FAYETTE COUNTY PURCHASING POLICY

Updated March 15, 2016

Fayette County Government operates under the laws and regulations adopted by the Tennessee General Assembly and administered by the Comptroller of the State of Tennessee. In addition the Fayette County Commission has set a limit on purchases that can be bought without a Purchase Order from the County Mayor's Office, and has set regulations on the method of purchasing items at auction. Tennessee law, as organized in Tennessee Code Annotated (TCA), covers counties' purchasing in TCA 5-14-201 et al., also known as the County Purchasing Law of 1983.

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

Purchase Orders

Fayette County Government has adopted a policy of requiring a Purchase Order for any purchase of $250 or more. This was adopted by the Fayette County Commission on February 25, 2003. (TCA 5-14-206)

Limits on purchases (TCA 5-14-203)

All purchases made from funds subject to the authority of this part shall be made within the limits of the approved budget and the appropriations made for the department, office or agency for which the purchase is made.

Bidding – Exceptions (TCA 5-14-204)

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 ten thousand dollars ($10,000); provided, that this exemption shall not apply to purchases of like items that individually cost less than ten thousand dollars ($10,000), but that are customarily purchased in lots of two (2) or more, if the total purchase price of such items would exceed ten thousand dollars ($10,000) during any fiscal year;

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

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

whom the purchases were made;

(B) A report of such sole source or proprietary purchases shall be made as soon as possible to the county governing body and the county mayor of the county and shall include all items of information as required in 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) A record of any emergency purchase shall be made by the person or body authorizing such emergency purchase, and shall specify the amount paid, the items purchased, from whom the purchase was made and the nature of the emergency;

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

(4) Leases or lease-purchase agreements requiring total payments of ten thousand dollars ($10,000) or less in each fiscal year the agreement is in effect; provided, that this exemption shall not apply to leases of like or related items that individually may be leased or lease-purchased with total payments of less than ten thousand dollars ($10,000) in any fiscal year, but that 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 exceed ten thousand dollars ($10,000) in any fiscal year;

(5) Governing bodies may exempt perishable commodities from the requirements of public advertisement and competitive bidding when such items are purchased in the open market;

(A) 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;

(B) A report of such purchases shall be made, at least monthly, to the county mayor and the governing body and shall include all items of information as required in the record; and

(6) 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.

Expenditures under $10,000 (TCA 5-14-205)

All purchases, leases or lease-purchase arrangements with expenditures of less than ten thousand dollars ($10,000) in any fiscal year may be made in the open market without newspaper notice, but shall, wherever possible, be based upon at least three (3) competitive bids.

Bid specifications for purchases of chemical products (TCA 5-14-207)

(a) Bid specifications for purchases of chemical products pursuant to this chapter shall require that the manufacturer of the chemical products create and maintain a material safety data sheet (MSDS) for such chemical products on the national MSDSSEARCH repository or the manufacturer's web site so that the information can be accessed by means of the Internet. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is freely accessible to the public.

(b) The URL for MSDSSEARCH shall be posted on the web site of the department of general services as provided in § 12-3-217. In lieu of posting a MSDS on MSDSSEARCH, a bidder shall include the manufacturer's URL for their MSDS in the bid proposal or purchase order.

Purchases of property at public auctions (TCA 12-2-421)

The Fayette County Commission on September 22, 2015 adopted the following regulations with regard to publicly advertised auctions using public funds:

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

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

3. The county official must obtain from the County Mayor's Office, or other applicable finance office, a purchase order which will show that funds are available and have been allocated for the purchase.

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

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

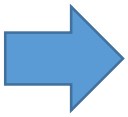
6. Purchases shall be made only by county warrant or county check.

7. The auction must be conducted by an auctioneer who is licensed to conduct auctions in the State of Tennessee, or, if the auction is outside of Tennessee, must be licensed in a state that has a reciprocal licensing agreement with the State of Tennessee. Any item purchased at public auction shall be accompanied by the vendor's certification that the item is free from any liens or encumbrances.

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

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

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



In addition to the Purchasing Law of 1983 and adopted resolutions, the County also has to adhere to other laws adopted by the Tennessee General Assemble. The following is a summary of many of those laws:

Professional Service Contracts (*TCA* §12-3-1209 & § 12-4-107)
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. For example, leasing office space from an attorney or purchasing computer services from an accountant are not professional services and will require competitive bids.
According to the legislation, a contract is to be awarded on the basis of recognized competence and integrity, rather than on competitive solicitations. This does not stop a county from requesting proposals from eligible service providers and deciding the capabilities of each. Although cost must be considered in choosing the service provider, it must not be the sole factor. When the service provider is chosen, the county and the provider must enter into a written contract specifying 1) the service and 2) the cost and expenses covered under the contract.
Any fiscal agent, financial advisor or advisory service that serves a county must meet the requirements of the Comptroller's Office of State and Local Finance regarding conflict of interest in purchasing municipal debt.

Energy-related Service Contracts (*TCA* §12-4-110)
Contracts by local governments for energy-related services that include both engineering services and equipment for the purpose of reducing energy costs in public facilities shall award contracts on the same basis as contracts for professional services.

Authorization for purchase of insurance without bidding (*TCA* §29-20-407)
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.

Purchases through State (*TCA* §12-3-1201)
Municipalities may take advantage of so-called "state prices" regardless of any charter or general law requirements. Unless restricted by local or private act, charter or general law, municipalities may purchase any item from local sources if the item is available for purchase through contracts or price agreements entered into by the central procurement office. The item must also be available at the same or lower cost from such local sources, and the local government 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, along with price and vendor information, are available electronically from the purchasing division of the Tennessee Department of General Services Central Procurement Office.

Purchases from Other Governments (*TCA* §12-3-1202)
Any county may buy secondhand items from any other government. These purchases may be made without competitive bidding and public advertisement, regardless of charter requirements. Any county may buy used or secondhand items from any private individual or entity without public advertisement and competitive bidding if the county documents the general range of value of the purchased item through a nationally recognized publication or through an appraisal by a licensed appraiser. The price paid must be no more than 5% of the highest value of the documented range.

Purchases for Other Local Governments (*TCA* §12-3-1203)
A county may buy supplies, equipment, and services for any other local government entity (i.e., other municipalities, counties, utility districts or other local government units). The purchase must be made on the terms of the purchaser. All competitive bidding and public advertisement requirements of the purchaser are met if the purchasing government complies with its own purchasing requirements.
A county may purchase equipment from a vendor under the same price and terms of a legal bid initiated by any other local government unit of this state. The purchase shall be made on the terms of the purchaser. The local government that purchases does so without involving the original purchasing entity. The original entity shares no liability or responsibility for any purchases made by another local government. Any local or private act, charter, or general law requirements for public advertisement or competitive bidding are met in accordance with this section. This authorization does not apply to purchases of new or unused motor vehicles unless the motor vehicles are manufactured for a special purpose as defined in TCA §12-3-1208; and purchases related to any transportation infrastructure project including, but not limited to construction or improvements of streets, highways, bridges, tunnels, or any roadway related facility.

Cooperative Purchasing Agreements (Local) (*TCA* §12-3-1205)
This law authorizes any local government of the state to participate in, sponsor, conduct, or administer a cooperative purchasing agreement with one or more other local governments for the purchase of any supplies, services, or joint construction with one or more other local governments. An agreement must be entered into between the participants.
If the participants in a joint- or multi-party contract are required to advertise and receive bids, it is sufficient for those purposes that the purchasing entity complies only with its own purchasing requirements.
Any county may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any goods, supplies, services or equipment with one or more local governments outside this state. This is only allowed to the extent the laws of the other state allow joint exercise of purchasing authority.
A county may participate in a master agreement by adopting a resolution accepting the terms of the master agreement. If the participant in the multi-party agreement is required to advertise and receive bids, it is considered sufficiently met if the purchasing entity complied with its own purchasing requirements. The participant shall acquire and maintain documentation that the purchasing entity or entities that procured the bid complied with its own purchasing requirements. This authorization does not apply to purchases of new or unused motor vehicles unless the motor vehicles are manufactured for a special purpose as defined in TCA §12-3-1208; and purchases of construction, engineering or architectural services, or construction materials.
The chief procurement officer may collect information from local governments concerning the type, cost, quality, and quantity of commonly used items procured under cooperative purchasing agreements.

Cooperative Purchasing Agreements (State) (*TCA* §12-3-512)
This agreement authorizes the central procurement office to enter into cooperative purchasing agreements with other states or local governments, provided that each contract is established through the use of full and open competition and pursuant to policies or rules approved by the procurement commission.

Cooperative Purchasing: Local in State and Local Out of State (*TCA* §12-9-101)
The Inter-local Cooperation Act permits any local government in Tennessee to enter into joint agreements to exercise any legitimate governmental function (including purchasing) with any other local government, in Tennessee or in any other state. Participating local governments in another state must have the same blanket authority under that state's own laws.

Electronic Contracting (*TCA* §47-10-107)
This statute allows contracts to be executed electronically with electronic records and electronic signatures.

Purchases of Property at Public Auctions - Reporting (*TCA* §12-3-1006)
This statute authorizes a county to establish written procedures governing purchases at publicly advertised auctions. It also establishes fixed reporting requirements for the purchasing official.

Competitive Bidding for Larger Municipalities (*TCA* §12-3-1204)
Municipalities with a population of greater than 150,000 have state-established regulations governing competitive bidding.

Reverse Auctions by Local Government (*TCA* §12-3-1208)
A local government may purchase goods or services through a competitive reverse auction process that allows offerors to bid on specified goods or services electronically and adjust bid pricing during a specified time period. This authorization shall not apply to construction services other than those relating to maintenance, repairs and renovations costing less than $25,000, architectural or engineering services, or new or unused motor vehicles unless manufactured for a special purpose or new or unused construction equipment. Other rules and restrictions apply.

Purchases from State Industries (*TCA* §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 pursuant to procedures approved by the procurement commission as being in satisfactory quality, of reasonable cost, and available. Municipalities may not evade the intent of the law by slightly changing the variations from standards adopted by TRICOR when articles have been certified. After notice from the governor, continued intentional violations by any county constitute wrongdoing in office and subject the officers or agents responsible for the violation to suspension or removal from office.

"Buy America" Act (*TCA* §54-5-135)
Municipalities may not buy any materials used for highway or roadway construction, re-surfacing, or maintenance from any:
(1) Foreign government,
(2) Company wholly owned or controlled by a foreign government, or
(3) Agency of such foreign government or company.

Materials include, but are not limited to, asphalt cement, asphalt emulsion, rock, aggregate, liquid and solid additives, sealers, and oils.
This statute does not apply if materials made by American companies are considered in unsatisfactory quality, found unavailable in sufficient quantity, or priced at an amount that will increase the overall project cost by 5% more than the overall project costs using materials produced by foreign companies.

Motor Oil Purchases (*TCA* §12-3-807)
Standard specifications for buying lubricating motor oil must include re-refined or recycled lubricating motor oil, unless circumstances or equipment require specialized treatment. If specialized treatment is necessary, documented evidence to substantiate this exclusion must be submitted to the procurement commission or the appropriate purchasing agency of the political subdivision.
Municipalities may purchase lubricating motor oil through the central procurement office. This department compiles and publishes a list of businesses that commercially distribute re-refined or recycled lubricating motor oil. Prior to accepting competitive bids for a contract concerning

lubricating motor oil, the county must notify each business entity on the list concerning such a proposed contract.

Life Cycle Cost and Procurement Act (*TCA* §12-3-901)
The state chief procurement officer will determine which commodities and products may be bought according to energy efficiency standards. The state must adopt rules and regulations relative to energy efficiency standards for major energy-consuming products. Life cycle costs are to be used in contracting for major energy-consuming products. In determining life cycle costs, the state may consider:
(1) Acquisition cost of the product,
(2) Energy consumption and projected cost of energy over the useful life of the product, and
(3) The expected re-sale or salvage value of the product.

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

Purchasing from Certain Disabled Persons (*TCA* §71-4-701)
Municipalities must purchase services and commodities from qualified non-profit work centers for the blind or severely disabled if the commodities are available and that are certified pursuant to procedures approved by the state procurement commission. This is not mandatory if the service or commodity is available from any state agency or if the procurement commission determines that the service or item does not meet reasonable requirements.

Purchase of Confiscated Property from the State (*TCA* §12-2-201)
A county may buy a motor vehicle that has been confiscated by the state by any city officer, employee, or agent. The motor vehicle must be for municipal use.

Conveyance of Real or Personal Property among Public Agencies (*TCA* §12-9-110)
Any county or other public agency or agencies may convey or transfer real or personal property to any other public agency or agencies by contract, regardless of any requirements in any budget or purchasing act. The 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.

Transfer of Assets for Fire Protection (*TCA* §12-3-1206)
A local government may transfer the ownership of assets for fire protection purchased through or with the proceeds of federal, state or local grants to volunteer fire departments within such county, county or metropolitan area if the volunteer fire departments are registered with the secretary of state as non-profit organizations.

Purchasing Through Competitive Sealed Proposals (*TCA* §12-3-1207)
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 county. This act places these restrictions and requirements on purchasing through competitive sealed proposals:

• The governing body must adopt a procurement code by ordinance before purchases may be made through competitive sealed proposals. MTAS, in conjunction with the comptroller's office, will develop a code that municipalities may adopt.

• The governing body must follow the procurement code; this code must contain criteria and procedures for making purchases.

• Purchases using competitive sealed proposals may be made only in instances when qualifications, experience, and competence are more important than price.

• These purchases may be made only when there is either: 1) More than one solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution, ***or*** 2) No readily identifiable solution to a purchasing issue and competitive sealed proposals will assist in identifying one or more solutions.

• Adequate public notice must be given for the request for proposals in the same manner as for requests for competitive sealed bids.

• The request for proposals must state the relative importance of price and other factors.

• Proposals must be opened in a manner that avoids disclosure of contents to competing respondents during the later negotiations. Proposals must be open to public inspection when the intent to award the contract to a particular respondent is announced.

• Discussions for clarification may be conducted with responsible respondents who submit proposals that have been determined by the purchasing agent to be viable for selection. These respondents must be given fair treatment relative to discussion and revision of proposals. Revisions to submitted proposals are permitted before the intent to award to a particular respondent is announced.

• In the discussions, the purchasing agent and other municipal personnel may not disclose information derived from competing proposals.

• The award must be made to the responsible respondent whose proposal the governing body determines is most advantageous to the county. The purchasing agent must place in the file a statement containing the basis on which the award was made.

Interest of Officer in Municipal Contracts (*TCA* §6-54-107)

No one holding a municipal office, elected or appointed, can contract with the county for any work that is to be paid for out of the treasury. That same person cannot also hold nor 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 can be indirectly interested in any contract with the county unless the officer publicly acknowledges his interest. "Indirectly interested" is defined as any contract in which the officer is interested, but not directly. It includes contracts where the officer is directly interested, but is the sole supplier of goods or services in the county.

Personal Interest of Officers Prohibited (*TCA* §12-4-101)

It is unlawful for any person whose duty is to vote for or to supervise any contract with a county to be directly interested in such a contract. No municipal officer or other person whose duty is to

superintend any contract with a county shall be indirectly interested in any such contract unless the officer or person publicly acknowledges his interest.

Emergency Purchases
The National Institute of Governmental Purchasing defines an emergency purchase as "a purchase made in an exigency (emergency), often made under special procedures, designed to meet the emergency."

The County Purchasing Law of 1983 exempts emergency purchases from public advertisement and competitive bidding requirements. The special provision for emergency purchasing is found in T.C.A. § 5-14-204(3) *(as listed above).*

FORMS

1) *Form for Publicly Advertised Auctions*

Copy of public advertisement of auction must be attached here.

REQUEST FOR PURCHASE AT PUBLIC AUCTION

Date and place of auction:

Auction Company/Auctioneer:

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

_____ _____

County Official Purchasing Agent

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

CERTIFICATION OF PURCHASE AT PUBLIC AUCTION

Date and place of auction:

Auction Company/Auctioneer:

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

Item	Actual Bid Price	Check or Warrant #	Vendor	Receipt No.

(Use additional pages if necessary)

TOTAL PRICE OF ALL ITEMS PURCHASED BY COUNTY: $

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

CERTIFICATION OF BIDDER AND AUCTIONEER

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

_____ _____

Auctioneer Bidder for County

_____

License Number

2) ***Form for Purchase Orders***

FAYETTE COUNTY GOVERNMENT
P.O. BOX 218
SOMERVILLE, TENNESSEE 38068
PHONE (901) 465-5291
FAX (901) 465-5229

PURCHASE ORDER

P.O. NUMBER	
ORDER DATE	
VENDOR NUMBER	
REQUISITION NUMBER	

TO:

DELIVERY DATE

TERMS

DELIVER ITEMS TO:	SPECIAL INSTRUCTIONS

ORDER/CONFIRMATION

CONFIRMATION DATE

PLACED BY

CONFIRMING TO

ATTN:

ITEM NUMBER	FUND ACCOUNT NUMBER	QUANTITY	ITEM DESCRIPTION	AMOUNT

NOTICE TO VENDOR:

Mail TWO copies of your invoice promptly to Attention of:

FAYETTE COUNTY GOVERNMENT
P. O. BOX 218
SOMERVILLE, TENNESSEE 38068

GRAND TOTAL

SUBJECT TO THE FOLLOWING CONDITIONS

1. All packages, cartons or other containers must be plainly marked with the purchase order number.
2. The right is reserved to purchase in the open market and to charge the difference to the Vendor in the event that deliveries are not made at the time specified in the bid and on this order.
3. Whenever a delivery is rejected, the Vendor shall be notified and be given the reason for the rejection. All rejected deliveries shall be held at the Vendor's risk and he shall bear the expense of removal.
4. No changes in or cancellations of this purchase order shall be recognized by the Vendor unless authorized by special form issued by the Purchasing Agent.
5. Acceptance of this order includes acceptance of all terms, prices, delivery, instructions, specifications and conditions stated.
6. The County/City/Town is not liable for Federal Tax or State Tax.
7. Each Shipment and/or each purchase order should be covered by separate invoices.

IMPORTANT: INVOICES AND PACKAGES MUST BEAR PURCHASE ORDER NUMBER

There is an otherwise unencumbered balance to the credit of the proper appropriation, allotment or fund to meet the expenditure covered by this purchase.

APPROVED:

PURCHASING AGENT