



October 25, 2016

Mike Bodensteiner, Executive Director  
SEKESC - #609  
PO Box 189  
Girard, KS 66743-0189

Dear Mike:

Tina Smith of your staff has requested an update on legal opinions previously provided to the SEKESC by Angie Stallbaumer of our office in November 2006, May 2010, July 2013, and August 7, 2014, and by me October 2, 2015.

I have reviewed the previous opinions and the underlying statutory authority relating to bid laws for educational entities in Kansas. The following opinion is substantially similar to the opinions we provided in preceding years. There have not been any changes in the Kansas bid law (K.S.A. 72-6760) that would change the conclusions reached in the prior opinions. There have been amendments to the Kansas Qualified Vendor statutes (K.S.A. 75-3317-3322), but those changes do not affect the ability of SEKESC to provide the purchasing services. It is also my understanding that there have not been any changes in the COOP purchasing program that was the subject of the prior opinions.

This opinion focuses on whether bid documents used in association with a COOP purchasing program facilitated by the SEKESC meet current Kansas bid law requirements. It is understood the COOP purchasing program, known as the Association of Education Purchasing Agencies (AEPA), is made up of K-12 purchasing agents from 26 member states. I also understand the AEPA meets on a bi-annual basis to solicit and award bids for member schools. This opinion also addresses the cooperative's ability to accept national as well as state purchasing contracts.

From a review of current statutory authority and the information previously provided, the purpose of this purchasing program is to allow school entities to purchase products from preferred vendors without the need to adhere to a formal bidding process. Each of the 26 agencies (SEKESC being the agency from Kansas) issues simultaneous Invitations For Bids (IFBs). Vendors then submit sealed bids to a single receiving point for all the Agencies. The vendors submitting bids must be able to provide the products to all AEPA members from the 26 states. The IFBs are then evaluated by all the agencies and, after AEPA approval, bids are awarded by each individual Agency to selected bidders.

According to the General Terms and Conditions for all Agencies, each agency "reserves the right to award a contract to one bidder, to make multiple awards, to reject any or all bids in whole or in part, to waive any minor formalities or irregularities in any bids, and to accept bids, which in its discretion and according to law may be in the best interest of its members." Vendors add a 2% administrative fee to the bid price that is invoiced as part of the overall invoice to school districts purchasing from the vendors. The vendors then submit the administrative fee to the SEKESC.

K.S.A. 72-6760(a) requires school boards to solicit sealed bids for any expenditure greater than \$20,000 for construction, reconstruction or remodeling or for the purchase of materials, goods or wares. Under this statute, school boards are also required to award the bid to the lowest responsible bidder. A specific question was posed whether the cost of installation was included in the threshold amount requiring use of the Kansas bid laws. It is my opinion that the pre-bid procedure of SEKESC – Greenbush that incorporates the cost of installation in the packages that have been bid and accepted meet the exception to the bid requirements.

K.S.A. 72-6760(b) provides several exceptions to the bidding requirements. K.S.A. 72-6760(b)(9) states, in pertinent part, that the bidding requirements of K.S.A. 72-6760(a) do not apply to the purchase of:

*(9) materials, goods or wares which are purchased:...*

*(A) From vendors who have entered into contracts with the state director of purchases pursuant to state purchasing statutes for purchases by state agencies;*

*(B) under the same pricing provisions established in the state contracts, subject to agreement of the vendor to honor the state contract prices; and*

*(C) under the same pricing provisions established in federal, national or other state contracts facilitated by a federal or local governmental entity or agency, subject to:*

*(i) Agreement of the vendor to honor the contract prices; and*

*(ii) approval by the board of education for expenditures in an amount greater than \$20,000.*

One exception to the bidding requirements, specifically the language in K.S.A. 72-6760(b)(9)(C), allows school districts to participate in multi-state purchasing pools. The AEPA would appear to be this very type of multi-state purchasing pool that schools may participate in according to this exception. The contracts awarded under this cooperative purchasing system are facilitated by the service center, which is a local governmental entity. Therefore, as long as the vendors agree to honor the contract prices provided for in the contract between the SEKESC, and the vendors and the board approves of the expenditures, school boards are allowed to purchase the goods provided for under these contracts.

Similarly, using this exception, Greenbush could enter into contracts for purchasing goods, materials, or wares so long as one of the exceptions stated above would apply. Any of the following scenarios would be acceptable under current law: 1) if Greenbush purchases these goods from a vendor that has already contracted with the Kansas Department of Administration through the director of purchases; 2) if the vendor is not a vendor holding one of the state contracts but one that agrees to the pricing provisions contained in such contracts; or, if the pricing provisions were established by federal, national, or other state entities with oversight of the federal government, the service center, or another local government entity, the vendor agrees to honor the contract provisions, and board approval is received for any expenses over \$20,000.

It should also be noted that K.S.A. 75-3321 requires school districts in Kansas to purchase certain school supplies from the Kansas industries for the blind division and rehabilitation services. A list of products manufactured by the Kansas industries for the blind and severely disabled is maintained by the secretary of the Kansas Department of Administration. See K.S.A. 75-3320. Finally, K.S.A. 75-3322 does provide for a waiver of the mandatory purchase requirement if the industries for the blind are unable to supply the products or meet the delivery requirements.

In conclusion, it is our opinion that school boards may purchase items from the vendors who have contracts with the SEKESC as a part of the multi-state purchasing cooperative and that Greenbush may seek out and utilize national purchasing contracts so long as the restrictions laid out in K.S.A. 72-6760(b)(9)(C) are met. If you have further questions, please do not hesitate to call me at 1-800-432-2471.

Sincerely,

A handwritten signature in cursive script that reads "David Shriver".

David Shriver  
Attorney