

OPINION NO. 97-006**Syllabus:**

1. A county contracting authority may purchase an environmental or safety system for a county building pursuant to a contract that is separate from the contract to purchase the maintenance and repair services that are necessary to keep that system working properly, so long as the intent in making the separate purchases is not to evade a requirement that the purchases be competitively bid, if made in combination. However, each separate contract the cost of which exceeds \$15,000 must be competitively bid in accordance with the requirements of R.C. 307.86-.92.
2. A county or township contracting authority must comply with applicable statutory directives when evaluating and formulating bid specifications for particular equipment or apparatus that the contracting authority intends to purchase. When the General Assembly has not expressly delineated the specifications for that equipment or apparatus, the county or township contracting authority must exercise a reasonable discretion in formulating and selecting specifications it believes most suitable and appropriate to that equipment or apparatus.
3. A county or township may include a trade-in of old vehicles or equipment as a part of the transaction by which the county or township purchases new vehicles or equipment pursuant to R.C. 125.04(B) through the auspices of the Department of Administrative Services.

To: Alan R. Mayberry, Wood County Prosecuting Attorney, Bowling Green, Ohio
By: Betty D. Montgomery, Attorney General, January 8, 1997

You have requested an opinion regarding competitive bidding requirements applicable to contracts of a county or township. The specific questions you would like us to address are the following:

1. Where a political subdivision (in this instance--the county) wishes to enter a contract for a heating, air conditioning, fire protection, security system or the like, which will need regular maintenance and repair, can a contract for only the equipment be bid and separate contracts that are in excess of \$15,000.00 be entered without competitive bidding for annual maintenance and repair of this equipment over the lifetime of the equipment?
2. Where a political subdivision wishes to purchase equipment or apparatus to be manufactured with parts from many different sources or manufacturers, can the specifications name certain brands or characteristics of certain brands for major equipment parts (e.g. chassis, motor, pump) even if some builders of that equipment or apparatus cannot acquire those brands or would be eliminated if the specifications were so worded? In the alternative, should the specifications be stated according to performance standard or performance minimum (e.g. load requirements, power minimums, flow rates)?
3. Where a township or county purchases vehicles or equipment under the Ohio Cooperative Purchasing Program (O.R.C. 125.04); can it trade-in existing equipment to the dealer providing the new equipment or vehicle under the Cooperative Program or should it be sold at auction pursuant to county or township provisions regarding the sale of obsolete or unneeded equipment or vehicles (O.R.C. 307.12 and O.R.C. 505.10)[?]

In your letter you describe the particular circumstances that have prompted your first question:

A number of contracts have been entered to purchase the equipment for the above-referenced systems in various county or township offices or facilities. Maintenance and repair work was not bid in the original contract. Subsequently, and without competitive bidding, annual maintenance contracts in excess of \$15,000.00 are let to the same vendor "because he's the only one who can service this equipment." Our concern is that vendors of the equipment can "low ball" the equipment bid knowing that they will more than make up the difference with annual maintenance contracts over the 20 to 25-year lifetime of the equipment.

Subject to various exceptions,¹ R.C. 307.86-.92 impose competitive bidding requirements and procedures with respect to purchases of, *inter alia*, any product or service, including maintenance and repair service, by or on behalf of a county or a county contracting authority at a cost in excess of fifteen thousand dollars. R.C. 307.86 thus reads, in pertinent part, as follows:

Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of fifteen thousand dollars, except as otherwise provided in division (D) of section 713.23 and in sections 125.04, 307.022, 307.041, 307.861, 339.05, 340.03, 340.033, 4115.31 to 4115.35, 5119.16, 5513.01, 5543.19, 5713.01, and 6137.05 of the Revised Code, shall be obtained through competitive bidding.

See R.C. 307.86(A)-(I) (enumerating those instances in which competitive bidding is not required); R.C. 307.87-.91 (notice and bidding procedures that must be followed whenever competitive bidding is required by R.C. 307.86); R.C. 307.92 (as used in R.C. 307.86-.91, "contracting authority" means any "board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof").

Your first question presents two related issues for purposes of the competitive bidding requirements of R.C. 307.86-.92. The first issue concerns the propriety of a county contracting authority purchasing an environmental or safety system for a county building under one contract, and purchasing under a second, separate contract the maintenance and repair services needed to keep that system in proper working order. Assuming a county contracting authority may obtain the system and services through separate purchases, the second issue is whether the foregoing competitive bidding requirements apply with respect to each of those separate purchases.

¹ These exceptions appear in divisions (A) through (I) of R.C. 307.86. Among these exceptions, R.C. 307.86(B) provides that competitive bidding is not required when "[t]he purchase consists of *supplies* or a replacement or supplemental *part* or *parts* for a product or equipment owned or leased by the county and the only source of supply for such *supplies*, *part*, or *parts* is limited to a single supplier." (Emphasis added.) This exception does not apply in this instance, however, because the contracts with which you are concerned are not for the purchase of supplies or parts. Rather, the contracts in question are for the purchase of maintenance and repair *services*. It also is apparent that the other exceptions to competitive bidding set forth in R.C. 307.86(C)-(I) do not apply to the contracts in question.

Finally, R.C. 307.86(A) provides that competitive bidding is not required when a board of county commissioners, by a unanimous vote of its members, makes a determination that a real and present emergency exists and such determination and the reasons therefor are entered in the minutes of the proceedings of the board when the estimated cost of the transaction is less than fifty thousand dollars, or there is actual physical disaster to structures, radio communications equipment, or computers. R.C. 307.86(A)(1)-(2). For the purpose of this opinion, we shall presume that this exception also is not applicable.

Prior opinions of the Attorneys General have addressed the question of whether the competitive bidding requirements of R.C. 307.86 limit or restrict the ways in which a county contracting authority may contract for the purchase of products or services, and, in particular, whether a county contracting authority is prohibited from separately purchasing products or services when those multiple purchases might otherwise be aggregated in a single purchase. *See, e.g.*, 1993 Op. Att'y Gen. No. 93-024; 1992 Op. Att'y Gen. No. 92-050; 1991 Op. Att'y Gen. No. 91-051; 1980 Op. Att'y Gen. No. 80-038. Following the pronouncements of the courts in this area, those opinions have advised that a single purchase otherwise subject to competitive bidding may not be split into separate contracts or orders for the purpose of evading a requirement that the purchase be competitively bid. *Id.*

In Op. No. 92-050, for example, the Attorney General was asked whether R.C. 307.86 would permit a board of county commissioners to purchase equipment for the use of the county engineer at an auction sale, where each piece of equipment cost less than the threshold amount specified in R.C. 307.86,² but, in the aggregate, the total amount of such purchases by the board exceeded that threshold amount. In concluding that R.C. 307.86 would permit an auction purchase in that situation, the opinion restated the principles that must be observed by a county contracting authority whenever it seeks to make a purchase that is subject to the requirements of that statute:

R.C. 307.86 by its terms applies to "[a]nything to be purchased," and not to an aggregate of purchases, and, therefore, the fact that the aggregate cost of a number of separate purchases at one auction exceeds \$10,000 would not generally trigger the requirement of competitive bidding. In applying the dollar limit for competitive bidding, 1980 Op. Att'y Gen. No. 80-038 noted that:

[T]he threshold limitation provided in [R.C. 307.86] should be interpreted as relating separately to any purchase or lease which may reasonably and in good faith be deemed to constitute a separate contract or purchase order. The purchase or lease contemplated may not be split into separate contracts or orders for the purpose of evading the requirements of the statute.

Op. No. 80-038 at 2-162; *see also* 1991 Op. Att'y Gen. No. 91-051 (applying the analysis of Op. No. 80-038 to the county's purchase of towing services where the cost of any single tow did not exceed \$10,000, but where the aggregate cost of tows could exceed \$10,000). Thus, as a general matter, R.C. 307.86 does not necessarily preclude the board of county commissioners from making individual purchases at auction, where the cost of each purchase is less than \$10,000, but where the cost of all purchases, in the aggregate, exceeds \$10,000.

² At the time 1992 Op. Att'y Gen. No. 92-050 was issued, the threshold amount specified in R.C. 307.86 was \$10,000. The General Assembly has since amended R.C. 307.86 for the purpose of increasing the threshold amount to \$15,000. *See* 1993-1994 Ohio Laws, Part III 5356, 5369 (Sub. H.B. 300, eff. July 1, 1994).

However, items that reasonably would be included in a single purchase contract may not be purchased separately in order to avoid the requirements of competitive bidding. In *Wing v. City of Cleveland*, 9 Ohio Dec. Reprint 551 (C.P. Cuyahoga County 1885), the court determined that a board of fire commissioners, bound by competitive bidding for purchases at a cost in excess of a certain amount, could not purchase a length of fire hose in a number of separate sections to avoid advertising for bids for the entire length of hose. Similarly, it has been held that a competitive bidding requirement cannot be avoided by making several separate payments on an account that represents, in fact, one contract between the parties. *Ludwig Hommel & Co. v. Woodsfield*, 115 Ohio St. 675, 155 N.E. 386 (1927). See also *State ex rel. Kuhn v. Smith*, 25 Ohio Op. 2d 203, 194 N.E.2d 186 (C.P. Monroe County 1963). Thus, depending upon the circumstances, it may be appropriate to aggregate a number of related items for determining the applicability of the dollar threshold requirement for competitive bidding. The primary question is whether each purchase reasonably and in good faith constitutes a separate contract or whether the purchase has been split into separate contracts to avoid the requirements of competitive bidding. What constitutes a purchase therefore is a question of fact to be determined on a case-by-case basis. Op. No. 91-051.

Op. No. 92-050 at 2-205.

R.C. 307.86, therefore, does not prevent a county contracting authority from purchasing products or equipment pursuant to a contract that is separate from a contract for the purchase of the maintenance and repair services that will keep those products or equipment working properly. Such purchases may be separated so long as the intent in so doing is not to evade the statutory requirement that they be competitively bid, if purchased in combination. Cf., e.g., R.C. 153.50 (requiring separate and distinct bid proposals for furnishing of materials or doing the work necessary, or both, for the erection of the public improvements therein specified); R.C. 153.51 (when separate contracts are required for the classes of work specified in R.C. 153.50); 1992 Op. Att'y Gen. No. 92-060 (syllabus, paragraph three) (R.C. 153.50 requires that separate bids be made for furnishing materials or doing work, or both, for each separate and distinct trade or kind of mechanical labor, employment, or business in the construction of a solid waste transfer, disposal, recycling, or resource recovery facility for a county solid waste management district).

This means that R.C. 307.86 does not prevent a county contracting authority from awarding one contract for the purchase of an environmental or safety system for a county building, and a second, separate contract for the purchase of the maintenance and repair services that will keep that system working properly. Such purchases may be separated so long as the intent is not to evade the statutory requirement that they be competitively bid, were those purchases to be made in combination. Whether or not, in these specific cases, a contract for maintenance and repair services was entered into separately in order to avoid a competitive bidding requirement is a question of fact. The resolution of that question can only be made by taking into consideration all the circumstances that prevailed at the time the county contracting authority decided to enter into the contract.³

³ In the event that a claim is made that a county contracting authority's execution of separate contracts was effected in order to evade a statutory competitive bidding requirement, contracting authority personnel must be prepared to articulate upon cross examination good and sufficient

It also is apparent, however, that each separate purchase, whether it be of the equipment comprising a particular system or the maintenance and repair services associated with that system, may remain subject to R.C. 307.86's competitive bidding requirement. Should the cost of a separate purchase exceed the threshold amount of \$15,000, then that purchase must be competitively bid. Accordingly, when a county contracting authority awards one contract for the purchase of an environmental or safety system for a county building, and a second, separate contract for the purchase of the maintenance and repair services associated with that system, each separate contract will have to be competitively bid if the cost of the system or service covered by that contract exceeds \$15,000.

Your second question concerns bid specifications that may be used by a political subdivision whenever it seeks to purchase particular equipment or apparatus. You have asked whether those specifications may require that a bidder use certain brands or types of components in the manufacture of the equipment or apparatus that the political subdivision intends to purchase.⁴ You also have asked whether bid specifications may be stated by way of certain performance standards that are applicable to the equipment or apparatus in question.

In determining the propriety of particular bid specifications, a county or township contracting authority should first consult the statutory provisions that impose the requirement that the purchase be competitively bid. It may be that those provisions address the subject of bid specifications, including those items that may comprise the specifications for the equipment or apparatus that is to be purchased. If that is the case, then the contracting authority should comply with the directives set forth in the statute when it formulates its bid specifications.

In other instances, however, the statutory scheme that imposes a competitive bidding requirement may be phrased in more general terms, such that it does not expressly enumerate various types or categories of specifications that may be used by the political subdivision with respect to the equipment or apparatus that is to be purchased. The provisions set forth in R.C. 307.86-.92 are an example of that type of statutory scheme. R.C. 307.86 generally states that "[a]nything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service...by or on behalf of the county or contracting authority...at a cost in excess of fifteen thousand dollars...shall be obtained through competitive bidding." R.C. 307.87 in turn addresses the notice that a county contracting authority must publish in seeking bids pursuant to R.C. 307.86. Division (A) of R.C. 307.87 addresses the frequency of publication of the bid notice and the type of newspaper in which the bid notice shall appear. R.C. 307.87(A) also describes the matters that must be included within bid notices as follows:

reasons why there was no intent on the part of the contracting authority to evade such competitive bidding requirement when entering into the separate contracts.

⁴ You suggest in your letter that a requirement that a bidder incorporate a certain brand or type of component in the manufacture of the product or equipment that is to be purchased may "dramatically reduce the number of potential bidders" and thus "frustrate the purposes of the competitive bidding statutes."

Notices shall state:

- (1) A general description of the subject of the proposed contract and the time and place where the plans and specifications or itemized list of supplies, facilities, or equipment and estimated quantities can be obtained or examined;
- (2) The time and place where bids will be opened;
- (3) The time and place for filing bids;
- (4) The terms of the proposed purchase;
- (5) Conditions under which bids will be received;
- (6) The existence of a system of preference, if any, for products mined and produced in Ohio and the United States adopted pursuant to section 307.90 of the Revised Code.

R.C. 307.87(A)(1) thus provides that a county's bid notice must state a general description of the subject of the proposed contract and the time and place where the plans and specifications or itemized list of supplies, facilities, or equipment and estimated quantities can be obtained or examined, but says nothing further regarding the precise nature or character of the proposed contract's specifications. Similarly, statutory provisions that address particular purchases by townships and that impose a requirement that those purchases be competitively bid are often silent regarding the particular specifications the township may settle upon when seeking bids for those purchases. *See, e.g.*, R.C. 515.01 (street lighting contracts); R.C. 5575.01 and R.C. 5575.02 (bidding of contracts for the maintenance and repair of township roads).

As stated by the Ohio Supreme Court in *Jewett v. Valley Railway Co.*, 34 Ohio St. 601, 608 (1878), "[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner." In 1991 Op. Att'y Gen. No. 91-002, at 2-9, the Attorney General addressed the application of this general rule within the context of a statutory competitive bidding requirement when no particular bidding procedure or method was mandated by the statutory scheme in question:

Specifically concerning those situations where competitive bidding is required by law, but no particular method is prescribed, the court in *State ex rel. Davies Manufacturing Co. v. Donahey*, 94 Ohio St. 382, 114 N.E. 1037 (1916), set forth the general rule that the contracting authority must use reasonable efforts to secure competitive bidding which must be open to everyone. As I concluded in 1983 Op. Att'y Gen. No. 83-034 (syllabus, paragraph six): "A contract for personal services may be let by competitive bidding, absent applicable statutory provisions, if reasonable action is taken to provide all qualified persons with the opportunity to submit proposals, and if the contract is awarded on the basis of the merit of the proposals." It is clear that the propriety of various methods of bidding for personal services contracts, in the absence of applicable statutory procedures, is a complex factual determination dependent upon whether the awarding authority reasonably exercised his discretion in choosing the method used under the particular circumstances. *See generally Leonard v. Mayfield Heights*, 6 Ohio L. Abs. 739 (Ct. App. Cuyahoga County 1928).

Op. No. 91-002 then explained, at 2-10, that where no statutory procedure prescribes an appropriate method of competitive bidding, "it is necessary to examine common law principles

to determine the elements necessary to constitute a reasonable method of bidding." Op. No. 91-002 proceeded to review and summarize those principles at 2-10 and 2-11:

[I]t is inherent in the process of competitive bidding that the work for which a contract is awarded be submitted for competing bids and that the contract be awarded for the matter set forth in the notice and specifications given to the bidders. *Boren & Guckes v. Commissioners of Darke County*, 21 Ohio St. 311 (1871); *Beaver & Butt v. Trustees of the Institution for the Blind*, 19 Ohio St. 97 (1869); *Boger Contracting Corp. v. Bd. of Commissioners*, 60 Ohio App. 2d 195, 200, 396 N.E.2d 1059, 1062 (Stark County 1978) ("[w]here mandatory competitive bidding is required, it is axiomatic that every prospective bidder should have identical information upon which to submit a proposal"). As stated in *State ex rel. Hoeffler v. Griswold*, 35 Ohio App. 354, 360, 172 N.E. 438, 440 (Franklin County 1930), "[i]t is incumbent upon the state in taking bids to apprise prospective contractors of that which they might reasonably be expected to do." In order to put all bidders on equal footing, it is essential that the specifications on which bids are to be submitted be sufficient to inform all bidders as to the matter for which, and the bases upon which, the contract will be awarded. *Checie v. Cleveland*, 31 Ohio L. Abs. 1 (Ct. App. Cuyahoga County 1939). See *Dayton ex rel. Scandrick v. McGee*, 67 Ohio St. 2d 356, 423 N.E.2d 1095 (1981) (city's use of unannounced residency criterion as basis on which to award contract to other than lowest bidder as lowest and best bidder was found to constitute an abuse of discretion).

Where no statutory criteria for the award of a contract are specified, it appears to be within the discretion of the contracting authority to determine the best bid and so award the contract. See *State ex rel. Aller & Sharp, Inc. v. Taylor*, 32 Ohio L. Abs. 461 (Ct. App. Franklin County 1940). Further, it is apparent that the basis upon which a contract will be awarded should be included in the notice and specifications given to prospective bidders so that the bidders may be accurately informed as to the manner in which their bids will be evaluated. See 32 Ohio L. Abs. at 464 ("[i]n situations...where no statutory provision is made for public letting, it is our determination that the contracting authority acting in good faith has the absolute right to determine the best bid and award the contract accordingly"); *Dayton ex rel. Scandrick v. McGee*, *supra*.

Ultimately, however, "[w]hether the methods [proposed] for the bidding and awarding of contracts that are not subject to a statutory bidding method constitute competitive bidding...is clearly a factual determination to be made in view of the totality of circumstances and cannot be resolved by means of an opinion of the Attorney General." *Id.* at 2-11.

The same principles apply whenever a county or township contracting authority undertakes a purchase that must be competitively bid. When the General Assembly has not prescribed specific procedures that are to be followed in that regard, it is left to the county or township contracting authority to exercise a reasonable discretion in designating and selecting those procedures.

Accordingly, where the General Assembly has not delineated the specifications for the equipment or apparatus to be purchased, a county or township contracting authority may select the specifications it believes most suitable and appropriate to that equipment or apparatus. When selecting those specifications, however, the contracting authority must bear in mind the important objectives that are meant to be advanced by statutory competitive bidding requirements. Those requirements are intended to ensure that public officials award public contracts and expend public moneys pursuant to the terms of those contracts in the best and most efficient fashion possible, and to prevent fraud and collusion in that process. As stated by the court in *Boger Contracting Corp. v. Bd. of Commissioners*, 60 Ohio App. 2d 195, 198, 396 N.E.2d 1059, 1061-62 (Stark County 1978), "[t]he overriding purpose of the legislature in compelling mandatory competitive bidding by public bodies for major construction projects...is to protect the taxpayer and the users of the system against excessive costs and corrupt practices." See also *United States Constructors and Consultants, Inc. v. C.M.H.A.*, 35 Ohio App. 2d 159, 163, 300 N.E.2d 452, 454 (Cuyahoga County 1973) (competitive bidding "fosters honest competition in order to obtain the best work and supplies at the lowest possible price because taxpayers' money is being used. It is also necessary to guard against favoritism, imprudence, extravagance, fraud and corruption").

It follows, therefore, that a county or township contracting authority should make an effort to select types or categories of specifications that will encourage the submission of bids from a large pool of potential bidders, which will foster competition among the bidders to submit the best and lowest bid. See R.C. 307.90(A) ("[t]he award of all contracts subject to [R.C. 307.86-.92] shall be made to the lowest and best bidder"). Otherwise, the contracting authority may find itself open to the charge that it has acted unreasonably should it select types or categories of specifications that have the opposite effect, such that competition to submit the best and lowest bid is virtually eliminated because the pool of potential bidders has been narrowed to only a few suppliers of the equipment or apparatus in question. See, e.g., *Auto Car Co. v. City of Zanesville*, 15 Ohio Op. 104, 107, 29 Ohio Law Abs. 140, 143 (C.P. Muskingum County 1939) (any system of competitive bidding adopted by a governmental entity must "invite competition and...prevent favoritism and fraud; to attain that object it is essential that the bidders, so far as possible, be placed on equal footing, and be permitted to bid on substantially the same proposition and on the same terms").⁵

⁵ At the state government level, R.C. 125.03 grants the Department of Administrative Services (DAS) the authority to "prescribe uniform rules governing forms of specifications, advertisements for proposals, the opening of bids, the making of awards and contracts, and the purchase of supplies" by state agencies and departments. Those uniform rules appear at 2 Ohio Admin. Code Chapter 123:5-1. Rule 123:5-1-10 sets forth guidelines to be followed by DAS and other agencies and departments of state government when formulation specifications for the purchase of particular supplies and services. Division (D) of rule 123:5-1-10 expressly declares that "[t]he purpose of a specification is to serve as a basis for procuring a supply or service in a cost-effective and non restrictive manner"; "[a]ccepted commercial standards may be used"; and "[u]nique requirements shall be avoided to the extent practicable." The rule further limits and restricts the use of "brand name" and "brand specific" specifications. See 2 Ohio Admin. Code 123:5-1-10(H), (I).

It has been my experience that a contracting authority, when formulating bid specifications, may invite and request the assistance of an entity that is in the business of supplying the product or service that is to be the subject of those specifications. This is not a practice I would encourage, however, especially if that entity remains eligible to submit a bid to the contracting authority with respect to the product or service that is to be purchased. At the state government level contractors

Your third question concerns those instances in which a county or township purchases vehicles or equipment through the Ohio Department of Administrative Services (DAS) pursuant to R.C. 125.04. R.C. 125.04(B) provides that the Department of Administrative Services "may permit a political subdivision to participate in contracts into which the department has entered for the purchase of supplies and services," and a county and township are "political subdivision[s]" as used in that statute. R.C. 125.04(B) further describes the process by which a political subdivision may make purchases through DAS:

Any political subdivision desiring to participate in such purchase contracts shall file with the department a certified copy of an ordinance or resolution of the legislative authority or governing board of the political subdivision. The resolution or ordinance shall request that the political subdivision be authorized to participate in such contracts and shall agree that the political subdivision will be bound by such terms and conditions as the department prescribes and that it will directly pay the vendor under each purchase contract. The department may charge a political subdivision a reasonable fee to cover the administrative costs the department incurs as a result of the subdivision's participation in the purchase contract. Purchases made by a political subdivision under this division are exempt from any competitive selection procedures otherwise required by law. No political subdivision shall make any purchase under this division when bids have been received for such purchase by the subdivision, unless such purchase can be made upon the same terms, conditions, and specifications at a lower price under this division.

You specifically wish to know whether a county or township may trade in old vehicles or equipment to the dealer or supplier from whom it purchases new vehicles or equipment under R.C. 125.04, or whether the county or township must sell the old vehicles or equipment at public auction pursuant to R.C. 307.12 and R.C. 505.10 respectively. The answer to your question is provided by the express language of R.C. 307.12 in the case of the county, and by the express language of R.C. 505.10 in the case of a township.

R.C. 307.12 provides, in pertinent part, that when a board of county commissioners finds, by resolution, that the county has personal property, including motor vehicles, road machinery, equipment, tools, or supplies, which is not needed for public use, or is obsolete or unfit for the use for which it was acquired, "the board may sell such property at public auction or by sealed

that prepare bid specifications for DAS or another state agency are not permitted to bid upon the project for which they have prepared such specifications. 2 Ohio Admin. Code 123:5-1-10(C) thus states as follows:

The department or head of a using agency authorized to prepare said specifications may enter into a contract outside the state for preparation of specifications as long as there is no substantial conflict of interest and it is in the best interest of the state. Such contractor may not provide a response or proposal on the project for which the contractor prepared specifications. The department retains authority to review, edit, and give final approval of the specifications to ensure open competition.

bid to the highest bidder, after giving at least ten days' notice of the time, place, and manner of sale by posting a typewritten or printed notice in the offices of the county auditor and board." R.C. 307.12(A). R.C. 505.10 provides that a board of township trustees must sell by public auction any property, including motor vehicles, road machinery, equipment, and tools, that the board, by resolution, finds the township does not need. R.C. 505.10(A), (B).

Division (C) of R.C. 307.12 also grants a board of county commissioners the following authority:

Where the board finds, by resolution, that the county has vehicles, equipment, or machinery which is not needed, or is unfit for public use, and the board desires to sell such vehicles, equipment, or machinery to the person or firm from which it proposes to purchase other vehicles, equipment, or machinery, the board may offer to sell the vehicles, equipment, or machinery to such person or firm, and to have such selling price credited to the person or firm against the purchase price of other vehicles, equipment, or machinery.

The second paragraph of division (B) of R.C. 505.10 grants a board of township trustees the same authority, in language nearly identical to that of R.C. 307.12(C):

Where the board finds, by resolution, that the township has motor vehicles, road machinery, equipment, or tools which are not needed, or which are unfit for public use, and the board wishes to sell such motor vehicles, road machinery, equipment, or tools to the person or firm from which it proposes to purchase other motor vehicles, road machinery, equipment, or tools, the board may offer to sell the motor vehicles, road machinery, equipment, or tools to such person or firm, and to have such selling price credited to the person or firm against the purchase price of other motor vehicles, road machinery, equipment, or tools.

The dictionary defines "trade-in," when used as a noun, as "a used car, appliance, etc. given or taken as part payment in the purchase of a new one." *Webster's New World Dictionary* 1506 (2nd college ed. 1978). The provisions of R.C. 307.12(C) and R.C. 505.10(B) just quoted thus contemplate those situations in which a county or township wishes to include a trade-in of old vehicles or equipment as a part of the transaction by which it purchases new vehicles or equipment from a particular dealer or supplier. R.C. 307.12(C) and R.C. 505.10(B) make it clear that a trade-in of old vehicles or equipment is a permitted exception to the public auction directives otherwise set forth in R.C. 307.12 and R.C. 505.10.

Reading R.C. 125.04 *in pari materia* with R.C. 307.12 and R.C. 505.10, we are of the view that a county or township may include a trade-in of old vehicles or equipment as a part of the transaction by which the county or township purchases new vehicles or equipment under R.C. 125.04. First, nothing in the language of R.C. 125.04 imposes a prohibition against a political subdivision trading in old vehicles or equipment simply because the purchase of new vehicles or equipment is accomplished through the auspices of DAS. It also is apparent that the provisions of R.C. 307.12 and R.C. 505.10, including the trade-in exception to the public auction directive, are general in nature, such that those provisions apply in any situation in which a county or township wishes to dispose of old or obsolete property for which it no longer has any use. Accordingly, each statute's trade-in exception to the public auction directive applies whenever a county or township makes a purchase of property through DAS pursuant to R.C. 125.04(B).

It is, therefore, my opinion, and you are advised that:

1. A county contracting authority may purchase an environmental or safety system for a county building pursuant to a contract that is separate from the contract to purchase the maintenance and repair services that are necessary to keep that system working properly, so long as the intent in making the separate purchases is not to evade a requirement that the purchases be competitively bid, if made in combination. However, each separate contract the cost of which exceeds \$15,000 must be competitively bid in accordance with the requirements of R.C. 307.86-.92.
2. A county or township contracting authority must comply with applicable statutory directives when evaluating and formulating bid specifications for particular equipment or apparatus that the contracting authority intends to purchase. When the General Assembly has not expressly delineated the specifications for that equipment or apparatus, the county or township contracting authority must exercise a reasonable discretion in formulating and selecting specifications it believes most suitable and appropriate to that equipment or apparatus.
3. A county or township may include a trade-in of old vehicles or equipment as a part of the transaction by which the county or township purchases new vehicles or equipment pursuant to R.C. 125.04(B) through the auspices of the Department of Administrative Services.