



August 27, 2015

To: North Carolina units of local government and other interested parties

From: Norma R. Houston, *Lecturer in Public Law and Government*

Re: North Carolina Sheriffs' Association Vehicle Procurement Program

The UNC School of Government has been asked to render an opinion about the legality of purchasing law enforcement vehicles directly through the North Carolina Sheriffs' Association Vehicle Procurement Program ("the NCSA Program") under the group purchasing program exception to competitive bidding requirements under North Carolina General Statute 143-129(e)(3). The following opinion is not a recommendation for or endorsement of the products or services offered through the NCSA Program.

Under North Carolina law, when a local government subject to Article 8, Chapter 143 of the North Carolina General Statutes decides to purchase apparatus, supplies, materials, or equipment involving the expenditure of \$30,000 or more, that local government must follow certain statutory bidding procedures unless an exception applies. G.S. 143-129 contains several exceptions to these bidding requirements. One of these exceptions, found in G.S. 143-129(e)(3), allows local governments to purchase apparatus, supplies, materials, or equipment through a "competitive bidding group purchasing program" instead of following the bidding requirements of Article 8. G.S. 143-129(e)(3) defines a "competitive bidding group purchasing program" as "a formally organized program that offers competitively obtained purchasing services at discount prices to two or more public agencies." In my opinion, the NCSA Program qualifies as a competitive bidding group purchasing program under G.S. 143-129(e)(3).

Accordingly, local governments subject to Article 8, Chapter 143 of the North Carolina General Statutes have the legal authority to purchase vehicles directly from vendors under contract through the NCSA Program under the group purchasing program exception in G.S. 143-129(e)(3), unless such purchases are inconsistent with local policies or procedures. An analysis of the NCSA Program under the group purchasing program exception follows.

Formally Organized Program

In order to qualify as a group purchasing program under G.S. 143-129(e)(3), the entity offering products and services must be "formally organized." While the statute does not define this term, it suggests some level of organization beyond an ad hoc group that decides

to enter into contracts jointly. The North Carolina Sheriffs' Association is a nonprofit organization formed in 1922. According to the NCSA website (www.ncsheriffs.org), the organization is governed by a board of directors, has an office, contact information, and staff. As such, the NCSA meets the requirement of being formally organized.

Competitively Obtained Purchasing Services

Under the group purchasing exception, the items and services offered must be "competitively obtained," meaning the organization's contracts were procured through a competitive process. While this process does not have to mirror in every respect the competitive bidding requirements of G.S. 143-129 for purchase contracts in the formal bidding range, it must ensure a reasonable opportunity for interested vendors to be notified of and submit bids with fair evaluation of those bids leading to a contract award. The vehicle contracts available through the NCSA Program are entered into by the NCSA after broadly disseminated advertising (including through the North Carolina Bid Network), a pre-bid conference, and receipt of sealed bids by an advertised bid deadline. Bids were evaluated and awarded based on the lowest, responsive, responsible bidder standard of award. In my opinion, this process meets the statutory requirement that the contracts be obtained competitively. (See NCSA website for specific bid-related documents).

Discount Prices

A third element of the group purchasing program exception is that the prices offered by vendors must be discounted. Typically such discounts take the form of a price less than list price, although this is not specifically required under the group purchasing program exception. The competitive bid prices received by the NCSA and the contracts awarded contain competitive discount pricing, thus satisfying this requirement of the statute.

Two or More Public Agencies

The final requirement under the group purchasing program exception is that the items offered through the program are available to at least two public agencies (this requirement does not exclude the opportunity for private entities to purchase items from the program). According to its website, the NCSA offers the opportunity to purchase through the NCSA Program to all 100 sheriffs' offices in North Carolina, thus making the program available to at least two public agencies.

For these reasons, it is my opinion that local governments in North Carolina may purchase vehicles directly (i.e., without having to comply with the competitive bidding requirements of Article 8) from vendors through the NCSA Program under the group purchasing program exception of G.S. 143-129(e)(3).