



From: Stephanie O'Hara, MTAS Legal Consultant  
To: MTAS Consultant  
Date: 10/5/2022  
Re: Requirement of central purchasing agent to increase bid threshold to \$25,000

You have asked whether a municipality may raise the bid threshold to \$25,000 or \$50,000 when the utility has a central purchasing agent. Due to the preemptive language in the statute “notwithstanding another law to the contrary,” it is my opinion that Tennessee Code Annotated § 12-3-1212, effective May 11, 2022, preempts most other language establishing bid thresholds:

- (a) Notwithstanding another law to the contrary, a county, municipality, utility district, or other local governmental entity having centralized purchasing authority with a full-time purchasing agent may, by resolution or ordinance of its governing body, increase the threshold over which public advertisement and sealed competitive bids or proposals are required to an amount not to exceed fifty thousand dollars (\$50,000) for nonemergency, nonproprietary purchases.
- (b) Notwithstanding another law to the contrary, a county, municipality, utility district, or other local governmental entity having non-centralized purchasing authority may, by resolution or ordinance of its governing body, increase the threshold over which public advertisement and sealed competitive bids or proposals are required to an amount not to exceed twenty-five thousand dollars (\$25,000) for nonemergency, nonproprietary purchases.
- (c) At least three (3) written quotations are required when possible for purchases costing less than the bid threshold established under subsection (a) or (b), but more than forty percent (40%) of such bid threshold or some lower amount as may be established by the governing body in a resolution. Purchases of like items must be aggregated for purposes of the bid threshold.
- (d) For purposes of this section, a “full-time purchasing agent” means a person who devotes the whole of the person's working time to the demands and duties of the office of purchasing agent.

Based on this amended language, a municipality does not need central purchasing authority in order to increase the competitive bid threshold to \$25,000. However, the municipality would need a “full-time purchasing agent” in order to raise the bid threshold to \$50,000 for the municipality generally. “Full-time purchasing agent” has been defined in the statute to be “a person who devotes the whole of the person's working time to the demands and duties of the office of purchasing agent.” If the municipality does not have “centralized purchasing authority” and the utility’s full-time purchasing agent does not serve the city as a whole, in my

opinion, this agent would not meet the requirements of Tennessee Code Annotated § 12-3-1212 to raise the bid threshold to \$50,000 for the municipality as a whole.

However, the Municipal Electric Plant Law provides specific purchasing authority for utilities created under the Municipal Electric Plant Law. While the municipal code for this municipality is not clear about the creation of the utility, the utility website states that it was created under the Municipal Electric Plant Law. Assuming the utility was created under the Municipal Electric Plant Law, the following bid limit would apply under Tennessee Code Annotated § 7-52-117(d):

(d) The superintendent shall let all contracts, subject to the approval of the supervisory body, but may, without such approval, obligate the electric plant on purchase orders up to an amount to be fixed by the supervisory body, but not to exceed fifty thousand dollars (\$50,000). Any work or construction exceeding in cost the amount specified in this subsection (d) shall, before any contract is let or work done, be advertised by the superintendent for bids, but the supervisory body shall have power to reject any and all bids.

This provision does not align with the thresholds and requirements contained in Tennessee Code Annotated § 12-3-1212. While Tennessee Code Annotated § 12-3-1212 is not contained within the Municipal Purchasing Law, the Attorney General has opined that the specificity in the Electric Plant Law would govern bid requirements over the Municipal Purchasing Law because the Electric Plant Law is more specific:

The Electric Plant Law and the Purchasing Law both govern advertising and bidding requirements for city owned electric systems. In Opinion 83-308, this Office concluded that where the Electric Plant Law and the Purchasing Law could not both be applied:

the Electric Plant Law of 1935 ... should be applied because there was no express repeal of it, and repeals by implication are not favored; and the 1935 Law is special in dealing at T.C.A. §7-52-117(d) only with purchases of municipal electric systems, whereas the municipal Purchasing Law of 1983 is general in dealing with purchases throughout municipal governments, and applicable special statutes prevail over general statutes.

See Tenn. Op. Att’y Gen. No. 96-043 (Mar. 13, 1996) (*citing* Tenn. Op. Att’y Gen. No. 83-308; Watts v. Putnam County, 525 S.W.2d 488, 492 (Tenn. 1975); and Hatler v. Stout, 434 S.W.2d 329 (Tenn. 1968)). The language of Tennessee Code Annotated § 12-3-1212 preempts the bid threshold authority in the Municipal Purchasing Law, but the utility department of a municipality does not meet the definition of “a county, municipality, utility district, or other

local governmental entity” within the preemption language of Tennessee Code Annotated § 12-3-1212. Therefore, in my opinion, Tennessee Code Annotated § 7-52-114 is not preempted by Tennessee Code Annotated § 12-3-1212, and assuming the utility was created under the Municipal Electric Plant Act, the supervisory body of the utility (as defined in Tennessee Code Annotated § 7-52-114, attached) may establish a bid threshold up to \$50,000 for the utility department.

Please note that if the municipality moves the competitive bid threshold to \$25,000, the municipality would also need to establish a threshold for three written quotes, which could be no higher than 40% of the competitive bid threshold (\$10,000 for a \$25,000 competitive bid threshold), but could be required for a lower amount if the governing body so chooses.

Please let me know if you have any additional questions.