

EXHIBIT A

**ARTICLE IX. PROCUREMENT CODE**

**DIVISION 1. GENERAL PROVISIONS**

**Sec. 2-576. Short Title.**

This chapter shall be known and may be cited as the "Procurement Code of Knox County":

**Sec. 2-577. Purposes: rules of construction.**

- a. *Liberal construction.* This article shall be liberally construed and applied to promote its underlying purposes and policies.
- b. *Purposes and policies.* Underlying purposes and policies of this article are:
  - (1) To secure the advantages of a centralized procurement process;
  - (2) To promote effective competition among prospective suppliers of goods and services;
  - (3) To make as uniform as possible the procedures on procuring among the various departments and offices of the County;
  - (4) To simplify, clarify and modernize the law governing procurement by the County;
  - (5) To promote fair and equitable treatment to all suppliers or prospective suppliers of goods and services;
  - (6) To provide for increased public confidence in procedures followed in public procurement;
  - (7) To permit the continued development of procurement policies and practices;
- c. *Singular-plural rules.* In this article, unless the context otherwise requires, words in the singular include the plural, and in the plural include the singular.

**Sec. 2-578. Supplementary general principles of law applicable.**

Unless displaced by the particular provisions of this code the principles of law and equity, including, without limitation, the Uniform Commercial Code, and the law relative to capacity to contract, principal and agent, fraud, misrepresentation, duress, coercion, mistake or bankruptcy, shall supplement its provisions.

**Sec. 2-579. Obligation of good faith.**

Every contract or duty within this article imposes an obligation of good faith in its performance or enforcement.

**Sec. 2-580. Application of the article.**

This article shall apply to every expenditure of public monies by the County under any contract or like business agreement excepting those specific areas listed below and made pursuant to authority granted by the Constitution of the State of Tennessee or applicable state or federal law, and this code shall not apply to contracts, or like business agreements between the federal, state, local jurisdictions and the county, except as provided in Division 8. The article shall likewise apply to disposal of county property as prescribed in Division 6. Where a conflict occurs between the provisions of the procurement code and HUD Regulations as

to Federal Community Block Grant Funds, or other federal funds administered by HUD, compliance will be with the regulations of the U.S. Department of Housing and Urban Development.

The funds described below shall be exempt from application of this article:

1. *Internal school funds; School cafeteria funds; School activity funds; School concession funds.* Internal school funds, school cafeteria funds, individual school activity funds and school concession funds shall be governed by procedures contained in the Tennessee Internal School Financial Management Manual as provided for in T.C.A. 49-2-110 and adopted by the Knox County Board of Education;
2. *Drug offense related or narcotics funds.* Drug offense related or narcotics funds which must be disbursed in cash for undercover drug investigations by a law enforcement agency shall be governed by "Procedures for Cash Transactions of Investigative Drug Operations" as provided for in T.C.A. 39-17-420(f);
3. *Imprest discretionary funds.* The Department Head and Elected officials, Imprest Discretionary Funds are to be established and operated within guidelines as determined by the Knox County Finance Director;
4. *PTA funds.* PTA funds shall be governed by policies and procedures adopted by each individual organization. and;
5. *Pupil Transportation Services.*

**Sec. 2-581. Approval by the Commission.**

Approval by the Commission of contracts and like business agreements shall be required in the following instances:

1. The acceptance of grants from the United States of America or the State of Tennessee and as required by Tennessee Code Annotated 5-8-101.
2. Proposed contracts involving projects or programs not previously approved by the Commission;
3. Proposed contracts or agreements wherein funds have not been appropriated or which require new or additional appropriations for their funding.
4. All proposed contracts for the purchase, sale or lease of real property, and all proposed franchises granted by the county shall require the approval of the Commission after the bidding or negotiation process has been completed and prior to execution on behalf of the County.
5. All proposed contracts for which payment to the contractor shall exceed One Hundred Thousand Dollars (\$100,000.00) over the anticipated life of the contract; and
6. All modifications or changes to existing contracts, **except for road and/or bridge construction**, that would increase expenditures under the existing contract by Twenty-Five Thousand Dollars (\$25,000.00) or more.
7. All modifications or changes to existing road and/or bridge construction contracts that would increase expenditures under the existing contract by One Hundred Thousand Dollars (\$100,000.00) or more.

**Sec. 2-582. Severability.**

If any provision or clause of this article or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

**Sec. 2-583. Construction against implicit repealer.**

This article is intended as uniform coverage of its subject matter, and no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction of the subsequent legislation can be reasonably avoided.

**Sec. 2-584. Definitions of terms.**

As used throughout this article, the words and terms defined in this section shall have the meanings set forth below, unless:

1. The context in which they are used clearly requires a different meaning, or
2. A different definition is prescribed for a particular section or portion thereof.

*Best Value* means more than low cost. It includes the initial cost, service, quality and others factors related to the acquisition.

*Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any legal entity through which business is conducted.

*County* means Knox County.

*Confidential information* means any information which is available to a person only because of said person's status as an officer or employee of the County, and is not a matter of public knowledge or available to the public on request.

*Conspicuously* means written in such special or distinctive format, print or manner that a reasonable person against whom, it is to operate ought to have noticed it.

*Construction* means the building, erection, alteration, demolition or repair (including, but not limited to, dredging, excavating and painting) of public buildings, structures and highways, and other improvements or additions to real property.

*Contract* means all types of agreements, orders for the procurement, use, or disposal of supplies, services, construction, insurance, real property or any other item.

*Contract modification* means any alteration in any provision of any existing contract.

*Contractor* means any person having a contract with the County.

*Cooperative procurement* means purchasing conducted by, or on behalf of, more than one public procurement unit, or by a public procurement unit with a foreign procurement entity.

*Data* means recorded information, regardless of form or characteristic.

*Debarment* means the disqualification of a person and/or business to receive invitations for bids, requests for proposals, or the award of a contract by the County for a specified period of time.

*Department* means any agency or any division thereof which is authorized or created by the Charter of Knox County, or by ordinance made pursuant thereto.

*Department head* means the chief administrative officer of a department.

*Employee* means any person drawing a salary from the County, whether elected or not.

*Established catalogue price* means a price included in the most current catalogue, price list, schedule, or other form that is:

1. Regularly maintained by the manufacturer or vendor of an item; and
2. Is either published or otherwise available for inspection by customers; and
3. States prices at which sales are currently, or were last made to a significant number of buyers constituting the general buying public for that item.

*Evaluated bid price* means the dollar amount of a bid after bid adjustments are made pursuant to a precise mathematical formula set forth in the invitation for bids, which measures the effective price to the County. Such formula shall take into account factors that contribute to the economy and effectiveness in the operation of a procured item, such as reliability, maintainability, useful life and residual value.

*Foreign procurement entity* means any buying organization not located in the State of Tennessee, which, if located in Tennessee, would qualify as a public procurement unit. An agency of the United States Government is a "foreign procurement entity."

*Good faith* means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

*Imprest Discretionary Fund* refers to a fund from which each elected official and Department Head may be reimbursed for small purchases of items deemed necessary to the function of their office, not to exceed two hundred dollars (\$200.00) per official or Department Head.

*Includes* means "includes but is not limited to."

*Invitation for bids* means all documents utilized for soliciting bids.

*Person* means any individual, business, union, committee, club, partnership, corporation or other organization or group.

*Procured item(s)* means any supply, service, construction, insurance or any other item obtained in accordance with this article.

*Procurement or Purchasing* means buying, renting, leasing or otherwise obtaining supplies, services, construction, insurance or any other item. It also includes all functions that pertain to the acquisition of such supplies, services, construction, insurance and other items, including description of requirements, selection and solicitation of sources, award of contract, administrative oversight of contract performance and all phases of warehousing and disposal.

*Public procurement unit* means the State of Tennessee, any county, city, town, governmental entity and other subdivision of the State of Tennessee, or any public agency, or any other public authority.

*Purchase request or requisition* means any document written or electronic whereby a using agency requests that a procurement be initiated for a specified need.

*Request for information* means any document used to obtain comments or reactions from contractors that precedes the issuing of a solicitation. Price is not requested.

*Request for proposals* means all documents, utilized for soliciting proposals.

*Request for qualifications* means any document used to obtain statements of qualifications from bidders prior to issuing final solicitations.

*Requisition* means any document written or electronic whereby a using agency requests that a contract or procurement be initiated for a specified need.

*Responsible bidder or offeror* means one who has the capability in all respects to perform fully the contract requirements.

*Responsive bidder* means one who has submitted a bid that conforms in all material aspects to the invitation for bids.

*Subcontractor* means any business which holds an agreement or purchase order to perform any part of the work or to make or furnish any article or service required for the performance of a county or county funded prime contract, or subcontract thereunder.

*Supplies* mean all property, except land or interest in land.

*Suspension* means the disqualification of any person to receive invitations for bid, or requests for proposals, or to be awarded a contract by the county or any governmental body thereof, for a temporary period pending the completion of an investigation, and any legal proceedings that may ensue.

*Using agency* means any department that utilizes supplies, services, insurance, construction or any other item procured under this article.

**Sections 2-585—2-605. Reserved.**

## **DIVISION 2. PROCUREMENT ORGANIZATION**

### **Sec. 2-606. Division of Procurement.**

The Division of Procurement shall be administered by the Procurement Director under the direction of the Finance Director.

### **Sec. 2-607. Authority and responsibility of the Finance Director.**

The Finance Director shall have full power and authority over the process of procuring any and all procured items required by the County unless excepted from the application of this article. The Finance Director shall adopt rules and regulations in accordance with Section 2-612, which shall govern the authority of the Procurement Director and other officials as provided herein.

### **Sec. 2-608. Specific areas of responsibility.**

The Finance Director shall have the following specific areas of responsibility:

1. Establish policy for and exercise overall supervision of the Procurement Director and other officials exercising procurement or property management authority pursuant to this article.

2. Make recommendations to the Commission for changes in the code following periodic reviews as deemed necessary or desirable to improve the procurement of supplies and services.

**Sec. 2-609. Procurement Director.**

The Division of Procurement shall be headed by the Procurement Director. The Procurement Director shall possess such recent experience, training, background, and education that demonstrate adequate managerial and organizational ability necessary to carry out the duties and responsibilities of this article.

**Sec. 2-610. Authority of the Procurement Director.**

The Procurement Director shall have the following authorities and responsibilities:

1. To serve as the central procurement and contracting authority of the County.
2. To contract for, purchase, lease-purchase, lease or otherwise acquire all procured items for the County.
3. To sell or otherwise dispose of surplus county property.
4. To enter into agreements and property transactions or projects with any federal or other governmental body.
5. To exercise general supervision and control over all warehouses, storerooms, and stores, and of all inventories of supplies belonging to the County and purchased pursuant to this article.
6. To establish and maintain a program for the development and usage of standard specifications.
7. To establish and maintain a program for the inspection and testing of supplies, construction, and services, or any other item.
8. To establish, maintain and promote a program to increase the procurement of recycled products and recyclable products.

**Sec.2-611. Appointment of assistants and other employees, and delegation of authority by the Procurement Director.**

Upon approval of the Finance Director, the Procurement Director, subject to the provisions of the Charter of Knox County or applicable ordinances may employ such assistant procurement agents and other persons as may be deemed necessary to discharge all duties. The Procurement Director may delegate authority to such assistants, as deemed appropriate.

**Sec. 2-612. Procurement Regulations.**

Procurement Regulations shall be issued and modified by the Procurement Director. The regulations so issued shall be distributed to the County Mayor, the Finance Director, and the Law Director for approval. Once approved, the Procurement Director shall be responsible for effectively disseminating and communicating the Procurement Regulations to all Department Heads and Elected Officials affected thereby.

**Sec. 2-613. Changes to article.**

Any additions, deletions or other modifications to this article, shall be issued by the Procurement Director and shall be transmitted to the Knox County Commission for review and approval. Once approved, the Procurement Director shall be responsible for effectively disseminating and communicating the modifications to this article to all Department Heads and Elected Officials affected thereby.

**Sec. 2-614. Determinations:**

- (a) *Written Determinations.* Each determination or decision required by this article shall be based upon written findings of the Procurement Director, and shall be retained in the official procurement file.
- (b) *Finality of determinations.* The determinations required by this code are final and conclusive unless clearly erroneous, arbitrary, capricious or contrary to law.

**Sec. 2-615. Procurement Advisory Councils.**

The County Mayor may establish ad hoc advisory councils to assist the Procurement Director with respect to matters within his delegated authority. Appointment of advisory council members shall consist of qualified representatives of government, industry, professional organizations, educational institutions and the general public.

**Sec. 2-616--2-630. Reserved.**

**DIVISION 3. SOURCE SELECTION AND CONTRACT FORMATION**

**Sec. 2-631. Methods of source selection.**

Except as otherwise authorized by law, all contracts and procurements subject to this article shall be awarded by:

1. Competitive sealed bidding, pursuant to Section 2-632;
2. Competitive negotiation, pursuant to Section 2-633;
3. Noncompetitive negotiation, pursuant to Section 2-634;
4. Small purchase procedures, pursuant to Section 2-636; or
5. Emergency Purchases, pursuant to Section 2-647
6. Spot Market Procurement, pursuant to Section 2-648.

**Sec. 2-632. Competitive sealed bidding.**

- (a) *Conditions for use.* Procurements exceeding the amount of Fifty-Thousand Dollars (\$50,000.00) Dollars shall be awarded by competitive sealed bidding whenever practicable. Factors that shall be analyzed in determining whether competitive sealed bidding is practicable shall include whether:
  - (1) An award can be made on the basis of the lowest bid price or lowest evaluated bid price, as determined in accordance with objective, measurable criteria set forth in the invitation for bids; and
  - (2) The available sources, the time and place of performance, and other relevant circumstances.
- (b) *Public notice.* The invitation for bids shall be given adequate public notice by posting on bulletin board and/or on the County's Procurement Division web-site. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening.
- (c) *Bid opening.* Bids shall be opened publicly at the time and place designated in the invitation for

bid. Each bid, together with the name of the bidder, shall be recorded and be open to public inspection.

- (d) *Award.* The contract shall be awarded with reasonable promptness by written and/or electronic notice to the responsive and responsible bidder whose bid is determined to be the "Best Value".
- (e) *Correction or withdrawal of bid.* Correction or withdrawal of bids may be allowed only to the extent permitted by regulations issued by the Procurement Director.

**Sec. 2-633. Competitive negotiation.**

- (a) *Use when competitive sealed bidding is impracticable.* A contract may be awarded by competitive negotiation in accordance with this article, and regulations promulgated hereunder when it is determined by the Procurement Director that the use of competitive sealed bidding is not practicable. In such cases, Requests for Proposals shall be used, except as provided in Section 2-634 and Section 2-636.
- (b) *Public notice.* The request for proposals shall be given adequate public notice in the same manner as provided in Section 2-632, "Competitive Sealed Bidding; Public Notice."
- (c) *Evaluation factors.* When an award is not to be made solely on the basis of the lowest evaluated price, the request for proposals shall indicate the relative importance of price and other significant evaluation factors.
- (d) *Award.* Award shall be made to the offeror whose proposal is determined to be more advantageous, to the County, taking into consideration price and the evaluation factors set forth in the request for proposals.
- (e) *Discussion with all responsible offerors.* Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined to be reasonably eligible for the award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:
  - (1) With respect to prices, where such prices are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions; or
  - (2) Where time of delivery or performance will not permit discussions; or
  - (3) Where it can be clearly demonstrated and documented to the Procurement Director from the existence of adequate competition or accurate prior cost experience with the procured items that acceptance of an initial offer without discussion would result in fair and reasonable prices, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.
- (f) *Consideration of Information.* The County reserves the right to use all pertinent information (also learned from sources other than disclosed in the RFP process) that might affect the County's judgment as to the appropriateness of an award to the best-evaluated proposer. This information may be appended to the proposal evaluation process results. Information on a service provider from reliable sources, and not within the service provider's proposal, may also be noted and made a part of the evaluation file. The County shall have sole responsibility for determining a reliable source. The County reserves the right to conduct written and/or oral discussions/interviews after the proposal opening. The purpose of such discussions/interviews is to provide clarification and/or additional information to make an award, which is in the best interest of the County.

**Sec. 2-634. Noncompetitive negotiation.**

A contract or procurement may be made by noncompetitive negotiation only when competition is not feasible, as determined by the Procurement Director and Finance Director prior to award.

**Sec. 2-635. Negotiations after competitive sealed bidding where all bids exceed available funding.**

- (a) In the event that all bids submitted pursuant to a competitive sealed bidding, invitation for bids under Section 2-632, result in bid prices in excess of the funds available for the purchase, a negotiated award may be made as set forth in paragraph (b) below when the Procurement Director determines:
  - (1) That there are no additional funds available from any source so as to permit an award to the responsive responsible bidder offering the Best Value; and
  - (2) The best interest of the County will not permit the delay attendant to a re-solicitation under revised specifications, and/or for revised quantities, under competitive sealed bidding as provided in Section 2-632.
- (b) Competitive negotiations shall be conducted with the bidder whose submittal to the competitive sealed bid invitation is determined to be the Best Value to the County.
- (c) In the event negotiations are not successful, then new invitations for competitive sealed bids shall be issued and the project shall be rebid.

**Sec. 2-636. Small procurements and informal bidding.**

**Procurements not exceeding \$25,000 shall be defined as Small Procurements and are at the discretion of the department head as to where the commodity or service is procured. These Small Procurements shall follow all Requisition, Electronic Commerce Card and Purchase Order procedures as set out in the Procurement Regulations.**

**Procurements exceeding \$25,000 but not exceeding \$50,000 shall be acquired by Informal Bidding which requires three (3) written quotes for the commodity or service. If three written quotes are not obtainable the procurement shall be procured through the formal sealed solicitation, or other methods.**

The above dollar thresholds for Small Procurements and Informal Bidding are to be considered in aggregate by Vendor for any fiscal year. The Procurement Director shall have the final decision on whether an item or service is deemed a Small Procurement.

**Sec. 2-637. Cancellation of invitations for bids or requests for proposals.**

When it is determined by the Procurement Director in accordance with regulations promulgated hereunder, that it is in the best interest of the County, any invitation for bids, request for proposals or other solicitation may be cancelled, as prescribed in the regulations promulgated hereunder, and all bids or proposals in response thereto may be rejected.

**Sec. 2-638. Responsibility of bidders and offerors.**

- (a) *Determination of responsibility.* The responsibility of a bidder or offeror shall be determined in accordance with regulations to be issued hereunder.
- (b) *Inquiry authorized.* A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted in accordance with regulations to be issued hereunder. The failure of a bidder or offeror to promptly supply information in connection with such an investigation may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

**Sec. 2-639. Prequalification of bidders or offerors.**

Suppliers seeking to provide particular types of procured items may prequalify as responsible prospective suppliers in accordance with regulations issued by the Procurement Director. Solicitation notification lists of potential suppliers of such procured items shall include but shall not be limited to such prequalified suppliers. Prequalification shall not preclude a determination:

- (a) Between the time of the bid opening or receipt of offers and the making of an award, that a prequalified supplier is not responsible; or
- (b) That a supplier who is not prequalified at the time of bid opening or receipt of offers is responsible.

**Sec. 2-640. Cost or pricing data.**

- (a) *Prime contractor data.* A contractor shall submit cost or pricing data in accordance with regulations issued hereunder, which shall be subject to audit.
- (b) *Price adjustment.* Any contract or change or modification thereto under which a certificate is required shall contain a provision that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the Procurement Director finds that such price was increased because the contractor furnished cost or pricing data which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.
- (c) *Cost or pricing data not required.* The requirements of this section do not apply to contracts where the price negotiated is based on adequate price competition, established catalogue or market prices of commercial items sold in substantial quantities to the general public, prices set by law or regulation, or in exceptional cases where the Procurement Director determines that the requirements of this section may be waived.

**Sec. 2-641. Types of Contracts.**

Except as set forth in Section 2-642, any type of contract that will promote the best interests of the County may be used.

**Sec. 2-642. Cost reimbursement-type contracts.**

No cost reimbursement contract may be made under Section 2-633 or Section 2-634, unless the Procurement Director determines that such contract is likely to be less costly to the County than any other type of contract or that it is impracticable to obtain property or services of the kind or quality required except under such a contract.

**Sec. 2-643. Multiyear contracts.**

- (a) *Specified period.* A contract for procured items may be entered into for periods of not more than twenty-five (25) years, if funds for the first fiscal year of the contemplated contract are available at the time of contracting. Payment and performance obligations for succeeding fiscal years shall be subject to the availability of funds and each such contract shall contain language to that effect (i.e. "ANNUAL FUNDING FOR THIS CONTRACT IS CONTINGENT UPON APPROPRIATION BY KNOX COUNTY COMMISSION").
- (b) *Determination prior to use.* Prior to the utilization of a multiyear contract, a determination shall be made by the Procurement Director:
  - (1) That estimated requirements covering the period of the contract are reasonably certain and continuing; and

- (2) That such a contract will serve the best interests of the County by encouraging effective competition or otherwise promoting economies in county procurement.
- (c) *Cancellation due to unavailability of funds in succeeding years.* When funds are not made available to support continuation of performance in a subsequent year of a multiyear contract, the contract for such subsequent year shall be cancelled.

**Sec. 2-644. Inspection of contractor's plant and records.**

- (a) *Right to inspect.* The County shall have the right to inspect the plant or business of a contractor or any subcontractor under any contract awarded by the County.
- (b) *Right to audit.* The County shall have the right to audit the books and records of any person seeking to become a contractor or subcontractor or of a contractor or any subcontractor under any negotiated contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract.

**Sec. 2-645. Reporting of suspected collusive bidding or negotiation.**

- (a) *Notification to the Law Director.* When for any reason collusion is suspected among any bidders or offerors, a written notice of such suspicion shall be transmitted to the Law Director.
- (b) *Retention of all documents.* All documents involved in any procurement in which collusion is suspected shall be retained until the Law Director gives notice that they may be destroyed. All retained documents shall be made available to the Law Director or his designee upon request.

**Sec. 2-646. Procurement of undercover narcotic vehicles.**

Vehicles to be purchased for the Knox County Sheriff's Office (KCSO) which are for the specific use of undercover narcotic operations, shall be acquired in the following manner.

- (a) KCSO will submit a requisition to the assigned Procurement Division representative. This request will include a generic description of the type of vehicle(s) to be procured.
- (b) The Procurement Division representative will then solicit, at a minimum, three (3) written, "Confidential Quotes" from perspective automobile dealerships.
- (c) The Procurement Division representative and the KCSO representative will then evaluate the quotes to determine Best Value.
- (d) Recommendation will then be made to the Procurement Director for signature approval.
- (e) The Procurement Director will forward to the Finance Director for signature approval.
- (f) Once approvals from the Procurement Director and Finance Director have been obtained the Procurement Division representative will make an award and issue a purchase order to the successful dealership.
- (g) All information relating to the type of vehicle procured will not be made part of the procurement record. Only information pertinent to acquisition and payment. KCSO will retain all other information deemed confidential.

**Sec. 2-647. Emergency Purchases.**

**AN EMERGENCY CONDITION IS:**

A situation, which creates a threat to public health, welfare, or safety such as, may arise by reasons of floods, epidemics, riots, equipment failures, or other such reasons that may be proclaimed by the County Mayor. The existence of such condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- a. The functioning of the Knox County Government
- b. The preservation or protection of property
- c. The health or safety of any person

1. PROCEDURES FOR EMERGENCY PURCHASES

EMERGENCY PURCHASE DEFINITION:

Emergencies are defined as acts of God or otherwise uncontrollable or unforeseeable circumstances. A condition that would endanger the health of the residents of Knox County, or cause additional and extensive damage to county property or would adversely affect programs in Knox County Government. All emergencies outside the physical boundaries of Knox County, which requires some action or response by Knox County, will be handled pursuant to **Tennessee Code Annotated 5-14-110. Emergency purchases.**

WHO CAN MAKE EMERGENCY PURCHASES:

Emergency Purchases may be made directly by the using department without competitive bids provided that sufficient appropriation has been made to cover such occasions and necessary approvals have been made.

WHO AUTHORIZES AN EMERGENCY PURCHASE:

The signature of the elected department head provides authorization for an emergency expenditure. True emergencies have no dollar limits.

HOW TO MAKE AN EMERGENCY PURCHASE:

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

- a. Notify the Procurement Division of the need and nature of the emergency. The Procurement Division will provide a verbal purchase order number or an Emergency Purchase Order to the department.
- b. The department will obtain the equipment or services, complete a requisition and an emergency purchase justification form. Both forms must be submitted to the Procurement Division before the vendor can be paid. If the department has acquired an Emergency Purchase Order from the Procurement Director, it may be submitted to the Finance Department for processing but must be accompanied with all required documentation. (See item four (4) below)

or

Procurement will expedite the procurement. This can mean taking telephone bids instead of sealed bids or it can mean shortening the time required for sealed bids to less than two weeks.

- c. Departments shall use sound judgment in making emergency purchases of materials and supplies and obtain reasonable prices. Orders should be placed with vendors who are providing or have provided the using department with satisfactory service in the past.

- d. Suppliers shall furnish sales tickets, delivery slips, invoices, etc. for the services and supplies rendered. Terms of the transactions, indicating price and other important data, shall be shown.
- e. Emergency purchases must be approved by the County Mayor or other elected officials (often, after the actual purchase has taken place).
- f. Emergency justification forms and Emergency Purchase Orders may be obtained from the Procurement Director.
- g. The Procurement Director may determine that it would be more feasible to employ the use of an electronic commerce card in making emergency purchases in which case only the emergency justification forms are required to be submitted to the Procurement Division.

ROUTING OF EMERGENCY PURCHASE ORDER COPIES:

The **Original Copy (white)** of the Emergency Purchase Order is issued to the vendor. The **Second Copy (canary)** of the Emergency Purchase Order is to be retained by the issuer until an invoice is prepared. Attach the invoice to the second copy and mail it to:

Knox County Finance Department  
 Room 630 City-County Bldg.  
 400 W. Main Ave.  
 Knoxville, TN 37902

The **Third Copy (pink)** of the Emergency Purchase Order is sent to the Procurement Division at time of submittal for payment by the issuing agency or office.

**The Fourth Copy (gold) of the Emergency Purchase Order is retained by the issuing agency.**

**Sec. 2-648. Spot Market Procurement.**

When it is determined that market conditions for procurement of gasoline, oil and perishable food commodities make any other method of source selection under these regulations impractical, procurements may be awarded by spot market procurement, as provided for in this subsection. Factors to be used in determining whether other methods of source selection are impractical shall include:

1. There must exist a formal or informal open market for the commodity to be procured.
2. The nature of the market for the commodity to be procured must be subject to such fluctuations in price and/or availability of the commodity that the use of any other method of source selection would prevent the County from effectively participating in the market.

**Limitation on use.** The use of spot market procurement is intended to be used only under limited circumstances and the procedures for such use as described herein are not intended to displace the procedures for competitive sealed bidding and competitive negotiation as set forth in other sections of these regulations.

**Notice.** Invitations for bids shall be sent in the manner that is customarily used in the market, including but not limited to, electronic transmissions.

**Receipt of bids.** The invitation for bids for spot market purchases shall specify a time for submission of bids. Any bid received after the specified bidding time may be considered by the County but any such bid is not required to be considered. Bids may be submitted in any manner customarily used in the market, including, but not limited to, electronic transmissions and telephone bids. Each bid and the name of the

bidder shall be recorded and the record of all bids shall be open for public inspection. The assigned Procurement Division Representative shall employ appropriate safeguards to ensure that the bid is not disclosed to any other bidder prior to award.

**Award.** The award shall be made with reasonable promptness by written and /or electronic notice to the responsive and responsible bidder whose bid is determined to be the "Best Value" to the County.

**Sec. 2-649. Applicability of Code**

The procedures and policies established in this document apply to all employees and agents of Knox County involved (directly or indirectly) in procuring goods and services of any type. Any order, agreement, or obligation that is contrary to these policies and procedures is void, and no person shall have any claim or demand whatsoever against the County. However, these policies and procedures do not take precedence over federal regulations such as the U.S. Department of Housing and Urban Development (HUD) regulations concerning procurements.

2-665. Reserved.

**DIVISION 4. PROCUREMENT OF CONSTRUCTION AND OTHER SERVICES**

**Sec. 2-666. Responsibility for selection of methods of construction contracting management.**

The Procurement Director shall issue regulations providing for as many alternative methods of oversight and supervision of construction contracts as are feasible; provided, however, that a determination setting forth the facts which led to the selection of a particular method of-construction oversight and supervision shall be included in the contract file in each instance.

1. *When required.* In the solicitation of construction services and any other services as determined by the Procurement Director, a bid bond or other form of bid guarantee satisfactory to the County shall be required when the contract to be awarded is expected to exceed one hundred thousand dollars (\$100,000.00) and such bond may be provided by a surety company authorized to do business in this state. For contracts less than one hundred thousand dollars (\$100,000.00), a bond shall not be required unless-specified in the invitation to bid.
2. *Amount of bid guarantee.* The official or using agency responsible for carrying out the construction project shall determine the bid guarantee amount adequate to protect the County from loss should the successful bidder fail to execute and deliver such further contract documents and bonds as may be required; provided, however, the percentage or amount shall not be less than two (2) per cent nor more than five (5) per cent of the bid price. If a bidder is permitted to withdraw a bid before award for mistake in the bid, no action shall be had against that bid bond.
3. *Rejection of bids for noncompliance with bid guarantee requirements.* When the solicitation requires that bids be supported by a bid bond, noncompliance requires rejection of the bid; provided, however, that the Procurement Director may, by regulation, set forth exceptions to this provision which are in the best interest of the County.

**Sec. 2-667. Contract performance and payment bonds.**

- (a) *When required; amounts; certificate prior to receiving progress, or final payment.* Before any construction contract exceeding one-hundred thousand dollars (\$100,000.00) is awarded to any person, the following bonds, which shall become binding upon the parties upon the award of the contract to such person (hereinafter designated as "contractor"), shall be furnished to the county:

- (1) A performance bond executed by a surety company authorized to do business in this state, or by other form of surety, either of which is satisfactory to the County, in the amount equal to one hundred percent (100%) of the contract price as it may be increased or decreased.
  - (2) A payment bond executed by a surety company authorized to do business in this state, or otherwise supplied, satisfactory to the County for the protection of all persons supplying labor and materials to the contractor or his subcontractors for the performance of the work provided for in the contract. The bond shall be in the amount of one hundred percent (100%) of the total of the contract price as it may be increased or decreased.
- (b) *Authority to require additional bonds.* Nothing in this section shall be construed to limit the authority of the County to require a bid performance bond or other security in addition to the aforementioned bonds, to the circumstances specified in subsection (a).

**Sec. 2-668. Bond filings.**

Bonds payable to the County shall be filed as directed by regulations promulgated by the Finance Director.

**Sec. 2-669. Contracts for the Procurement of Services.**

Contracts for the procurement of construction and other services shall be awarded in accordance with **Division 3**.

**Sec. 2-670. Professional Services Acquisitions.**

Professional services acquisitions, as defined in T.C.A 12-4-107, are not subject to the provisions of the Procurement Code, and will be selected by the County Mayor or in the case of legal services, by the Law Director. However, officials who wish to acquire these services through competitive means may do so through a Request for Qualifications and/or a Request for Information.

**Sec. 2-671—2-690. Reserved.**

**DIVISION 5. CONTRACT MODIFICATIONS**

**Sec. 2-691. Modification of contracts.**

The Procurement Director is authorized to adopt regulations permitting or requiring the insertion in contracts of appropriate clauses to enable the County to effect desired changes and modifications to such contracts; provided however, that any such change or modification, except for road and/or bridge construction, which would result in additional expenditures by the County in the sum of twenty-five thousand dollars (\$25,000.00) or any such larger sum only shall be effected after appropriate authorization and approval by resolution of the Commission.

Change orders less than one hundred thousand dollars (\$100,000.00) for road and/or bridge construction must be authorized by the Mayor. Change orders for an amount of one hundred thousand dollars (\$100,000.00) or more must be authorized by the Mayor and approved by resolution of the Commission.

**Sec. 2-692—2-710. Reserved.**

**DIVISION 6. SURPLUS PROPERTY DISPOSAL**

**Sec. 2-711. Surplus Property.**

All using agencies shall submit to the Procurement Director, as required by the regulations promulgated, hereunder, reports showing stocks of all property, real or personal, which are no longer used.

**Sec. 2-712. Disposal of Surplus Property.**

- (a) *Transfer.* The Procurement Director shall have the authority to transfer surplus property, real or personal, to other using agencies.
- (b) *Sale or Exchange.* The Procurement Director shall have the authority to sell all property, real or personal, which has become unsuitable for public use, or to exchange the same for, or trade in the same on, new property, real or personal, subject to the limitations hereinafter stated.
  - (1) Valuations of surplus property, real or personal, shall be made in accordance with criteria set forth in the regulations promulgated hereunder.
  - (2) Sales of personal property valued in excess of \$2,500.00 shall be awarded by competitive bidding whenever practicable. Competitive bids may be made in sealed bids, at auction, through on-line auction service, or in other forms of competitive bidding specified in the regulations promulgated hereunder. The Procurement Director may accept or reject any and all bids. Bids shall be made at a specified date, time, and place. When deemed most advantageous to the County by the Procurement Director, the County may enter into negotiated contracts for the sale of scrap and waste products. Typical contracts include accumulated scrap metal, used tires, used batteries, etc. When an authorized insurance settlement calls for sale to an insurance carrier, surplus vehicles are also sold by two-party negotiation.
  - (3) Sales or lease of real property shall be awarded by competitive solicitations whenever practicable. Competitive solicitations may be made in sealed bids, sealed proposals, at live auction, on-line auction or through negotiated contract. The negotiated sales method for the disposition of real property may be utilized only if the Procurement Director has conducted a market analysis and has determined that due to the unique nature of the property only one purchaser would reasonably be expected to seek to purchase property. In addition, the Senior Director of Finance and the County Mayor must approve this method of real property disposal. Any sales, lease and/or transfer of real property shall require the approval of Commission.
  - (4) The Procurement Director shall have the authority to negotiate a sale, exchange, or trade of property, real or personal, when the sale, exchange, or trade is to another public agency, when the sale by competitive bidding is not practicable, as determined by the Procurement Director, or when the prices received from competitive bids are unreasonable or were not independently reached in open competition. Any proposed sale or exchange of real property shall be approved by the County Mayor and the Commission before becoming effective.
  - (5) Any material change to the original scope of development of those real properties awarded by sealed competitive bid (as set forth in the successful bidder's submittal documents) and whose appraised value is determined to exceed seventy-five thousand dollars (\$75,000) is strictly prohibited. Such material change will result in an automatic repeal of the award, necessitating a rebid of the project.
- (c) *Donation of Surplus Property.* The Procurement Director, with the written approval of the County Mayor, may transfer surplus personal property valued at less than \$5,000.00 to public agencies and to not-for-profit organizations. Any donation of personal property valued in excess of \$5,000.00 requires approval of the Commission.

**Sec. 2-713 Appraisals.**

Prior to any real property being purchased or sold by Knox County, a current appraisal (within the last 12 months) by a certified appraiser must be obtained and made available to the Knox County Commission prior to their consideration. Real property, however, that is the subject of a tax sale and/or where the value of the real property may not exceed the cost of an appraisal is hereby specifically excluded from this requirement. The Procurement Director is authorized to make the determination of whether the cost of a particular property may not exceed the cost of an appraisal.

**Sec. 2-714—2-730. Reserved.**

## **DIVISION 7. LEGAL AND CONTRACTUAL REMEDIES**

**Sec. 2-731. Legal and contractual remedies.**

The official or using agency responsible for the administration of a contract is authorized to settle, compromise, pay or otherwise adjust any claim by or against, or any controversy with, a contractor or bidder relating to a contract with the County. All proposed settlements or compromises shall be submitted to the Law Director for a determination of reasonableness and approval prior to formation of a binding agreement with the other party, in accordance with regulations issued by the Law Director. Any proposed settlement or compromise in an amount in excess of \$10,000.00 shall also be approved the County Mayor prior to formation of a binding agreement with the other party.

**Sec. 2-732—2-735. Reserved.**

## **DIVISION 8. INTERGOVERNMENTAL RELATIONS**

**Sec. 2-736. Cooperative procurement authorized.**

The County, through the Procurement Director, may participate in or sponsor, conduct, and/or administer a cooperative procurement agreement for the acquisition of procured items with any other public procurement unit or foreign procurement activity, in accordance with an agreement entered into between the County and the other public procurement unit or foreign procurement activity.

**Sec. 2-737. Sale, acquisition or use of property.**

The County, through the Procurement Director, may sell to, acquire from, or use any property belonging to another public procurement unit or foreign procurement activity, independent of the requirements of Article III of this article; provided, however, that no sale or transfer of real property or any interests therein shall be valid unless approved by resolution of the Commission.

**Sec. 2-738. Cooperative use of supplies or services.**

The County, through the Procurement Director, may enter into an agreement independent of the requirements of division III or VII, with any other public procurement unit or foreign procurement activity for the cooperative use of supplies or services.

**Sec. 2-739—2-745. Reserved.**

## **DIVISION 9. ETHICS IN PUBLIC CONTRACTING**

**Sec. 2-746. General standards of conduct.**

(a) *General standards of conduct for employees.* Any effort to realize personal gain through public employment, inconsistent with the responsible discharge of that public employment, is a violation of a public trust, as is any conduct which would create a justifiable impression in the public that such trust is being violated. In order to fulfill the ethical standards prescribed by this article, employees must

meet the standards of conduct set forth in this article and applicable provisions of the Charter of Knox County, other ordinances, and general law.

- (b) *General standards of conduct for nonemployees.* Any effort by any person to influence any public employee to violate the standards of ethical conduct set forth in this code, or to engage in any conduct which would create a justifiable impression in the public that such trust is being violated is also a violation of the ethical standards prescribed in this section.

**Sec. 2-747. Use of confidential information.**

It shall be unlawful for any employee, or former employee, of the County to use confidential information for actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

**Sec. 2-748. Remedies for Violators.**

Employees who violate the ethical considerations of this article shall be subject to appropriate personnel action, including termination and nonemployees shall be subject to appropriate sanctions as determined by the Procurement Director. These remedies are in addition to all applicable civil and criminal remedies.

**Sec. 2-749, 2-750. Reserved.**