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# Johnson County, TN Purchasing Manual

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2020

Johnson County Purchasing Department  
211 North Church Street  
Mountain City, TN 37683

Dustin Shearin, Purchasing Agent

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## I. Introduction

This manual contains the purchasing policies, rules, regulations, and procedures of which are required to be followed by the departments/agencies of Johnson County, TN Government. It is to be known as the Johnson County, TN Purchasing Manual. It has been developed to meet the requirements prescribed by the County Purchasing Law of 1957, Tennessee Code Annotated 5-14-101, et seq.

The manual as written, serves as a user's guide for County employees and officials when implementing authorized purchasing procedures. This edition of the *Purchasing Manual* supersedes all previous editions and changes thereto. **Strict adherence to the purchasing rules, regulations, and procedures as set forth herein shall be followed to ensure and maintain the fairness, efficiency, and integrity of the purchasing process.**

Changes to this Manual will be announced through the issuance of Purchasing Manual Revision (PMR) memorandums that shall be issued by the Purchasing Department. Each revision to the Manual shall be full page replacements and at the bottom of each page, the Revision Date shall be noted. When received, each new PMR shall be filed in the Manual as instructed, and the outdated portion shall be removed and destroyed.

This manual and its contents are not intended to conflict with any existing law. It represents the minimal purchase requirements. If any part of the manual conflicts with the law, then the Law shall take precedence over the manual. This manual may or may not reflect all required regulations or policies, and should be used as a reference tool only!

Elected officials and appointed department heads may appoint requisitioning and receiving agents for their department as determined necessary to promote the efficient and successful operation of their respective organization. However, names and positions for these designated agents must be submitted to the Purchasing Department in writing.

The integrity and success of the County's purchasing system depends upon the accuracy, honesty, and credibility of its elected officials, appointees, and its employees.

Copies of this manual may be obtained from the Purchasing Department.

The Johnson County Purchasing Department is readily available to assist any County office, department, or agency at any time. Comments, suggestions, and questions of interpretation should be addressed to the Purchasing Department.

## II. General Purchasing Information

### **(a) Purchasing Code of Ethics/ Conflict of Interest**

Each employee of Johnson County shall maintain the highest of ethical standards when entering into procurement activities. (See Appendix (a) (1))

According to T.C.A. 5-14-114, (a) Neither the county purchasing agent, nor members of the county purchasing commission, nor members of the county legislative body, nor other officials of the county, shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any supplies, materials, equipment or contractual services used by or furnished to any department or agency of the county government. (b) Nor shall any such person accept or receive, directly or indirectly, from any person, firm or corporation to which any contract or purchase order may be awarded, by rebate, gift or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. (c) A violation of this section is a Class D felony.

### **(b) Purchasing Agent Duties, Power, & Responsibility**

The County Purchasing Agent shall have exclusive power and it shall be his/her duty:

- (1) To contract for and purchase all supplies, materials, equipment and contractual services required by each and every official, agency, office, department, or employee of the County government or which is supported by, or under control of the County government and which expends or encumbers any of the County's funds. No other official, employee, or agent of the County or of any of its departments or agencies, shall be authorized to contract for or purchase any such materials, supplies, equipment, or contractual services;
- (2) To arrange for the rental of machinery, buildings, or equipment when the rental costs are to be paid out of funds belonging to the County or any department, institution, or agency thereof; however, no commitment shall be made which extends beyond the end of the current fiscal year for which appropriations have been made by the County legislative body, except such commitments as are authorized by resolution of the County legislative body, and no other official, employee, or agent of the County shall have the right or power to make any contract for such rental;
- (3) To transfer materials, supplies, and equipment to or between County departments and agencies as may be needed for the proper and efficient administration of the County government;
- (4) To have charge of any central storeroom or central mailing room or similar services which may hereafter be established for the efficient and economical handling of the County's business.

**(c) Purchasing Department Responsibilities**

The Purchasing Department has the ultimate responsibility to utilize cost effective best practices to procure quality goods and services which present the best value to the County. These services are offered to all County departments, agencies of the County, and jointly funded governmental entities when funding and payment responsibilities rest with the County.

**(d) Purchasing Committee**

The County Purchasing Agent may summon the Purchasing Committee for review of any purchases of which a review is deemed necessary. Notice of these public meetings will be posted at least one (1) week in advance on the County Notice Board within the County Courthouse. Notice may also appear within a newspaper of countywide circulation when deemed appropriate and in accordance with the Tennessee Open Meetings Act (a.k.a. The Sunshine Law).

**(e) Government Certificate of Exemption**

Johnson County Government is exempt from state, county, and federal sales and use taxes. Completion of a certificate of exemption of which states that purchases of property or services are for the exclusive use of the government, is necessary. A tax exemption form from the County Mayor's office or use of a Streamlined Tax Exemption form are the appropriate exemptions for Johnson County. It is illegal for the exemption to be used for personal purchases.

**(f) Mail Services**

Mail services provided consist of shipping materials and supplies (when available), and postage meter machines located in the Department of Accounts & Budgets and the Courthouse mailroom. Individual postage stamps are needed by some departments

**(g) Assets/Inventory ID's**

For items belonging to the County of which cost \$500.00 or more and ALL computer equipment, an Asset Tag/County ID tag is to be assigned to each separate item. Assets of this nature are required to be listed on the department's inventory list and tagged with the assigned ID sticker. The Purchasing Department requires periodic reviews of inventory by each department.

### III. Standard Purchasing Policies and Procedures

#### (a) Purchase Approval Required

If any official or employee of the County authorizes or incurs an obligation against the County without first securing the proper approvals, such official or employee shall be individually liable for the amount of such obligation.

- County Commission Ruling February 1997, Minute Book FF; Pg. 129 – Must have a purchase order number, description of item, and approximate cost before the County will make payment. (See Appendix (a) (2))

For any County purchase you must have a purchase order with a description of what is being purchased, and an estimated cost. If there is no purchase order, the individual making the purchase is responsible for the payment of the bill given that the County is not responsible for anything obtained without a purchase order.

- T.C.A. 5-14-113 – Liability of County.

The County shall be liable for the payment of all purchases of supplies, materials, equipment and contractual services made in accordance with the provisions of this chapter, but shall not be liable for the payment of such purchases made contrary to its provisions.

#### (b) Requisitioner Responsibilities

The procurement process is a combined effort of the ordering department or agency (known herein as the Requisitioner) and the Purchasing Department. When both co-operate and work as a team, the results are an efficient and properly performed procurement. The responsibilities of the Requisitioner are as follows:

- (1) To allow ample lead-time for the processing of the requisition, the issuance of the purchase order, and allowing the supplier time to deliver the needed items or services.
  - a. Forty Five (45) Days is the minimum necessary lead-time for sealed bid requirements, though the process has at times taken longer.
- (2) To prepare a complete and accurate description of the items to be purchased as indicated in the requisition procedures section of this manual.
- (3) To plan purchases well ahead of time to eliminate avoidable urgent or emergency situations.
- (4) To acquire the appropriate approvals prior to committing the County to a purchase commitment since the employee or official shall be personally liable for the amount of an unauthorized purchase.

- (5) To initiate specification preparation on items to be bid, and avoid writing restrictive specifications preventing the promotion of a fair and open bid competition.
- (6) To include the Purchasing Department in all discussions and/or negotiations for bids and proposals.
- (7) To insure that each sales receipt/ticket is clear, legible, and includes the date of the purchase, the purchase order number, a complete item description, quantity, unit price, extended amount for each line item purchased, the total amount of the purchase, payment terms, vendor's name, and must have written name of the department making the purchase and be signed by the department head or their authorized receiving agent.
- (8) To review quality and quantities of purchased products/services delivered to ensure amount is actually the amount charged on the ticket.
- (9) To advise the Purchasing Department, in writing, of defective merchandise or of any vendor dissatisfaction.
- (10) To promptly submit receipts/invoices to the Purchasing Department within three (3) business days to be processed for payment.
- (11) Purchases with Grant Funding may impose requirements that are different, or in addition to those requirements set forth by County policy. The Purchasing Department shall be informed of these upcoming grant fund purchases at least forty five (45) days prior to any orders being placed. This allows for ample time to review any appropriate requirements for these purchases.
- (12) Employees are **NOT** authorized to sign **ANY** document that binds the County, per T.C.A. 5-14-105. Please be aware that some service and delivery agreements constitute a contract. The County Attorney must approve any contract or legal document as to its form. The County Mayor's signature is the required signature for any contract or other legal document for the county. The proper approvals must be met before any contract or legal document is signed. Contracts extending beyond the current fiscal year require Budget Committee, & County Commission Approval.

**(c) Purchase Requisition Procedures**

Purchasing requisitions are required to be completed as the first step in the purchasing process. The following are required to be completed before a purchase order will be issued:

- (1) List requisitioning department's name in the appropriate location.
- (2) List date issued in the appropriate location.
- (3) Include the name of the vendor and a description of the items to be purchased under the description location. List as separate item numbers if using multiple vendors.  
Descriptions shall include a non-abbreviated product name, its appropriate item number, and any other identifier that may be necessary. Quantities and appropriate units of measure shall be listed in the appropriate sections on the requisition.
- (4) Include a total estimated cost.
- (5) Purchase order number may be written in the order no. location.

- (6) Account number may be provided if known.
- (7) Requisition must be signed by the Department Head or an Authorized Representative.

**(d) Informal Purchases Between \$1 and \$9,999.99**

The requisitioner shall prepare a purchase requisition and obtain a purchase order prior to making the purchase. There should be at least three (3) quotations received verbally or written whenever possible. The requisitioner will have preference of the vendor selected. Hard Copies of Purchase Orders are made available to the vendor when requested, though not always required by the vendor.

- Purchases made with County Issued Credit Cards must follow the proper requisitioning & purchase order procedures, unless following the emergency purchase policy as listed below in section (g)- Exceptions .

**(e) Purchases Between \$10,000.00 and \$24,999.99**

The requisitioner shall strictly follow the requirements for this expenditure level. Any deviation from the policy set forth shall be construed as circumvention of the purchasing policy. The Buyer may solicit these informal purchases without formal advertisement. The objective of this informal purchase method is to obtain the necessary item at the lowest possible cost. Authority for this expenditure level was granted by County Resolution July 2015, Minute Book JJ; Pg. 416. (See Appendix (a) (3))

- (1) The requisitioner must obtain three written quotations before completing a purchase requisition.
- (2) These written quotations along with the purchase requisition shall be delivered to the purchasing department for review by the purchasing agent. The purchasing agent has the final say as to if the quotes received are acceptable.
- (3) The purchasing agent will determine through the Director of Accounts & Budgets if the necessary funds are readily available to process a purchase order.
  - a. If determined that funds are available, a purchase order will be issued to the vendor with the lowest cost & allowing for selecting the vendor with the County's best interest at mind.
  - b. If determined that funds are not readily available to encumber under a purchase order. An amendment to the respective fund line item shall be sought at the next scheduled Budget Committee meeting. The County Commission must vote on and approve the amendment before a purchase order is issued.
- (4) A purchase order will be issued only after all steps are completed and documented to the approval of the Purchasing Agent. Hard Copies of Purchase Orders are made available to the vendor.

**(f) Purchases Over \$25,000.00 Competitive Sealed Bids Required**

**1. Specifications**

The requisitioner will provide the Purchasing Department with specifications for the product or service to be bid. The department knows and understands what their product or service needs are. It is important to provide specifications to the purchasing department to avoid confusion on what the desired outcome is for your department. Failure to provide clear and understandable specifications to the purchasing department could lead to receiving products or services that are below the requisitioner's departmental standards. The purchasing agent shall not be responsible for any omissions or errors of specifications not originally provided by the requisitioner.

After a bid package is completed by the purchasing department and approved by the requisitioning department, bid packages will be sent to known vendors who may want to submit a bid. Bid packages will be made available to any other interested parties, upon request.

**2. Receiving Sealed Bids**

The following Sealed Bid receipt and registrations procedure shall be followed upon receipt of a sealed bid/proposal.

- (a) The date and time the bid was received is to be stamped on the front of the bid envelope.
- (b) The bid number and project description should be clearly listed on the envelope.
- (c) The Purchasing Department will place unopened bid in the appropriate bid file.
- (d) Unopened bids will remain in the Purchasing Department until the scheduled bid opening meeting.

Any potential bid documents received by the Purchasing Department that may not be clearly marked as such, may be held until the bid opening meeting and introduced as a bid. If unmarked bid documents are mistakenly opened prior to the bid opening meeting those documents become VOID due to failure to meet bid submission requirements.

All bid documents received become the property of Johnson County, TN.

**3. Bid Opening & Review**

Bid opening meetings are public meetings and are advertised as such.

The County Purchasing Agent will hold a public bid/proposal opening meeting at the scheduled time and location. This meeting will include a review of vendors submitting bids/proposals, the services to be provided, any proposed pricing would

be announced, as well as any other information needing to be announced from the bids/proposals being opened. Once the bid/proposal opening meeting is complete, the County Purchasing Agent will compile the data from the bids, review bids for accuracy and conformance to specifications, and create a bid tab/proposal summary sheet of all information for review. As necessary, the Purchasing Agent will review bids/proposals with the requesting department, County Attorney, Director of Accounts & Budgets, and any other necessary involved person. The Purchasing Agent would also be able to request additional information from any vendor or have questions answered regarding the proposals/bids as necessary.

The Purchasing Committee would meet at a scheduled meeting after every document has been reviewed and the Purchasing Agent has become somewhat familiar with the bids/proposals submitted. If required, an award recommendation could be made at this time by the Purchasing Committee, and any further committees would be requested to make approvals at any future meetings as necessary. Documents will be made available for public inspection after an award is approved.

#### **4. Late Bids**

Late arrival bids received after the designated bid opening date and time will be returned to the sender with a letter explaining why the bid is being returned. The outside of the bid envelope should be stamped showing the date and time the bid was received in the Purchasing Department. Johnson County is not responsible for late/undelivered packages, or misrouting by the post office, or other delivery services.

#### **5. Other Information**

- Fiscal Year Bids – Certain items/services are automatically bid each year by the Purchasing Department. The following are solicitations performed prior to the start of each fiscal year: Asphalt Materials, Mineral Aggregate Stone, Guardrails & Related, Corrugated Pipe, & County Vehicle Maintenance. (Subject to change.)

#### **(g) Exceptions to Competitive Sealed Bid Requirements**

1. Informal Purchases Less than \$25,000.00
2. Proprietary, Sole, and Single Source Purchases – Vendors must be able to document this to the satisfaction of the Purchasing Agent.
3. Emergency Purchasing (See (h) below).
4. Purchases from the State of Tennessee General Services Contracts, Federal GSA Supply Schedules (when applicable), State Prison Industries, the State's Blind/Disabled Vendor Program, and Approved Cooperative Governmental Purchasing Agreements may be used for certain purchases while forgoing the competitive sealed bid requirements.
5. Professional Services as stated in T.C.A. 12-4-107.
6. Travel Reimbursements (Must follow Current Travel Regulations on file with the Accounting Director.)

7. Purchase of secondhand articles or equipment from other government agencies or private individuals or entities when following guidance set forth in T.C.A. 12-3-1202.

**(h) Emergency Purchasing/Emergencies**

1. FEMA defines exigency as a situation that demands immediate aid or action, and where there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, to the non-state entity, and use of competitive procurement proposals would prevent the urgent action required to address the situation. Thus, a noncompetitive procurement may be appropriate.
2. FEMA defines an emergency as a situation that demands immediate aid or action, and where a threat to life, public, health or safety, or improved property requires immediate action to alleviate the threat.
3. Small Value Emergency Purchases may be made by a Department Head when the Purchasing Department is not available outside of normal business hours. These purchases may not exceed \$1000.00 and the guidance set forth in T.C.A. 5-14-110 must be followed. Poor planning, neglect, or indifference in anticipating normal needs does **NOT** constitute as an emergency. A complete requisition & Emergency Purchase Justification Form (See Appendix (a) (8)) from the Department Head justifying the purchase must be turned in to the Purchasing Department before the close of the next business day following the date of such purchase. Failure to follow this procedure will place the entire responsibility for the purchase on the Department Head. Funds to cover these type purchases will be pulled from the Department's Line Item Budget Appropriations.
4. For All County, State, and/or Federal Disaster Declarations or Emergency/Exigency Situations, the County Purchasing Agent may waive competitive solicitation and advertising requirements. This procedure only applies during the time when immediate needs & immediate actions are required to address a public exigency or emergency situation and cannot be delayed by a competitive solicitation. But all means shall be taken to ensure the best value is received for the tax payer, whenever possible.
5. Use of any non-department specific line item appropriations during exigency or emergency situations must be approved by the County Mayor and the Director of Accounts & Budgets prior to issuance of the Purchase Order.
6. Federal Procurement Standards found in 2 C.F.R. Part 200 etc. should be reviewed and used to aid in procurement efforts when there is potential for a Federal Disaster Declaration or Public Assistance Funding.
7. Purchases must follow normal procurement methods and purchasing thresholds after the actual exigency threat or actual emergency circumstances have passed.
8. Non-essential procurements, both formal or informal, may be delayed during a declared State of Emergency. The County Purchasing Agent will make the determination as to what is considered essential or non-essential purchases, and may delay the procurement

of any non-essential item(s) or project(s) during a County, State, or Federally declared State of Emergency. Both essential and non-essential procurements must follow normal procurement methods if they do not directly relate to the actual immediate exigency threat or actual immediate emergency circumstances.

9. For Further Details See Appendix (a) (8).

**(i) Fuel Purchases**

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 quotes. Fuel and fuel products may also be purchased from the State Department of General Services contracts where available.

**(j) Perishable Commodities**

The county legislative body, adopted by resolution in November 2014, Minute Book JJ; Pg. 319, may exempt perishable commodities from sealed or competitive bidding requirements when they are purchased in the open market. (See Appendix (a) (4))

**(k) Bid Bonds/Performance Bonds**

These types of bonds shall be included within the specifications of the ITB, RFP, or RFQ, when deemed necessary or required by any other statute, law, resolution, or provision.

**(l) Vendor Debarment**

The Purchasing Department shall review, from time to time, listings of State & Federal Debarment Lists. Any new or current vendor found to be listed as a debarred vendor will not be allowed to do business with any department of Johnson County. Any appeals from the vendor will be reviewed by the Purchasing Agent. In all cases, the decision of the purchasing agent shall be the final decision.

**(m) Title VI Requirements**

Johnson County, TN, as a recipient of any Federal financial assistance, has agreed to and is obligated to comply with Title VI of the Civil Rights Act of 1964 et seq. No person in the United States shall, on the grounds of race, color, sex, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity promoted by the County, whether the program or activity is funded with federal funds or non-federal funds. (See Appendix (a) (5))

**(n) Advertising & Solicitation Requirements**

Sealed bids shall be solicited by public notice inserted at least once in a newspaper of county-wide circulation, 14 days prior to the date of public opening of bids. Notice will also be posted on the County Notice bulletin board located in the County Courthouse.

The Purchasing Agent will send bid packets to known vendors in the county's trade area of which may be interested in submitting a bid to supply the material or service.

**(o) Purchasing at Public Auctions**

T.C.A. 12-2-421 shall be followed when making purchases at public auctions.

Also, any department wishing to attend an advertised auction shall notify the purchasing agent no later than 2 weeks in advance of the auction. This will allow for enough time to complete all documentation & funding reviews required prior to making purchases at public auctions. No purchase shall be made until the "Request for Purchase at Public Auction" form is completed and signed by the purchasing agent. (See Appendix (a) (6))

## IV. Surplus Property

**(a) Declaration of Surplus Property**

For items totaling a value less than \$1,000.00, the purchasing agent shall be allowed to declare items as surplus allowing for disposal by appropriate method. The county legislative body adopted this amendment to the County Purchasing Law of 1957 by resolution in November 2014, Minute Book JJ; Pg. 188. (See Appendix (a) (7))

For items totaling a value greater than \$1,000.00 & all vehicles, the county legislative body must declare such items as surplus. Items will then be disposed of by the appropriate method.

## V. Appendix

### **(a) Miscellaneous County Resolutions/Policy Updates**

- 1.) County Ethics Policy – Adopted May 17, 2007 & Policy Update regarding Gifts - Approved (1/19/2017)
- 2.) County Commission Purchase Order Ruling – Feb. 1997, Minute Book FF; Pg. 129
- 3.) County Resolution to Increase Bid Threshold to \$25,000.00 – July 2015, Minute Book JJ; Pg. 416
- 4.) County Perishable Commodities Resolution – Nov. 2014, Minute Book JJ; Pg. 319
- 5.) Title VI Compliance POC Sheet
- 6.) Request for Purchase at Public Auction Form
- 7.) County Resolution on Purchasing Agent Surplus Declaration – Feb. 2014, Minute Book JJ; Pg. 188.
- 8.) Emergency/Exigency Policy Updates April 2020.

**County Government Employees Purchasing or Receiving Tangible Gifts of Significant Value, Monetary Gifts, or Gift Cards from anyone other than as authorized by the County Commission.**

Review Section 4 "Acceptance of gifts and other things of value" of the Code of Ethics for an explanation of what is and is not acceptable regarding acceptance of gifts by County Government Employees.

Any purchase requisitions made by County Government Employees for any County Department shall be made following all ethical standards and abide by all Federal, State, & Local laws, policies, and procedures.

Any non-disclosure to the purchasing agent that any of the listed items on a requisition will be used as gifts, and not for County Government use, shall be construed as circumvention of purchasing policies, a possible ethical standards violation, and possible theft if County funds are used in the purchase.

The purchasing agent shall have the initial authority to determine if an item to be purchased will violate this policy. If the department disputes the purchasing agent, the County Commission shall make the final determination.

No Purchase Order will be issued, or the Purchase Order voided if one already exists, if the Purchasing Agent determines that items will be used in an unauthorized manner.

Any founding of purchases of un-disclosed gifts will be written into a formal letter and given to the County Ethics Committee & County Attorney for their review.

Exceptions to this purchasing policy shall include:

- Any plaques, trophy's, awards, or like items recognizing an employee for an accomplishment not to exceed \$100.00 per each unique award.
- Food stuffs for scheduled training or meetings.
- As per policy, any items such as flowers, fruit baskets, etc. when given to an employee for bereavement purposes.
- Items costing less than \$50.00 each of which would be considered insignificant, such as calendars, planners, promotional items, custom pens, etc.
- Any item as otherwise approved by the County commission.

## JOHNSON COUNTY GOVERNMENT

Dick Grayson, County Mayor  
222 West Main Street  
Mountain City, TN 37683  
Phone (423) 727-9696



# Memo

To: All Johnson County Departments  
From: Dick Grayson, County Mayor and Tammie Fenner, County Clerk  
Date: June 19, 2007  
Re: Johnson County Code of Ethics/Resolution

Chapter 49 of the Comprehensive Governmental Ethics Reform Act of 2006 Public Chapter requires all county legislative bodies adopt certain ethical standards by resolution prior to June 30, 2007.

The Johnson County Commission adopted such resolution and Code of Ethics on May 17, 2007 at regular Commission meeting.

Enclosed is a copy of the resolution and a Code of Ethics for our County.

As a Department head and/or constitutional officer of Johnson County, it becomes your mandatory duty to furnish each employee or volunteer employed within your office or department a copy of the resolution and Code of Ethics.

After the receipt of this letter you will need to refer any questions or complaints to the "ethics committee". As required by statute the local committee is composed of Commissioners Cliff Dunn, Lester Dunn, and Freddy Phipps, Constitutional Officer Tammie Fenner, and Board Member Kenneth Gregg.

Once you and your employee have read the enclosed, I believe you will have found it to be self explanatory. Please make yourself familiar with both documents for future reference as this is a very serious legislative item.

Your usual cooperation is greatly appreciated.

# RESOLUTION TO ADOPT A CODE OF ETHICS FOR OFFICIALS AND EMPLOYEES OF JOHNSON COUNTY GOVERNMENT

WHEREAS, Section 49 of the Comprehensive Governmental Ethics Reform Act of 2006, 2006 Public Chapter 1 (1st Ex. Sess.), (the "Ethics Reform Act") requires county legislative bodies to adopt certain ethical standards by resolution on or before June 30, 2007; and

WHEREAS, the County Technical Assistance Service (CTAS) is directed to prepare and disseminate a model of ethical standards which may be adopted by counties in compliance with the Ethics Reform Act; and

WHEREAS, Johnson County desires to adopt the CTAS model of ethical standards as the Code of Ethics for Johnson County;

NOW THEREFORE, BE IT RESOLVED by the Johnson County legislative body meeting in regular session at Mountain City, Tennessee, on this 17th day of May, 2007, that:

SECTION 1. The model of ethical standards developed by CTAS and attached to this resolution is hereby adopted as the Code of Ethics for Johnson County.

SECTION 2. Upon approval of this resolution, the County Clerk is directed to:

(a) Mail a copy of this resolution to the State Ethics Commission; and

(b) Mail a copy of this resolution and the attached Code of Ethics to each county office governed thereby, including all boards, committees, commissions, authorities, corporations or other instrumentalities appointed or created by the county or an official of the county, and specifically including the county school board, the county election commission, the county health department, and utility districts in the county; and

(c) Post a copy of the Code of Ethics on each public bulletin board in the county courthouse.

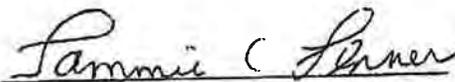
SECTION 3. This resolution shall take effect upon its passage and approval, the public welfare requiring it.

ADOPTED this 17 day of May, 2007.

APPROVED:

  
County Mayor

ATTEST:

  
County Clerk

**CODE OF ETHICS  
JOHNSON COUNTY, TENNESSEE**

**Section 1. Definitions.**

(1) "County" means Johnson County, which includes all boards, committees, commissions, authorities, corporations or other instrumentalities appointed or created by the county or an official of the county, and specifically including the county school board, the county election commission, the county health department, and utility districts in the county.

(2) "Officials and employees" means and includes any official, whether elected or appointed, officer, employee or servant, or any member of any board, agency, commission, authority or corporation (whether compensated or not), or any officer, employee or servant thereof, of the county.

(3) "Personal interest" means, for the purpose of disclosure of personal interests in accordance with this Code of Ethics, a financial interest of the official or employee, or a financial interest of the official's or employee's spouse or child living in the same household, in the matter to be voted upon, regulated, supervised, or otherwise acted upon in an official capacity.

**Section 2. Disclosure of personal interest in voting matters.** An official or employee with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and to be included in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official's or employee's vote on the measure. In addition, the official or employee may, to the extent allowed by law, recuse himself or herself from voting on the measure.

**Section 3. Disclosure of personal interest in non-voting matters.** An official or employee who must exercise discretion relative to any matter other than casting a vote and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on the attached disclosure form and file the disclosure form with the county clerk. In addition, the official or employee may, to the extent allowed by law, recuse himself or herself from the exercise of discretion in the matter.

**Section 4. Acceptance of gifts and other things of value.** An official or employee, or an official's or employee's spouse or child living in the same household, may not accept, directly or indirectly, any gift, money, gratuity, or other consideration or favor of any kind from anyone other than the county:

(1) For the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; or

(2) That a reasonable person would understand was intended to influence the vote, official action, or judgment of the official or employee in executing county business.

It shall not be considered a violation of this policy for an official or employee to receive entertainment, food, refreshments, meals, health screenings, amenities, foodstuffs, or beverages that are provided in connection with a conference sponsored by an established or recognized statewide association of county government officials or by an umbrella or affiliate organization of such statewide association of county government officials.

**Section 5. Ethics Complaints.** A County Ethics Committee (the "Ethics Committee") consisting of five members shall be appointed to one-year terms by the County Mayor with confirmation by the county legislative body, to be appointed each year at the same time as internal committees of the county legislative body. At least three members of the committee shall be members of the county legislative body; one member shall be a constitutional county officer or, should no constitutional county officer be willing to accept appointment, an additional member of the county legislative body; and the remaining member may be either a member of a board, committee, commission, authority, corporation, or other instrumentality governed by this policy, or an additional member of the county legislative body. The Ethics Committee shall convene as soon as practicable after their appointment and elect a chair and a secretary. The records of the Ethics Committee shall be maintained by the secretary and shall be filed in the office of the county clerk, where they shall be open to public inspection.

Questions and complaints regarding violations of this Code of Ethics or of any violation of state law governing ethical conduct should be directed to the chair of the Ethics Committee. Complaints shall be in writing and signed by the person making the complaint, and shall set forth in reasonable detail the facts upon which the complaint is based.

The County Ethics Committee shall investigate any credible complaint against an official or employee charging any violation of this Code of Ethics, or may undertake an investigation on its own initiative when it acquires information indicating a possible violation, and make recommendations for action to end or seek retribution for any activity that, in the Committee's judgment, constitutes a violation of this Code of Ethics. If a member of the Committee is the subject of a complaint, such member shall recuse himself or herself from all proceedings involving such complaint.

The Committee may:

- (1) refer the matter to the County Attorney for a legal opinion and/or recommendations for action;
- (2) in the case of an official, refer the matter to the county legislative body for possible public censure if the county legislative body finds such action warranted;
- (3) in the case of an employee, refer the matter to the official responsible for supervision of the employee for possible disciplinary action if the official finds discipline warranted;
- (4) in a case involving possible violation of state statutes, refer the matter to the district attorney for possible ouster or criminal prosecution;

The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this Code of Ethics. When a violation of this Code of Ethics also constitutes a violation of a personnel policy or a civil service policy, the violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this Code of Ethics.

**Section 6. Applicable State Laws.** In addition to the ethical principles set out in this Code of Ethics, state laws also provide a framework for the ethical behavior of county officials and employees in the performance of their duties. Officials and employees should familiarize themselves with the state laws applicable to their office or position and the performance of their duties. To the extent that an issue is addressed by state law (law of general application, public law of local application, local option law, or private act), the provisions of that state law, to the extent they are more restrictive, shall control. Following is a brief summary of selected state laws concerning ethics in county government. For the full text of these statutes, see the Tennessee Code Annotated (T.C.A.) sections indicated.

Campaign finance - T.C.A. Title 2, Chapter 10. Part One (campaign financial disclosure) requires candidates for public office to disclose contributions and contributors to their campaigns. Part Three (campaign contribution limits) limits the total amount of campaign contributions a candidate may receive from an individual and sets limits on the amount a candidate may receive in cash.

Conflict of interest - T.C.A. 12-4-101 is the general conflict of interest statute that applies in all counties. It prohibits anyone who votes for, lets out, or in any manner supervises any work or contract from having a direct financial interest in that contract, purchase or work, and it requires disclosure of indirect financial interests by public acknowledgment.

Conflict of interest - T.C.A. 49-6-2003 applies to the department of education in all counties and prohibits direct and indirect conflicts of interest in the sale of supplies for use in public schools.

Conflict of interest - T.C.A. 5-1-125 applies in all counties and prohibits county officials and employees from purchasing surplus county property except where it is sold by public bid.

Conflict of interest - T.C.A. 54-7-203 applies in all counties that are governed by the County Uniform Highway Law. It prohibits officials and employees in the highway department and members of the county legislative body from having any personal interest in purchases of supplies, materials, machinery, and equipment for the highway department.

Conflict of interest - T.C.A. 5-14-114 applies in counties that have adopted the County Purchasing Law of 1957. It prohibits the purchasing agent, members of the purchasing commission, and all county officials from having any financial or other personal beneficial interest in any contract or purchase of goods or services for any department or agency of the county.

Conflict of interest - T.C.A. 5-21-121 applies in counties that have adopted the County Financial Management System of 1981. It prohibits all county officials and employees from having any

financial or other personal beneficial interest in the purchase of any supplies, materials or equipment for the county.

Conflict of interest - T.C.A. 5-5-102 and 12-4-101 govern disclosures and abstentions from voting due to conflicts of interest of members of county legislative bodies.

Conflict of interest disclosure statements - T.C.A. 8-50-501 and the following sections require candidates and appointees to local public offices to file a disclosure statement with the state ethics commission listing major sources of income, investments, lobbying activities, professional services provided, bankruptcies, certain loans, and other information, and to keep these statements up to date.

Gifts - T.C.A. 5-14-114 applies in counties that have adopted the County Purchasing Law of 1957. It prohibits the purchasing agent, members of the purchasing commission, and all county officials from receiving anything of value, directly or indirectly, from anyone who may have or obtain a contract or purchase order with the county.

Gifts - T.C.A. 5-21-121 applies in counties that have adopted the County Financial Management System of 1981. It prohibits the finance director, purchasing agent, and employees in those departments from accepting anything of value, directly or indirectly, from anyone who furnishes supplies, materials or equipment to the county.

Honoraria - T.C.A. 2-10-116 prohibits elected officials from accepting an honorarium (including money or anything of value, but not including reimbursement for actual expenses) for an appearance, speech, or article in their official capacity.

Private use of public property - T.C.A. 54-7-202 applies in counties that are governed by the County Uniform Highway Law. It prohibits the private use of equipment, rock, and other highway materials.

Court sales - T.C.A. 39-16-405 prohibits judges, clerks of court, court officers, and employees of court, from bidding on or purchasing any property sold through the court for which such person discharges official duties.

Rules of the Supreme Court - Rule 10, Cannon 5 (Code of Judicial Conduct) establishes ethical rules for judges and other court personnel when exercising judicial functions.

Fee statutes - T.C.A. 8-21-101, 8-21-102, and 8-21-103 set out circumstances where fees are authorized, prohibit officials from requiring payment of fees in advance of performance of services except where specifically authorized, and set penalties for charging excessive or unauthorized fees.

Consulting fee prohibition for elected county officials - T.C.A. 2-10-122 and 2-10-124 prohibit officials from receiving compensation for advising or assisting a person or entity in influencing county legislative or administrative action.

Crimes involving public officials- T.C.A. 39-16-101 and the following sections prohibit bribery, soliciting unlawful compensation, and buying and selling in regard to offices.

Official misconduct - T.C.A. 39-16-402 applies to public servants and candidates for office and prohibits unauthorized exercise of official power, acting in an official capacity exceeding the servant's power, refusal to perform a duty imposed by law, violating a law relating to the servant's office or employment, and receiving a benefit not provided by law.

Official oppression - T.C.A. 39-16-403 prohibits abuse of power by a public servant.

Bribery for votes - T.C.A. 2-19-121, 2-19-126, and 2-19-127 prohibit bribery of voters in elections.

Misuse of official information - T.C.A. 39-16-404 prohibits a public servant from attaining a benefit or aiding another person in attaining a benefit from information which was obtained in an official capacity and is not available to the public.

Ouster law - T.C.A. 8-47-101 sets out conduct which is punishable by ouster from office, including misconduct in office and neglect of duty.

**JOHNSON COUNTY CODE OF ETHICS**  
**CONFLICT OF INTEREST DISCLOSURE STATEMENT**

**Instructions:** This form is for reporting personal interests required to be disclosed under Section 3 of the Code of Ethics of this county. Officials and employees are required to disclose personal interests in matters that affect or would lead a reasonable person to infer that it would affect the exercise of discretion of an official or employee.

1. Date of disclosure:
2. Name of official or employee:
3. Office and position:
4. Description of personal interest (describe below in detail):

\_\_\_\_\_  
Signature of official or employee

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Printed name of witness

Feb. 20, 97

Book FF  
Pg. 129

MUST HAVE A PURCHASE ORDER NUMBER, DESCRIPTION OF ITEM AND APPROXIMATE COST BEFORE THE COUNTY WILL MAKE PAYMENT

10)

Motion made by Bill Adams, seconded by Deah L. Stout starting at 8:40 P.M., February 20th, 1997 for any County Purchase you must have a Purchase Order with a description of what is being done with an estimated cost and if there is no Purchase Order, the individual is responsible for the payment of the bill and the County is not responsible for anything purchased without a Purchase Order. Upon Roll Call Vote, all 22 Commissioners present voted Yes. (Motion Carried)

APPROVE MUTUAL AID AGREEMENT WITH SULLIVAN COUNTY EMERGENCY MANAGEMENT

(8631)

Motion made by Evelyn Hill, seconded by Eric Taylor to approve Mutual Aid Agreement with Sullivan County Emergency Management. Upon Roll Call Vote, all 22 Commissioners present voted Yes. (Motion Carried)

GIVE LIBRARY BOARD AUTHORIZATION TO CHECK ON CHANGING THEIR SIGN TO JOHNSON COUNTY, MOUNTAIN CITY PUBLIC LIBRARY

32  
(0143)

Motion made by Sue Howard, seconded by Evelyn Hill to give the Library Board permission to check on the cost of changing the sign. Upon Show of Hands Vote (Motion Carried).

GIVE THE COUNTY EXECUTIVE AUTHORITY TO SIGN THE GRANT WITH THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION (\$22,950.00 FOR RECYCLING)

(0209)

Motion made by David Pennington, seconded by Glen Arney to give the County Executive authority to sign the Grant Application for recycling

TENNESSEE CODE ANNOTATED  
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\*\*\* Current through the 2013 Regular Session \*\*\*

Title 5 Counties  
Chapter 14 County Purchasing  
Part 1 County Purchasing Law of 1957

Tenn. Code Ann. § 5-14-113 (2014)

**5-14-113. Liability of county.**

The county shall be liable for the payment of all purchases of supplies, materials, equipment and contractual service made in accordance with the provisions of this chapter, but shall not be liable for the payment of such purchases made contrary to its provisions.

**HISTORY:** Acts 1957, ch. 312, § 13; T.C.A., § 5-1413.

**RESOLUTION TO INCREASE THE THRESHOLD OVER WHICH PUBLIC  
ADVERTISEMENT AND SEALED COMPETITIVE BIDS OR PROPOSALS ARE  
REQUIRED**

**WHEREAS**, 2015 Public Chapter No. 457 has amended Title 12, Chapter 3 to authorize the county commission to, by resolution, increase the threshold over which public advertisement and sealed competitive bids or proposals are required to \$25,000 for non-emergency, non-proprietary purchases in counties having centralized purchasing and a full-time purchasing agent; and

**WHEREAS**, Johnson County has centralized purchasing and a full-time purchasing agent; and

**WHEREAS**, the county legislative body of Johnson County is desirous to realize the cost and time savings associated with such an increase of the bidding threshold would bring to the county purchasing department.

**NOW, THEREFORE, BE IT RESOLVED** by the county legislative body of Johnson County, Tennessee, meeting this 16<sup>TH</sup> day of July, 2015, that:

**SECTION 1.** Pursuant to the provisions of 2015 Public Chapter No. 457, the Johnson County Commission increases the threshold over which public advertisement and sealed competitive bids or proposals are required to \$25,000 for non-emergency, non-proprietary purchases.

**SECTION 2.** Pursuant to the provisions of 2015 Public Chapter No. 457, the Johnson County Commission requires the Johnson County Purchasing Department to obtain at least three (3) written quotations, whenever possible, for purchases costing less than \$25,000 but greater than \$10,000.

**SECTION 3.** This resolution shall take effect upon adoption, the general welfare requiring it. All resolutions and private acts in conflict with be and the same rescinded insofar as such conflict exists.

Adopted this the 16th day of July, 2015.

Approved by: Motion 1st Tommy Poore 2nd Rick Snyder; Bill Adams (No), Eugene Campbell (No), Robert G. "Jerry" Grindstaff (Yes), Evelyn Hill (Yes), Huey L. Long (Yes), George Lowe (Yes), Jimmy Lowe (Yes), Steve Marshall (Yes), Scott Mast (Absent), Gina Meade (Yes), Christopher B. Pierce (Yes), Tommy Poore (Yes), Bill Roark (Yes), Rick Snyder (Yes), and Mike Taylor (Yes).

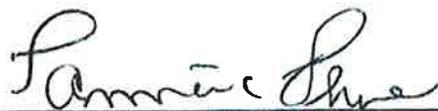
I hereby certify that hereto is a resolution of the Johnson County Commission duly and lawfully adopted by its Board of Commissioners on July 16, 2015, at a meeting at which a quorum was acting throughout, and I furthermore certify that such resolution has not been amended or modified in any respect.

*Book JJ  
Pg. 416*

APPROVED:

  
\_\_\_\_\_  
Larry Potter  
County Mayor

ATTEST:

  
\_\_\_\_\_  
Tammie Fenner  
County Clerk



Book JJ  
Pg. 319

RESOLUTION TO ADOPT THE EXEMPTION  
TO COUNTY PURCHASING LAW OF 1957 -

PURCHASING PERISHABLE COMMODITIES ON THE OPEN MARKET

**WHEREAS**, *Tennessee Code Annotated*, Section 5-14-108 (c) (2), authorizes counties to adopt by resolution, an exemption to the County Purchasing Law of 1957 and,

**WHEREAS**, said exemption allows for the county to be exempt from the requirements of sealed or competitive bidding when purchasing perishable commodities, when such items are purchased in the open market.

**NOW, THEREFORE, BE IT RESOLVED** by a majority vote of the county legislative body of JOHNSON County, Tennessee, meeting in session on this 20<sup>TH</sup> day of NOVEMBER, 2014, that JOHNSON County, Tennessee, does hereby adopt the exemption to County Purchasing Law of 1957, *Tennessee Code Annotated*, Section 5-14-108 (c) (2),

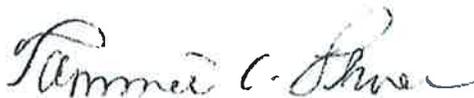
County Commission Roll Call Vote: All Yes 20 day of November, 2014.  
Adopted by two-thirds (2/3) majority vote this

APPROVED:



Larry Potter  
County Mayor

ATTEST:



Tammie Fenner  
County Clerk

## **PUBLIC NOTICE**

### **TITLE VI OF THE 1964 CIVIL RIGHTS ACT**

**"No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."**

The State Department of Military provides benefits and services such as emergency management assistance, National Guard protection services and facility construction and maintenance, and disaster assistance following a major Presidential declaration. The federal assistance administered by the Military Department are pass through funds to local governments, other state agencies, and certain private non-profit organizations.

Anyone who believes that an agency or local government receiving the federal funding mentioned above has discriminated against someone on the basis of race, color or national origin has a right to file a complaint within 180 days of the alleged discrimination.

### **TITLE VI Coordinator**

Agency Name: Johnson County Government

POC: Bill Adams

Phone Number: 423-727-7929 or 727-7369

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.**

RESOLUTION TO ADOPT THE AMENDMENT

Appendix (a) (7)

TO COUNTY PURCHASING LAW OF 1957 -

DECLARATION OF SURPLUS PROPERTY BY COUNTY PURCHASING AGENT

WHEREAS, *Tennessee Code Annotated*, Section 5-14-108 (o) (4), authorizes counties to adopt by resolution, an amendment to the County Purchasing Law of 1957 by a two-thirds (2/3) majority vote of the county legislative body upon request of the county mayor; and,

WHEREAS, amendment provides the purchasing agent the authority to declare county owned personal property with an accumulative estimated value of one thousand dollars (\$1,000) or less, as surplus property, and,

WHEREAS, declared property is to become surplus, obsolete, or unusable personal property and authorizes the disposal of the personal property, at the purchasing agents discretion, by selling the personal property on the open market or by gift, trade, or barter to a non-profit or charitable organization properly incorporated under the laws of this state, and,

WHEREAS, no part of the net earnings of the charitable organization inures or may lawfully inure to the benefit of any private shareholder or individual, and that it provides services benefiting the general welfare of the residents of the county.

WHEREAS, Items having an accumulative estimated value that exceeds one thousand dollars (\$1,000) shall not be subdivided in order to circumvent the requirement for public notice or receipt of sealed bids or selling the property through public or Internet auction.

WHEREAS, The purchasing agent shall keep all records of transactions of the disposal of personal property under this subdivision (o) (4) for a minimum of five (5) years.

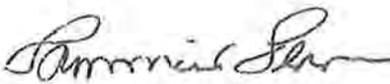
**NOW, THEREFORE, BE IT RESOLVED** by a majority vote of the county legislative body of JOHNSON County, Tennessee, meeting in session on this 20<sup>TH</sup> day of FEBRUARY, 2014, that JOHNSON County, Tennessee, does hereby adopt the amendment to County Purchasing Law of 1957, *Tennessee Code Annotated*, Section 5-14-108 (o) (4),

Adopted by two-thirds (2/3) majority vote this 20 day of Feb, 20 14.

APPROVED:



Larry Potter  
County Mayor

ATTEST: 

Tammie Fenner  
County Clerk





**JOHNSON COUNTY PURCHASING DEPT.**

211 North Church Street  
Mountain City, TN 37683  
423-727-7861

**DUSTIN SHEARIN**  
PURCHASING AGENT

**Emergency Purchase Justification Form**

Use this form to explain purchases when quotes cannot be obtained or when formal bids cannot be obtained or when the 2-Week advertisement requirement needs to be waived. Emergencies are acts of God or otherwise uncontrollable or unforeseeable circumstances. They are conditions that would endanger the health of the residents of Johnson County, TN, or cause additional and extensive damage to property or would adversely affect Johnson County, TN services.

<b>Requisition/Purchase Order Number</b>	
<b>Date</b>	
<b>Department</b>	

**AFFIDAVIT OF EMERGENCY**

**The following conditions and/or circumstances require either: (indicate which):**

- A purchase outside of the normal procurement processes
- An expedited purchase by the County Purchasing Agent

**READ BEFORE SIGNING!**

I certify that the articles or services listed on this requisition were purchased (or will be purchased) on an emergency basis due to the conditions and circumstances outlined above.

**Departmental Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Approved by the County Purchasing Agent:**

\_\_\_\_\_

**Date:** \_\_\_\_\_

## Tenn. Code Ann. § 5-14-110

### Copy Citation

Current through the 2018 Regular Session.

[Tennessee Code Annotated](#) [Title 5 Counties](#) [Chapter 14 County Purchasing](#) [Part 1 County Purchasing Law of 1957](#)

### 5-14-110. Emergency purchases.

**(a)** The county purchasing agent may authorize any department or agency of the county government to purchase in the open market, without filing requisition or estimate, 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; but such emergencies shall not include conditions arising from neglect or indifference in anticipating normal needs.

**(b)**

**(1)** Such direct emergency purchases, however, may only be made by department or agency heads at times when the office of the county purchasing agent is closed.

**(2)** At all other times, only the county purchasing agent shall make these purchases.

**(3)** A report of such emergency purchase, when made by a department or agency head, together with a record of the competitive bids secured and upon which it was based, shall be submitted in writing to the county purchasing agent before the close of the next working day following the date of such purchase, by the head of the county department or agency concerned, together with a full and complete account of the circumstances of such emergency.

**(4)** Such report shall be kept on file and shall be open to public inspection.

### History

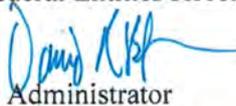
Acts 1957, ch. 312, § 9; T.C.A., § 5-1410.



FEMA

March 17, 2020

MEMORANDUM FOR: All States, Territories, Tribal Governments, Local Governments, and All Other Non-Federal Entities Receiving FEMA Financial Assistance

FROM: David Bibo   
Acting Associate Administrator  
Office of Response and Recovery

Bridget E. Bean   
Assistant Administrator  
Grant Programs Directorate

SUBJECT: Procurement Under Grants Conducted Under Emergency or Exigent Circumstances for COVID-19

Subsequent to the President's March 13, 2020 Nationwide Emergency Declaration for Coronavirus Disease 2019 (COVID-19), the Department of Homeland Security's Federal Emergency Management Agency (FEMA) is issuing the attached Fact Sheet addressing procurements made during periods of exigent or emergency circumstances. FEMA recognizes that noncompetitive procurements may be necessary to save lives, to protect property and public health, and to ensure public safety, as well as to lessen or avert the threat of a catastrophe. The attached Fact Sheet provides answers and guidance surrounding the need for such measures.

Current Federal procurement standards (found at 2 C.F.R. § 200.320(f)(2)) allow non-state entities to noncompetitively procure contracts (i.e., sole-sourcing) under certain emergency or exigent circumstances. FEMA defines an emergency or exigent circumstances as unexpected and unusually dangerous situations requiring immediate action or an urgent need for assistance or relief. Emergencies typically involve a threat to life, public health or safety, improved property, or some other form of dangerous situation. Exigencies, on the other hand, typically involve an urgent need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise. Under both an emergency and exigency, using a competitive procurement process would prevent a non-state entity from taking immediate action required to address the situation. However, use of the emergency/exigency exception is only permissible during the actual emergency or exigent circumstances.

The President's unprecedented Nationwide Emergency Declaration, and the Secretary of Health and Human Services' (HHS) declaration of a Public Health Emergency for COVID-19 establish that exigent and emergency circumstances currently exist.

[For the duration of the Public Health Emergency](#), which began January 27, 2020 as determined by HHS, local governments, tribal governments, nonprofits, and other non-state entities may proceed with new and existing noncompetitively procured contracts in order to protect property and public health and safety, or to lessen or avert the threats created by emergency situations for 1) Emergency protective measures under FEMA's Public Assistance Program and 2) Use of FEMA non-disaster grant funds by non-state recipients and sub-recipients to respond to or address COVID-19.

Attachment:

(1) Fact Sheet: *Procurement Under Grants Conducted Under Exigent or Emergency Circumstances*



## Procurement Under Grants Conducted Under Exigent or Emergency Circumstances

The Federal Emergency Management Agency (FEMA) provides financial assistance to states, territories, tribes, local governments, nonprofits, institutions of higher education, and other non-Federal entities. All FEMA grant programs are subject to the Federal procurement standards found at 2 C.F.R. §§ 200.317 – 200.326. Recognizing that FEMA’s recipients and subrecipients may face exigencies or emergencies when carrying out a FEMA award, this Fact Sheet provides key information to consider when utilizing contracted resources under exigent or emergency circumstances.

### **What Rules Apply to State Entities?**

States are required to follow their own procurement procedures as well as the Federal requirements for procurement of recovered materials and inclusion of required contract provisions per 2 C.F.R. §§ 200.317, 200.322, and 200.326.

For purposes of the Federal procurement requirements, states are defined as the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Mariana Islands, and any agency or instrumentality thereof except for local governments. Tribal governments are not considered to be states when applying Federal procurement standards required by 2 C.F.R. Part 200.

### **What Rules Apply to Non-State Entities?**

For all other types of entities, referred to as “non-state entities” in this Fact Sheet, Federal regulations (2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) establish requirements for the exigency or emergency exception that permits the use of noncompetitive procurements, frequently referred to as “sole-source contracting.” This exception and associated procurement requirements are discussed further below. In general, it will be fact-specific and entity-specific as to when exigent or emergency circumstances necessitate the use of noncompetitive procurements. The answers to the frequently asked questions below provide additional guidance on the acceptable use of noncompetitive proposals under exigent or emergency circumstances, which is described in regulation at 2 C.F.R. § 200.320(f)(2).

It is essential that all non-state entities understand that both FEMA and the U.S. Department of Homeland Security’s Office of Inspector General (OIG) closely review procurement actions and contract selections, with a particular emphasis on noncompetitive procurement actions, to evaluate compliance with Federal requirements. ***Failure to follow Federal contracting and procurement requirements puts non-state entities at risk of not receiving reimbursement or not being able to use FEMA grant funds for otherwise eligible costs.***

### **What is the exigency or emergency exception?**

Non-state entities must follow the procurement requirements found at 2 C.F.R. §§ 200.317 – 200.326. However, Federal regulations allow for noncompetitive procurements under certain circumstances, including when a non-state entity determines that immediate actions required to address the public exigency or emergency cannot be delayed by a competitive solicitation. This represents an exception to requirements for full and open competition. FEMA approval is not required for use of noncompetitive

procurements under the emergency or exigency exception; however, the non-state entity must document its justification for using noncompetitive procurements and must still comply with other procurement requirements and ensure that costs are reasonable.

When referring to procurement activity, FEMA defines both exigency and emergency as situations that demand immediate aid or action. The difference between the two is that:

- In the case of an **exigency**, there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, to the non-state entity, and use of competitive procurement proposals would prevent the urgent action required to address the situation. Thus, a noncompetitive procurement may be appropriate.
- In the case of an **emergency**, a threat to life, public health or safety, or improved property requires immediate action to alleviate the threat.

While emergency conditions generally are short-lived, exigent circumstances can exist for a period of weeks or months.

**Exigency Example:** A tornado impacts a city in June and causes widespread and catastrophic damage, including damage to a city school. The city wants to repair the school and have it ready for use by the beginning of the school year in September. The city estimates, based on past experience, that awarding a contract using a sealed bidding process would require at least 90 days, and the city's engineer estimates that the repair work would last another 60 days. This would extend the project beyond the beginning of the school year. Rather than conducting a sealed bidding process, the city—in compliance with state and local law—wants to sole source with a contractor it has contracted with previously. The city can demonstrate that this constitutes an “exigent circumstance” because use of a sealed bidding process would cause an unacceptable delay and thus procurement by noncompetitive methods was necessary based on the particular situation.

**Emergency Example #1 (Disaster Grants):** Severe weather impacts a city and causes widespread and catastrophic damage, including loss of life, widespread flooding, loss of power, damage to public and private structures, and millions of cubic yards of debris across the city, leaving almost the entire jurisdiction inaccessible. The city needs to begin debris removal activities immediately to restore access to the community, support search and rescue operations, power restoration, and address health and safety concerns. Under these circumstances, the city may find it necessary to award noncompetitive contracts to address threats to life, property, and public health.

**Emergency Example #2 (Non-Disaster Grants):** The weather in a city has been below freezing for the past 2 weeks, causing a pipe in the city's emergency operations center to burst and flood the first floor. This flood destroyed half of the city's radios that its emergency workers use to communicate with police and fire personnel. The city documented and demonstrated that it needed to replace these radios right away to avert an immediate threat to life, safety, or property as the city needed a full supply of radios in order to respond to emergencies. Under these circumstances, the city may find it necessary to award noncompetitive contracts to address threats to life, property, and public health.

**When does the exigency or emergency exception apply and for how long?**

Use of the public exigency or emergency exception *is only permissible during the actual exigent or emergency circumstances*. Exigency or emergency circumstances will vary for each incident, making it difficult to determine in advance or assign a particular time frame when noncompetitive procurements may be warranted. Exigent or emergency circumstances may exist for two days, two weeks, two months, or even longer in some cases. Non-state entities must ensure that work performed under the noncompetitively procured contracts is specifically related to the exigent or emergency circumstance in

effect at the time of procurement. Importantly, because the exception to competitive procurement is available only while the exigent or emergency circumstances exist, non-state entities should, upon awarding a noncompetitive contract, immediately begin the process of competitively procuring similar goods and services in order to transition to the competitively procured contracts as soon as the exigent or emergency circumstances cease to exist.

FEMA may review a non-state entity's justification that exigent or emergency circumstances warrant an exception to competitive procurement. If the agency determines that exigent or emergency circumstances did not exist or did not preclude a non-state entity from adhering to competitive procurement requirements, FEMA may disallow all or part of the non-state entity's cost related to the contract or take other actions permitted by statute and regulation. (*See* 2 C.F.R. § 200.338).

**What documentation is required to support the use of the exigency or emergency exception?**

While FEMA approval is not required for a non-state entity to use noncompetitive procurement proposals under the emergency or exigency exception, non-state entities must document and provide justification for the use of the exigent or emergency exception. A list of elements that non-state entities may wish to include as part of their written justifications can be found at the end of this Fact Sheet. The justification must be included in the non-state entity's records for each FEMA award, subaward, or project.

**Do any Federal procurement requirements apply if a non-state entity is sole-sourcing a contract under exigent or emergency circumstances?**

Yes, non-state entities must comply with the following requirements even when exigent or emergency circumstances exist:

- Contracts must include the required contract clauses (2 C.F.R. § 200.326 & Appendix II) (also applicable to states).
- Contracts exceeding the Federal simplified acquisition threshold must include the Federal bonding requirements if the contract is for construction or facility improvement (2 C.F.R. § 200.325).
- Contracts must be awarded to a responsible contractor (2 C.F.R. § 200.318(h)).
- The non-state entity must complete a cost or price analysis to determine that the cost or price of the contract is fair and reasonable if the contract exceeds or is expected to exceed the Federal simplified acquisition threshold (2 C.F.R. § 200.323(a) and (b)).
- The use of cost-plus-percentage-of-cost contracting is prohibited (2 C.F.R. § 200.323(c)).
- Use of time and materials contracts must comply with 2 C.F.R. § 200.318(j).
- The non-state entity must follow documentation, oversight, and conflict of interest requirements among other general procurement requirements in 2 C.F.R. § 200.318. If a conflict of interest is unavoidable due to the exigent/emergency circumstances, the non-state entity must explain that in the procurement documentation.

**What if the non-state entity wants to use a pre-awarded or pre-existing contract in an exigency or emergency and that contract does not comply with the Federal procurement requirements?**

If a pre-awarded or pre-existing contract is not in compliance with the Federal procurement requirements (e.g., the contract was not fully and openly competed (*see* 2 C.F.R. §§ 200.319, 200.320), the six affirmative socioeconomic contracting steps were not completed (2 C.F.R. § 200.321), there is a conflict of interest involved (2 C.F.R. § 200.318)), it may still be possible to use the contract for the duration of the exigency or emergency. FEMA recommends that non-state entities review the list of procurement requirements above and take actions to modify pre-awarded or pre-existing contracts where applicable. In addition, non-state entities must prepare the appropriate documentation to justify the use

of a noncompetitively procured contract.

**Can non-state entities use time and materials (T&M) contracts in an exigency or emergency?**

Yes, but only under certain circumstances. FEMA advises against the use of T&M contracts and generally limits the use of these contracts to a short time period where the scope or duration of the work is unclear. T&M contracts do not incentivize contractors to control costs or maximize labor efficiency. FEMA may reimburse costs incurred under a T&M contract only if all of the following apply:

- No other contract was suitable;
- The contract has a ceiling price that the contractor exceeds at its own risk; and
- The non-state entity can demonstrate it provided a high degree of oversight to obtain reasonable assurance that the contractor used efficient methods and effective cost controls.

**Can a non-state entity award cost-plus-a-percentage-of-cost contracts or contracts with a percentage-of-construction-cost method in an exigency or emergency?**

No. This prohibition applies to all work, regardless of the circumstances (2 C.F.R. § 200.323(d)).

**Can non-state entities use piggyback contracts in an exigency or emergency?**

Piggyback contracting occurs when one entity with an existing contract assigns some or all of its contractual rights to another entity that was not previously party to the contract. Generally, FEMA discourages piggyback contracts because the original contract pertains to the needs of the original entity with a specific scope of work for that entity. While there may be circumstances when piggybacking is permissible, in almost all instances, the scope of work would need to be changed to include the needs of a non-state entity, and changes to the scope of work are generally not permitted as there is not likely to be full and open competition for the expanded scope of work. However, during emergency and exigency circumstances, non-state entities may be able to piggyback another entity's contract and expand the scope of a contract for the period of the emergency or exigency circumstance.

Note that a non-state entity may choose to enter into a separate contract with the same contractor as another entity, using the same terms and conditions as in that other entity's contract, with only a change in the scope of work and the associated costs. However, this is sole-source contracting rather than piggyback contracting, and it must meet the requirements for noncompetitive procurement under exigency or emergency circumstances as described elsewhere in this Fact Sheet.

*If a non-state entity is contemplating the use of piggyback contracting, it should contact its state or territory liaison, or the applicable FEMA Program Office to request FEMA assistance with contract review. For assistance with FEMA contact information, the entity should contact the Centralized Scheduling and Information Desk (CSID) help line at (800) 368-6498 or [askcsid@fema.dhs.gov](mailto:askcsid@fema.dhs.gov). CSID hours of operation are from 9 a.m. to 5 p.m. ET, Monday through Friday.*

**Can states use time and materials (T&M) or cost-plus-percentage-of-cost (CPPC) contracts in an exigency or emergency?**

While the Federal procurement rules do not prohibit the use of T&M contracts and CPPC contracts by states, FEMA discourages states from using these contracts because they generally lack provisions that control costs and maximize efficiency in performing work. FEMA and the OIG closely scrutinize these types of contracts for cost reasonableness.

Although T&M contracts are discouraged, there may be instances where T&M contracts are appropriate in the short term for activities such as debris removal, emergency power restoration, or other immediate actions required to address emergency health and safety threats under a Public Assistance award. States

entering into T&M contracts are encouraged to include language in the contract that specifies a ceiling price and limits the duration of the contract to a short time period, thus providing the state time to develop a scope of work and transition to the more competitive procurement procedures.

As a reminder, 2 C.F.R. § 200.317 requires states to follow: (1) the same policies and procedures they use for procurements using non-Federal funds; (2) 2 C.F.R. § 200.322 (procurement of recovered materials); and (3) 2 C.F.R. § 200.326 (required contract provisions). These requirements apply regardless of whether exigency or emergency circumstances exist. States must ensure that they are also in compliance with the cost principles in 2 C.F.R. §§ 200.400 – 200.474, including ensuring that costs are reasonable, as defined in 2 C.F.R. § 200.404.

#### **Additional Information and Resources**

Non-state entities should consult as soon as possible with all appropriate parties, including their own legal counsel, to review their procurement policies, actions, and contracts and compare them to the Federal procurement requirements. Non-state entities also should contact their state or territory liaisons, or applicable FEMA Program Office to request assistance with any procurement activity concerns. For assistance with FEMA contact information, the entity should contact the Centralized Scheduling and Information Desk (CSID) help line at (800) 368-6498 or [askcsid@fema.dhs.gov](mailto:askcsid@fema.dhs.gov). CSID hours of operation are from 9 a.m. to 5 p.m. ET, Monday through Friday.

Detailed procurement and contracting information is available on the FEMA website at [www.fema.gov/procurement-disaster-assistance-team](http://www.fema.gov/procurement-disaster-assistance-team). While the guidance available at that website is specifically applicable to FEMA's Public Assistance Program, it is a useful resource for FEMA's other grant programs as the procurement requirements in 2 C.F.R. Part 200 apply to all of FEMA's grant programs. The current Code of Federal Regulations referenced in this guidance can be accessed at [www.eCFR.gov](http://www.eCFR.gov). The annual Code of Federal Regulations is available at <https://www.govinfo.gov/app/collection/cfr>, and the applicable regulations will be the ones in place at the time FEMA issued the declaration or made the award.

## Suggested Elements for Noncompetitive Procurement Justification

1. Identify which of the four circumstances listed in 2 C.F.R. § 200.320(f) justify a noncompetitive procurement:
  - (1) The item is available only from a single source;
  - (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
  - (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
  - (4) After solicitation of a number of sources, competition is determined inadequate.
2. Provide a brief description of the product or service being procured, including the expected amount of the procurement.
3. Explain why a noncompetitive procurement is necessary. If utilizing the exigency/emergency exception, the justification should explain the nature of the public exigency or emergency, including specific conditions and circumstances that clearly illustrate why procurement other than through noncompetitive proposals would cause unacceptable delay in addressing the public exigency or emergency. (Failure to plan for transition to competitive procurement cannot be the basis for continued use of noncompetitive procurement based on public exigency or emergency).
4. State how long the noncompetitively procured contract will be used for the defined scope of work and the impact on that scope of work should the noncompetitively procured contract not be available for that amount of time (e.g., how long do you anticipate the exigency or emergency circumstances will continue; how long will it take to identify your requirements and award a contract that complies with all procurement requirements; or how long would it take another contractor to reach the same level of competence).
5. Describe the specific steps taken to determine that full and open competition could not have been used, or was not used, for the scope of work (e.g., research conducted to determine that there were limited qualified resources available that could meet the contract provisions).
6. Describe any known conflicts of interest and any efforts that were made to identify possible conflicts of interest before the noncompetitive procurement occurred. If no efforts were made, explain why. If a conflict of interest is unavoidable, such as due to exigent/emergency circumstances, explain how it was unavoidable and any steps taken to address the impact of that conflict of interest.
7. Include any other information justifying the use of noncompetitive procurement in the specific instance.

*NOTE: A separate justification is required for each instance of noncompetitive procurement.*