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Hot Topic: Changes to the Tennessee Municipal Purchasing Law of 1983 (2007)

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Municipal Technical Advisory Service

*In cooperation with the
Tennessee Municipal League*

#147

HOT
topic

June 29, 2007

2007 CHANGES TO THE TENNESSEE MUNICIPAL PURCHASING LAW OF 1983

Josh Jones, Legal Consultant

The Municipal Purchasing Law of 1983, T.C.A. § 6-56-301, *et seq.* governs the processes many cities must follow when spending or encumbering public monies in a purchase, lease, or lease-purchase agreement. The relevant sections of the statute require municipalities to publicly advertise and subsequently accept closed bids for purchases over designated amounts. As originally enacted the purchasing law granted exemption to cities that dealt with these specific purchasing requirements in their charters. Last year, however, in a measure to extend the law's application to a particular city, the legislature broadly extended applicability to almost every city in the state. Recognizing the unintended purchasing difficulties that ensued for cities, the legislature has returned the purchasing law's applicability to its original intent and form.

In 2005 the Tennessee attorney general ruled in a nonbinding opinion that the city of Clarksville was exempt from the 1983 Municipal Purchasing Law. Tenn. Atty. Gen. Op. No. 05-120. At that time, the act merely required "charter provisions or private act requirements governing competitive bidding and purchasing" for a city to be exempt from the Municipal Purchasing Law. T.C.A. § 6-56-301. Clarksville's charter stated that the city must establish bidding

and purchasing regulations by ordinance. Clarksville City Charter, 1957 Priv. Act ch. 292. The attorney general found this sufficient to exempt Clarksville from the Municipal Purchasing Law.

In 2006, in light of the aforementioned opinion, the legislature passed Public Chapter 814, applying the Municipal Purchasing Law to most cities in the state. Before passage of this act, municipalities that had general charter provisions that governed competitive bidding and purchasing were exempt from the Municipal Purchasing Act. With the passage of Public Chapter 814, cities were exempted only if they had specific provisions and requirements in their charters. These specific provisions included dollar limits for competitive bidding, exemptions from competitive bidding, and general bid procedures covering public advertising and the opening and securing of bids.

This session the state legislature enacted Public Chapter No. 84, removing the universal application language of the 2006 bill and returning the applicability of the Municipal Purchasing Law to its original scope. Now municipalities that have charter provisions speaking to competitive bidding by establishing bid limits in the charter or allowing bid limits to be set by ordinance provided a maximum cap amount is set may

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continue to operate under these provisions. These cities must establish, by charter or ordinance, general bid procedures, including public advertising, securing and opening bids, and any exemptions from competitive bidding. Exemptions must be substantially similar to those found in T.C.A. § 6-56-304, which include purchases of less than \$2,500 or other amount up to \$10,000 that may be set by ordinance, single source purchases, emergency purchases, real property purchases, second-hand purchases from governmental agencies, purchases of perishables, and purchases for resale of natural gas and propane.

Municipalities with charter provisions that deal with competitive bidding but fail to establish bidding limits may, via ordinance, set a limit not exceeding \$25,000 over which public advertisement and competitive bidding must precede purchases. These municipalities must also, via ordinance, set a dollar limit

not exceeding 40 percent of the bid limit above which the municipality need not advertise but where competitive bidding is required. This ordinance must also establish procedures for public advertising, securing and opening bids, and allowing exemptions from competitive bidding that are substantially similar to those in T.C.A. § 6-56-304, as mentioned.

Cities whose charter provisions fail to meet the above requirements by charter or ordinance are still bound by the requirements of the Municipal Purchasing Law, which include advertising and bidding requirements for applicable purchases. Cities are advised to consult with their finance and legal departments to ensure compliance with or exemption from the law as amended. And, as always, if your city has any questions or concerns consult your MTAS management consultant.

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