, including counties, municipalities, metropolitan governments, the state of Tennessee, the federal government, other states or their political subdivisions and the divisions of any of the foregoing, or other governmental entities. This can be done without regard for any other provision of law concerning the sale or disposition of used or surplus personal property.

This legislation shall be read as supplemental authority for counties, municipalities and metropolitan governments.

PURCHASES FROM STATE INDUSTRIES (T.C.A. §§ 41-22-119 — 121)

Municipalities must buy all items produced, re-packaged, assembled, warehoused or manufactured by the labor of inmates from the Tennessee Rehabilitative Initiative in Correction (TRICOR) program provided the articles have been certified by the Board of Standards as being in satisfactory condition, of reasonable cost and available. However, municipalities may not evade the intent of the law by slightly changing the variations from standards adopted by TRICOR when articles have been certified.

Continued intentional violations by any municipality, after notice from the governor, constitute wrongdoing in office and subject the officers or agents responsible for the violation to suspension or removal from office.

"BUY AMERICA" ACT (T.C.A. § 54-5-135)

Municipalities must not buy any materials used for highway or roadway construction, re-surfacing, or maintenance from any foreign government, any company wholly owned or controlled by a foreign government, or any agency of such foreign government or company.

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

This 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 5 percent more than the overall project costs using materials produced by foreign companies.

PURCHASING MOTOR OIL (T.C.A. § 12-2-531)

Standard specifications for buying lubricating motor oil must include re-refined or recycled lubricating motor oil, unless circumstances or equipment require specialized treatment. If specialized treatment is necessary, documented evidence supporting the need must be available on request.

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

LIFE CYCLE COST AND PROCUREMENT ACT (T.C.A. §§ 12-3-601 *et seq.*)

The state Department of General Services will determine which commodities and products may be bought according to energy efficiency standards. The state shall adopt rules and regulations relative to energy efficiency standards for major energy-consuming products.

Life cycle costs are to be used in contracting for major energy-consuming products. In determining life cycle costs, the state may consider acquisition cost of the product, energy consumption and projected cost of energy over the useful life of the product, and the expected re-sale or salvage value of the product.

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

PURCHASING FROM CERTAIN HANDICAPPED PERSONS (T.C.A. § 71-4-701)

Municipalities must purchase services and commodities from qualified non-profit work centers for the blind or severely handicapped 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 Board of Standards determines that the service or item doesn't meet reasonable requirements.

PURCHASE OF CONFISCATED PROPERTY FROM THE STATE (T.C.A. § 12-2-201)

A municipality may buy a motor vehicle that has been confiscated by the state by any city officer, employee or their agent when the purchase is for municipal use.

INTEREST OF OFFICER IN MUNICIPAL CONTRACTS (T.C.A. § 6-54-107)

No one holding a municipal office, elected or appointed, shall contract with the municipality for any work that is to be paid for out of the treasury, nor shall such person hold or have any direct interest in such a contract. Direct interest is defined as any business in which the official is the sole proprietor, a partner, or the person who has the controlling interest. Controlling interest means the person with the ownership or control of the largest number of outstanding shares owned by any individual or corporation.

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

PERSONAL INTEREST OF OFFICERS PROHIBITED (T.C.A. § 12-4-101)

It is unlawful for any person whose duty is to vote for or to supervise any contract with a municipality to be directly interested in such a contract. As stated previously, "directly interested" means any contract with the official or person himself or with any business in which the official or person is the sole proprietor, a partner or the person having the controlling interest. "Controlling interest" includes the person with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation.

No municipal officer or other person whose duty is to superintend any contract with a municipality shall be indirectly interested in any such contract unless the officer or person publicly acknowledges his interest. "Indirectly interested" means any contract in which the officer or person is interested, but not directly, but includes contracts where the officer or person is directly interested, but is the sole supplier in the municipality.

MULTI-YEAR CONTRACTS FOR MAINTENANCE OF WATER STORAGE TANKS (T.C.A. § 12-4-123)

Multi-year contracts for painting and maintenance of water storage tanks may be procured through a request for proposals process. According to the legislation, the solicitation document must include the categories used for evaluating the proposals and the relative weight afforded each category. The categories will include, but are not limited to, factors such as qualifications, experience, availability of workers, technical approach, minority participation and cost. Cost is not the sole criterion for evaluation. Proposers have 30 days from public advertisement of the request for proposals to submit their proposals.

CONVEYANCE OF REAL OR PERSONAL PROPERTY AMONG PUBLIC AGENCIES (T.C.A. § 12-9-110)

Any city or other public agency or agencies may convey or transfer real or personal property to any other public agency or agencies by contract, regardless of any requirements in any budget or purchasing act. However, the receiving public agency or agencies must use the conveyed property for a public purpose. In addition, the governing body of every public agency involved in the conveyance or transfer must agree that the terms and conditions are appropriate.

PURCHASE OF SECOND-HAND ARTICLES (T.C.A. § 12-3-1003)

Allows counties and municipalities to purchase second-hand articles, goods, equipment, materials, supplies or commodities from federal, state, or local government agencies without public advertisement and competitive bidding and from private entities under certain circumstances.

In order to purchase second-hand items from private entities, the municipality or county must document the general value of the item through a listing in a nationally recognized publication or through an appraisal by a licensed appraiser. The price paid must fall within 10 percent of the documented range.

PURCHASING THROUGH COMPETITIVE SEALED PROPOSALS (TC.A. § 12-3-1011)

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

- The governing body must adopt a procurement code before purchases may be made through competitive sealed proposals. MTAS, in conjunction with the comptroller's office, will develop a code that municipalities may adopt.
- The governing body must follow the procurement code, which must contain criteria and procedures for making purchases.
- Purchases using competitive sealed proposals may be made only in instances when qualifications, experience and competence are more important than price.
- These purchases may be made only when (1) there is more than one solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution, or (2) when there is no readily identifiable solution to a purchasing issue and competitive sealed proposals will assist in identifying one or more solutions.
- Adequate public notice must be given for the request for proposals in the same manner as for requests for competitive sealed bids.
- The request for proposals must state the relative importance of price and other factors.
- Proposals must be opened in a manner that avoids disclosure of contents to competing proposers during the subsequent negotiations. Proposals will be open to public inspection once the intent to award the contract to a particular proposer is announced.
- Discussions may be conducted for clarification with responsible proposers who submit proposals determined by the purchasing agent to be viable for selection. These proposers must be given fair treatment relative to discussion and revision of proposals. Revisions to proposals are permitted after submission and before the intent to award to a particular proposer is announced.
- In the discussions, the purchasing agent and other municipal personnel may not disclose information derived from competing proposals.
- The award must be made to the responsible proposer whose proposal the governing body determines is most advantageous to the municipality. The purchasing agent must place in the file a statement containing the basis on which the award was made.

Utility boards also use this law.

CHAPTER 6: PURCHASING PROCEDURES

One of the most important jobs of a municipality is choosing the person responsible for purchasing. In some cases the municipal charter specifies the buyer. If the charter doesn't, the governing body must make the selection. The municipality should formally recognize the office of purchasing agent and the adoption of the purchasing procedures by ordinance. The buyer should be available to give input for creating and adopting purchasing procedures.

Using written, organized buying procedures is important because it lets taxpayers know their money is being spent carefully. Vendors know they will be treated fairly, and employees will have support, direction and protection from their highest superiors. Good purchasing policies should be developed around mandatory purchasing laws and regulations, common-sense business practices, and day-to-day practical experience.

The sample purchasing procedures contained in Exhibit 30 were selected as samples because they are comprehensive and practical. Some will be better than others for certain municipalities. In any case, the policies can easily be modified for most situations. According to these procedures, the municipality competitively bids everything costing more than $1,000 and requires public advertisement and sealed bids for everything costing more than $2,500. To modify for another municipality, simply change the amounts. Changes in routing of paperwork can be modified in the same way.

The size of the municipality makes little difference in the need for good purchasing procedures. Some municipalities will want a more sophisticated system. Remember, MTAS consultants are available to help officials develop and implement almost any system.

EXHIBIT 1: MUNICIPAL PURCHASING LAW OF 1983

6-56-301. Short title — This part shall be known and may be cited as the "Municipal Purchasing Law of 1983."

6-56-302. Application of part — This part shall apply to all purchases by authorized officials in all municipalities using or encumbering municipal funds, except as follows:

(1) This part shall not apply to purchases by authorized officials in municipalities that have a charter provision or private act that either establishes within the charter or act itself dollar limits over which competitive bidding is required, or authorizes the municipality to set a dollar limit by ordinance but establishes the maximum dollar limit over which competitive bidding is required, and the municipality has established either by charter, private act, or ordinance general bidding procedures that include, but are not limited to, public advertising, securing and opening bids, and any exemptions from competitive bidding. Any exemptions must be substantially similar to those listed in § 6-56-304, except that any dollar amounts listed must be established in accordance with the municipality's charter or private act;

(2) This part shall not apply to purchases by authorized officials in municipalities that have charter provisions relative to competitive bidding but that do not establish a dollar limit over which competitive

bidding is required, as long as the municipality, by ordinance, establishes:

(A) A dollar limit over which competitive bidding is required, which may not exceed twenty-five thousand dollars ($25,000);

(B) A dollar limit, which may not exceed forty percent (40%) of the amount established under subdivision (2)(A), over which the municipality need not advertise but must, when possible, obtain three (3) competitive bids and below which no advertisement or competitive bidding is required;

(C) Procedures for public advertising, securing, and opening bids; and

(D) Any exemptions from competitive bidding, which must be substantially similar to those listed in § 6-56-304, except that any dollar amounts listed must be in accordance with the municipality's ordinances;

(3) This part shall not apply to purchases made under the provisions of § 12-3-1001;

(4) This part shall not apply to investments in or purchases from the pooled investment fund established pursuant to title 9, chapter 4, part 7;

(5) This part shall not apply to purchases from instrumentalities created by two (2) or more cooperating governments such as, but not limited to, those established pursuant to the Inter-local Cooperation Act, compiled in title 12, chapter 9; and

(6) This part shall not apply to purchases from nonprofit corporations such as, but not limited to, the Local Government Data Processing Corporation, whose purpose or one of whose purposes is to provide goods or services specifically to municipalities.

6-56-303. Limits on purchases — All purchases made from funds subject to the authority of this part shall be made within the limits of the approved budget, when required, and the appropriations, when required, for the department, office or agency for which the purchase is made.

6-56-304. Advertising and bidding — Exceptions — 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:

(1) Purchases costing less than two thousand five hundred dollars ($2,500); provided that this exemption shall not apply to purchases of like items which individually cost less than two thousand five hundred dollars ($2,500), but which are customarily purchased in lots of two (2) or more, if the total purchase price of such items would exceed two thousand five hundred dollars ($2,500) during any fiscal year;

(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 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 purchase was made. A report of such sole source or proprietary purchases shall be made as soon as possible to the municipal governing body and the chief executive officer of the municipality and shall include all items of information as required for the record;

(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 record of any such emergency purchase shall be made by the person or body authorizing such emergency purchases, and shall specify the amount paid, the items purchased,

from whom the purchase was made and the nature of the emergency. A report of any emergency purchase shall be made as soon as possible to the municipal governing body and the chief executive officer of the municipality, and shall include all items of information as required in the record;

(4) Leases or lease-purchase agreements requiring total payments of less than two thousand five hundred dollars ($2,500) in each fiscal year the agreement is in effect, provided this exemption shall not apply to leases of like or related items which individually may be leased or lease-purchased with total payments of less than two thousand five hundred dollars ($2,500) in any fiscal year, but which are customarily leased or lease-purchased in numbers of two (2) or more, if the total lease or lease-purchase payments for such items under a single agreement would be two thousand five hundred dollars ($2,500) or more in any fiscal year;

(5) Purchases, leases, or lease-purchases or real property;

(6) Purchases, leases, or lease-purchases from any federal, state, or local governmental unit or agency of secondhand articles or equipment or other materials, supplies, commodities, and equipment;

(7) Purchases of perishable commodities from the requirements of public advertisement and competitive bidding, when such items are purchased in the open market. A record of all such 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 purchase was made. A report of such purchases shall be made, at least monthly, to the chief executive officer and the governing body, and shall include all items of information as required in the record. Fuel and fuel products may be purchased in the open market without public advertisement, but shall whenever possible be based on at least three (3) competitive bids. Fuel and fuel products may be purchased from the department of general services' contract where available; and

(8) Purchases of natural gas and propane gas for re-sale.

6-56-305. Advertising and Bidding — Expenditures of less than $2,500 — All purchases, leases, or lease-purchase arrangements with expenditures of less than two thousand five hundred dollars ($2,500) but more than one thousand dollars ($1,000) in any fiscal year may be made in the open market without public advertisement, but shall, whenever possible, be based upon at least three (3) competitive bids. Purchases, leases, or lease-purchases of one thousand dollars ($1,000) or less in any fiscal year shall not require any public advertisement or competitive bidding. Any municipal governing body may, by ordinance, increase the one thousand dollar ($1000) limit in this section to a maximum of forty percent (40%) of the amount established as authorized under § 6-56-306 for purchases requiring public advertisement and competitive bidding.

6-56-306. Additional authority of municipal governing body —

(a) Municipal governing bodies are specifically authorized to lower the dollar amounts required in this part for public advertisement and competitive bidding to an amount to be set by the municipal governing body. Municipal governing bodies may by ordinance increase the dollar amount required in this part for public advertisement and competitive bidding from two thousand five hundred dollars ($2,500) to a maximum of ten thousand dollars ($10,000). When the governing body does this, references in this part to two thousand five hundred dollars ($2,500) shall be deemed a reference to the amount established by the municipal governing body in its ordinance.

(b) Municipal governing bodies are specifically authorized to adopt regulations providing procedures for implementing the provisions of this part.

EXHIBIT 2: SAMPLE ORDINANCE TO INCREASE PURCHASING LIMITS

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

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

WHEREAS, this law has been amended by Chapter No. 269, Public Acts of 1999, permitting municipalities to increase the dollar amount of purchases requiring public advertisement and competitive bidding, and,

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

BE IT ORDAINED BY THE *(governing body)*, **THAT**:

Section 1. Public advertisement and competitive bidding shall be required for the purchase of all goods and services exceeding an amount of ten thousand dollars ($10,000) except for those purchases specifically exempted from advertisement and bidding by the Municipal Purchasing Act of l983.

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

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

EXHIBIT 3: LAWS RELATED TO PURCHASING IN CITY MANAGER-COMMISSION CHARTER

6-19-104. Purchasing and contract procedures —

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

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

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

(d) The city manager may reject all bids and authorize the making of public improvements or accomplishment of any other city work by any city department.
(e) Purchasing and contract procedures not prescribed by this charter or other law may be established by ordinance.
(f) The board of commissioners may by ordinance delegate to the city manager the authority to enter into binding contracts on behalf of the city, without specific board approval, in routine matters and matters having insubstantial long-term consequences. The ordinance shall enumerate the types of matters to which the city manager's authority extends and may place other limitations on the city manager's authority under this subsection. As used in this subsection (f) "routine matters and matters having insubstantial long-term consequences" means any contract for which expenditures during the fiscal year will be less than ten thousand dollars ($10,000).

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

(1) See that the laws and ordinances are enforced, and upon knowledge or information of any violation thereof, see that prosecutions are instituted in the city court;
(2) Except as otherwise provided in this charter, appoint, promote, demote, suspend, transfer, remove, and otherwise discipline all department heads and subordinate employees at any time, subject only to any personnel rules and regulations adopted by ordinance or resolution by the commission. Any hearings on, or appeals from, the city manager's personnel decisions provided for in the personnel rules and regulations shall be exclusively before the city manager or a hearing officer designated by the city manager;
(3) Supervise and control the work of the recorder, the chief of police, the city attorney, treasurer, and all other officers, and of all departments and divisions created by this charter or which hereafter may be created by the board of commissioners;
(4) See that all terms and conditions imposed in favor of the city or its inhabitants in any public utility or franchise are faithfully done, kept and performed, and, upon knowledge or information of any violation thereof, call the same to the attention of the city attorney, who is hereby required to take such steps as are necessary to enforce the same;
(5) Attend all meetings of the board, with the right to take part in the discussion, but not to vote;
(6) Recommend to the board for adoption such measures as the city manager deems necessary or expedient;
(7) Act as budget commissioner and keep the board fully advised as to the financial condition and need of the city;
(8) Act as purchasing agent for the city and to purchase all material, supplies and equipment for the proper conduct of the city's business as provided in ' 6-19-104;
(9) Execute contracts on behalf of the city when this authority is delegated to the city manager by ordinance; and
(10) Perform such other duties as may be prescribed by this charter or required of the city manager by resolution or ordinance of the board.

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

EXHIBIT 4: SAMPLE ORDINANCE TO ESTABLISH PURCHASING LIMITS IN CITY MANAGER-COMMISSION CHARTERED CITIES

AN ORDINANCE OF THE CITY OF _____ TO ESTABLISH PURCHASING LIMITS

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

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

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

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

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

(a) Purchases not exceeding $_____ (not to exceed $10,000). The city manager is authorized to make the following purchases whose estimated costs do not exceed $_____ without formal sealed bids and written specifications: commonly used items of material, supplies, equipment and services used in the ordinary course of maintaining and repairing the city's real or personal property; building or maintaining stocks of city material, supplies and equipment used in the ordinary course of city operations; and minor construction, repair or maintenance services. However a record of all such purchases shall be maintained

describing the material, supplies, equipment or service purchased, the person or business from whom it was purchased, the date it was purchased, the purchase cost, and any other information from which the general public can easily determine the full details of the purchase. Each purchase shall be supported by invoices and/or receipts and any other appropriate documentation signed by the person receiving payment.

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

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

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

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

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

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

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

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

EXHIBIT 5: LAWS RELATED TO PURCHASING IN MODIFIED CITY MANAGER-COUNCIL CHARTERED CITIES

6-35-205. Purchasing —

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

(b)

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

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

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

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

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

(a) The management of all city property and equipment except school property and equipment shall be the responsibility of the city manager who shall prepare for the approval of the council regulations governing the acquisition, custody, use and disposal of all such property and equipment. Such regulations shall provide for a regular inventory, appraisal and marking of all such property and shall require that the disposal of any city property and equipment valued at more than five hundred dollars ($500), provided that any sale for more than one thousand dollars ($1,000), or any sale of real estate shall be subject to the approval of the city council.

6-36-115. Purchases and contracts —

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

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

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

EXHIBIT 6: PROFESSIONAL SERVICE CONTRACTS

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, they are within the technical competency of the existing firm, without exercising the provisions of this section.

(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 therefore, and the expenses to be covered under such contracts.

(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. Not withstanding 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.

EXHIBIT 7: PURCHASE OF CERTAIN INSURANCE

29-20-407. Authorization for purchase of insurance without bidding — Any governmental entity may purchase any of the insurance authorized by this chapter, without the necessity of public bidding, as required by any public or private act or charter restriction, if such insurance is purchased through a plan authorized and approved by any organization of governmental entities representing cities and counties.

EXHIBIT 8: PURCHASES THROUGH STATE — GENERAL SERVICES

12-3-1001. Purchases for local governmental units. —

(a) The department of general services may, upon request, purchase supplies and equipment for any county, city, municipality, special district, school district, or other local governmental unit of the state. The purchases shall be made on the same terms and under the same rules and regulations as now provided for the purchase of supplies and equipment by the department of general services. The cost of any purchase made pursuant to this section shall be borne by the local governmental unit concerned. The department of general services shall have the power to promulgate all rules and regulations necessary for the operation of this section, subject to the approval of the Board of Standards.

(b) It is the intent of this section that the department of general services advise local governments of the benefits to be derived from the use of the purchasing procedures authorized herein. Where any local or private act, charter, or general law requires that a local governmental unit purchase by competitive bidding, the local unit of government may, not withstanding the local or private act, charter, or general law, purchase, without public advertisement or competitive bidding, under the provisions of contracts or price agreements entered into by the department of general services.

(c) To the extent permitted by federal law or regulations, local governments may make purchases of goods, except motor vehicles, or services included in federal general service administration contracts or other applicable federal open purchase contracts either directly or through the appropriate state department or agency; provided, that no purchase under this section shall be made at a price higher than that which is contained in the contract between the general services administration and the vendor affected.

(d)

(1) Except as provided in subdivision (d)(5), where any local or private act, charter, or general law requires that a local governmental unit purchase by competitive bidding, the local unit of government may, notwithstanding the local or private act, charter, or general law, purchase, without public advertisement or competitive bidding, any item from local sources if such item is available for purchase under the provisions of contracts or price agreements entered into by the department, and such item is available at the same or lower cost from such local sources. This subsection shall apply only in cases where the local governmental entity is not permitted to purchase from an existing contract established by the department. Any item purchased locally must be of equal or better specifications than the item under the competitive bid contract.

(2) The legislative body of a county by resolution and a municipality by ordinance may establish and adopt a program to encourage participation in government purchasing programs by minority-owned businesses. Such programs may include set-aside provisions which conform to federal law.

(3) The provisions of this subsection shall be permissive relative to sellers of motor vehicles.

(4) The provisions of this subsection (d) shall have no effect unless it is approved by a two-thirds (2/3) vote of the local legislative body and such approval is filed with the comptroller of the treasury.

(5) The provisions of this subsection (d) do not apply in a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), or in a county having a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census.

EXHIBIT 9: COOPERATIVE PURCHASING AGREEMENTS (STATE)

12-3-216. Cooperative purchasing agreements (State) — The commissioner of general services is authorized to enter into cooperative purchasing agreements with other states, local governments and higher education institutions; provided, that each contract is established through the use of competitive sealed bids and each procurement has the prior approval of the Board of Standards.

EXHIBIT 10: ELECTRONIC BIDDING

12-3-704. Electronic bidding, invitations to bid, requests for proposals and other solicitations — Not withstanding any provision of law, rule or regulation to the contrary, state agencies and local governments may satisfy any requirement for mailing by distributing invitations to bid, requests for proposals and other solicitations electronically. In addition, state agencies and local governments may receive bids, proposals, and other offers electronically. In order to assure the fullest possible participation of small businesses and minority owned businesses, state agencies and local governments shall not require such small businesses and minority-owned businesses to receive or respond to invitations to bid, requests for proposals, or other solicitations electronically.

EXHIBIT 11: RECOGNITION OF ELECTRONIC CONTRACTING

47-10-107. Legal recognition of electronic records, electronic signatures and electronic contracts —

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
(c) If a law requires a record to be in writing, an electronic record satisfies the law.
(d) If a law requires a signature, an electronic signature satisfies the law.

Although this section has uniform application when two or more entities participate in an e-business transaction, specific attention is focused on **Section 3, Illustration 2,** in the **COMMENTS TO OFFICIAL TEXT**.

> **Illustration 2:** A sends the following e-mail to B: "I hereby offer to buy 100 widgets for $1,000, delivery next Tuesday. /s/ A." B responds with the following e-mail: "I accept your offer to purchase 100 widgets for $1,000, delivery next Tuesday. /s/ B." In this case the records satisfy the requirements of UCC § 2-201(1) [47-2-201(1)]. The transaction may not be denied legal effect solely because there is not a pen and ink "writing" or "signature."

EXHIBIT 12: PURCHASES FROM OTHER GOVERNMENTS

12-3-1003. Purchase of second-hand articles or equipment by municipalities — Not withstanding the requirements of its charter, any municipality may purchase from any federal, state, or local governmental unit or agency secondhand articles or equipment or other materials, supplies, commodities, and equipment without public advertisement and competitive bidding.

EXHIBIT 13: PURCHASES FOR OTHER LOCAL GOVERNMENTS

12-3-1004. Purchases for other local 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.

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

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

(d) 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.

EXHIBIT 14: TRANSFER PERSONAL PROPERTY AMONG GOVERNMENTS

12-3-1005. Transfers of surplus personal property among governmental entities —

(a) Notwithstanding any other provisions of law, counties, municipalities, and metropolitan governments may purchase, trade or receive as a gift, upon approval of the governing bodies involved in the transaction, any used or surplus personal property from another county, municipality, metropolitan government, state government, federal government or any instrumentality of the foregoing, without regard to any laws regarding public advertisement and competitive bidding. Also not withstanding any other provision of law, any county, municipality, or metropolitan government may by resolution or ordinance of its governing body establish a procedure for the disposition of its surplus personal property to other governmental entities, including, but not limited to, counties, municipalities, metropolitan governments, the state of Tennessee, the federal government, other states or their political subdivisions and the instrumentalities of any of the foregoing, by sale, gift, trade, or barter upon such terms as the governing body may authorize, without regard to any other provisions of law regarding the sale or disposition of used or surplus personal property.

(b) The provisions of this section shall be construed as supplemental authority for counties, municipalities and metropolitan governments.

EXHIBIT 15: PURCHASE OF PROPERTY AT PUBLIC AUCTIONS

12-3-1006. Purchases of property at public auctions — Reporting —

(a) Not withstanding 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 governing purchases 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.

EXHIBIT 16: COMPETITIVE BIDDING

12-3-1007. Competitive bidding —

(a) As used in this section, "municipality," "county" and "metropolitan government" apply only to municipalities, counties, and metropolitan governments with a population greater than one hundred fifty thousand (150,000) according to the latest federal census.

(b) In any municipality, county or metropolitan government, not withstanding any charter provision, private act, or other provision of law, a purchase, lease, or lease-purchase must be preceded by competitive bidding or competitive proposals only if the purchase, lease, or lease-purchase exceeds ten thousand dollars ($10,000).

(c) When the charter of a metropolitan government requires that purchases be made on the basis of competitive bidding, notwithstanding the provisions of subsection (b), "competitive bidding" for the metropolitan government means:

DOLLAR AMOUNT OF PURCHASE	REQUIREMENT
$1,000.00 to $3,999.99	Three (3) verbal (including telephone) quotations when possible.
$4,000.00 to $9,999.99	Three (3) written (including fax) quotations when possible.
$10,000.00 and above	Competitive sealed bids or proposals for non-emergency and non-proprietary product purchases.

(d) Any municipality, county or metropolitan government may retain present competitive bidding requirements and retains the right to establish, in accordance with charter amendment or private act, whichever is applicable, different dollar amount thresholds and different requirements for competitive bids and competitive proposals from those established in this section.

(e) Nothing in this section shall be deemed to expressly or impliedly repeal the provisions of § 7-52-117, or any part of that section.

(f) The provisions of this section shall not supersede or be construed to supersede the provisions of § 12-3-1001.

EXHIBIT 17: COOPERATIVE PURCHASING AGREEMENTS (LOCAL)

12-3-1009. Cooperative purchasing agreements (Local) — Any municipality, county, utility district, or other local government of the state may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any supplies, services or construction with one (1) or more other local governments in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between local governments. Where the participants in a joint or multi-party contract are required to advertise and receive bids, it shall be sufficient for those purposes that the purchasing entity comply only with its own purchasing requirements.

EXHIBIT 18: INTER-LOCAL COOPERATION ACT

12-9-101 *et seq*. Inter-local Cooperation Act — (Cooperative Purchasing) (Local in State and Local out of State) — (a)(1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state, including those provided in § 6-54-307, may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment.

EXAMPLE: U.S. COMMUNITIES GOVERNMENT PURCHASING ALLIANCE

The U.S. Communities Government Purchasing Alliance is a non-profit organization set up by the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, and the National Institute of Governmental Purchasing to pool the purchasing power of governmental agencies and thereby achieve volume discounts on equipment and supplies. Through competitive bids by "lead public agencies" the group of 5,000 participating public agencies offers competitive prices on autos, trucks and heavy equipment; office supplies; furniture; industrial, communication, electrical and data networking supplies; and computer hardware and software. There is no cost to participate, and the organization qualifies under Tennessee law as a legal participant in an inter-local agreement with Tennessee local governments. Currently, the "lead public agencies" that carry out the bidding and selection process are Los Angeles County, Calif., and Fairfax County, Va. For more information, go to the U.S. Communities Web site at http://www.uscommunities.org/, or contact the organization at 2175 North California Blvd., Suite 550, Walnut Creek, CA 94596. Phone: 866-GPA-SHOP.

EXHIBIT 19: PURCHASES FROM STATE INDUSTRIES

41-22-119. Purchase of articles by public agencies —

(a) All departments, institutions, agencies, and political subdivisions of this state, which are supported in whole or in part by the state, shall purchase from the Tennessee rehabilitative initiative in correction board (TRICOR) all articles required by such departments, institutions, agencies or political subdivisions of the state produced, repackaged, assembled, warehoused, or manufactured by TRICOR with the labor of inmates confined within the institutions or elsewhere employed within this state; provided, that the articles are certified by the Board of Standards as being of satisfactory quality, being reasonable in price, and available.

(b) In certifying articles for purchase by state government, the Board of Standards may consider, if it deems appropriate, the effect of such certification on markets in the private sector; however, it is not the legislative intent that such effect, if considered, be a controlling factor in the board's decision.

(c) The board shall appoint a certification committee consisting of, but not limited to, a representative from the TRICOR board, the departments of general services and finance and administration, and the office of the comptroller of the treasury, who shall advise the board.

(d) The TRICOR board shall submit requests for certification of articles together with supporting data regarding quality, price and availability to the Board of Standards.

(e) No such article shall be purchased by any such department, institution, agency, or political subdivision of the state from any other source unless excepted from the provisions of §§ 41-22-117 — 41-22-124 as hereinafter provided.

(f) Each member of the general assembly may purchase any office furniture and equipment manufactured by TRICOR for the purpose of furnishing the legislative offices of such member in the member's legislative district.

(g) The competitive bidding procedures set forth in title 12, chapter 3, part 5, do not apply to the purchase of articles manufactured or grown by TRICOR and certified by the Board of Standards.

41-22-120. Agencies not required to purchase prison-made articles — Exceptions from the operation of the mandatory provisions of §§ 41-22-117 — 41-22-124 may be made in any case where, in the opinion of the Board of Standards, articles so produced or manufactured do not meet the reasonable requirements of a department, institution, agency or political subdivision of the state. No department, institution, agency or political subdivision may be allowed to evade the intent and meaning of this section by slight variations from standards adopted by the Tennessee rehabilitative initiative in correction board when articles produced or manufactured by it are certified.

41-22-121. Violations of § 41-22-120 — No voucher, certificate or warrant issued on the commissioner of finance and administration by any such department, institution, agency or political subdivision shall be questioned by him or by the state treasurer on the grounds that § 41-22-120 has not been complied with by such department, institution, agency, or political subdivision, but if intentional violation of § 41-22-120 by any department, institution, agency or political subdivision continues, after notice from the governor to desist, it shall constitute a malfeasance in office, and shall subject the officer or officers or agents responsible for this violation to suspension or removal from office, as may be provided by law in other cases of malfeasance.

EXHIBIT 20: "BUY AMERICA" ACT

54-5-135. "Buy America" Act —

(a) No agency or entity of state, county, or municipal government in Tennessee shall purchase any materials used for highway or roadway construction, resurfacing, or maintenance from any foreign government, any company wholly owned and controlled by a foreign government regardless of the location of such company, or any agency of such foreign government or company.

(b) As used in this section, "materials" includes but is not limited to, asphalt cement, asphalt emulsion, rock, aggregate, liquid and solid additives, sealers and oils.

(c) This section shall not apply:

(1) If such materials are not produced by American companies in sufficient and reasonably available quantities, and are of satisfactory quality; or

(2) If such American materials increase the overall project cost for which these materials are purchased by five percent (5%) more than the overall project cost using materials produced by a foreign government owned company.

EXHIBIT 21: PURCHASING MOTOR OIL

12-3-531. Standard specifications for lubricating motor oil — Authorized purchases — List of businesses distributing re-refined or recycled oil —

(a) Standard specifications adopted for lubricating motor oil for competitive bidding contracts to be let by the department of general services, or by the appropriate purchasing agencies for any political subdivision of the state, shall be prescribed to include re-refined or recycled lubricating motor oil. Provided, however, such specifications may exclude re-refined or recycled lubricating motor oil for circumstances or equipment which require specialized treatment, upon submission of documented evidence to the Board of Standards or the appropriate purchasing agency of the political subdivision to substantiate each such claim for exclusion.

(b) Standard specifications adopted for lubricating motor oil for competitive bidding contracts to be let by any department, institution, or agency of state government enumerated in T.C.A. § 12-3-103, or by any political subdivision of the state shall be prescribed to include re-refined or recycled lubricating motor oil. Provided, however, such specifications may exclude re-refined or recycled lubricating motor oil for circumstances or equipment which require specialized treatment, upon submission of documented evidence to the appropriate departmental, institutional or agency head to substantiate each such claim for exclusion. Provided, further, that the requirements of this section shall in no way be construed to prohibit such department, institution, or agency from purchasing and contracting for the purchase of such re-refined or recycled lubricating motor oil through the department of general services as authorized in § 12-3-103, or through the appropriate local purchasing agency.

(c) Any not-for-profit corporation receiving funding from the state or contracting with any department, institution, or agency of state government or political subdivision of the state to provide services to the public, shall be authorized to purchase and contract for the purchase of such re-refined or recycled lubricating motor oil as provided in this section through the department of general services under the provisions of this chapter or through the appropriate local purchasing agency.

(d)

(1) The department of general services shall compile and publish a list of business entities which commercially distribute re-refined or recycled lubricating motor oil which complies with the standard specifications adopted by the department pursuant to this section. The department shall make such list available to the various entities and political subdivisions of state government. The department shall mail such list to the chief executive of each county and each municipality.

(2) Prior to accepting competitive bids for a contract concerning lubricating motor oil, a county or municipality shall notify each business entity on the department's list of relevant facts concerning such proposed contract.

EXHIBIT 22: LIFE CYCLE COST AND PROCUREMENT ACT

12-3-601. Short title — This part shall be known as and may be cited as the "Life Cycle Cost and Procurement Act of 1978."

12-3-602. Policy of state — It is hereby declared to be the policy of the state and its political subdivisions to use the life cycle costs of commodities as developed and disseminated by the federal government when purchased by the state or its political subdivisions where feasible as provided in this part.

12-3-603. Definitions — For the purposes of this part:

(1) "Board of Standards" means the board established as set forth in part 4 of this chapter;

(2) "Commissioner" means the commissioner of general services;

(3) "Energy efficiency standard" means a performance standard which prescribes the relationship of the energy use of a product to its useful output of services;

(4) "Major energy-consuming product" means any article so designated by the Board of Standards in consultation with the office of energy management;

(5) "Office of energy management" means the office of energy management in the department of general services, created in § 4-3-1104;

(6) "Political subdivision" means any city, town, municipality or county within the state; and

(7) "State" means the state of Tennessee.

12-3-604. Purchases to be made according to energy efficiency standards — The commissioner, to the maximum extent feasible, shall determine which commodities and products purchased by the state may be purchased according to energy efficiency standards. The commissioner shall have the duty to recommend those commodities and products to the Board of Standards for adoption and use in state purchasing procedures.

12-3-605. Energy efficiency standards to be adopted —

(a) The Board of Standards, in consultation with the director of the office of energy management, shall adopt rules and regulations relative to energy efficiency standards for major energy-consuming products to be procured by the state.

(b) Where federal energy efficiency standards exist, the Board of Standards, in consultation with the director of the office of energy management, shall, where feasible, adopt standards at least as stringent as the federal standards.

(c) For the purpose of implementing this part only, the director of the office of energy management shall advise and consult with the Board of Standards as an ex-officio member.

12-3-606. Life cycle costs used in purchase of major energy-consuming products — Where energy efficiency standards are established, the Board of Standards shall adopt rules requiring life cycle costs to be used by the commissioner in contracting for major energy-consuming products. In determining life cycle costs, the Board of Standards and the commissioner may consider the acquisition cost of the product, the energy consumption and the projected cost of energy over the useful life of the product, and the anticipated resale or salvage value of the product.

12-3-607. Energy efficiency standards and life cycle costs to be used by political subdivisions — Except where private act or state law prohibits, every political subdivision shall adopt and incorporate in its procurement policies energy efficiency standards and life cycle costing employed by the state in its procurement policies.

12-3-608. Action by aggrieved party to void executory contract for purchase of commodities —

(a) Executory contracts for the purchase of commodities by a political subdivision included in this part shall be voidable by the circuit courts upon the bringing of an action by an aggrieved party.

(b) The court may void the contract upon the showing by the aggrieved party that:

(1) The party is a seller of the commodity;

(2) The party is doing business in the state;

(3) The commodity to be sold has an energy efficiency rating and life cycle cost lower than the commodity contracted for by the purchaser;

(4) The purchaser is a political subdivision, and the standard for the commodity has been adopted for one (1) year by the Board of Standards and has not been incorporated or adopted by the political subdivision; and

(5) The aggrieved party is ready, willing and able, without any other legal constraints, to sell the commodity to the purchaser.

12-3-609. Assistance in development of energy efficiency standards — The departments of finance and administration, general services, and the office of energy management shall provide technical assistance to aid in the development or implementation of energy efficiency standards for procurement policies to political subdivisions that request assistance.

12-3-610. Cooperation among state and local agencies — The appropriate state agencies shall cooperate and coordinate their efforts in the development and implementation of energy efficiency standards for procurement policies to the fullest extent possible with the Tennessee Municipal League, the Municipal Technical Advisory Service, the County Technical Assistance Service, the Tennessee County Services Association, and any other appropriate state or local agency or group.

12-3-611. Adoption of more stringent energy efficiency standards by political subdivisions — Nothing in this part shall be construed to prohibit the adoption of an energy efficiency standard by a political subdivision when that standard has not been adopted by rules of the Board of Standards or where the standard proposed to be adopted by the political subdivision is more stringent than the standard adopted by the Board of Standards.

12-3-612. Administrative procedures — The provisions of the Uniform Administrative Procedures Act, compiled in chapter 5 of title 4, shall apply to this part.

EXHIBIT 23: PURCHASING FROM CERTAIN HANDICAPPED PERSONS

71-4-703(d) All departments, institutions, agencies, and political subdivisions of this state supported in whole or in part by the General Assembly, shall purchase all services or commodities required by such departments; institutions, agencies or political subdivisions of this state from qualified non-profit work centers for the blind or severely handicapped as defined by Section 71-4-702, provided that the articles are certified by the Board of Standards and are available. This act has precedence over any law requiring state agency procurement of commodities or services, except laws that require purchases from nonprofit organizations operating under §§ 71-4-204 and 71-4-205, laws establishing preference for blind vendors operating under *Tennessee Code Annotated*, Title 71, Chapter 4, Part 5, and laws requiring purchases under §§ 41-22-118 through 41-22-124.

(e) This act shall not apply in any case in which commodities or services are available from any agency of the state or where the Board of Standards determines that the commodities or services do not meet the reasonable requirements of a department, institution, agency or political subdivision of this state.

EXHIBIT 24: PURCHASE OF CONFISCATED PROPERTY FROM THE STATE

12-2-201(b)

(1) Not withstanding any provision of the law or this chapter to the contrary, in the sale of motor vehicles to governmental entities in accordance with the provisions of § 12-2-407, it shall be the duty of the commissioner of general services:

(A) To determine the place of storage and the location of the sale of such motor vehicles;

(B) To determine, in lieu of the provisions of § 12-2-205, the fair market value of such vehicles to be sold;

(C) To set the percentage of the sale price to be retained by the department to defray the costs of administering the sale and such percentage may exceed the amount provided in § 12-2-207(a);

(D)

(i) To enter notice of the intended disposal by public sale in at least one (1) newspaper of general circulation in the county or counties in which the disposal is to be made,

(ii) To include in such advertisement the manner in which interested parties can obtain information regarding the make, model, condition, and options which may be on a vehicle, and

(iii) To post printed public notices in at least two (2) public places in the county in which the vehicle was seized and confiscated, with one (1) of the public places to be the courthouse; and

(E) To promulgate rules and regulations for the implementation of the provisions of this act.

(2) For such sales, the provisions of § 12-2-202(b) shall not apply. Not withstanding the provisions of any law or § 12-2-208 to the contrary, any state, city, or county officer, employee or his agent may buy or offer to buy motor vehicles when such purchase is in the name of and for the use of a governmental entity.

EXHIBIT 25: INTEREST OF OFFICER IN MUNICIPAL CONTRACTS

6-54-107. Interest of officer in municipal contracts prohibited —

(a) No person holding office under any municipal corporation shall, during the time for which he or she was elected or appointed, be capable of contracting with such corporation for the performance of any work which is to be paid for out of the treasury. Nor shall such person be capable of holding or having any other direct interest in such a contract. "Direct interest" means any contract with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest. "Controlling interest" shall include the individual with the ownership or control of the largest number of outstanding shares owned by any single individual or corporation.

(b) No officer in a municipality shall be indirectly interested in any contract to which the municipality is a party unless the officer publicly acknowledges his 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.

(c)

(1) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality may vote on matters in which he has a conflict of interest if the member informs the governing body immediately prior to the vote as follows: "Because I am an employee of (name of governmental unit), I have a conflict of interest in proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents."

(2) In the event a member of a local governing body of a county or a municipality has a conflict of interest in a matter to be voted upon by the body, he may abstain for cause by announcing such to the presiding officer. Any member of a local governing body of a county or municipality who abstains from voting for cause on any issue coming to a vote before the body, shall not be counted for the purpose of determining a majority vote.

(3) The vote of any person having a conflict of interest who does not inform the governing body of such conflict as provided in subdivision (1) of this subsection shall be void if challenged in a timely manner. As used in this subdivision, "timely manner" means during the same meeting at which the vote was cast and prior to the transaction of any further business by the body.

(4) Nothing in this subsection shall be construed as altering, amending or otherwise affecting the provisions of § 12-4-101(a). In the event of any conflict between this subsection and § 12-4-101(a), the provisions of § 12-4-101(a) shall prevail.

EXHIBIT 26: PERSONAL INTEREST OF OFFICERS PROHIBITED

12-4-101. Personal interest of officers prohibited —

(a)

(1) It shall not be lawful for any officer, committeeman, 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 districts, utility districts, human resource agencies, and other political subdivisions created by statute shall or may be interested, to be directly interested in any such contract. "Directly interested" means any contract with the official himself or with any business in which 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. The provisions of this subdivision shall not be construed to prohibit any officer, committeeman, director, or any person other than a member of a local governing body of a county or municipality from voting on the budget, appropriation resolution, or tax rate resolution, or amendments thereto, unless the vote is on a specific amendment to the budget or a specific appropriation or resolution in which such person is directly interested.

(2)

(A) The provisions of subdivision (a)(1) shall also apply to a member of the board of directors of any not-for-profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more counties, cities, towns and local governments pursuant to the provisions of Title 7, Chapter 54 or 58.

(B) The provisions of subdivision (a)(2)(A) shall not apply to any county with a metropolitan form of government and having a population of four hundred thousand (400,000) or more according to the 1980 federal census or any subsequent federal census.

(b) It shall not be lawful for any officer, committeeman, 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 districts, utility districts, human resource agencies, and other political subdivisions created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges his 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.

(c)

(1) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality and whose employment pre-dates his initial election or appointment to the governing body of the county or municipality may vote on matters in which he has a conflict of interest if the member informs the governing body immediately prior to the vote as follows: "Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents." The vote of any such member having a conflict of interest who does not so inform the governing body of such conflict shall be void if challenged in a timely manner. As used in this subdivision, "timely manner" means during the same meeting at which the vote was cast and prior to the transaction of any further business by the body.

(2) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality and whose employment began on or after the date on which he was initially elected or appointed to serve on the governing body of the county or municipality shall not vote on matters in which he has a conflict of interest.

(3)

(A) In the event a member of a local governing body of a county or a municipality has a conflict of interest in a matter to be voted upon by the body, he may abstain for cause by announcing such to the presiding officer.

(B) Any member of a local governing body of a municipality who abstains from voting for cause on any issue coming to a vote before the body shall not be counted for the purpose of determining a majority vote. The provisions of this subdivision (c)(3)(B) shall in no way be construed to apply to any county having a metropolitan form of government and having a population in excess of five hundred thousand (500,000) according to the 1990 federal census or any subsequent federal census.

EXHIBIT 27: MULTI-YEAR CONTRACTS FOR MAINTENANCE OF WATER STORAGE TANKS

12-4-123. Multi-year contracts for water storage tank painting and maintenance —

(a) As used in this section, the term "governmental entity" means any county, municipality, metropolitan government, town, utility district, or other municipal or public corporation of this state.

(b) Not-withstanding any other provision of law or private act to the contrary, a governmental entity may enter into multi-year contracts for painting and other maintenance of water storage tanks and appurtenant facilities procured through a request for proposals process. The request for proposals process shall invite prospective proposers to participate and shall indicate the service requirements and the categories used for evaluating the proposals, together with the relative weight of each category. Such categories shall include such factors as qualifications, experience on similar projects, availability of workers, technical approach, minority participation, cost, and/or any additional factor or factors deemed relevant by the procuring governmental entity; cost is not to be the sole criterion for evaluation. Proposers shall be given at least (30) days from public advertisement of the request for proposals to consider the evaluation factors set forth in the solicitation documents before submitting proposals. The contract shall be awarded to be the best proposer, using the evalution criteria set forth above, who meets the minimum required qualifications.

(c) Any governmental entity may, at its option, require such multi-year contracts to be competitively bid.

EXHIBIT 28: CONVEYANCE OF REAL OR PERSONAL PROPERTY AMONG PUBLIC AGENCIES

12-9-110. Contracts for conveyance of property —

(a) Any one (1) or more public agencies may contract with any one (1) or more public agencies for the conveyance or transfer of property, real or personal, if:

(1) The public agency or agencies receiving the conveyance or transfer utilizes the property for a public purpose; and

(2) The governing body of each public agency that is a party to the contract authorizes such conveyance or transfer and determines that the terms and conditions set forth are appropriate.

(b) Any public agency utilizing the authority of this section shall not be required to declare such property surplus prior to the conveyance or transfer, and shall also be exempt from contrary requirements in any budget or purchasing act, public or private.

EXHIBIT 29: PURCHASE OF SECOND-HAND GOODS FROM PRIVATE ENTITIES

12-3-1003. Purchase of second-hand goods from private entities —

(a) Not withstanding any charter, private act, or general law requirements, any municipality or any county may purchase used or second-hand articles consisting of goods, equipment, materials, supplies, or commodities from any federal, state, or local governmental unit or agency without public advertisement and competitive bidding.

(b) Not withstanding any charter, private act, or general law requirements, any municipality or any county may purchase used or second-hand articles consisting of goods, equipment, materials, supplies, or commodities from any private individual or entity without public advertisement and competitive bidding as long as the purchasing government documents the general range of value of the purchased item through a listing in a nationally recognized publication or through an appraisal by a licensed appraiser, and the price paid falls within ten percent (10%) of the documented range.

EXHIBIT 30: PURCHASING THROUGH COMPETITIVE SEALED PROPOSALS

12-3-1011. Authorization to use competitive bid proposals —

(a) Any municipality may use competitive sealed proposals to purchase goods and services rather than competitive sealed bids when the municipal governing body, acting under the restrictions and requirements of this section and a procurement code adopted by the governing body, determines that the use of competitive sealed bidding is either not practicable or not advantageous to the municipality. In actual emergencies caused by unforeseen circumstances such as natural or human-made disasters, delays by contractors, delays in transportation, or unanticipated volume of work, purchases through competitive sealed proposals may be made without specific authorizing action of the municipal

governing body. A record of any emergency purchase shall be made by the person or body authorizing the emergency purchase, specifying the amount paid, the items and services purchased, from whom the purchase was made, and the nature of the emergency. A report of the emergency purchase through competitive sealed proposals containing all relevant information shall be made as soon as possible by the person or body authorizing the purchase to the municipal governing body.

(b) In the decision to use competitive sealed proposals, the governing body shall follow a procurement code, which must be adopted by the municipality by ordinance before purchases may be made under this section. The code shall contain criteria for purchasing through competitive sealed proposals and procedures consistent with this section for doing so.

(c) The procurement code shall provide that competitive sealed proposals may be used only when qualifications, experience, or competence are more important than price in making the purchase and:

(1) When there is more than one solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution; or

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

(d) The Municipal Technical Advisory Service of the University of Tennessee Institute for Public Service, in conjunction with the comptroller's office, shall develop a model procurement code that may be adopted by any municipality to guide the governing body and purchasing agent in making purchases through requests for competitive sealed proposals. The model procurement code shall contain provisions allowing an aggrieved proposer to protest the intended award to another proposer if the protest is filed within seven (7) days after the intended award is announced. The protest must be filed with and decided by the municipal governing body.

(e) Adequate public notice of the request for competitive sealed proposals shall be given in the same manner provided for competitive sealed bids.

(f) Competitive sealed proposals shall be opened in a manner that avoids disclosure of contents to competing proposers during the negotiation. The proposals shall be open for public inspection after the intent to award the contract to a particular proposer is announced.

(g) The request for competitive sealed proposals shall state the relative importance of price and other evaluation factors.

(h) As provided in the request for competitive sealed proposals and in the procurement code, discussions may be conducted for clarification to assure full understanding of, and responsiveness to, the solicitation requirements with responsible proposers who submit proposals determined by the purchasing agent to be reasonably susceptible of being selected. These proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before the intent to award to a particular proposer is announced to obtain the best and final offers. In conducting discussions, the purchasing agent and other municipal personnel may make no disclosure to any proposer of any information derived from proposals submitted by competing proposers.

(i) The award shall be made to the responsible proposer whose proposal the governing body determines is the most advantageous to the municipality, taking into consideration price and the evaluation factors set out in the request for competitive sealed proposals. No other factor may be used in the evaluation. The purchasing agent shall place in the contract file a statement containing the basis on which the award was made.

(j) A governmental utility board shall have the same rights and be subject to the same restrictions and requirements as apply to a municipal governing body under this section. The governmental utility board must adopt a procurement code by resolution before purchases may be made under this section. For purposes of this subsection (j), a "governmental utility board" shall include a board of public utilities created under Title 7, Chapter 52, and shall also include any other county, metropolitan government or municipal utility board or supervisory body created by private act, home rule charter or local ordinance or resolution. Nothing in this subsection shall otherwise modify or impair any limitations on the contracting power of such governmental utility boards as such powers may exist under applicable law.

EXHIBIT 31: PURCHASING BY MUNICIPALITIES WITH CHARTER REQUIREMENTS RELATIVE TO COMPETITIVE BIDDING.

Public Chapter No. 84 Public Acts, 2007. AN ACT to amend *Tennessee Code Annotated*, Title 6, relative to municipal purchasing.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:
SECTION 1. *Tennessee Code Annotated*, § 6-56-302, is amended by deleting the following language from item (1):

having charter provisions or private act requirements governing competitive bidding and purchasing; provided, that the charter provision or private act at a minimum establishes, within the provisions of the charter or act itself, dollar limits for which competitive bidding would be required, any exemptions from the competitive bidding process, and general bid process procedures, which include, but are not limited to, procedures regarding public advertising, securing, and opening bids; and by substituting the following:

that have a charter provision or private act that either establishes within the charter or act itself dollar limits over which competitive bidding is required, or authorizes the municipality to set a dollar limit by ordinance but establishes the maximum dollar limit over which competitive bidding is required, and the municipality has established either by charter, private act, or ordinance general bidding procedures that include, but are not limited to, public advertising, securing and opening bids, and any exemptions from competitive bidding. Any exemptions must be substantially similar to those listed in 6-56-304, except that any dollar amounts listed must be established in accordance with the municipality's charter or private act;

SECTION 2. *Tennessee Code Annotated*, § 6-56-302, is further amended by inserting the following as new item (2) and renumbering present item (2) and subsequent items accordingly:
(2) This part shall not apply to purchases by authorized officials in municipalities that have charter provisions relative to competitive bidding but that do not establish a dollar limit over which competitive bidding is required, as long as the municipality by ordinance establishes: (i) a dollar limit over which competitive bidding is required, which may not exceed twenty-five thousand dollars ($25,000); (ii) a dollar limit, which may not exceed forty percent (40%) of the amount established under the preceding provision, over which

the municipality need not advertise but must when possible obtain three (3) competitive bids and below which no advertisement or competitive bidding is required; (iii) procedures for public advertising, securing, and opening bids; and (iv) any exemptions from competitive bidding, which must be substantially similar to those listed in § 6-56-304 except that any dollar amounts listed must be in accordance with the municipality's ordinances;

EXHIBIT 32: SAMPLE ORDINANCE ESTABLISHING OFFICE OF PURCHASING AGENT

ORDINANCE NO. _____

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

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

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

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

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

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

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

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

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

EXHIBIT 33: SAMPLE INVITATION TO BID

INVITATION TO BID

Sealed bids will be received at the office of the (*mayor, city manager, city administrator, purchasing agent, city recorder or city clerk, etc.*), City Hall; River, Tennessee; 116 Creek Street; until 10:00 a.m. Friday; January 10, 2009, at which time they will be opened for the following:

One (1) Police Automobile

Specifications are available and on file at the office of the (*mayor, city manager, city administrator, purchasing agent, city recorder or city clerk, etc.*), City Hall, River, Tennessee.

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

John Doe
Purchasing agent

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

EXHIBIT 34: SAMPLE PURCHASING PROCEDURES RESOLUTION

RESOLUTION NO. _____

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

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

WHEREAS, such action is required by the Municipal Purchasing Law of 1983, *Tennessee Code Annotated* 6-56-301 *et seq.*, now

THEREFORE, BE IT RESOLVED BY THE (*governing body*) OF THE (CITY)/(TOWN) OF _____, TENNESSEE, AS FOLLOWS:

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

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

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

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

EXHIBIT 35: SAMPLE PURCHASING PROCEDURES

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FOREWORD

With the help of this guide, our city can create the most efficient purchasing operation possible. By clarifying the procedures, both the using department and the Purchasing Department will benefit from time saved obtaining materials, equipment and services.

The main function of the Purchasing Department is to aid all departments within the city by securing the best materials, supplies, equipment, and service at the lowest possible cost, while maintaining high standards of quality. One purpose of this manual is to explain city buying policies and to serve as a general framework and guide for purchasing decisions. To have a good purchasing program, all city employees directly or indirectly associated with buying must work as a team to promote the city's best interests in getting the maximum value for each dollar spent.

As revisions or additions to this manual become necessary, new pages will be sent to all recipients, who are expected to keep the guide up to date.

If there are any questions, please contact the purchasing agent at city hall. Requests for additional copies should be addressed to the same office.

MAYOR _____

CITY OF _____

PURCHASING PROCEDURES

CITY OF _____, TENNESSEE

As designated in Ordinance No. _____, the _____ shall act as purchasing agent for the city, with power, except as set out in these procedures, to purchase materials, supplies, equipment; secure leases and lease-purchases; and dispose of and transfer surplus property for the proper conduct of the city's business. All contracts, leases, and lease-purchase agreements extending beyond the end of any fiscal year must have prior approval of the governing body.

The purchasing agent shall have the authority to make purchases, leases, and lease purchases of more than one thousand dollars ($1,000) and less than twenty-five hundred dollars ($2,500)* singly or in the aggregate during any fiscal year and, except as otherwise provided herein, shall require three (3) competitive bids or quotations, either verbal or written, whenever possible prior to each purchase. Competitive bids or quotations for the purchase of items that cost less than one thousand dollars ($1,000) are desirable but not mandatory. All competitive bids or quotations received shall be recorded and maintained in the office of the purchasing agent for a minimum of seven (7) years after contract expires. When requisitions are required, the competitive bids or quotations received shall be listed upon that document prior to the issuance of the purchase order. Awards shall be made to the lowest and best bid.

A description of all projects or purchases, except as herein provided, that require the expenditure of city funds of twenty-five hundred dollars ($2,500)* or more shall be prepared by the purchasing agent and submitted to the governing body for authorization to call for bids or proposals. After the determination that adequate funds are budgeted and available for a purchase, the governing body may authorize the purchasing agent to advertise for bids or proposals. The award of purchases, leases, or lease-purchases of twenty-five hundred dollars ($2,500)* or more shall be made by the governing body to the lowest and best bid.

Purchases amounting to twenty-five hundred dollars ($2,500)* or more, which do not require public advertising and sealed bids or proposals, may be allowed only under the following circumstances and, except as otherwise provided herein, when such purchases are approved by the governing body:

- Sole source of supply or proprietary products as determined after complete search by using the department and the purchasing agent, with governing body approval.
- Emergency expenditures with subsequent approval of the governing body.
- Purchases from instrumentalities created by two (2) or more cooperating governments.
- Purchases from nonprofit corporations whose purpose or one of whose purposes is to provide goods or services specifically to municipalities.
- Purchases, leases or lease-purchases of real property.
- Purchases, leases, or lease-purchases, from any federal, state, or local governmental unit or agency, of second-hand articles or equipment or other materials, supplies, commodities, and equipment.

**This limit may be lowered or increased to a maximum $10,000 by the governing body.*

- Purchases through other units of governments as authorized by the Municipal Purchasing Law of 1983.
- Purchases directed through or in conjunction with the state Department of General Services.
- Purchases from Tennessee state industries.
- Professional service contracts as provided in T.C.A. § 12-4-106.
- Tort liability insurance as provided in T.C.A. § 29-20-407.
- Purchases of fuels, fuel products or perishable commodities.
- Purchases of natural gas and propane gas for re-sale.

The purchasing agent shall be responsible for following these procedures and the Municipal Purchasing Law of 1983, as amended, including keeping and filing required records and reports, as if they were set out herein and made a part hereof and within definitions of words and phrases from the law as herein defined.

RELATIONS OF OTHER DEPARTMENTS WITH THE PURCHASING DEPARTMENT

The Purchasing Department is a service agency for all other departments of the city. The purchasing function is a service, and for the mutual benefits gained to go toward the good of the city, all departments must work in harmony. This manual is a guide to help the departments know their buying responsibilities.

PURCHASING DEPARTMENT'S RESPONSIBILITIES

- To aid and cooperate with all departments in meeting their needs for operating supplies, equipment, and services.
- To process all requisitions with the least possible delay.
- To procure a product that will meet the department's requirements at the least cost to the city.
- To know the sources and availability of needed products and services and maintain current vendor files.
- To obtain prices on comparable materials after receipt of departmental requisition.
- To select vendors, prepare purchase orders, and process and maintain order and requisition files.
- To search for new, improved sources of supplies and services.
- To assist in preparation of specifications and to maintain specification and historical performance files.
- To prepare and advertise requests for bids and maintain bid files.
- To keep items in store in sufficient quantities to meet normal requirements of the city for a reasonable length of time within space availability.
- To investigate and document complaints about merchandise and services for future reference.
- To transfer or dispose of surplus property.

USING DEPARTMENT'S RESPONSIBILITIES

- To allow ample lead time for the Purchasing Department to process the requisition and issue the purchase order, while permitting the supplier time to deliver the needed items.
- To prepare a complete and accurate description of materials to be purchased.
- To help the Purchasing Department by suggesting sources of supply.
- To plan purchases in order to eliminate avoidable emergencies.
- To initiate specification preparation on items to be bid.

- To inspect merchandise upon receipt, and complete a receiving report noting any discrepancies in types, numbers, condition, or quality of goods.
- To advise the Purchasing Department of defective merchandise or dissatisfaction with vendor performance.
- To advise the Purchasing Department of surplus property.

PURCHASING FORMS AND METHODS

PURCHASE REQUISITION

Purpose

A purchase requisition lets the Purchasing Department know, in detail, what the using department needs. A requisition is required for purchases, requesting price information, initiating a bid request, and for requesting governing body approval on major expenditures.

When Prepared

Requisitions shall be prepared far enough in advance that the Purchasing Department can obtain competitive prices and the vendor has enough time to make the delivery.

Who Prepares the Requisition

Requisitions shall originate in the using department and must be signed by the requisitioner and the department head. The department head shall file with the Purchasing Department a certified memorandum listing those who are authorized to sign a requisition.

How to Prepare

A properly processed purchase requisition must contain the following information:

- Date issued — The date the requisition is prepared.
- Date wanted — State a definite delivery date. "AT ONCE, ASAP, and RUSH" are vague instructions and don't give the Purchasing Department sufficient information. Prepare far enough in advance to avoid emergencies.
- Requisition number — Place the sequential number in this area if your department keeps a numerical requisition file.
- Department — The complete name of using department
- Requisitioner — Signature of the person initiating the purchase request
- Department head — Signature of the department head
- Suggested vendors — If there are more than three suggested vendors, the department head should list on a separate sheet.
- To be delivered to — Be specific. If vague or indefinite, confusion may result in costly delays.
- Item number — Numerical order of items listed.
- Quantity — The number required.
- Unit — Dozen, lineal feet, gallons, etc.

- Description — Give a clear description of the items, including size, color, type, etc. If the purchase is of a technical nature, specifications should be attached to the requisition. If the item cannot be described without a great amount of detail, a brief description should be given, followed by a trade name and model number of an acceptable item "or approved equal." Requisitions must not give specifications that will favor one supplier to the exclusion of any others.
  NOTE: Incomplete information in this area will result in the requisition being returned to the using department for clarification.
- Account to be charged — Complete budgetary code.
- Unit price — Price for each individual item.
- Amount — A total of quantity times unit price.

Routing Requisitions

Prepare three copies of the purchase requisition. Send the original and one copy to the Purchasing Department and keep the third copy in departmental files. After the Purchasing Department has received at least three quotations or bids and has determined total cost of the merchandise, the cost will be listed on the original and one copy of the requisition. These copies shall then be forwarded to the finance officer. The finance officer shall certify, by signature, that the proper account has been charged and the availability of budgetary and cash funds. The original requisition must then be returned to the Purchasing Department and the copy filed in the office of the finance officer.

General Information

A requisition must be completed before a purchase is made, except when stated otherwise.

The Purchasing Department obtains prices for any needed item after receiving a departmental requisition. **All requests for prices will be processed in this manner.**

Suggested vendors will be of great assistance to the Purchasing Department and will be given full consideration. This information will allow the department to process the requisition quickly.

Approximate cost of items will help buyers know if bids are required.

If a requisition is incomplete or improperly prepared, the Purchasing Department shall return it to the using department for completion. An incomplete requisition can cause unnecessary delays.

The requisitioner shall not split orders to avoid any provision of the city code or charter, this manual, or any policy established by the city, nor shall requisitions be submitted for the sole purpose of using up budgetary balances.

Expediting Orders

If a company is waiting for a purchase order to process a rush job, write EXPEDITE IMMEDIATELY in the body of the requisition. The Purchasing Department will then contact the vendor and supply a purchase order number. This process will be the exception rather than the rule.

Insufficient Funds

If the finance officer says there is not enough in the budget account, it will be referred to the purchasing agent, who will notify the department head.

REQUISITION SAMPLE FORM

CITY OF _____ , TENNESSEE

Requisition For Supplies

Date issued *(date requisition prepared)*
Date wanted *(date delivery is needed)*

Department *(name of using department)*
Requisitioner *(signature of requesting person)*
Department Head (signature of department head)

Suggested vendors:
1. _____
2. _____
3. _____

Req. No.(department file number)

To be purchased from:
(This area to be filled in by Purchasing Department unless there is only one supplier for items requested.)

To be delivered to:
Give specific delivery instructions, including name of person designated to receive the item(s), department and street address.

ITEM NUMBER	QUANTITY	UNIT	DESCRIPTION	ACCOUNT TO BE CHARGED	UNIT PRICE	AMOUNT

Competitive Prices: *(To be filled in by Purchasing)*

_____

_____

_____

Approved:

_____
Finance Officer

_____
Purchasing Agent

PURCHASE ORDER

Purpose

A purchase order authorizes the seller to ship and invoice the materials and services as specified. Purchase orders shall be written in a clear, concise and complete manner. This will prevent confusion and unnecessary correspondence with suppliers.

When Prepared

Purchase orders are issued only after a requisition has been submitted and approved by the purchasing agent and the finance officer. No purchase order will be issued until the finance officer has certified adequate funds and cash balances to make the purchase, except as otherwise mentioned.

Who Issues the Purchase Order

The Purchasing Department issues purchase orders, except as otherwise provided herein. The using departments will not enter into negotiations with suppliers for the purchase of equipment, supplies, materials, services, or other items, except under the emergency purchase procedures and as otherwise provided herein.

How Purchase Orders Are Handled

The purchase order is made from the approved requisition and is prepared in six copies: white, blue, yellow, pink, green and orange.

White copy is mailed to the vendor to be used as authority to furnish the city with the materials or services indicated.

Blue copy is sent to the finance officer and the account that handles the amount of the purchase order.

Yellow copy is sent to the department head making the request, to be held until the goods or services are received. Upon completion of the order or contract, the yellow copy will be signed and invoices and material receiving report attached. This copy is sent to the purchasing agent for discounting and processing for payment.

Pink copy is kept by the purchasing agent and filed as record of outstanding orders. When paid, the pink copy will be marked properly and put in a completed file in numerical order.

Green copy is the department copy and should be kept in each department's file for reference.

Orange copy is the acknowledgment copy and will be sent to the vendor along with the white copy. The vendor will sign and return the orange copy to the purchasing agent, confirming the order.

Cancellations

The Purchasing Department must initiate all cancellations and will issue a purchase order to the next best vendor or renew the purchasing process.

PURCHASE ORDER SAMPLE FORM

CITY OF _____, TENNESSEE

Purchase Order

To: _____
Purchase Order No.: _____
Ship to: _____
_____
Via: _____

Telephone: _____
E-mail: _____
Date: _____
Department: _____

Mail invoice to city finance officer

ITEM NUMBER	QUANTITY	UNIT	DESCRIPTION	ACCOUNT TO BE CHARGED	UNIT PRICE	AMOUNT

Terms and Conditions:
Unless stated otherwise, all prices are free on board (F.O.B.) _____, Tennessee. City is exempt from federal, state, and local taxes. Exemption certificates will be furnished if necessary. Mark all shipments and invoices with purchase order number.

Purchasing Agent
I certify that the above materials or services have been received as ordered and in good condition, except as follows: _____
_____
_____

Date Received: _____ Department Head: _____

MATERIAL RECEIVING REPORT

Purpose

The material receiving report form is designed to let the purchasing agent and the finance officer know that an item(s) of a particular order has been received.

When Prepared

This form is completed immediately upon receipt of materials, supplies, or services.

Who Prepares

The person receiving the merchandise.

How to Prepare

A proper material receiving report must contain the following information:

- Purchase order number — The number from the purchase order on which the items were ordered
- From — Name of vendor
- Material received by — Person receiving the item
- Date received — Date the goods are received
- Quantity — Number of items received
- Description — Brief statement describing item(s)
- Price — Unit price from the purchase order
- Per — Unit measure (foot, lb., etc.)
- Amount — Amount equal to quantity times unit cost
- Freight charge — Amount (if any) charged for delivery

When any item(s) is not in satisfactory condition, a statement about the condition of the item(s) must be made in the description column. There is no need to write anything in this column if the item is undamaged.

SAMPLE MATERIAL RECEIVING REPORT FORM

CITY OF _____ , TENNESSEE

Material Receiving Report

Purchase Order No: _____

From: _____

QUANTITY	DESCRIPTION	PRICE	per	AMOUNT

Freight Charge: _____

TOTALS: _____

MATERIALS RECEIVED

By: _____ Date Received: _____

DEPARTMENTAL PURCHASE ORDERS

Purpose

Departmental purchase orders allow the using department to handle small purchases without having to process a requisition through the Purchasing Department.

When Used

Departmental purchase orders are to be used for buying items which cost $_____* or less.

Who Prepares

The department head may fill out a departmental purchase order. The Purchasing Department must keep a list of people authorized to sign a departmental purchase order for a department head.

How to Prepare

A proper departmental purchase order will contain the following information:

- Number (No.) — Assigned by the Purchasing Department
- Date — The date the order was prepared
- Dept. — Ordering department
- Vendor — Firm or person from whom purchase is being made
- Vendor's address — Address of vendor
- Quantity — The amount ordered of each item described
- Description — Brief description of item(s) to be bought
- Account to be charged — Complete budgetary code of using department
- Price — Amount equal to quantity times unit cost
- Purchase authorized by — Signature and title of department head
- Articles or service received — Signature of person receiving articles or service and date received

Routing

A departmental purchase order is a three-part form containing the following:

- **White copy** — Original given to the vendor
- **Yellow copy** — Acknowledgment copy; will be sent to the vendor along with the white copy. The vendor will sign and return the yellow copy to the department head, confirming the order. The yellow copy will be attached to the packing slip, delivery ticket, invoice, material receiving report, etc., by the Receiving Department and forwarded to the Purchasing Department. The purchasing agent will initial and forward to the finance officer for payment.
- **Pink copy** — Forwarded to Purchasing Department for filing

General Information

The department head is responsible for keeping expenses within budgetary appropriations and must try to secure at least three quotes for those items which cost $_____ * or less.

**Amount to be established by the governing body.*

These purchase orders will be numbered and issued to the using department by the Purchasing Department.

It is the responsibility of the department head, considering price and quality, to determine the best source of supply. All local sources should be considered before a purchase is made. The Purchasing Department will assist in vendor selection upon request.

If the purchase is above the dollar limit, under no circumstances may multiple forms be used in an effort to avoid filling out a purchase requisition.

SAMPLE DEPARTMENTAL PURCHASE ORDER FORM

CITY OF _____ , TENNESSEE

Department Purchase Order

Vendor: _____ No.: _____

Vendor's Address: _____ Date: _____

_____

Dept: _____

The departmental purchase order is valid only for purchases of $_____ or less. The original copy should be returned to the ordering department with your invoice or statement to make payment easier.

QUANTITY	DESCRIPTION	ACCOUNT TO BE CHARGED	PRICE

TERMS AND CONDITIONS:

The city is exempt from federal, state and local taxes. Exemption certificates will be provided upon request.

TOTAL: _____

This purchase authorized by:

Name: _____

Title: _____

Date Received: _____

Articles or service received by:

Name: _____

Title: _____

REQUEST FOR BID SAMPLE FORM

The request for bid form shall be used when the purchasing agent decides it is necessary. The bid number (#) shall be the number assigned to the firm or individual to which the request for bid is forwarded.

CITY OF _____ , TENNESSEE

Request for Bid

Sealed bids will be received until _____ a.m./p.m., (*date*) _____, 20_____, in the office of the purchasing agent and will be opened the same day at _____ a.m./p.m.

IMPORTANT: THIS IS NOT AN ORDER

Bid #: _____

Date: _____

Purchasing Agent: _____

Terms: _____

Delivery: _____

NO BIDS RECEIVED AFTER CLOSING WILL BE ACCEPTED.

Quotations are requested for furnishing the items described below in accordance with the terms set forth herein. Failure of a bidder to execute a purchase order or contract awarded as a result of this bid or to comply with any terms or conditions therein may disqualify the bidder from receiving future orders. Bidders are cautioned to verify their bids before submission. No bid may be withdrawn or changed after it has been opened. If you do not quote, return this sheet and explain the reason. Otherwise your name may be removed from our mailing list.

ALL QUOTATIONS MUST BE FREE ON BOARD (F.O.B.) _____ , TENNESSEE.

ITEM NUMBER	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT

Above items to be delivered to:

_____

_____

Bids must be sealed and returned in envelope provided.

In submitting the above, the vendor agrees that acceptance of any or all quotations by the purchasing office within a reasonable period consitutes a contract.

Name of Firm: _____

By: _____

Phone: _____

SUMMARY OF BIDS SAMPLE FORM

The summary of bids form shall be used by the Purchasing Department to record quotations. This form must contain the bids for each purchase and be attached to the pink copy of the purchase order when filed.

CITY OF _____ , TENNESSEE

Request for Bid

Requisition No.: _____ Date: _____

ITEMS	QUANTITY	UNIT	NAMES OF BIDDERS				
			UNIT PRICE	UNIT PRICE	UNIT PRICE	UNIT PRICE	UNIT PRICE
TERMS							

Reverse side must contain full explanation of awards not given to the lowest bidder.

EMERGENCY PURCHASES

Purpose

Emergency purchases are to be made by departments only when normal functions and operations of the department would be hampered by submitting a requisition in the regular manner, or when property, equipment, or life are endangered through unexpected circumstances and materials, services, etc., and are needed immediately.

Who Makes Emergency Purchases

Emergency purchases, either verbal or written, may be made directly by the using department without competitive bids, provided sufficient funds are available and necessary approvals have been secured.

Who Authorizes Emergency Purchases

The purchasing agent or the department head, if the purchasing agent is unavailable, may authorize an emergency purchase.

How to Make Emergency Purchases

After determining a true emergency exists, the following procedure should be followed:

1. Notify the Purchasing Department of the need and nature of the emergency. The department will give verbal approval and issue a purchase order number. This number will be put on the requisition referred to in number 4 below.
2. Using department must use sound judgment about prices when making emergency purchases of materials and supplies and for labor or equipment. Orders should be placed with vendors who have a good track record with the department.
3. Suppliers shall furnish sales tickets, delivery slips, invoices, etc., for the supplies or services rendered. Terms of the transactions, indicating price and other data, shall be shown.
4. As soon as the purchase is complete, on the same or following business day, the using department must:
   - Give the Purchasing Department a complete requisition with a description of the emergency and approval by the department head. "Confirming Emergency Purchase" must be marked plainly on the requisition, along with the purchase order number.
   - The sales ticket, delivery slips, invoices, and material receiving report confirming the purchase must be attached to the emergency requisition form.
   - The Purchasing Department will issue the vendor a purchase order marked "Confirmation."
5. If an emergency should occur during a time when the Purchasing Department normally is closed, the using department will follow the above procedure with the exception of the first step. The evidence of purchase, such as sales slip, counter receipt, delivery slip, invoice, etc., that the supplier normally furnishes, shall be attached to the completed and approved requisition form and be forwarded to the Purchasing Department, along with a material receiving report.
6. As soon as possible, the person authorizing the emergency purchase must prepare a report to the chief executive officer and the governing body specifying the amount paid, the item(s) purchased, from whom the purchase(s) was made, and the nature of the emergency.

General Information
Emergency purchases are costly and should be kept to a minimum. Avoiding emergency orders will save the city money.

PETTY CASH FUND

To buy items that cost less than $_____ (*amount to be established by governing body*) from businesses that don't issue invoices or have charge accounts, a petty cash fund must be set up by the finance officer.

The department head is solely responsible for any withdrawals from this account. All receipts or requests for monies from this fund must contain the departmental code and be signed by the department head.

This fund should be used only if other purchasing methods are not applicable.

The finance officer may establish more detailed procedures for the use of the petty cash fund.

SEALED BIDS OR PROPOSALS

Sealed bids are required on purchases of $2,500* or more. Bids must be advertised in a local newspaper of general circulation not less than five (5) days before bid opening date.

Purchasing Department's Responsibilities
- Prepare bid requests.
- Establish date and time for bid opening.
- Select possible sources of supply.
- Prepare specifications (unless of a technical nature, such as architectural, engineering, etc.) using department's input and assistance.
- Mail bid requests and advertise as appropriate. If delivered by hand, a receipt of the bid request should be signed by the vendor.
- Receive and open bids.
- Evaluate bids using department's assistance.
- Prepare bids and make a recommendation on award to governing body for approval.
- Process purchase order after governing body approval.
- Maintain all specification and bid data files.

**Unless lowered or increased to a maximum of $10,000 by the governing body.*

Using Department's Responsibilities

- Prepare requisition to begin bid process. This should contain specific information about items needed. For example, quantity, size, brand preferred, performance requirements, etc.
- Submit requisition to begin bid request to the Purchasing Department at least three weeks prior to the date bids are to be opened.
- Assist in specification preparation if needed.
- Assist in evaluation of bid results.

General Information

The following policies shall apply to sealed bids:

1. **Bid or Proposal Opening:** Bids will be opened at the time and date specified on the bid request. All bids are opened publicly and read aloud, with a tabulation provided to all vendors participating. Proposals for extensive systems, complicated equipment, or construction projects, with prior approval of the governing body, may be opened privately in cases where the disclosure of the contents of the proposal could not readily be evaluated and would have a negative impact on both the vendor and the city.
2. **Electronic Bids:** The invitation for bids shall be distributed electronically and bids shall be considered when they are received in hand at the designated office if by the time and date set for receipt of bids. Such electronic bids or proposals shall contain specific reference to the Invitation for Bids; the items, quantities, and prices for which the bid is submitted; the time and place of delivery; and a statement that the bidder agrees to all the terms, conditions, and provisions of the Invitation for Bids.
3. **Late Bids:** No bids received after closing time will be accepted. All late bids will be returned unopened to the vendor. Bids postmarked on the bid opening date but received after the specified time will be considered late and will be returned unopened.
4. **Bid Opening Schedule:** The Purchasing Department is responsible for setting bid opening dates and times.
5. **Telephone Bids:** The Purchasing Department will not accept any bid by telephone.
6. **Bid Form:** The Purchasing Department sends duplicate copies of bid request forms to each bidder, thereby enabling the bidder to return one and maintain a file copy. Bids will not be accepted on any vendor letterhead, vendor bid form, or other substitutions unless special permission is given by the Purchasing Department.
7. **Unsigned Bids:** Failure of a vendor representative to sign a bid proposal removes that bid from consideration. A typed official's name will not be accepted without that person's written signature.
8. **Acceptance of Bids:** The city reserves the right to reject any or all bids, to waive any irregularities in a bid, to make awards to more than one bidder, to accept any part or all of a bid, or to accept the bid (or bids) that in the judgment of the governing body is in the best interest of the city.
9. **Shipping Charges:** Bids are to include all shipping charges to the point of delivery. Bids will be considered only on the basis of delivered price, except as otherwise authorized by the governing body.
10. **Sample Product Policy:** The Purchasing Department may request a sample product as part of a bid. If this is stated on the bid proposal form, the vendor is required to comply with this request or have the bid removed from consideration.

11. **Approved Equal Policy:** Specifications in the request for bid are intended to establish a desired quality or performance level or other minimum requirements that will provide the city with the best product available at the lowest possible price. When a brand name or model is designated, it signifies the minimum quality acceptable. If an alternate is offered, the bidder must include the brand name or model to be furnished, along with complete specifications and descriptive literature and, if requested, a sample for testing. Brands or models other than those designated as "equal to" products shall receive equal consideration.
12. **Alternate Bids:** Should it be found, after bids have been opened, that a product has been offered with an alternative specification and that this product would be better for the city to use, all bids for that item may be rejected and specifications redrawn to allow all bidders an equal opportunity to submit bids on the alternate item.
13. **Vendor Identification:** Potential suppliers are selected from existing vendor files using department's suggestions and any and all sources available to locate vendors related to a specific product or service. New suppliers are added to the bid list as they are found.
14. **Tie Bids:** A tie bid is one in which two or more vendors bid identical items at the same unit cost. The winning bidder among tie bids may be determined by one of the following factors:
    - Discount allowed
    - Delivery schedule
    - Previous vendor performance
    - Vendor location
    - Trade-in value offered
15. **Cancellation of Invitation for Bid or Request for Proposal:** An invitation to bid, a request for proposal, or other solicitations may be canceled, or any or all bids or proposals may be rejected in part as may be specified in the solicitation when it is in the best interest of the city. The reasons shall be made a part of the bid or proposal file.
16. **Public Advertisement:** In addition to publication in a newspaper of general circulation as required by law, the purchasing agent may make any other efforts to let all prospective bidders know about the invitation to bid. This may be accomplished by delivery, verbally, mail, or by posting the invitation to bid in a public place. It is not required that specifications be included in the invitation to bid. However, this notice should state clearly the purchase to be made.
17. **Mistakes in Bids:** Mistakes in bids detected prior to bid opening may be corrected by the bidder withdrawing the original bid and submitting a revised bid prior to the bid opening date and time. Bidder mistakes detected by the bidder after the bids have been opened based on miscalculation may be withdrawn only with the approval of the purchasing agent. The purchasing agent shall determine if all or a portion of any bid bond shall be surrendered to the city as liquidated damages for any costs associated with the bid withdrawal.
18. **Bid Bond:** The purchasing agent may require that bidders submit a bid bond or other acceptable guarantee equal to 5 percent of the bid to ensure that the lowest responsible bidder selected by the board enters into a contract with the city. All or a portion of the bid bond shall be surrendered to the city as liquidated damages should the successful bidder fail to enter into a contract awarded by the board.

19. **Performance Bond:** The purchasing agent may require and then include in the bid documents a requirement for the successful bidder to post a performance bond or other guarantee satisfactory to the city attorney that insures the faithful performance of all of the terms and conditions of the purchase contract.
20. **Sealed Bids and Sealed Proposals:** The following is taken from The Model Procurement Code for State and Local Governments, American Bar Association, February, 1979. Pages 21-22.
    (a) "Competitive sealed bidding as defined in this Code, is the preferred method of procurement. Although the formal sealed bid process should remain a standard in public purchasing, there is a place for competitive negotiation' (State and Local Government Purchasing. The Council of State Governments (1975) at 2.2). The competitive sealed proposal method (similar to competitive negotiation) is available for use when competitive sealed bidding is either not practicable or not advantageous.
    (b) Both methods assure price and product competition. The use of functional or performance specifications is allowed under both methods to facilitate consideration of alternative means of meeting [state] needs (with evaluation and where appropriate) on the basis of total or life cycle costs. The criteria to be used in the evaluation process under either method must be fully disclosed in the solicitation. Only criteria disclosed in the solicitation may be used to evaluate the items bid or proposed.
    (c) These two methods of source selection differ in the following ways:
        - Under competitive sealed bidding, judgmental factors may be used only to determine if the supply, service or construction item bid meets the purchase description. Under competitive sealed proposals, judgmental factors may be used to determine not only if the items being offered meet the purchase description, but may also be used to evaluate competing proposals. The effect of this different use of judgmental evaluation is that under competitive sealed bidding, once the judgmental evaluation is completed, award is made on a purely objective basis to the lowest responsive and responsible bidder. Under competitive sealed proposals, the quality of competing products or services may be compared and trade-offs made between price and quality of the products or services offered (all as set forth in the solicitation). Award under competitive sealed proposals is then made to the responsible offer or whose proposal is most advantageous to the [state].
        - Competitive sealed bidding and competitive sealed proposals also differ in that, under competitive sealed bidding, no change in bids is allowed once they have been opened, except for correction of errors in limited circumstances. The competitive sealed proposal method on the other hand, permits discussions after proposals have been opened to allow clarification and changes in proposals provided that adequate precautions are taken to treat each offer fairly and to ensure that information gleaned from competing proposals is not disclosed to other offers.

OTHER ASPECTS TO BE CONSIDERED IN BID AWARDS

In addition to price, the following points should be considered when awarding a bid:

- The ability of the bidder to perform the contract or provide the material or service required.
- Whether the bidder can perform the contract or provide the material or service promptly or within the time specified, without delay or interference.
- The character, integrity, reputation, experience and efficiency of the bidder.
- The previous and existing compliance, by the bidder, with laws and ordinances relating to the contract or service.
- The ability of the bidder to provide future maintenance and service for the use of the subject contract.
- Terms and conditions stated in bid.
- Compliance with specifications or request for proposal.

NON-PERFORMANCE POLICY

Failure of a bidder to complete a contract, bid, or purchase order in the specified time agreed on, or failure to provide the service, materials, or supplies required by such contract, bid, or purchase order, or failure to honor a quoted price on services, materials, or supplies on a contract, bid, or purchase order may result in one or more of the following actions:

- Removal of a vendor from bid list for a period to be determined by the governing body.
- Allowing the vendor to find the needed item for the city from another supplier at no additional cost to the city.
- Allowing the city to purchase the needed services, materials, or supplies from another source and charge the vendor for any difference in cost resulting from this purchase.
- Allowing monetary settlement.

DELINQUENT DELIVERY

Once the Purchasing Department has issued a purchase order, no follow-up work should be done unless the using department says the items have not been received. If this happens, the Purchasing Department will initiate action, either written or verbal as time allows, to investigate the delay. The using department will be advised of any further problems or a revised delivery date.

CONTRACTUAL PURCHASES

Materials, supplies, or services that are needed constantly for city operations will be taken on a formal bid and will be awarded by the governing body for a contract period determined to be in the best interest of the city. This procedure shall be used in cases where the amount of the purchase of said materials, supplies, or services will be $2,500* or more within the fiscal year. For amounts below $2,500*, the award will be made by the purchasing agent.

**Limit may be lowered or increased to a maximum of $10,000 by the governing body.*

ITEMS COVERED BY WARRANTY OR GUARANTEE

The city buys many items that have a warranty or guarantee for a certain length of time, such as tires, batteries, water heaters, roofs, and equipment. Before these items are repaired or replaced, the purchasing agent should be consulted to see if the item is covered by such warranty or guarantee.

The purchasing agent shall maintain an active current file with complete information on such warranties or guarantees. All warranties must be remitted to the purchasing agent with the invoice indicating date of receipt.

SIGNATURES

Contracts, applications for title, tax exemption certificates, agreements, and contracts for utilities shall not be signed by any city employee unless authorized in writing by the purchasing agent or by action of the governing body.

TRADE-INS

List of equipment to be used as trade-in shall accompany the request and specifications. The list includes the model, year, serial and city tag numbers, and other pertinent data.

SALE OF SURPLUS PROPERTY

When a department head decides there is excess equipment or material in the department, he or she shall notify the purchasing agent in writing. The purchasing agent will figure out the best way to dispose of items with an estimated value of less than $100* and inform the department head. Items with an estimated value of more than $100* shall be advertised for bidding, which will begin after the purchasing agent has received approval from the governing body. Such equipment or materials will be sold to the highest bidder.

However, the purchasing agent may transfer surplus equipment or material from one department to another. He or she must be sure the finance officer knows about the transfer or sales. With approval of the governing body, equipment or material also may be sold at public auction.

INSPECTION AND TESTING

When necessary, the purchasing agent may have all deliveries of supplies, materials, equipment, or contractual services inspected to be sure their performance meets specifications made in an order or contract.

The purchasing agent also may require chemical and physical tests of materials submitted with bids and delivery samples or after products have been delivered. These tests may be necessary to be sure the quality of materials meets the desired standards. When performing such tests, the purchasing agent may use the facilities of any outside lab.

**Limit may be lowered or increased to a maximum of $10,000 by the governing body.*

GENERAL INFORMATION

Preference to Local Dealers
When buying supplies, materials, equipment, and services for the city's requirements, preference shall be given dealers who have stores or warehouses within the city; price, quality, delivery, and service being equal.

Federal Excise Tax
The city is exempt from the payment of excise taxes imposed by the federal government, and suppliers should be requested to deduct the amount of such taxes from their bids, quotations, and invoices.

Standardization Requirements
Standardizing supplies and materials that can be bought in large quantities can save a great deal of money. Thus, department heads should adopt as standards the minimum number of quantities, sizes, and varieties of commodities consistent with successful operation. Where practical, materials and supplies should be bought on the basis of requirements for a six-month period.

Inspection of Deliveries
No invoices for supplies, materials, or equipment shall be accepted for payment until such supplies, materials, etc., have been received and inspected by the department head.

Correspondence with Suppliers
Copies of any correspondence with suppliers concerning prices, adjustments, or defective merchandise shall be forwarded to the purchasing agent. All invoices, bills of lading, delivery tickets, and other papers relating to purchases shall be sent to the purchasing agent.

Claims
The purchasing agent shall prosecute all claims for shortages, breakages, or other complaints against either shipper or carrier in connection with shipments.

Public Inspection of Records
The purchasing agent shall keep a complete record of all quotations, bids, and purchase orders. Such records shall be open to public inspection.

Designee
When a position such as purchasing agent, finance officer, or department head is mentioned, their assistants or designees are acceptable substitutes if they have written permission to do so.

DEFINITIONS

- **Customarily Purchased:** Items that are purchased regularly under specific circumstances considered reasonable and appropriate. (Example: After two consecutive years; then, not required for two consecutive years of not attaining the total amount of $2,500*).
- **Like Items:** Items that are similar and may be bought at the lowest common denominator, such as size, color, etc.
- **Lot:** A single grouping of like items to be purchased at one time.
- **Single Source of Supply:** When only one vendor is available for a product or service within a reasonable marketable distance of the city.
- **Proprietary Product:** A brand-name product made and marketed by one having the exclusive right to manufacture and sell.
- **Within the Limits of the Approved Budget:** Purchases must stay within appropriation limits in funds requiring budgets either by law, regulation, or policy. Appropriation limits do not apply to nonexpendable funds not requiring budgets, such as enterprise funds, intra-governmental service funds, and nonexpendable trust funds.
- **Performance and Bid Bonds:** Performance and bid bonds as may be determined by the purchasing agent or the governing body.
- **Architect or Engineer Required:** Plans, specifications and estimates for any public works project exceeding $25,000 must be prepared by a registered architect or engineer as required by T.C.A. § 62-2-107.

**Limit may be lowered or increased to a maximum of $10,000 by the governing body.*

SOURCES

Purchasing Policy

City of Hendersonville, Tenn.
City of Johnson City, Tenn.
City of Little Rock, Ark.
City of Tullahoma, Tenn.

and

The Model Procurement Code
for State and Local Governments
American Bar Association
February 1979

Model Purchasing Ordinance
Municipal Association of South Carolina
April 1983

THE UNIVERSITY of TENNESSEE

MUNICIPAL TECHNICAL ADVISORY SERVICE

The University of Tennessee does not discriminate on the basis of race, sex, color, religion, national origin, age, disability or veteran status in provision of educational programs and services or employment opportunities and benefits. This policy extends to both employment by and admission to the university.

The university does not discriminate on the basis of race, sex or disability in its education programs and activities pursuant to the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA) of 1990.

Inquiries and charges of violation concerning Title VI, Title IX, Section 504, ADA or the Age Discrimination in Employment Act (ADEA) or any of the other above referenced policies should be directed to the Office of Equity and Diversity (OED), 1840 Melrose Avenue, Knoxville, TN 37996-3560, telephone (865) 974-2498 (V/TTY available) or 974-2440. Requests for accommodation of a disability should be directed to the ADA Coordinator at the UTK Office of Human Resources, 600 Henley Street, Knoxville, TN 37996-4125.

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