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Joint Committee on Finance

Paper #103

Prison Industries Procurement Pricing (DOA -- General Agency Provisions)

[LFB 2015-17 Budget Summary: Page 27, #21]

CURRENT LAW

The Department of Administration (DOA) and other designated purchasing agents must offer Prison Industries the opportunity to supply products or services if the price charged by Prison Industries is equal to or lower than a price which may be obtained through competitive bidding or competitive sealed proposals and is able to conform to the specifications. The Department of Corrections Prison Industries program provides vocational training and work skills development to participating inmates through production of items such as office furniture, seating, signage, and metal stamping of license plates.

GOVERNOR

Require DOA and any other designated state purchasing agent, prior to seeking bids or competitive sealed proposals with respect to the purchase of any materials, supplies, equipment, or contractual services enumerated in a list of Prison Industries products and supplies available for purchase (provided by the Department of Corrections), to offer Prison Industries the opportunity to supply the products or services if Corrections is able to provide them at a price that is comparable to one which may be obtained through competitive bidding or competitive sealed proposals and is able to conform to the specifications. Specify that DOA and any other designated state purchasing agents may solicit bids or competitive proposals before awarding an order or contract if DOA or another purchasing agent is unable to determine whether the price of Prison Industries is comparable to one that would be obtained through competitive bidding or competitive sealed proposals.

DISCUSSION POINTS

1. According to the administration, the purpose of the provision is to support work that develops employable skills among inmates and assists inmates in reintegration after release from prison. Additionally, the administration indicates that "as the state's unemployment rate continues to decline, the need for a skilled workforce will only increase."

2. The Department of Corrections operates the Prison Industries program, known as Badger State Industries (BSI), at many of the maximum- and medium-security correctional institutions and two of the minimum-security centers. The mission statement of the Bureau of Correctional Enterprises, under which BSI is located, is "to enhance public safety by providing jobs and training for inmates which develop marketable skills and experiences in financially viable businesses, producing quality products and services to our customers." The program is funded by program revenue generated from the sale of goods and services produced by the inmates employed by BSI. Sales revenue must, by law, cover the costs of raw materials, inmate wages, equipment, staff salaries and administrative overhead. For 2014-15, the BSI program has an authorized budget of \$17,714,000 PR and 96.1 PR positions.

3. The sale of BSI goods and services is limited by statute. A BSI program may only engage in manufacturing articles for the state and its counties, cities, villages, towns, tax-supported institutions, nonprofit agencies, other states and their political subdivisions, and the federal government. In addition, BSI is limited to selling wood and metal office furniture and laundry services only to state agencies. State statutes further require that inmates employed by BSI be provided with training and work experience that allows them to develop skills necessary to retain employment in outside business and industry.

4. Badger State Industries operates the following industries: (a) textiles, including laundry and upholstery; (b) imaging, including sign shops and printing; (c) fabricating, including metal stamping (license plates), wood and metal furniture, and upholstered products; and (d) a distribution center. During 2013-14, BSI had an average of 344 inmate positions in the various programs. The average hourly wage for inmates in 2013-14 was 94¢, ranging from 79¢ to \$1.41 per hour.

5. Under state statute, all orders awarded or contracts made by DOA for materials, supplies, equipment, and contractual services, to be provided to any state agency, must be awarded to the lowest responsible bidder, taking into consideration life cycle cost estimates, agency location, quantity to be supplied, conformity to specifications and purpose, and date of delivery. The state procurement manual defines lowest responsible bidder as the supplier who submits the lowest dollar total appearing in combination with other elements of the bid that best meet the requirements of the solicitation.

6. Some exceptions to this low bid requirement are permitted, including a statutory provision that relates to Prison Industries. Created under 1983 Act 333, the low bid exception relating to Prison Industries required at that time that state agencies: (a) to the extent possible, write specifications for the purchase of materials, supplies, commodities, equipment, and contractual services so as to permit their purchase from Prison Industries; and (b) offer Prison Industries the opportunity to supply products or services if the price would be comparable to the price that would

be obtained through competitive bidding or competitive sealed proposals. Both requirements were maintained in state statute until 2011.

7. In addition to low bid requirements, the State Bureau of Procurement within DOA's Division of Enterprise Operations manages contracts for products and services commonly purchased across state government to ensure low cost, standard terms and conditions, and consistent warranties and customer service requirements. Many statewide contracts are mandatory contracts, which means that state agencies must utilize the contract whenever possible for products or services that are needed and are covered under the contract. Several mandatory contracts exist for BSI products, including: (a) office furniture (not including used or refurbished furniture, laboratory furniture, student housing furniture, or dormitory furniture); (b) signage; (c) laundry services for Corrections and the Department of Health Services; and (d) clothing for Corrections. When purchasing office furniture, an agency must first contact BSI to meet the agency's needs. If BSI determines that it cannot meet the agency's needs, it will issue the agency a waiver to purchase some or all of the project from another vendor. According to DOA, most waivers for office furniture are issued when BSI is unable to meet the agency's specifications. Waivers for other mandatory BSI contracts are generally not issued to state agencies.

8. Under 2011 Act 32 (the 2011-13 biennial budget act), the requirement that state agencies consider Prison Industries when writing purchase specifications was repealed. In addition, the pricing rule was changed from "comparable to" to "equal to or lower than." Both changes would have the effect of nullifying the purchasing preference given to Prison Industries. To the extent that the change in requirements would have had an effect on purchases of Prison Industries products and services, it would have reduced purchases from Prison Industries, and increased purchases from other sources. However, according to the administration, "It is unknown at this time whether the Act 32 change had a direct effect on the purchase of prison industries-supplied products and services."

9. Subsequently, during the 2013-15 biennial budget deliberations, the Committee modified the rule for furniture produced by Prison Industries. The change to the bill would have specified that state agencies must offer Prison Industries the opportunity to provide furniture if the price would be comparable to the price that would be obtained through competitive bidding or competitive sealed proposals. In issuing a partial veto of 2013 Act 20 with regard to the furniture procurement pricing rule, the Governor stated, "I am vetoing this provision because I believe that this change has the potential to provide an unfair advantage to Badger State Industries compared to the private sector. My veto will retain current law and retain the appropriate balance between supporting prison industries and the private sector."

10. To the extent that a change in the pricing rule from "equal to or lower than" to "comparable to" would have an effect on sales, the result would be to increase purchases of Prison Industries products and services. Likewise, other manufacturers and service providers could have reduced sales as a result of the provision. It is also possible that an increase in revenue to the Prison Industries program could lead to improvements in the policy goals targeted by the procurement exception: employability of inmates, successful reintegration into the community after release, and reduced probability of reoffending. However, the degree to which the pricing rule might affect sales of BSI products or services, if at all, is unknown.

11. On one hand, it could be argued that the "comparable" pricing rule, which was maintained from 1984 to 2011, supports the development of employable skills among inmates that may in turn support the reintegration of individuals after returning to the community, increase productive contribution through work, and reduce the risk of reoffending. Further, it could be argued that the current law pricing rule in statute, which is statutorily located in Chapter 16 under the heading of "Buy on Low Bid, Exceptions," is not an exception to low bid requirements, given that the price specified is equal to or lower than the price which would be obtained through competitive bids or proposals (which would qualify as a low bid). Therefore, the Committee could approve the Governor's recommendation to return to a pricing rule that requires agencies to offer Prison Industries the opportunity to supply products or services that can be supplied at a price comparable to a price which may be obtained through competitive bidding or competitive sealed proposals. Under this alternative, the product or service would need to meet the specifications of the purchasing agency. The bill would not reinstitute the requirement in place prior to 2011 Act 32 that agencies must consider Prison Industries when writing purchase specifications. [Alternative 1]

12. On the other hand, the administration did not provide evidence that the rule change had negatively affected state agency purchases of Prison Industries products or services. In addition, it could be argued, as the Governor did in his partial veto of 2013 Act 20, that a "comparable" pricing rule provides an advantage to Prison Industries relative to the private sector. Therefore, the Committee could delete the provision. [Alternative 2]

ALTERNATIVES

1. Approve the Governor's recommendation to change the Prison Industries procurement pricing rule to require DOA and any other designated state purchasing agent to offer Prison Industries the opportunity to supply its products or services if the price is comparable to, rather than equal to or lower than, one which may be obtained through competitive bidding or competitive sealed proposals and is able to conform to the specifications.

2. Delete provision.

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