

STATE PURCHASING
OFFICER:



When the State Purchasing Agent requests bids for an article, the article shall be described in general terms and by general specification, if by so doing the State Purchasing Agent can obtain the article which he wants, but if he cannot do so by describing the article in general terms and by general specifications he may then use a brand or trade name. Whether he can describe the article in general terms and by general specification is largely a matter within his discretion.

October 2, 1953

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

Dear Sir:

Recently you requested an official opinion from this department on the following matter:

"I would like to have an opinion on Section 34.060 Revised Statutes of Missouri, 1949, which deals with requests for bids on supplies and materials and which states that such requests must be in general terms.

"I wish an opinion on this particular section because we receive numerous requisitions asking for stock feeds by brand name rather than by formula of the ingredients.

"Such specifications doubtless arise from the fact that dairymen and business managers at the various state institutions have used certain brand feeds and have gotten satisfactory results from the standpoint of production. This being true, they want to continue to use the same feeds and feel that if they don't specify the brand wanted they may get a feed that will affect production. This is especially true in dairy and egg production."

The question which you want answered appears to be: When the State Purchasing Agent invites bids on various articles which the state wishes to purchase, should he, in his invitation, give the "brand, trade name, or other individual mark" of such article, or should the article be referred to in "general terms and by general specifications".

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Section 34.060 RSMo 1949, to which you refer, reads as follows:

"All requests hereafter made for bids and proposals for materials, products, supplies, provisions and other needed articles to be purchased at public expense, shall be made in general terms and by general specifications and not by brand, trade name or other individual mark, provided such article to be purchased can be definitely described without the designation of such brand, trade name or other individual mark. All such requests and bids shall contain therein a paragraph in easily legible print, reading as follows: 'By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the state of Missouri.'"

The meaning of the above section seems to us to be: When the state purchasing agent invites bids for the furnishing of an article, the article shall be described in general terms and by general specification, not by a brand or trade name, if the desired article can be described definitely without stating a brand or trade name, but that if it cannot be, that then a brand or trade name may be used.

It would appear that the underscored lines above are very clearly implied by Section 34.060, supra. Therefore, it would seem that Section 34.060 means that when the state purchasing agent invites bids on an article, he should describe the article in general terms if by so doing he can thereby obtain bids on the article which he wants, but that if he cannot get the article he wants by describing it in general terms, he may describe it by brand or trade name. Clearly it would have to be a matter largely within the discretion of the state purchasing agent, whether he could obtain an article which he wanted by describing it in general terms and specifications. If, in his opinion, he could not do so, he could then use a brand or trade name.

CONCLUSION

It is the opinion of this department that when the state purchasing agent requests bids for an article, the article shall be

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described in general terms and by general specification if by so doing the state purchasing agent can obtain the article which he wants; but if he cannot do so by describing the article in general terms and by general specifications he may then use a brand or trade name. Whether he can describe the article in general terms and by general specification is largely a matter within his discretion.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

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