

STATE PURCHASING AGENT:
DEPARTMENT OF CORRECTIONS:
DIVISION OF PENAL INSTITUTIONS:

The State Purchasing Agent is not required to secure bids where the articles to be purchased for the state, or any institutions thereof, can be obtained from the Division of Prison Industries.

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February 5, 1957

Honorable Edgar C. Nelson
State Purchasing Agent
Capitol Building
Jefferson City, Missouri

Dear Mr. Nelson:

Reference is made to your request for an official opinion of this office, which request reads as follows:

"Last week I attended a conference called by Colonel Carter, Director of the Department of Corrections, for the purpose of acquainting the business managers of our various correctional and eleemosynary institutions as to the various categories of prison-made goods now available for purchase by such institutions.

"During the discussion I advised the business managers that new legislation passed by the last General Assembly (House Bill No. 377) directs me, the state purchasing agent, to buy no goods from private vendors which can be supplied by the penitentiary industries.

"The various institutions affected by this legislation have been provided with a complete list of all prison-made items now available. This list will be added to from time to time as more items become available.

"I advised the business managers that when they were in need of any such prison-made items they should order it direct from the prison industries by using our Departmental Direct Order form which serves a dual purpose, namely, requisition and purchase order combined.

"One or two of the business managers insisted that they should use our regular requisition form and ask

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for bids from private vendors as well as getting quotations from the prison industries in order that they might have competitive prices.

"I contend that the law very clearly states in Section 37, Paragraph 2, that 'No article so manufactured shall be purchased from any other source for the state or public institutions of the state unless the division of prison industries shall certify that the articles included in the requisition cannot be furnished or supplied within sixty days, or, in the event the same articles cannot be procured on the open market within sixty days, that the division cannot supply them within a reasonable time and no claims for the payment of such articles shall be audited or paid without this certificate. One copy each of the requisition or certificate shall be retained by the department.'

"In this connection, the same Section, Paragraph 3, says: 'The division of prison industries shall fix and determine the prices at which articles so manufactured shall be furnished, and the prices shall be uniform to all.'

"Further, if any institution is dissatisfied as to style, design, prices or quality of any prison-made articles furnished them, Paragraph 40, Section 37, provides for an appeal to a board of arbitrators.

"In brief, it is my contention that I must buy any prison-made article needed by any institution without asking for competitive prices from private vendors.

"I would appreciate an opinion on the proper procedure for me as State Purchasing Agent in such matter."

Section 216.510 RSMo Cum. Supp. 1955, relating to the sale of articles manufactured in the penal institutions of the state to the various institutions owned or controlled by the state and the various political subdivisions, provides as follows:

"1. All articles manufactured in the penal institutions of the state and not required for use therein may be furnished to the state, to any public institution owned, managed or controlled by the state

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or to any political subdivision of the state, or to any institution thereof at such prices as shall be determined as herein provided upon the requisition of the proper official or purchasing agent.

"2. No article so manufactured shall be purchased from any other source for the state or public institutions of the state unless the division of prison industries shall certify that the articles included in the requisition cannot be furnished or supplied within sixty days, or, in the event the same articles cannot be procured on the open market within sixty days, that the division cannot supply them within a reasonable time and no claims for the payment of such articles shall be audited or paid without this certificate. One copy each of the requisition or certificate shall be retained by the department.

"3. The division of prison industries shall fix and determine the prices at which articles so manufactured shall be furnished, and the prices shall be uniform to all.

"4. Any differences between the division of prison industries and the state, its agencies, institutions or the political subdivisions of the state as to style, design, price or quality of articles shall be submitted to arbitrators whose decision shall be final. One of the arbitrators shall be named by the division, one by the office, department or institution concerned, and one by agreement of the other two. The arbitrators shall receive no compensation but their necessary expenses shall be paid by the office, department or institution against which the award is given."

It should be noted that the state or any institutions thereof shall not, under the above provision, purchase any article manufactured in the penal institutions from any other sources unless the division of prison industries shall certify that the articles cannot be furnished or supplied within sixty days, or if the same articles cannot be procured upon the open market within sixty days, then the division shall certify that the division cannot supply them within a reasonable time.

The purchase of articles manufactured by the division of prison industries by the state or any institution thereof is to be upon requisition of the state purchasing agent.

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The provision above noted would seem to be clear and unequivocal in requiring that the state and the various institutions thereof purchase, as their needs require, the various articles manufactured by the state penal institutions, unless they first obtain a certificate from the division of prison industries, as above referred to. Indeed, the law clearly states that no claim for payment shall be audited or paid without said certificate.

Having observed the duty of the state and the various institutions thereof to purchase articles from the penal institutions, upon requisition of the state purchasing agent, we now turn to what is popularly referred to as the State Purchasing Agent Act, Chapter 34, RSMo 1949. Section 34.090 thereof provides as follows:

"If any law shall provide that the state shall purchase for its own use the products manufactured by any institution of the state or shall give preference to the products of any such institution, the provisions of this chapter shall be deemed modified to permit the purchasing agent to purchase such products or give such preference in any manner prescribed by such law."

The legislature saw fit to provide that the provisions of the state purchasing agent law should be deemed modified to permit the purchasing agent to purchase for the state products manufactured by any institution of the state. Therefore, we are of the opinion that the provisions of Section 34.040 RSMo 1949, requiring the purchases to be made on competitive bids, is inapplicable where the articles desired can be obtained from the division of prison industries.

A like conclusion, holding that the provisions of the state purchasing agent law were inapplicable to purchases made from the state under similar statutory direction, was reached in an opinion of this office to R. L. Chapman, Superintendent of Industries, under date of March 26, 1935. A copy of said opinion is attached hereto.

CONCLUSION

Therefore, it is the opinion of this office that the state purchasing agent is not required to secure bids where the articles to be purchased for the state or any institutions thereof can be obtained from the division of prison industries.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

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