

***Purchasing Law of 1983  
&  
Update of the  
General Purchasing Laws  
presented to  
TAMCAR  
Fall Conference 2013***

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**Course Topics**

- ✓ Overview
- ✓ The Municipal Purchasing Law of 1983
- ✓ Other general laws related to purchasing

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**Municipal Purchasing**

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**Purpose of Purchasing:**

*Maximization of taxpayer dollars in the acquisition of necessary goods and services while maintaining a high standard of quality and production.*

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**Purchasing Objectives**

- Acquire goods and services
- Efficiency
- Integrity and openness
- Compliance with social objectives

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## Purchasing Goals

1. Provide materials, supplies, and services timely and efficiently
2. Secure at lowest cost
3. Equal opportunity for vendors
4. Protect the organization
5. Timely information
6. Surplus excess

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## Purchasing Questions

- When is public advertising required?
- When is competitive bidding required?
- Are any organizations or procedures exempt?
- What about emergency purchases?
- What authority has the governing body to customize the law?

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The answers to those questions depend on:

- Municipal Charter
- Local purchasing ordinance and policies
- 1983 Municipal Purchasing Law
- Other General Purchasing Laws

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# Municipal Charters

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## Types of Municipal Charters

- General Law Charters
  - Mayor-Aldermanic Charter
  - City Manager-Commission Charter
  - Modified Manager-Council Charter
- Private Act Charters
- Home Rule Charters

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## Mayor-Aldermanic General Law Charter

- Charter is silent on purchasing activity
- Purchasing activities governed by the Municipal Purchasing Law of 1983

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**City Manager-Commission & Modified Manager-Council General Law Charters**

- Sets specific guidance in the charter on purchasing
- Procedures not set by charter are established by ordinance
- Ordinance must address items included in the Municipal Purchasing Law

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**Private Act & Home Rule Charters**

- Requires careful reading to determine purchasing requirements.
- If the charter doesn't mention purchasing and competitive bidding, then purchasing activities will be governed by the 1983 Municipal Purchasing Law.

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**Purchasing Ordinance & Policies**

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## Purchasing Ordinance

1. Sets thresholds for public advertisement and competitive bidding
2. Sets threshold for competitive quotes
3. Authorizes implementation of local purchasing policies and procedures

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## Purchasing Policies

1. Authorized personnel
2. Pre-numbered forms
3. Emergency / Small-item procedures
4. Purchase order approval process
5. Authorized card users
6. Competitive bidding requirements

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## Purchasing Policies (cont.)

7. Required documentation
8. Governing body approvals
9. Personnel requirements when competitive bids are required
10. Written agreement requirements
11. Requirements for written quotes

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## Key Tools

- Purchase requisitions
- Purchase orders
- Departmental purchase orders
- Detailed procedures

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## The Municipal Purchasing Law of 1983

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## Overview

- Governs the municipal purchasing process
- Applies to all purchases by “authorized officials” in all municipalities with few exceptions
- All purchases to be in compliance with budget
- With limited exception, all purchases, leases, or lease purchase agreements must be
  - Publicly advertised, and
  - Competitively bid

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## Exceptions

- Municipalities with charter provisions relative to competitive bidding
  - Establishes competitive bidding limits
  - Authorizes competitive bid limit be set by ordinance
- Purchases made through the state Central Procurement Office

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## Exceptions (cont.)

- Investments in or purchases from the Local Government Investment Pool
- Cooperative purchasing pursuant to the Inter-local Cooperation Act
- Purchases from certain nonprofit corporations

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## Bidding Exceptions

- Purchases of items that cost less than \$2,500 during any fiscal year (total purchase price)
- Sole source or proprietary purchases
- Emergency purchases
- Leases or lease-purchases requiring total payments of less than \$2,500

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## Bidding Exceptions (cont.)

- Purchases, leases, or lease-purchases
  - Of real property
  - From other governments
- Perishable commodities purchased in the open market
- Natural gas or propane gas purchased for resale

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## Thresholds

Purchases, leases or lease-purchase arrangements costing less than \$2,500 but more than \$1,000 in any fiscal year

- May be made in the open market without public advertisement
- Based on three competitive bids whenever possible

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## Thresholds (cont.)

Purchases, leases or lease-purchase arrangements that costing \$1,000 or less in any fiscal year

- Do not require public advertisement
- Do not require competitive bidding

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## Threshold Summary

- \$ 0 to \$1,000 = Direct Purchase
- \$1,000 to \$2,500 = 3 Competitive Quotes
- \$2,500 and above = Competitive Sealed Bids

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## Additional Authority of the Governing Body

- By ordinance, the public advertisement and competitive bidding limit may be raised to \$10,000 (may also be lowered)
- By ordinance, the \$1,000 limit may be raised to 40% of the public advertising and competitive bidding limit

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## Other General Purchasing Laws



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## Other General Laws

- Purchasing laws in addition to:
  - Municipal charter provisions
  - 1983 Municipal Purchasing Law
- Apply equally to all municipalities

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## 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 when the purchase is for municipal use.

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## Cooperative Purchasing Agreements (State)

[ T.C.A. 12-3-512 ]

The chief procurement officer is authorized to enter into cooperative purchasing agreements with other states, local governments and higher education institutions, under certain provisions.

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**Purchasing Motor Oil**  
[ T.C.A. 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.

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**Life Cycle Cost and Procurement Act**  
[ T.C.A. 12-3-901 et seq. ]

The state chief procurement officer will determine which commodities and products may be purchased according to energy efficiency standards based on rules and regulations, policies, and procedures approved by the procurement commission.

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

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**Purchases Through State**  
[ T.C.A. 12-3-1201 ]

Although not all prices quoted to the state are available to local governments, municipalities may take advantage of so called "state prices" regardless of any charter or general law requirements.

Central Procurement Office  
<http://tn.gov/generalsvc/cpo>

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### Purchases from Other Governments

[ T.C.A. 12-3-1202(a) ]

Regardless of charter requirements, any municipality may buy secondhand articles consisting of goods, equipment, materials, supplies, or commodities from any other government without competitive bidding and public advertisement.

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### Purchases from Other Governments

[ T.C.A. 12-3-1202(b) ]

Regardless of charter requirements, any municipality may buy secondhand articles consisting of goods, equipment, materials, supplies, or commodities from any private individual or entity without competitive bidding and public advertisement as long as the purchasing government documents the general range of value of the purchased item:

- a. Through a listing in a nationally recognized publication, or
- b. Through an appraisal by a licensed appraiser.

The price paid must not be more than 5% of the highest documented range.

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### Purchases for Local Governments

[ T.C.A. 12-3-1203 ]

- Any local governmental entity may buy supplies, equipment, and services for any other local governmental body.
- The acquisition must be made on the terms of the entity making the purchase.
- All competitive bidding and public advertisement requirements of the requesting entity are met if the purchasing body complies with its own buying requirements.

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## Purchases for Local Governments

[ T.C.A. 12-3-1203 (c)(1) & (c)(2) ]

- Any local government entity may purchase supplies, goods, equipment, and services under contracts or price agreements entered into by any other local governmental unit of this state.
- Purchases shall be made on same terms and under the same rules and regulations as the purchasing entity.
- All competitive bidding and public advertisement requirements of the requesting entity are met.
- This does not apply to:
  - Purchases of new or unused motor vehicles (unless special purpose defined in § 12-3-1208); and
  - Purchases related to construction or improvements of streets, highways, bridges, tunnels, or any roadway related facility.

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## Regulations for Competitive Bidding

[ T.C.A. 12-3-1204 ]

Establishes regulations governing competitive solicitation for municipalities greater than 150,000 population.

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## Cooperative Purchasing Agreements (Local)

[ T.C.A. 12-3-1205(a) ]

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 (1) or more other local governments in accordance with an agreement entered into between the participants.

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### Cooperative Purchasing Agreements (Local)

[ T.C.A. 12-3-1205)(b)(1) ]

Authorizes any local government to participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any goods, supplies or equipment with one or more other governmental entities outside this state to the extent the laws of the other state permit the joint purchasing authority – provided the items acquired were competitively advertised and bid and made available for use by other governmental entities.

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### Cooperative Purchasing Agreements (Local)

[ T.C.A. 12-3-1205(b)(2) ]

- Authorizes any local government to participate in a master agreement by adopting a resolution accepting the terms of the master agreement.
- Competitive bidding & public advertisement requirements of the participant in the multi-party agreement are met if the entity that procured the bid complied with its own purchasing requirements.
- The participant shall acquire and maintain documentation that the purchasing entity complied with its own purchasing requirements.

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### Cooperative Purchasing Agreements (Local)

[ T.C.A. 12-3-1205(b)(4) ]

This authorization for local government to join multi-party procurement agreements does not extend to:

- Purchases of new or unused motor vehicles (unless special purpose defined in § 12-3-1208); and
- Purchases of construction, engineering or architectural services, or construction materials.

The state's chief procurement officer may collect information from local governments regarding purchases.

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## Transfer of Assets for Fire Protection

[ T.C.A. 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, municipality or metropolitan area if the volunteer fire departments are registered as non-profit organizations.

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## Purchasing Through Competitive Proposals

[ T.C.A. 12-3-1207 ]

A municipality may use competitive sealed proposals rather than bidding when the governing body determines competitive sealed bidding is not practicable or advantageous to the municipality.

Multiple restrictions in order to comply with this authorization.

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## Reverse Auctions By Local Governments

[ T.C.A. 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.
- Shall not apply to:
  - Construction services other than those relating to maintenance, repairs and renovations costing less than \$25,000
  - Architectural or engineering services
  - New or used motor vehicles unless manufactured for a special purpose or new or used construction equipment.
- Other rules and restrictions apply.

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## Professional Service Contracts

[ T.C.A. 12-3-1209 & 12-4-107 ]

- Contracts for professional services, which include:
  - legal services,
  - fiscal agent,
  - financial adviser or advisory services,
  - educational consultant services,
  - similar services
- Professional people or groups with “high ethical standards”
- Awarded on the basis of recognized competence and integrity rather than on competitive solicitations.

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## Professional Service Contracts (cont.)

[ T.C.A. 12-3-1209 & 12-4-107 ]

- Contracts for architectural and engineering and construction services:
  - Local government may seek qualifications and experience data from any firm licensed in this state and interview such firm(s).
  - Local governments may negotiate a contract with the firm.
  - If unable to negotiate a satisfactory contract, the negotiations will continue with other qualified firms.
- If a satisfactory relationship exists, the local government may continue.

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## Interest of Officer in Municipal Contracts

[ T.C.A. 12-4-101 & 6-54-107 ]

- No one holding a municipal office, elected or appointed, shall have any direct interest in any contract with the municipality for any work.
- No municipal officer shall be indirectly interested in any contract with the municipality unless the officer publicly acknowledges his interest.

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## Energy-related Service Contracts

[ T.C.A. 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.

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## Multi-Year Contracts for Maintenance of Water Storage Tanks

[ T.C.A. 12-4-112 ]

A municipality may purchase multi-year contracts through a request for proposals (RFP).

RFP evaluates qualifications, experience, availability, technical approach, minority participation, cost, and other relevant factors.

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## Cooperative Purchasing (Local in State and Local out of State)

[ T.C.A. 12-9-101 ]

- The Interlocal Cooperation Act permits any local government to enter into joint agreements to exercise any legitimate governmental function (including purchasing) with any local government in Tennessee or in any other state.
- Participating governments in other states must have the same authority.

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## Conveyance of Real or Personal Property Among Public Agencies

[ T.C.A. 12-9-110 ]

- A municipality may convey or transfer real or personal property to any other public agency by contract regardless of any budget or purchasing act.
- The receiving public agency must use the conveyed property for public purpose.

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## Certain Insurance

[ T.C.A. 29-20-407 ]

Regardless of any public or private act or charter restrictions, 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.

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## Purchases from State Industries

[ T.C.A. 41-22-119 through 121 ]

Municipalities must buy all items for the state inmates from the Tennessee rehabilitative initiative in correction board (TRICOR), provided:

- The articles have been certified by the Board of Standards as being in satisfactory condition
- Of reasonable cost, and
- Available.

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## Recognition of Electronic Records

[ T.C.A. 47-10-107 ]

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

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## “Buy America” Act

[ T.C.A. 54-5-135 ]

- Municipalities must not buy any materials (asphalt cement, asphalt emulsion, rock aggregate, liquid and solid additives, sealers, and oils) used for highway or roadway construction, resurfacing, or maintenance from any foreign government, any company wholly owned or controlled by foreign government, or any agency of such foreign government or company.
- Shall not apply if:
  - Materials are not available by American companies; or
  - American materials increase the overall project cost by 5% more than those produced by the foreign source.

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## Purchasing from Certain Handicapped Persons

[ T.C.A. 71-4-701 ]

Municipalities shall purchase services and commodities from qualified nonprofit work centers for the blind or severely handicapped if the commodities are available and have been certified by the Board of Standards unless the service or item doesn't meet reasonable requirements.

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## Advantages of Organized Buying Procedures

1. Lets taxpayers know their money is being spent carefully.
2. Vendors know they will be treated fairly.
3. Employees will have support, direction, and protection.

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## Summary

- ✓ Overview
- ✓ The Municipal Purchasing Law of 1983
- ✓ Other general laws related to purchasing

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## Contact information:

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## QUESTIONS ?

*Thank you for your attention  
And  
Have a great rest of the day!*

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