This chapter provides a general overview of the scope and power of state and local governments to develop an infrastructure that supports a properly functioning procurement system. State and local government procurement presents challenges for lawyers, procurement professionals, and contractors alike because oftentimes the laws, regulations, rules, and judicial opinions are not accessible. This chapter attempts to provide a starting place for identifying procurement laws and codes of the 50 states and several U.S. territories, but by no means is it meant to be comprehensive. Additionally, this chapter canvases the topics dealing with procurement oversight, the contracting power of procuring officials, the authority of government personnel, and the type of authority required to bind state and local governments.

**State Procurement Organizations**

Implementing effective procurement policy requires an infrastructure that will support and promote transparency, competition, and flexibility. State procurement is in a period of renaissance. States
are making purchases of supplies and services that are complex yet necessary for economic growth within state borders. In order to sustain and support such growth during a period of complex purchasing, states have established state procurement offices with policymaking or operational responsibilities or both. The American Bar Association’s (ABA) 2007 Model Code for Public Infrastructure Procurement (MC PIP)¹ and its 2000 Model Procurement Code (MPC) set forth the basic organizational concepts for establishing procurement policy and conducting procurement operations.²

**Researching State Procurement Codes**

Many states and localities have passed laws and regulations on public contracting procedures. These laws are not uniform across the states. State procurement laws may be found in the various state codes, which may also be referred to as state statutes or other, similar terms. Typically, state laws on procurement fall into a few general categories of legislation; for example, California has a public procurement code, but the state has also enacted statutes governing contracting and procurement in other codes, including, among others, the California Government Code, the California Public Utilities Code, and the California Code of Regulations. Some states have passed detailed, comprehensive Procurement Codes, based on the ABA’s 2007 MC PIP and/or 2000 MPC. In these states, detailed procedures are included for nearly all aspects of public contracting, from types of specifications to contract administration. This chapter’s appendix offers a starting point for researching state procurement statutes and codes in specific jurisdictions. For a comprehensive compilation of state procurement laws and statutes, refer to the American Bar Association’s *Guide to State Procurement: A 50-State Primer on Purchasing Laws, Processes and Procedures*.³ For more detailed citations to local government codes in which municipalities may have their own procurement and purchasing procedures, refer to the Municode Library, a free service of the Municipal Code Corporation providing access to an online library of municipal codes to casual users.⁴
Control and Oversight of Procurement

Any expenditure of public funds to procure goods, services, or construction automatically invokes the requirement that state and local governments exercise control and oversight over such purchases. The authority to exercise this control and oversight is generally articulated in state and/or local procurement codes. For example, Louisiana’s Public Bid Law; Professional, Personal, Consulting, and Social Services Procurement law; and the Louisiana Procurement Code all become applicable when there is an expenditure of public funds. Similarly, the Utah Procurement Code provides, in pertinent part, that it applies “to every expenditure of public funds irrespective of their source, including federal assistance, by any state agency under any contract.”

Procurement codes, statutes, and ordinances of the state governing the letting of public contracts exist to support a strong public policy of fostering honest competition, to assure prudent and economical use of public monies, and to facilitate the acquisition of high-quality goods and services at the lowest possible cost. The purpose of these laws, in addition to the protection of taxpayers and the public treasury by obtaining the best work at the lowest possible price, is to guard against favoritism, improvidence, extravagance, fraud, and corruption in the awarding of public contracts. Inasmuch as these laws were intended for the benefit of the taxpayers and not to help enrich the corporate bidders, they are to be construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest.

Even when a formal procurement code has not been adopted, as is the case with the Virgin Islands and American Samoa, similar goals to protect the integrity of their procurement systems are invoked. For example, the statutory requirements pertaining to contracts with the government of the Virgin Islands were created “to protect the local treasury from fiscal mismanagement, unauthorized expenditures, and generally to insure the functions of the legislature in dispensing local revenues from encroachments by the executive branch.” To allow enforcement of agreements with the government despite statutory
violations “would destroy the life and vitality of the statutes.” Policy concerns underlying the statutory requirements pertaining to contracts with the government of the Virgin Islands apply with equal force whether or not federal or local funds are to be disbursed at the discretion of the territorial government.

The Government’s Power to Contract

A contract is the basic method by which the government procures needed supplies, services, and construction from the private sector. The power of state governments to enter into contracts and to seek their enforcement emanates from the inherent authority of states as “sovereigns.” This authority may also be affirmed by express authorization by state constitutions or statutes. Moreover, departments of state governments are typically delegated to exercise the states’ contract powers. For example, in Ohio, the Department of Administrative Services may purchase supplies and services for use by state agencies. In addition to these powers, the Department of Administrative Services is required to exercise the power, among others, to “prepare, or contract to be prepared, by licensed engineers or architects, surveys, general and detailed plans, specifications, bills of materials, and estimates of cost for any projects, improvements, or public buildings to be constructed by state agencies that may be authorized by legislative appropriations or any other funds made available therefor, provided that the construction of the projects, improvements, or public buildings is a statutory duty of the department.”

The power of local and municipal governments to enter into contracts is dependent upon whether Dillon’s Rule or home rule applies. Dillon’s Rule is a canon of statutory construction from common law that calls for the strict and narrow construction of local governmental authority. Dillon’s Rule provides that a municipal corporation possesses and can exercise only the following powers: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; and (3) those
essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable. ¹⁷ Today, home-rule authority reverses Dillon’s Rule; however, the rule remains the most important factor in deciding the powers of non-home-rule local governments. ¹⁸ Home-rule units of local government may enact regulations when the state has not specifically declared its exercise to be exclusive; non-home-rule units of local government are governed by Dillon’s Rule, under which non-home-rule units possess only the powers that are specifically conveyed by the state constitution or statute. ¹⁹ One state still operates entirely under this regime, while a few other states incorporate aspects of this regime into their delegation of municipal powers, and another state grants, pursuant to the state constitution, the privilege of autonomous rule over municipal affairs. ²⁰

An example of the government’s power to contract is Digital Biometrics, Inc. v. Anthony. ²¹ In Digital Biometrics, the court upheld the decision of an administrative body with quasi-judicial functions to refuse to exercise general jurisdiction over contracts for the procurement of electronic data processing and telecommunications goods and services. ²² The refusal was based on the administrative body’s recognition that it did not have broad jurisdiction and authority over supervising the procurement of goods and services. Instead, the administrative body determined, and the court agreed, that California’s General Services Administration had general supervisory authority over the procurement of such goods and services as specifically provided for in section 12100 of California’s Public Contract Code. ²³ Specifically, the court concluded that if “after the selection of an awardee a disappointed bidder can protest to the Board of Control and raise matters relating to the earlier stages of the process that could and should have been presented to General Services,” it “would encroach upon the jurisdiction committed to General Services and would be contrary to the Legislature’s declaration that General Services’s decision on such matters shall be final,” meaning that the matter at issue in this case was correctly handled by General Services and that for a court to rule on the matter would be a usurpation of the powers delegated to General Services. ²⁴

A Tennessee case recognizing the power and authority of a government purchasing agent to contract for goods and services is
Metropolitan Air Research Testing Authority, Inc. v. Metropolitan Government of Nashville and Davidson County. According to Metropolitan Charter §§ 8.109, 8.110, 8.111, the responsibility for procuring goods and services for most of the city’s departments rested on the purchasing agent. Upon receipt of a requisition for goods or services costing more than $1,000, the purchasing agent prepares the specifications and issues the advertisements or invitations to bid. After the bid opening, the purchasing agent requests the requisitioning agency to review the bids and obtains a certification from the finance director that funds for the contract are available. Thereafter, the purchasing agent “with the approval of the mayor” makes all determinations with regard to the award of the contract. In concluding that the purchasing agent held the authority to contract, as opposed to a government official on hand at a meeting to give opinions about contract award, the court explained that “procuring goods and services is the type of routine activity that is best left to governmental officials,” and that “public procurement authorities have wide discretion with regard to accepting bids or any of the other details of entering into a contract,” and “in the absence of fraud, corruption, or palpable abuse of discretion, the courts will ordinarily not interfere with [those] governmental procurement [decisions].”

The Authority of Government Personnel

The authority to contract is not unfettered. State agencies and their personnel are restricted in their contracting actions by legislative oversight through appropriations laws and through the requirement of actual authority to enter into and enforce state contracts. With respect to local governments and municipalities, home-rule provisions may provide authority for personnel to contract to the extent that the procurement is strictly local; however, home rule may be limited by state legislatures when contract actions impact statewide interests. Accordingly, state personnel must have actual authority to contract; as well, local and municipal government personnel must also adhere to home-rule limitations as well as actual authority.
In Wyoming, all purchases or all encumbrances on behalf of any municipality shall be made or incurred only upon an order or approval of the person duly authorized to make such purchases except encumbrances or expenditures directly investigated, reported, and approved by the governing body. Similarly, in District of Columbia v. Greene, the court reiterated a basic principle of state procurement law: That, in accordance with District law, a contracting official cannot obligate the District to a contract in excess of his or her actual authority.

In addition to stating the rule requiring actual authority, Greene also restates the well-settled general principle that one who makes a contract with a municipal corporation is bound to take notice of limitations on both the government entity’s and particular officer’s authority to make the contract. That is, persons dealing with a municipal corporation through its agent are bound to know the nature and extent of the agent’s authority in accordance with long-existing and well-settled general rules obtained in the law of agency generally and applying to dealings with both artificial and natural persons. Accordingly, a person making or seeking to make a contract with the District is charged with knowledge of the limits of the agency’s (or its agent’s) actual authority.

In Greene, Verizon South asserted its reliance on the action of the contracting officer, making what amounted to a claim of estoppel against the District. In rejecting the estoppel claim, the court reaffirmed that a party contracting with the government is “on constructive notice of the limits of the [government agent’s] authority,” and cannot reasonably rely on representations to the contrary.

Delegation of Actual Authority

It is a general principle of procurement law that only those specifically delegated actual authority may bind a state government. In ARA Health Services, Inc. v. Department of Public Safety and Correctional Services, a contractor argued that a state department had waived its sovereign immunity against suit for additional contract payments. The Department of Public Safety and Correctional Services, as “a
principal department of the State Government,”\textsuperscript{41} challenged and stated that it continued to enjoy the protective cloak of sovereign immunity. It cited §12-201(a) of Maryland’s State Government title, which provided,

Except as otherwise expressly provided by a law of the State, the State, its officers, and its units may not raise the defense of sovereign immunity in a contract action, in a court of the State, based on a written contract that an official or employee executed for the State or [one] of its units while the official or employee was acting within the scope of the authority of the official or employee.\textsuperscript{42}

The court concluded that although §12–201(a) indeed constitutes a partial waiver of sovereign immunity, its application is limited to actions where: (1) the contract upon which the claim is based was reduced to writing; and (2) the state employee or official acted within the scope of his or her authority in executing the contract.\textsuperscript{43} The Court of Special Appeals concluded that neither requirement was satisfied and held that the contractor’s claim was barred as a result.\textsuperscript{44}

The court also noted that the original contract afforded the contractor “no relief in that its plain terms indicated that reimbursement was due only for hospital-related AIDS services.”\textsuperscript{45} In addition, Modification H to the contract was “similarly unhelpful in that its effective date was subsequent to the period relevant to the dispute.”\textsuperscript{46} The basis of the contractor’s claim, “therefore, [was] the contract as modified by the parties’ conduct during the initial 18-month term of the contract. In order for the waiver of immunity in §12–201(a) to apply, therefore, the modification by conduct must satisfy the requirements set forth in the statute.”\textsuperscript{47}

An express requirement of §12–201(a) was that “the claim must be based on a contract executed within the scope of authority of the State employee or official.”\textsuperscript{48} In determining whether the Department of Corrections “would have acted within the scope of its authority if it modified by conduct the payment terms of the contract with the contractor,” the court found it “necessary to examine the procurement procedures with which the [Department of Corrections] was required to comply.”\textsuperscript{49}
The court determined that the “terms of the contract clearly stated that the parties to the contract were the contractor and the State of Maryland, ‘acting through’” the Department of Corrections. In executing the contract on the State’s behalf, the Department of Corrections “acted merely as an agent of the State and, in this capacity, enjoyed only limited powers.” Specifically, the Department of Correction’s authority to modify the contract with the contractor “was circumscribed not only by the contract terms, but also by the statutes and regulations applicable to State procurement.”

The court further stated that the legislature has empowered the Board of Public Works (the Board) with control over procurement by State agencies. Under the applicable statute, procurement is broadly defined, in relevant part as “buying or otherwise obtaining supplies, services, construction, construction related services, architectural services, engineering services, or services provided under an energy performance contract,” and a procurement contract is “an agreement in any form entered into by a unit for procurement.” The Board has the “statutory authority both to ‘require prior Board approval for specified procurement actions,’ as well as to dispense with the requirement of Board approval.” Furthermore, the statutory and regulatory scheme that governs State procurement contemplates Board approval “of not only initial procurement contracts, but also of modifications to these contracts.”

Based on the court’s interpretation, the Board has “delegated contracting authority to various governmental units. Often included in these delegations is the authority to execute contract modifications, provided certain conditions are met. For example, the Department of Public Safety and Correctional Services has the authority to execute modifications to contracts for construction and construction-related services that, among other things, do not exceed $50,000 or materially change the scope of the original contract.”

The court concluded that “where there has been no delegation of authority, . . . the procurement regulations expressly provide that Board approval must precede the procurement action.” The court determined that the Board “ha[d] not delegated to the Department [of Corrections] procurement authority with respect to the service contract at issue in the instant case,” and that “[t]he absence of this
delegation necessarily means that the Department must obtain Board approval prior to executing such a contract or any modification thereto.”59

The court found that the modification at issue was “purportedly accomplished by the parties’ conduct. Moreover, while Board approval was procured for Modification H, the modification by conduct that forms the basis of the contractor’s claim did not receive Board approval.”60 As a result, the Department of Correction’s “failure to follow the requirements of the statutory and regulatory scheme with which it must comply amounted to an ultra vires act” and failed to “satisfy the second requirement of § 12–201(a).”61

The court reiterated that “the scope of a State official’s authority is co-extensive with his or her actual authority.”62 As the court observed in the context of municipal corporations in other cases, “[a]lthough a private agent, acting in violation of specific instructions, yet within the scope of a general authority, may bind his principal, the rule, as to the effect of a like act of a public agent, is otherwise.”63 The court explained the general procurement principle that “those who contract with a public agency . . . are presumed to know the limitations on that agency’s authority and bear the risk of loss resulting from unauthorized conduct by that agency.”64 Accordingly, the “scope of authority” to which reference was made in § 12–201(a) was “synonymous with the State agent’s actual authority.”65 “It matters not that the [Department of Corrections], though lacking in actual authority, might have acted with apparent authority to modify the contract. Public policy demands that the State cannot be bound by the unauthorized acts of its agents.”66

The Requirement to Comply with Limits on Authority

The power of the government and its personnel to contract is limited by the requirement of actual authority.67 State courts have analyzed the enforceability of public contracts under the ultra vires doctrine. A contract is said to be ultra vires when it is wholly beyond the scope of the public agency’s authority under any circumstances and for any purpose.68 Where contracts are let in a manner that
contravenes the purpose of competitive bidding, courts have declared them to be void and illegal ab initio. For example, in Platt Electric Supply v. City of Seattle,69 a contract was awarded to a bidder after the contracting officer privately negotiated with him to lower his bid. The court held that the award was void.70 Similarly, when a contract, which by statute required competitive bidding, was let without seeking bids, the contract was void.71 However, a contractor who performs under such a void contract may be permitted to recover in quantum meruit.72 Similarly, where an agency has the general authority to award such a contract, but the award is technically or procedurally flawed such that it violates a statute, a contractor may be permitted quantum meruit recovery so long as the award is not marked by fraud or bad faith and does not manifestly contravene public policy.73 Accordingly, a private party acting in good faith may recover to the extent necessary to prevent manifest injustice or unjust enrichment, thus recovering the reasonable value of performance.

On the other hand, when actual authority does exist, the contracting agency has discretion in awarding contracts. In Heritage Pools, Inc. v. Foothills Metropolitan Recreation and Park District,74 the court determined that a contracting officer acted within the scope of actual authority by conducting negotiations with prime contractors regarding their ability to work with certain subcontractors. In Heritage, the subcontractor argued that the district forced the contractors to select another subcontractor in violation of § 18–8–307 of the Colorado Revised Statutes. This provision stated, in pertinent part,

(1) No public servant shall require or direct a bidder or contractor to deal with a particular person in procuring any goods or service required in submitting a bid to or fulfilling a contract with any government. . . .

(3) It shall be an affirmative defense that the defendant was a public servant acting within the scope of his authority exercising the right to reject any material, subcontractor, service, bond, or contract tendered by a bidder or contractor because it does not meet bona fide specifications or requirements relating to quality, availability, form, experience, or financial responsibility.75
In this case, the district had called in each of the four low-bidding general contractors separately and asked if it would have any problem working with a subcontractor other than Heritage if the district decided to select another subcontractor with greater experience. Each agreed it could work with one of the other subcontractors.\textsuperscript{76} The next lowest-priced subcontractor was proposed. According to the court, the district did not require that the general contractors accept a particular subcontractor, nor did the district require the general contractors to absorb any additional cost because it preferred a different subcontractor.\textsuperscript{77} This type of negotiation and modification did not “constitute a designation of supplier to fulfill a government contract, but rather” was considered “an exercise of the District’s discretion in rejecting a particular subcontractor on the basis of experience.”\textsuperscript{78}

**Legal Significance of Actions by Government Employees without Actual Contract Authority**

Arguments have been raised that a chief procurement officer or purchasing agent, having actual authority, may ratify conduct in violation of a procurement law as long as the ratification is in the best interest of the state.\textsuperscript{79} The majority of state courts interpreting state statutes and codes do not agree. In *McMahon v. City of Chicago*,\textsuperscript{80} the plaintiff, a prospective contractor, asserted that he was party to an oral contract made by a state employee on behalf of the State. Specifically, the plaintiff alleged that a city employee asked him for a proposal, told him he had been awarded the contract, gave him a purchase order number, wrote a memorandum under the city employee’s supervisor’s signature stating that certain city departments (none of which was the purchasing or procurement department) approved of the department’s choice of plaintiff, and arranged for the plaintiff to gain access to restricted vantage points to work on his sketches.\textsuperscript{81} The court found that the plaintiff had not alleged that either city employee he dealt with was a procurement officer or purchasing agent under the statute.\textsuperscript{82} Although the plaintiff stated that he was given a purchase order number, he did not “allege that an authorized official expressly approved the purchase order or assigned
the purchase order number. In fact, issuing purchase order numbers” was not “among the enumerated powers and duties of a municipal purchasing agent.”83

Purchasing and public works contracts with Illinois municipalities are governed by Article 8, Division 10 of the Illinois Municipal Code, which “consists of a municipal purchasing act applicable to cities with populations of 500,000 or more.”84 The Municipal Code “substantially limits the contracting power of municipal employees,” stating,

No department, office, institution, commission, board, agency or instrumentality of any such municipality, or any officer or employee thereof, shall be empowered to execute any purchase order or contract [involving amounts in excess of $10,000] except as herein specifically authorized, but all such purchase orders or contracts shall be executed by the purchasing agent in conformity with [this statute].85

“Municipalities are limited to only those powers that are given to them by constitution and statute, and a municipality cannot be bound by a contract that does not comply with the prescribed conditions for the exercise of its power.”86 “A purchase order or contract that does not comply with the Illinois Municipal Code ‘shall be null and void as to the municipality.’”87

The Chicago Municipal Code provides that the city’s chief procurement officer has the powers and duties mandated by the Illinois Municipal Code.88 “No contract shall be binding upon the city, nor shall any work contracted for be commenced . . . until the contract . . . has been duly executed.”89 “A municipality’s power to contract is limited by statute and the city cannot be bound unless statutory requirements are followed.”90

Based on the governing codes and statutes, “a prospective contractor who deals with a municipal corporation is presumed to know the limitations of the power of the city officials to enter into contracts.”91 This expectation is also explained in Eugene McQuilllin’s treatise on municipal law: (1) a prospective contractor must confirm that his or her contract complies substantially with the city ordinance and is authorized by the controlling law; (2) when a municipality
exceeds the law, the person dealing with the municipal official does so at his or her own risk; and (3) if the contract is not authorized, the would-be contractor is deemed a mere volunteer. Accordingly, the court determined that when a plaintiff, as the one in McMahon, “relies on the statements of an unauthorized official, the reliance has been held to be unwarranted because the statute has put the party on notice that the official’s authority is limited.”

Relying on agency law, the plaintiff also contended that the city employees with whom he dealt “had either actual or apparent authority to enter into the contract with him,” and that, because the city employee obtained a purchase order number, the employee “must have been authorized to enter into contracts.” In particular, the plaintiff argued,

> [t]he Purchasing Statutes do not grant absolute immunity from the entry of certain of its employees into well documented (as the case at bar) oral contracts—to bind the City. Courts must carefully consider the facts of each individual case, with an eye towards whether actual authority, implied authority or ratification arose during the transaction—all of which were ignored by the Court below. While the statutes limit the circumstances under which authority can arise, they do not eliminate the existence of authority altogether.

The court articulated that the plaintiff “relied on principles of agency law” to argue that the city employee “was authorized to enter into the contract based on the theories of delegation, apparent authority, implied authority or ratification.” The plaintiff offered several arguments to support his theory, saying that

the city is allowed to delegate its authority to contract; a city may cloak its employees with the apparent authority to enter into agreements on the city’s behalf; a contract is valid where a city knowingly ratifies or fails to interfere with a contract made by unauthorized employees; a city commissioner’s knowledge that work is being done for the city’s benefit may be imputed to the city; even where a statute expressly limits the authority of an official, the inconsistent acts of the city act as a waiver on the limitations; and a third party can hold a defendant liable for
the acts of its agent where the defendant created the appearance of authority.97

The court concluded that the plaintiff’s reliance on principles of delegation, apparent authority, implied authority, ratification, and agency law was “misplaced within the municipal law context.”98 The court agreed with the city’s argument that implied contracts are not recognized in cases involving municipalities: a contract cannot be implied if the statutory method of executing a municipal contract has not been followed. Implied contracts with municipalities that are *ultra vires*, contrary to statutes, are unenforceable. Unless the power to bind the city in a contract is expressly delegated to someone other than the statutory authority, only the statutorily designated authorities may execute contracts.99

“A municipal contract which is legally prohibited or beyond the power of the municipality is absolutely void and cannot be ratified by later municipal action.”100

According to the court, “under both state statutes and city ordinances, only the city’s procurement officer or purchasing agent has the authority to contract.”101 The plaintiff “did not allege that the authority to contract had been expressly delegated. Instead he alleged, without factual support, that the city employee must have had implied authority. This fails because implied authority results in *ultra vires*, unenforceable contracts.”102

The plaintiff also raised a “fairness argument,” asking the court “not to immunize the city from liability for its informal contracts because the city must be held to standards of honesty and fair dealing.”103 The court concluded that it did not “see how honesty and fair dealing would be promoted by holding the city to unauthorized informal agreements,” because “the municipal purchasing statute circumscribed municipal contracting,” in order to guard against “favoritism, improvidence, extravagance, fraud and corruption, [and to help] secure the best work or supplies at the lowest price practicable.”104 Accordingly, the enforcement of the statute, not informal contracts, achieves those aims.
Similarly, in *Shampton v. City of Springboro*,\(^{105}\) the court summarized the rule that lack of actual authority to contract results in a null and void contract. Specifically, the court stated that people “seeking to enter into a contractual relationship with a governmental entity are on constructive notice of the statutory restrictions on the power of the entity’s agent to contract.”\(^{106}\) Reinforcing this principle is *Shipley v. Cates*,\(^{107}\) in which the court held that a government contract is “void where the public official did not have constitutional or statutory authority to enter into the contract.”\(^{108}\) The court went on to say, however, “[t]hough . . . a person entering into a contract with the government is charged with knowing the government agent’s authority to contract, he or she is not charged with knowing whether the authorized contract is somehow defective because of the agent’s misinterpretation or misapplication of law.”\(^{109}\) Regardless, the court concluded that all persons dealing with government officers are charged with knowledge of the extent of their authority and are bound, at their peril, to ascertain whether the contemplated contract is within the power conferred.\(^{110}\) Finally, *Nichols v. Jackson*\(^{111}\) cements the principle that contracts of public officials entered without constitutional, statutory, or other authority are void.

**Binding the Government through Conduct of Its Agents**

This section deals with the scope of a government employee’s authority as opposed to whether authority to contract is present. The doctrine that the government cannot be estopped or bound by the unauthorized acts or conduct of its agents or its employees has been widely applied in a variety of contexts. For example, it is well settled that “only those with specific authority can bind the government contractually; even those persons may do so only to the extent that their authority permits.”\(^{112}\) This judicial reluctance to bind the government by its agent’s unauthorized conduct is based upon numerous considerations, including sovereign immunity, separation of powers, and public policy.
For example, in *Service Management, Inc. v. State Health and Human Services Finance Commission*, the court determined that an “erroneous misconstruction of the contract by a State employee” did not “change the contract’s explicit terms” and the State was not bound by the act of its officer in making an unauthorized payment. Thus, the general rule is that a government entity cannot be estopped by the conduct of one of its officers that exceeds the authority conferred upon him or her, and anyone dealing with a government agency assumes the risk of having ascertained whether the official or agent is acting within the bounds of his or her authority.

**Conclusion**

State and local procurement systems are challenging to navigate because of the various levels of government and the many layers of authority to contract. It is vital to understand that, more often than not, purchasing and procurement authority is dispersed at each level of government—state, local, city, and municipal. Accordingly, lawyers, procurement professionals, and contractors should be aware of the laws, regulations, and rules governing authority for any given procurement.
## Appendix

### State Procurement Codes

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<tr>
<th>State</th>
<th>Main Citation</th>
<th>Related Citations</th>
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<td>Alabama</td>
<td><strong>AL A. CODE ANN. 1975,</strong> Title 41, Ch. 16, Arts. 1–7, §§ 41–16–1 through 41–16–144</td>
<td>Chapter 16A; <strong>AL. ADMIN. CODE,</strong> Ch. 355–4–1; <strong>AL. DEPT OF FINANCE,</strong> <strong>FISCAL PROC.</strong> Man., Ch. 4</td>
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<td>Alaska</td>
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<td><strong>AM. SAMOA ADMIN. CODE,</strong> Title 12, Ch. 2</td>
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<td><strong>ARIZ. ADMIN. RULES &amp; REGS.,</strong> A.A.C. R.2–7–101 et seq.; <strong>LOCAL GOVERNMENT CODE (CONSTRUCTION)</strong> A.R.S. Title 34; <strong>LOCAL GOVERNMENT CODE FOR NON-CONSTRUCTION,</strong> A.R.S. Titles 9 (Cities) and 11 (Counties)</td>
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**Note:** This table is not comprehensive; rather, it is offered as a starting point for researching a jurisdiction’s laws, codes, and/or regulations dealing with procurement. The table identifies a state or territory. Next, the table offers a citation to the primary state level procurement statute. Finally, where space limitations permit and when jurisdictions have significant additional governing codes, the table provides a reference to these codes under the related citation heading. A number of jurisdictions will likely have codes addressing local government procurement that should be consulted when dealing with procurement actions at the local level.
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<td>C.N.M.I. Title 70, Ch. 70–30, Subch. 70–30.3</td>
<td>The Department of Finance Regulations and relevant subsections of the Commonwealth Administrative Code are currently under review. Once the review is complete, the code and regulations will be posted at <a href="http://www.cnmidof.net/procure/">http://www.cnmidof.net/procure/</a></td>
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<td>Florida</td>
<td>Fl St. Ann. Title 19, Chs. 287 &amp; 255 (Capital Projects)</td>
<td>Commodities, Insurance, and Contractual Services, §§ 287.001–287.1345; Means of Transport, §§ 287.14–287.20; Ch. 120, Florida Statutes, which is the Florida Administrative Procedures Act, contains provisions governing bid protests, specifically § 120.57(3); Florida's Public Records Act, Ch. 119, Florida Statutes, and Florida's Code of Ethics for Public Officers and Employees, Part III, Ch. 112, Florida Statutes, also contain provisions relevant to state and local procurement in Florida. Ch. 255 (Construction Projects) Ch. 337.11 (Highway Construction/Maintenance).</td>
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<tr>
<td>Hawai‘i</td>
<td>Division 1, Title 9, HRS § 103D</td>
<td>Division 1, Title 9, HRS § 103F; H.A.R. §§ 3-120–132; H.A.R. §§ 3-140–149</td>
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<td>Illinois</td>
<td>30 ILCS 500</td>
<td>ILL. ADMIN. CODE Title 44 §§ 1.1 through 1.7030; local government contract rules and regulations are spread across living wage ordinances, debarment rules, dispute resolution regulations, and protest procedures, <a href="http://www.cityofchicago.org/content/city/en/depts/dps/provdrs/comp.html">http://www.cityofchicago.org/content/city/en/depts/dps/provdrs/comp.html</a></td>
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<td>State</td>
<td>Code Reference</td>
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<td>Iowa</td>
<td>IOWA CODE Title I, Subtitle 4, Ch. 8A; the Iowa Code chapters relating to procurements Ch. 8, Ch. 8A, Ch. 72, Ch. 73, Ch. 73A, and Ch. 307</td>
<td>IOWA ADMIN CODE 11, Ch. 105. Procurements by counties, municipalities, and utilities are governed by other sections of the Iowa Code, including IOWA CODE Chs. 331 (County Home Rule Implementation); 362 (Cities—Definitions and Miscellaneous Provisions), 364 (Powers and Duties of Cities); 384 (City Finance); and 473 (Energy Development and Conservation).</td>
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<td>Kansas</td>
<td>KS ST. ANN. §§ 75–3735 through 75–3744</td>
<td>KS Admin. Regs. Agency 48 and Agency 50. The Code of Ordinances for each municipality may contain purchasing rules or polices; see municipal code library for the State of Kansas, <a href="http://www.municode.com/library/KS">http://www.municode.com/library/KS</a>. An example is Wichita Code of Ordinances Purchasing Policy Title 2, Ch. 64.</td>
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<td>Kentucky</td>
<td>KY REV. ST. ANN. §§ 45A.005 through 45A.990</td>
<td>KY REV. ST. Chs. 46, 47, 48; K.A.R. Title 200, Ch. 5, <a href="http://www.lrc.state.ky.us/kar/TITLE200.HTM">http://www.lrc.state.ky.us/kar/TITLE200.HTM</a></td>
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<td>Maryland</td>
<td>MD. CODE STATE FIN. &amp; PROC., Div. 1, Title 11–19 §§ 11–101 through 19–120</td>
<td>Title 17, State and Local Subdivisions; COMAR Title 21</td>
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<td>State</td>
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<td>Nevada</td>
<td>NV Title 27, Ch. 333, §§ 333.010 through 333.820</td>
<td>NRS Ch. 332, Purchasing: Local Governments; NRS Ch. 333A, State Performance Contracts for Operating Cost-Savings Measures; NRS Ch. 334, Purchasing: Generally</td>
</tr>
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New Hampshire  
N.H. Rev. St. Title I, Ch. 21, §§ 21-1:1 through 21-1:86  
RSA § 28:8, Competitive Bidding on Purchases (county purchases); RSA § 48:17; City Purchasing Departments (city purchasing departments); Title III, Ch. 31:59a–d, Town Central Purchasing Department; N.H. Admin. Rules, Adm. 600 et seq (Plant and Property Management Rules); City of Manchester, New Hampshire Procurement Code, http://www.manchesternh.gov/website/portals/2/departments/purchasing/Current%20Procurement%20Code.pdf

New Jersey  
Local Public Contract Law, N.J.S.A. 40A:11–1 et seq.; NJ Admin. Code Ch. 17:12

New Mexico  
N.M. St. Ann. Ch. 13, Art. 1, §§ 13–1–1 through 13–1–199  

New York  
N.Y. Cls. St. Fin. §§ 160 et seq.  
N.Y. Comp. Codes R. & Regs. Tit. 9, §§ 250.0 et seq., Purchasing Regulations

North Carolina  

North Dakota  
N.D. St. Ann. §§ 54–44.4–01 through 54–44.4–14  
N.D. Admin. Code §§ 4–12–01 to 16; N.D. Cent. Code § 11–11–14, County Procurement Authority; N.D. Cent. Code § 40–05–01, Municipality Procurement Authority; Public improvement Bids and Contracts, N.D. Cent. Code § 48–01.2; Architect, engineer, construction management, and land surveying services under N.D. Cent. Code Ch. 54–44.7

Ohio  

Oklahoma  
74 OK St. Ann. §§ 85.1–85.44C through 227  
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<th>State</th>
<th>Main Citation</th>
<th>Related Citations</th>
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<tr>
<td>Puerto Rico</td>
<td>22 L.P.R.A. § 41</td>
<td>“The Commonwealth public works and joined services connected therewith, such as the buying of materials and so forth, which are the subject of §§412, 413, 417–423 of Title 3 and §§1-5 and 41-46 of this title shall be done by contract awarded after public bidding in accordance with the provisions hereof.”—Political Code, 1902, §420.</td>
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<td>Rhode Island</td>
<td>R.I. GEN. LAWS 1956 §§37-2-1 et seq.</td>
<td>R.I. GEN. LAWS §§45-55-1 et seq.; R.I. PROC. REGS. §§1-12</td>
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<td>South Carolina</td>
<td>S.C. CODE ANN. Title 11 Ch. 35-10 et seq.</td>
<td>S.C. CODE REGS., Ch. 19, Art. 4; Local Government Procurement S.C. CODE ANN. §§11-35-50 and 70</td>
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<td>Tennessee</td>
<td>TN CODE ANN. §12-3-101 et seq.</td>
<td>TN CODE ANN. Title 5, Ch. 14 (county purchasing); Title 6, Chs. 19, 35, and 56 (cities and towns); TENN. CODE R. &amp; REGS. R 0620-3-3-.01 and .03; <em>Department of General Services Purchasing Division, Purchasing Policy Manual</em>, <a href="http://tn.gov/generalserv/purchasing/documents/topsman.pdf">http://tn.gov/generalserv/purchasing/documents/topsman.pdf</a>; Purchasing Guide for Tennessee Municipalities, <a href="http://www.mtas.utk.edu/KnowledgeBase.nsf/bfbd8572d38db861852569ca006e7708/467676aed07ba76b8852575750544ee6/$FILE/Purchase%20Guide%202008.pdf">http://www.mtas.utk.edu/KnowledgeBase.nsf/bfbd8572d38db861852569ca006e7708/467676aed07ba76b8852575750544ee6/$FILE/Purchase%20Guide%202008.pdf</a></td>
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<td>Texas</td>
<td>Texas Gov’t Code, Chs. 2155.001 through 2155.510, 2156, 2157, 2158</td>
<td>TXADMIN. CODE Title 34, Part 1, Ch. 20; Texas Local Gov’t Code, Title 8, Chs 252 and 271; <em>Texas Procurement Manual</em>, <a href="http://www.window.state.tx.us/procurement/pub/manual/">http://www.window.state.tx.us/procurement/pub/manual/</a></td>
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<td>Code/Title/Announcement</td>
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<td>U.S. Virgin Islands</td>
<td>V.I. St. Title 31, Ch. 23, §§ 231–251</td>
<td>Procurement-related documents and forms, <a href="http://npv.org:2005/pnvip/documents.php">link</a></td>
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<td>Vermont</td>
<td>VT St. Ann. Title 29, Ch. 49; Title 3, Part 1, Ch. 14, §§ 341 et seq.</td>
<td>State of Vermont Agency of Administration, Bulletin No. 3.5, Contracting Procedures, <a href="http://aoa.vermont.gov/sites/aoa/files/pdf/AOA-Bulletin_3_5.pdf">link</a></td>
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<td>Virginia</td>
<td>VA Code Ann. § 2.2–4300 et seq.</td>
<td><a href="http://www.eva.state.va.us/aspmanalen/aspmanalen.htm">link</a></td>
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<td>West Virginia</td>
<td>W.V. Code Ann. §§ 5A-3-1 et seq., and § 7-1-11</td>
<td>W.V. Code Ann. § 8-12-10 (Municipalities); W.V. Code Ann. § 5-22A-11 (Design Build Procurement Act); 148 C.S.R. 1 et seq. (Purchasing Division); 148 C.S.R. 11 et seq. (Design-Build); West Virginia Purchasing Division Procedures Handbook, <a href="http://www.state.wv.us/admin/purchase/handbook/2007R14/default.htm">link</a>; Vendor Procurement Guide, <a href="http://www.state.wv.us/admin/purchase/vrc/VPG/default.html">link</a></td>
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<td>Wyoming</td>
<td>WY St. § 9-2-1027</td>
<td>WY St. § 16–4–107 (Local Government Procurement); WCWR 006–160–001 through 009 (State Purchasing Rules); Wyoming Purchasing Procedures Manual, <a href="http://ai.state.wy.us/generalservices/procurement/PDF/PurchasingPolicyAndProcedures.pdf">link</a></td>
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</table>
Notes

6. Id. §§ 39:1481–1526.
7. Id. §§39:1551–1755.
11. Id.
12. See id.
13. With respect to local governments and municipalities, home-rule provisions provide authority for personnel to contract to the extent that the procurement is strictly local. See In re Title, Ballot Title and Submission Clause, and Summary for 1999–2000 No. 104, 987 P.2d 249 (Colo. 1999); Worth County Friends of Agriculture v. Worth County, 688 N.W.2d 257 (Iowa 2004) (other than to levy taxes); In re Dakota Telecommunications Group, 590 N.W.2d 644 (Minn. Ct. App. 1999); Munroe v. Town of East Greenwich, 733 A.2d 703 (R.I. 1999).
15. Id. § 123.01(A)(1).
17. Id.
18. Id.
19. Id.
20. Compare In re Extension of Boundaries of City of Sardis, 954 So. 2d 434 (Miss. 2007) (operating entirely under Dillon’s Rule) and Marich v. Bob Bennett Constr. Co., 116 Ohio St. 3d 553 (2008) (confirming primacy of general law when ordinance is in conflict) with Cawdrey v. City of Redondo Beach, 15 Cal. App. 4th 1212, 19 Cal. Rptr. 2d 179 (1993) (referring to California State Constitution, Art. XI, section 3, which permits a measure of home rule by allowing counties as well as cities to adopt a charter that shall supersede any existing charter and all laws inconsistent therewith).
22. Id., 17 Cal. Rptr. 2d at 48.
23. Id.
24. *Id.* at 48–49.
26. *Id.* at 618.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
32. *Id.* at 619.
35. 806 A.2d 216 (D.C. 2002).
36. *Id.* (citing Coffin v. District of Columbia, 320 A.2d 301, 303 (D.C. 1974)).
38. *See* Greene, 806 A.2d at 222 (citing Chamberlain, 606 A.2d at 159 and Office of Personnel Management v. Richmond, 496 U.S. 414, 419 (1990) (that “equitable estoppel will not lie against the Government as against private litigants” is well established)).
40. *Id.* at 436.
41. *Id.* at 439.
42. *Id.* at 438.
43. *Id.* at 438–39.
46. *Id.* at 438–39.
47. *Id.* at 439.
48. *Id.*
49. *Id.*
50. *Id.*
51. ARA Health Servs., 685 A.2d at 439.
52. *Id.*

56. *Id.* See also COMAR 21.02.01.04A-D (delegating authority to the Secretaries of the Department of Budget and Fiscal Planning, the Department of General Services, the Department of Transportation; the Maryland Transportation Authority; and the Chancellor of the University of Maryland System for the approval and award of certain contracts and contract modifications under limited conditions).

57. 685 A.2d at 439.

58. See COMAR 21.02.01.05A(1) (providing that “the Board shall review and approve the award of those procurement contracts not delegated under this chapter, before execution”).

59. 685 A.2d at 439.

60. *Id.*

61. *Id.* at 439–40.

62. *Id.* at 440.

63. *Id.*

64. *Id.* (citing Schaefer v. Anne Arundel County, Md., 17 F.3d 711, 714 (4th Cir. 1994) (applying Maryland law and observing that “[people] who contract with the government do so at their peril when they fail to take notice of the limits of the agent’s authority)).

65. *ARA Health Servs.*, 685 A.2d at 440.

66. *Id.*


70. *Id.*


75. *Id.* at 1263.

76. *Id.*

77. *Id.*

78. *Id.*

79. HRS §103D-707; HAr §3-126–38.


81. *Id.* at 348.

82. *Id.* at 351.

83. *Id.* (citing 65 ILL. COMP. STAT. 5/8–10–16 (West 2000); Chicago Municipal Code §2–92–010 (amended September 4, 2002)).

84. *Id.* at 350 (citing 65 ILL. COMP. STAT. 5/8–10–1 et seq. (West 2000)).
85. *Id.* (citing 65 Ill. Comp. Stat. 5/8-10-18).
86. *Id.* (citing Ad-Ex, Inc. v. City of Chicago, 565 N.E.2d 669, 673 (Ill. 1990)).
87. *Id.* at 350 (citing 65 Ill. Comp. Stat. 5/8-10-21 (West 2000)); see also Stanley Magic-Door, Inc. v. City of Chicago, 393 N.E.2d 535 (Ill. 1979).
90. *McMahon*, 789 N.E.2d at 350; see also Roemheld v. City of Chicago, 83 N.E. 291 (Ill. 1907) (where a statute or ordinance specifies how a city official can bind the city by contract, that method must be followed); DeKam v. City of Streator, 146 N.E. 550 (Ill. 1925) (a contract expressly prohibited by a valid statute is void; there are no exceptions); Haas v. Commissioners of Lincoln Park, 171 N.E. 526 (Ill. 1930) (where a charter prescribes how a municipal corporation is to enter into contracts, that method is exclusive and must be followed); Chicago Food Management, Inc. v. City of Chicago, 516 N.E.2d 880 (Ill. 1987) (where a city’s agents are restricted by law as to the method of contracting, agreements executed by officials lacking authority are illegal and void).
93. *Id.* at 351.
94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.* at 351–51 (internal citations omitted).
98. *Id.* at 347, 352.
99. *Id.* at 352 (internal citations omitted).
100. *Id.* (citing *Ad-Ex*, 565 N.E.2d 669, 675 (Ill. App. Ct. 1990)).
101. *Id.*
102. *Id.* at 352.
103. *Id.* at 353.
105. 98 Ohio St. 3d 457, 2003-Ohio-1913, 786 N.E.2d 883.
106. 2003-Ohio-1913 at ¶ 34, 786 N.E.2d at 888.
107. 200 S.W.3d 529 (Mo. 2006).
108. *Id.* at 534.
109. *Id.* at 535.
110. *Id.* at 539 (citing Aetna Ins. Co. v. O’Malley, 124 S.W.2d 1164, 1166 (Mo. 1939)).
111. 2002 OK 65, 55 P.3d 1044.
114. Id. at 444. See also Wisconsin Central R.R. Co. v. United States, 164 U.S. 190 (1896); Dep’t of Pub. Safety v. ARA, 668 A.2d 960, 969 (Md. Ct. Spec. App. 1995) (noting the rule that those who contract with a public agency are presumed to know the limitations on that agency’s authority and bear the risk of loss resulting from unauthorized conduct by that agency, and citing Gontrum v. City of Baltimore, 182 Md. 370, 35 A.2d 128 (1943), which has stated: “Although a private agent, acting in violation of specific instructions, yet within the scope of a general authority, may bind his principal, the rule, as to the effect of a like act of a public agent, is otherwise.” 182 Md. at 375, 35 A.2d at 130); Schaefer v. Anne Arundel County, Md., 17 F.3d 711, 714 (4th Cir. 1994) (applying Maryland law and observing that “[people] who contract with the government do so at their peril when they fail to take notice of the limits of the agent’s authority”)).
115. See Metromedia, Inc. v. Kramer, 504 N.E.2d 884 (Ill. App. Ct. 1987) (in Illinois, a limited exception to the general rule exists only where the party invoking the doctrine of estoppel shows (1) some affirmative act by the government agency that induced his good-faith actions and (2) that without the relief requested he or she would suffer a substantial loss).