

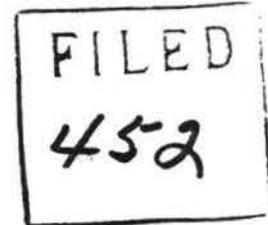
STATE PURCHASING AGENT:

The Purchasing Agent is required to determine whether bids for supplies to be purchased by the State of Missouri show that the delivered price of a firm, corporation or individual not doing business as a Missouri firm, corporation or individual is the same or less than the bid of a Missouri firm, corporation or individual and if he determines that a Missouri bidder has submitted an equal bid, in competition with an out-of-state bidder, then the Purchasing Agent is required to prefer the Missouri bidder. The Purchasing Agent is not permitted to accept a higher bid from a Missouri bidder on the grounds that the economic interests of the state would be furthered by patronizing a bidder doing business as a Missouri firm, corporation or individual.

OPINION NO. 452

December 9, 1970

Honorable George E. Murray  
State Representative  
38th District  
3 Williamsburg Road  
Creve Coeur, Missouri 63141



Dear Representative Murray:

This is in response to your opinion request requesting an official opinion from this office with regard to the following question:

". . . I would specifically request an opinion as to whether or not the present statutes would permit the purchasing agent to prescribe regulations, giving preference to Missouri products and Missouri firms where the bid price is inconsequential and the benefit to the state and its inhabitants outweighs other factors. I further request your opinion as to what is meant by the preferences described in Sections 34.060 and 34.070."

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April 19, 1950, this office issued an official opinion, No. 17 to Leo J. Clavin, the State Purchasing Agent.

On page 5 of the opinion, the predecessor to Section 34.070 was discussed as follows:

"In answer to this question we suggest that the language of the statute clearly indicates an intention on the part of the Legislature that where the subject matter of the purchase can be purchased from a firm, corporation or individual doing business as a Missouri firm, corporation or individual at approximately the same price as such subject matter may be purchased from a firm, corporation, or individual not doing business as a Missouri firm, corporation or individual and the quality is approximately the same the purchasing agent shall purchase the thing, or things, desired from the firm, corporation or individual doing business as a Missouri firm, corporation or individual. This being true it becomes the duty of the purchasing agent to determine the question and the discretion is vested in him to decide as to how wide a variation there can be between the respective prices and qualities of the goods offered without its being true that the prices and qualities are not approximately the same. When he has determined that question his determination is final and if he has determined that both price and quality are approximately the same he is vested with the further discretion to determine, and it is his duty to determine, whether or not either person, firm, corporation or individual offering to sell is a person, firm, corporation or individual not doing business as a Missouri firm, corporation or individual. . . ."

Section 34.070, RSMo 1969, now provides that the Purchasing Agent shall give preferences in the circumstances there set forth:

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". . .[W]hen quality is equal or better and delivered price is the same or less."

This language results from a 1965 amendment to 34.070 and prior to that amendment, Section 34.070 provided:

". . .[W]hen quality and price are approximately the same. . . ."

It is apparent that the legislature in withdrawing the term "approximately" has limited the discretion of the Purchasing Agent. The opinion to Clavin, dated April 19, 1950 is hereby withdrawn because of the amendment of Section 34.070. The Purchasing Agent now has the duty to determine if two bids are the same rather than approximately the same. The preference section applies only where the Purchasing Agent determines that two bids are the same and after such a determination, directed to prefer a Missouri bidder. If he determines that one of two bids is lower, he is not permitted to accept the higher bid.

We note that you refer to that portion of Section 34.040 which provides that the "contracts shall be let to the lowest and best bidder".

We do not believe that "best bidder" is to be interpreted as modifying Section 34.070 in the sense that the Purchasing Agent is to make a determination as to whether the purchase of a particular product from a Missouri firm would be in the economic interest of the state. 81 C.J.S. States §116. The specific preference section is limited to the situation where the price is the same or less and we do not believe that the Purchasing Agent is authorized to consider the economic consequences to the state by determining that a Missouri citizen would be a "best bidder".

#### CONCLUSION

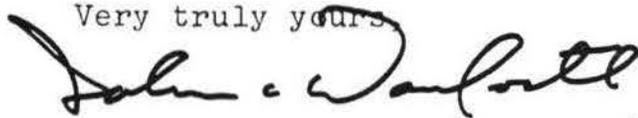
It is therefore the opinion of this office that the Purchasing Agent is required to determine whether bids for supplies to be purchased by the State of Missouri show that the delivered price of a firm, corporation or individual not doing business as a Missouri firm, corporation or individual is the same or less than the bid of a Missouri firm, corporation or individual and if he determines that a Missouri bidder has submitted an equal bid, in competition with an out-of-state bidder, then the Purchasing Agent is required to prefer the Missouri bidder. The

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Purchasing Agent is not permitted to accept a higher bid from a Missouri bidder on the grounds that the economic interests of the state would be furthered by patronizing a bidder doing business as a Missouri firm, corporation or individual.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Craft.

Very truly yours



JOHN C. DANFORTH  
Attorney General