

Title 12 Public Property, Printing And Contracts
Chapter 4 Public Contracts
Part 1 General Provisions

Tenn. Code Ann. § 12-4-106(2011)

12-4-106. Contracts for professional services.

(a) (1) Contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of the state, for legal services, fiscal agent, financial advisor or advisory services, educational consultant services, and similar services by professional persons or groups of high ethical standards, shall not be based upon competitive bids, but shall be awarded on the basis of recognized competence and integrity. The prohibition against competitive bidding in this section shall not prohibit any entity enumerated from interviewing eligible persons or groups to determine the capabilities of such persons or groups.

(2) (A) In the procurement of architectural and engineering services, the selection committee/procurement official may seek qualifications and experience data from any firm or firms licensed in Tennessee and interview such firm or firms. The selection committee/procurement official shall evaluate statements of qualifications and experience data regarding the procurement of architectural and engineering services, and shall conduct discussions with such firm or firms regarding the furnishing of required services and then shall select the firm deemed to be qualified to provide the services required.

(B) The selection committee/procurement official shall negotiate a contract with the qualified firm for architectural and engineering services at compensation which the selection committee/procurement official determines to be fair and reasonable to the government. In making such determination, the selection committee/procurement official shall take into account the estimated value of the services to be rendered, the scope of work, complexity and professional nature thereof.

(C) Should the selection committee/procurement official be unable to negotiate a satisfactory contract with the firm considered to be qualified, at a price determined to be fair and reasonable, negotiations will continue with other qualified firms until an agreement is reached.

(D) A city, county or utility district having a satisfactory existing working relationship for architectural or engineering services may expand the scope of the services; provided, that they are within the technical competency of the existing firm, without exercising this section.

(3) (A) For construction of local correctional facility projects or additions to existing correctional facility buildings, a county, city, metropolitan government or town may contract for construction management agent or advisor services. Construction management services that are provided for a fee and that involve preconstruction and construction administration and management services are deemed to be professional services and may be performed by a qualified person licensed under the Contractors Licensing Act of 1994, compiled in title 62, chapter 6. Construction management services are to be procured for each project through a written request for proposals process through advertisement. The procurement and advertisement shall be in accordance with laws, regulations, and ordinances of the county, city, metropolitan government or town. The written request for proposals process will invite prospective proposers to participate and will indicate the service requirements and the factors used for evaluating the proposals. These factors shall include the construction manager's qualifications and experience on similar projects, qualifications of personnel to be assigned to the project, fees and costs or any additional factors deemed relevant by the procuring entity for procurement of the service. Cost is not to be the sole criterion for evaluation. The contract for such services shall be awarded to the best qualified and responsive proposer. A construction manager is prohibited from undertaking actual construction work on a project over which the construction manager coordinates or oversees the planning, bid or construction phases of the project, except in instances where bids have been solicited twice and no bids have been submitted. If the construction manager can document that a good faith effort was made in each bid solicitation to obtain bids and no bids were received, then the construction manager may perform the construction work at a price agreed upon by the construction manager, the architect and the owner of the project. A governing body, at its own discretion, may perform work on the project with its own employees and may include the coordination and oversight of this work as part of the services of the construction manager. Sealed bids for actual construction work shall be opened at the bid opening and the names of the contractors

and their bid amounts shall be announced.

(B) Construction management agent or advisor services for the construction of local correctional facility projects or additions to existing correctional facility buildings in accordance with subdivision (a)(3)(A) may be performed by:

(i) A general contractor licensed in Tennessee pursuant to the Contractors Licensing Act of 1994, compiled in title 62, chapter 6; provided, that none of such services performed by a general contractor involve any of the services exempt from the requirements of title 62, chapter 6 as "normal architectural and engineering services" under § 62-6-102(4)(B) or (C), unless, with regard to the performance of any services defined as normal architectural and engineering services, the general contractor is also licensed as an architect or engineer under title 62, chapter 2; or

(ii) An architect or an engineer licensed pursuant to title 62, chapter 2; provided, that none of such services performed by an architect or engineer involve any of the services required to be performed by a contractor within the definition of "contractor" under § 62-6-102, unless with regard to the performance of any services included within the definition of contractor, the architect or engineer is also licensed as a contractor under the Contractors Licensing Act of 1994, compiled in title 62, chapter 6.

(C) Construction work that is under the coordination and oversight of a construction manager shall be procured through competitive bids.

(b) Any person providing fiscal agent, financial advisor or advisory services to any county, city, metropolitan government, town, utility district or other municipal or public corporation shall perform such services only pursuant to a written contract, to be entered into prior to, upon or promptly after the inception of the relationship, specifying the services to be rendered, the costs therefor, and the expenses to be covered under such contract.

(c) Any person providing fiscal agent, financial advisor or advisory services to any county, city, metropolitan government, town, utility district or other municipal or public corporation of this state who desires to bid, directly or indirectly, on any bonds, notes or other obligations of such entity sold pursuant to public, competitive sale shall receive in writing prior to the sale the permission of such entity to bid either directly or indirectly on the obligations.

(d) For the purposes of this section, "providing fiscal agent, financial advisor or advisory services" means a relationship that exists when a person renders or enters into an agreement to render financial advisory or consultant services to or on behalf of an issuer with respect to a new issue or issues of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such issue or issues, for a fee or other compensation or in expectation of such compensation for the rendering of such services. Notwithstanding the foregoing provisions of this subsection (d), a financial advisory relationship shall not be deemed to exist when, in the course of acting as an underwriter, a municipal securities dealer renders advice to an issuer, including advice with respect to the structure, timing, terms and other similar matters concerning a new issue of municipal securities.

(e) (1) Contracts by counties, cities, metropolitan governments, towns, utility districts and other municipal and public corporations of the state for information management services, including, but not limited to, computer program analyst services shall, upon approval by a two-thirds (2/3) vote of the governing body, be procured through a request for proposals process. The request for proposals process will invite prospective proposers to participate and will indicate the service requirements and the factors used for evaluating the proposals. Such factors shall include cost, vendor's qualifications and any additional factor or factors deemed relevant by the procuring entity for the procurement of the service; cost is not to be the sole criteria for evaluation. The contract for such services will be awarded to the best evaluated, responsive proposer.

(2) This subsection (e) shall only apply in counties having a population of not less than four hundred seventy thousand (470,000) nor more than four hundred eighty thousand (480,000), according to the 1980 federal census or any subsequent federal census.

HISTORY: Acts 1969, ch. 331, § 1; T.C.A., § 12-432; Acts 1984, ch. 822, § 2; 1990, ch. 699, § 1; 1991, ch. 518, §§ 1, 2; 1998, ch. 990, § 1; 2009, ch. 518, § 1.