S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

April 9, 2009

Opinion No. 09-55

Board of Regents Master Intergovernmental Cooperative Purchasing Agreement

QUESTIONS

1. Has the National Intergovernmental Purchasing Alliance met the requirements of Tenn. Code Ann. §§ 12-9-101, *et seq.*, the Interlocal Cooperative Act, in order for Tennessee Board of Regents institutions to make purchases from suppliers pursuant to the Master Intergovernmental Cooperative Purchasing Agreement?

2. If not, has the National Intergovernmental Purchasing Alliance met the requirements of Tenn. Code Ann. § 49-7-127 for a group purchasing program?

OPINIONS

1. Yes. In accordance with Tenn. Code Ann. § 12-9-104(c) and (d), the Master Intergovernmental Cooperative Purchasing Agreement provides that the National Intergovernmental Purchasing Alliance is the administrator of the cooperative purchasing program established under the agreement. No additional information about the National Intergovernmental Purchasing Alliance is required under the Interlocal Cooperative Act, Tenn. Code Ann. §§ 12-9-101, *et seq.*

2. Based on the answer to Question No. 1, this opinion need not address this question.

ANALYSIS

This request relates to the Tennessee Board of Regents' ("TBR") participation in a cooperative purchasing arrangement in which TBR institutions may buy supplies on the same terms and pricing under a contract competitively bid by a public agency in another state. To participate, TBR has entered into a Master Intergovernmental Cooperative Purchasing Agreement (the "Master Agreement"), a copy of which is attached to the request. The Master Agreement identifies the National Intergovernmental Purchasing Alliance ("National IPA") as an administrative agent for the procuring agencies and the participating agencies, like TBR.

The request states that TBR participates in the cooperative purchasing arrangement under the authority of the Interlocal Cooperation Act, Tenn. Code Ann. §§ 12-9-101 *et seq*. ("the Act").

You have asked whether National IPA meets the requirements of the Act to serve as administrator for the cooperative undertaking.

Review of the Act's statutory requirements and the terms of the Master Agreement indicates that National IPA meets the requirements of the Act to provide administrative services for the cooperative undertaking. The Act exists to permit cooperation between governmental agencies for their mutual advantage. *See* Tenn. Code Ann. § 12-9-102. Tenn. Code Ann. § 12-9-104 broadly authorizes a public agency in Tennessee to enter into an interlocal cooperative agreement with a public agency of another state.[1] Tenn. Code Ann. § 12-9-104(a) reads in pertinent part:

> Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state, may be exercised and enjoyed jointly with any other public agency of the state having the power or powers, privilege or authority, and jointly with any public agency of any other state or the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment.

Thus, the joint endeavor must be within each respective agency's authority and the laws of the non-Tennessee agency must likewise permit such agency to enter into the cooperative agreement with the Tennessee agency. Tenn. Code Ann. § 12-9-104(a), (b) and (e).

Although nothing in the Act specifically identifies a cooperative purchasing agreement, such as the Master Agreement, the broad language of § 12-9-104 would include this type of non-exclusive agreement under which one agency may purchase from another agency's competitively bid contract.[2] The single procurement increases efficiency and reduces administrative expenses. And both the procuring agency and TBR, together with other participating agencies, are able to purchase goods at a lower price based on the predictably larger volume of goods sold.

The Act, at Tenn. Code Ann. § 12-9-104(c) and (d), sets forth certain subject matters cooperative agreements must specify. In particular, subsections (c)(2) and (d)(1) mandate that the agencies' cooperative agreement either establish a separate legal or administrative entity to conduct the cooperative undertaking or provide for an administrator or a joint board responsible for administering the cooperative undertaking. If the agencies do establish a separate entity,

---

[1] While Tenn. Code Ann. § 12-9-102 states that the purpose of the Act is to assist "local government units," Tenn. Code Ann. § 12-9-104(a)(1) and (b) clarify that the Act applies to any "public agency of this state." The definition of "public agency" in Tenn. Code Ann. § 12-9-103(3) includes "any agency of the state government or of the United States." TBR, created by Tenn. Code Ann. § 49-8-101, is the state agency vested with the authority to govern, manage and control the state university and community college system. It has the implied power under Tenn. Code Ann. § 49-8-203 to enter contracts for the provision of goods and services. Thus, it may be concluded that the Board may enter into interlocal cooperation purchasing agreements pursuant to the Act.

[2] Tennessee statutory law includes several statutes specifically pertaining to cooperative purchasing. *See, e.g.*, Tenn. Code Ann. §§ 12-3-216 (authorizing Commissioner of General Services to enter cooperative purchasing agreements with other states, local governments and higher education institutions); 12-3-1009 (authorizing local governments to participate in, sponsor, conduct or administer a cooperative purchasing agreement with other local governments); and 49-7-127(authorizing higher education institutions to purchase goods and services through a group purchasing program).

their agreement must specify the "precise organization, composition and nature" of the entity, together with its powers. Tenn. Code Ann. § 12-9-104(c)(2). But if the agencies opt to designate a third-party administrator, the Act does not expressly require the agreement to specify the administrator's organizational details.

In the instant case, the Master Agreement is the cooperative agreement. To participate in the cooperative purchasing arrangement, TBR registered electronically with National IPA and entered into the Master Agreement, a copy of which is included with the opinion request. The Master Agreement is between TBR, as a "Participating Public Agency," and "Principal Procurement Agencies," which are the government agencies that have competitively solicited contracts in accordance with their public purchasing laws. Principal Procurement Agencies also execute "Principal Procurement Certificates," which are appended to and made a part of the Master Agreement.

In accordance with Tenn. Code Ann. § 12-9-104(d)(1), the Master Agreement also identifies that National IPA is the administrator of the cooperative undertaking. To wit, the Master Agreement recites that the agreements between Principal Procurement Agencies and suppliers "are made available [to Participating Public Agencies] by Principal Procurement Agencies *through National IPA*" (emphasis added).[3]

Based on our review of the Act and the Master Agreement, it is the opinion of this Office that National IPA meets the requirements of the Act in order for TBR institutions to make purchases from suppliers pursuant to the Master Agreement. The Act simply requires that the Master Agreement provide for an administrator, which the Master Agreement does. Additionally, the Master Agreement states that the contracts have been competitively solicited by a lead public agency in accordance with their public purchasing rules and regulations. The Master Agreement further recites there is consent of all parties for the joint undertaking, including the supplier, the lead public agencies and participating agency purchasing from the lead public agency contract.[4]

ROBERT E. COOPER, JR.
Attorney General and Reporter

[3] The Master Agreement appears in all other respects to satisfy the requirements of Tenn. Code Ann. § 12-9-104(c) and (d) to the extent those requirements apply to cooperative purchasing. For example, the Master Agreement states the purpose of the agreement, the duration of the agreement, the obligation of TBR as a participating public agency and the method of terminating the contract. Some of the requirements, such as those stated in subsections (c)(4) and (d)(2), have no application due to the nature of cooperative purchasing.

[4] The request also includes an example of an administrative agreement National IPA enters into with suppliers under which suppliers agree, among other terms, to pay National IPA an administrative fee for its services.

MICHAEL E. MOORE
Solicitor General

EUGENIE B. WHITESELL
Senior Counsel

Requested by:

The Honorable Charles W. Manning
Chancellor
Tennessee Board of Regents
1415 Murfreesboro Road, Suite 340
Nashville 37217-2833