

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

April 2, 2015

Opinion No. 15-31

Local Agencies Combining Procurement Bids

Question

Is it possible for a local sheriff's office and a school board to combine their food procurement bids in order to take advantage of the higher total purchase amount so that both local governmental entities save money?

Opinion

Yes.

ANALYSIS

Tennessee Code Annotated § 12-3-1203 authorizes local governmental units, with certain limitations, to make purchases for other local governmental units (1) when there is a request for such a purchase, or (2) when such a purchase is made under existing contractual arrangements entered into by another local governmental unit purchaser.

Specifically, Tenn. Code Ann. § 12-3-1203(a) (emphasis added) provides in part:¹

Any municipality, county, utility district, or other local governmental unit of the state may, *upon request*, purchase supplies, equipment, and services for any other municipality, county, utility district, or other local government unit.

And Tenn. Code Ann. § 12-3-1203(c)(1) (emphasis added) provides in part:²

Any municipality, county, utility district, or other local governmental unit of this state may purchase supplies, goods, equipment, and services *under contracts or price agreements entered into by any other local governmental unit of this state*.

¹ Subsections (a)(1) through (a)(3) set out some requirements and limitations that apply or might apply when such a request is made and purchases are made by request.

² Subsection (c)(1) also specifies some conditions and requirements that apply or might apply when joint purchases are made under such a contract. Subsection (c)(1) does not apply to purchases of motor vehicles (with some exceptions) and does not apply to purchases related to any transportation infrastructure project. Tenn. Code Ann. § 12-3-1203(c)(1) Tenn. Code Ann. § 12-3-1203(c)(1).

A local sheriff's office and a board of education are both "local governmental units" falling within the provisions of Tenn. Code Ann. § 12-3-1203. Purchasing food supplies and receiving bids from suppliers of foodstuffs also fall within these provisions. Accordingly, Tenn. Code Ann. §§ 12-3-1203(a) and (c)(1) provide authority for combining bidding and procurement of food supplies by a local sheriff's office and a local school board.

It should be noted that Tenn. Code Ann. § 12-3-1203(b) contains special provisions for equipment purchases by local education agencies (LEAs).³ It specifies that an LEA may purchase equipment under the same terms of a legal bid or contract initiated by any other LEA. Subsection (b) of the statute, therefore, expressly limits purchases of equipment by an LEA to only equipment contracts procured by another LEA, notwithstanding the general applicability of subsections (a) and (c) which broadly include procurement of supplies, goods, and services as well as equipment purchases. *See Keough v. State*, 356 S.W.3d 366, 371 (Tenn. 2011) (citing generally accepted rule of statutory construction that "a special statute, or a special provision of a particular statute, will prevail over a general provision in another statute or a general provision in the same statute"). Subject to this specific limitation on equipment procurement in subsection (b), however, subsections (a) and (c) of Tenn. Code Ann. § 12-3-1203 allow purchases of food supplies and services by an LEA in conjunction with any other municipality, county, utility district, or other governmental unit.

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

JANIE C. PORTER
Senior Counsel

³ The terms "local education agency" and "local board of education" are defined in Tenn. Code Ann. § 49-1-103. A local board of education is the board of education that manages and controls the respective local public school system. Tenn. Code Ann. § 49-1-103(1). A local education agency includes a county or city school system, a special school district, and other local public school system or district created by the general assembly. Tenn. Code Ann. § 49-1-103(2).

Requested by:

The Honorable Steve Southerland
State Senator
10 Legislative Plaza
Nashville, TN 37243-0201