

# 2017 Tennessee Code

## Title 4 - State Government

### Chapter 15 - State Building Commission

#### § 4-15-102. Powers and duties.

Universal Citation: TN Code § 4-15-102 (2017)

- (a) The commission has the power and authority, except as otherwise provided in this chapter, to approve and supervise all projects involving:
  - (1) Any improvement to real property funded by public or private funds or both in which the state or any of its departments, institutions or agencies has an interest;
  - (2) The demolition of any building or structure located on real property in which the state or any of its departments, institutions or agencies has an interest, or the demolition of any building or structure by a foundation created for the primary purpose of benefiting the University of Tennessee or any institution of the state university and community college system of Tennessee, provided such building or structure when constructed or acquired was originally approved by the commission pursuant to this section, except for the demolition of any building or structure acquired by the department of transportation for highway rights-of-way; and
  - (3) Any improvement to real property in excess of five hundred thousand dollars (\$500,000) by a foundation created for the primary purpose of benefiting the University of Tennessee or any institution of the state university and community college system of Tennessee, the operation of which will be, or is intended by the foundation to be or become, the responsibility of the University of Tennessee or any institution of the state university and community college system of Tennessee. The intent of the foundation to retain operation of the improvement or to transfer operations to the state shall be contained in the records of the foundation.
  
- (b)
  - (1) No contract for the improvement of real property in which the state or any of its departments, institutions or agencies has an interest, and no contract for the demolition of any building or structure on real property in which the state or any of its departments, institutions or agencies has an interest shall be awarded until the plans therefor have been submitted to and approved by the commission.
  - (2) This subsection (b) shall not apply to the demolition of any building or structure acquired by the department of transportation for highway rights-of-way.

- (3) This subsection (b) shall apply to improvements or demolitions of any building or structure approved by the commission pursuant to this section by a foundation created for the primary purpose of benefiting the University of Tennessee or any institution of the state university and community college system of Tennessee.
  
- (c) (1) (A) The commission, using procedures that promote competition to the greatest extent possible, has the power and authority to advertise and award contracts relating to the projects described in subsection (a), including contracts for construction, erection or demolition and contracts to furnish, install or provide goods or materials that are incidental to projects that are within the jurisdiction of the commission.
  - (B) The commission also has the power and authority to award contracts for professional design, surveying or planning services relating to the projects described in subsection (a), following procedures of the commission.
  - (C) This subsection (c) shall not apply to contracts made by the department of transportation pursuant to title 54, chapter 5.
    - (2) Any rule, regulation, specification or policy of the commission promulgated pursuant to this subsection (c) that restricts eligibility to bid on a project to the manufacturer of the material to be utilized in such project shall be waived, if in the discretion of the commission:
      - (A) The person, company, corporation or other entity submitting a bid offers a warranty or guarantee substantially equivalent to the warranty or guarantee offered by the manufacturer; and
      - (B) The person, company, corporation or other entity submitting such bid is financially capable of performing such warranty or guarantee.
  
- (d) (1) The following transactions shall be subject to approval by the state building commission, in addition to the other approvals required by law:
  - (A) The acquisition of any interest in real property by the state or any of its departments, institutions or agencies, except for the acquisition of any interest in real property by the department of transportation for highway rights-of-way;
  - (B) The disposal of any interest in surplus real property described in § 12-2-112; provided, that:
    - (i) The commission may establish policies that permit the disposal, without approval by the commission, of interests in surplus real property other than the fee interest, including, but not limited to, leases, easements and rights-of-way; and
    - (ii) Such policies that permit the disposal of any interest, without the approval by the commission, shall not include disposal or conveyance in any manner of any interest or rights in minerals,

coal, natural gas, oil, timber and any other energy related resources;

- (C) All leases described in § 12-2-115(b); and
- (D) All leases or other contracts that may involve the use of private funds for the proposed construction and that relate to improvements to real property in which the state or any of its departments, institutions or agencies have an interest.
  - (2) Notwithstanding any other law to the contrary, subdivision (d)(1) shall not apply to the University of Tennessee and the state university and community college system of Tennessee in the acquisition and disposal of any interest in real property acquired by gift or devise, unless the acquisition of any interest in real property by gift or devise obligates the University of Tennessee, the state university and community college system of Tennessee, or the state to expend state funds for capital improvements or continuing operating expenditures. Furthermore, information on such gift property will be filed with the commission.
  
- (e)
  - (1) It is the duty of the office of legislative services to notify each member of the general assembly who requests such notification of any particular project to be considered by the commission, which project is proposed to be located within the district represented by the particular senator or representative.
  - (2) Such notification shall be given by mail not less than five (5) days prior to the commission meeting at which the subject project will be considered, unless it is an emergency meeting of the commission, in which case notification shall be made to the legislators as quickly as feasible.
  
- (f)
  - (1) The commission may award and approve contracts that provide for retainage as follows: not more than ninety-five percent (95%) of the contract price shall be paid on any contract until it is completed and the work is accepted; provided, that such contracts are with reputable building contractors who are principally located within this state and who have demonstrated by past experience their ability to properly perform equivalent building construction or improvement projects, whether public or private.
  - (2)
    - (A) Prior to the execution of any such contract in excess of one hundred thousand dollars (\$100,000), the commission shall require the execution of a good and solvent corporate surety payment and performance bond in an amount to be determined by the commission.
    - (B) Such bond shall be sufficient in amount to secure the faithful and satisfactory completion of the state building or improvement

project and payment for all labor and materials used by the contractor, or any immediate or remote subcontractor under the contract.

- (3) Any damages caused by a building contractor for failure to complete the contract or by failing to satisfactorily complete the work shall be recoverable by the state in an action against the building contractor and the building contractor's sureties.
- (g) Full settlement may be made with the contractor after the following have occurred:
  - (1) The contractor shall furnish evidence to satisfy the commission that all the material used by the contractor, the contractor's subcontractors or the contractor's agents has been fully paid for and all laborers and other employees working for the contractor, the contractor's subcontractors, or the contractor's agents have been fully paid; and
  - (2) Within ten (10) days after receipt of evidence requested in subdivision (g)(1), the commission shall provide thirty (30) days notice in some newspaper published in the county where the work is done, if there is a newspaper published there, and if not, in a newspaper in an adjoining county, that settlement is about to be made and notifying all claimants to file notice of their claims with the commission, and the period for filing shall not be less than thirty (30) days after the last published notice.
- (h) Except as provided in chapter 13, part 1 of this title, this chapter shall have no application to property conveyed in trust to a private corporation organized and chartered under the laws of this state pursuant to § 4-13-101.
- (i) Whenever the commissioner of education is authorized by the state board of education to take responsibility for the operation of any local school system or school that has been placed on probation pursuant to title 49, chapter 1, part 6, the state building commission shall have the same authority granted by this chapter relative to state agencies for all expenditures of educational capital outlay funds for such local school system or school.