



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

Bob Corbin  
~~XXXXXXXXXXXXXXXXXXXX~~  
ATTORNEY GENERAL

February 1, 1979

William S. Jamieson, Director  
Department of Economic Security  
1717 West Jefferson, Room 123  
Phoenix, Arizona 85007

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

Re: I79-35 (R78-107)

Dear Mr. Jamieson:

This is in response to a request from former acting Department of Economic Security Director Ed Crowley for an opinion on the following questions pertaining to the Arizona Industries for the Blind (AIB) established under A.R.S. § 41-1971 through § 41-1976. These questions have arisen in connection with the preparation and submission of bids by AIB to the State Purchasing Office, and request clarification of the statutes regarding the preference for products supplies to State agencies by AIB.

1. AIB exchanges products for sale with other member industries of the National Industries for the Blind. Is the sale of these "exchanged" products to State institutions and departments permissible under A.R.S. § 41-1972?
2. AIB has endeavored to obtain and deliver products from commercial vendors which augment or supplement the use of AIB-produced or "exchanged" products. These products primarily consist of janitorial products such as waxes, detergents, and sealers which supplement AIB-produced mops, brooms, sponges, brushes and other cleaning implements. Are sales of these "purchased" products to State institutions and departments permissible under A.R.S. § 41-1972?
3. AIB products are required by A.R.S. § 41-1974 to meet State department or institution quality standards in order to qualify for preference. Industry products are produced according to appropriate federal specifications. Is compliance with these federal specifications sufficient to qualify for preferences when detailed State specifications are not available?

4. A.R.S. § 34-242 and § 34-243 provide that certain construction materials from an in-state source may be granted a 5 percent preference over similar materials from out-of-state sources.

(a) Can this preference be applied to bids submitted by AIB?

(b) Can similar preferential treatment be established for AIB products against all other bidders, in view of the preferences in A.R.S. §§ 34-242, 34-243 and 41-1974?

5. What State agency is responsible for compliance with the preference requirements of A.R.S. § 41-1974?

A.R.S. § 41-1972 provides:

A. For the purposes of the program of industries for the blind authorized by this article, the state department of economic security may equip and operate one or more training centers, one or more workshops, a business enterprise program, and a home industries program for training and employment of adaptable blind persons.

B. The state department of economic security may devise ways and means for the sale, distribution and marketing of the products of the training centers, workshops and home industries authorized by subsection A.

C. The state department of economic security may, in addition to the activities authorized by subsections A and B, aid individual blind persons or groups of such persons to become self-supporting by supplying materials, equipment or machinery to them, and may also aid them in the sale and distribution of their products.

Although A.R.S. § 41-1972 does not specifically authorize the acquisition and sale of "exchanged" and "purchased" products, such activities appear to be included within the scope of the Department's mandate to "devise ways and means for the sale, distribution and marketing" of AIB's products. If that be true, then such "exchanged" and "purchased" products may be sold to State departments and institutions. Notwithstanding that A.R.S. § 41-1972, in our view, authorizes the sale of AIB produced "exchanged" and "purchased" products to State departments and institutions, that section does not mandate that the State purchase such products. The State is required to purchase AIB products only if they meet the requirements found in A.R.S. § 41-1974 which provides:

When any of the products of Arizona industries for the blind, produced under the supervision and direction of the department of economic security, meet the requirements of any state department or institution as to quality, quantity and price, such products shall have preference, and such state departments and institutions shall purchase from the department such products as are required.

A.R.S. § 41-1974 does not specify the products that can be sold by AIB; however, it is apparent that the purchasing preference extends only to products produced under the supervision and direction of the Arizona Department of Economic Security (DES).\* "Produce" is defined as "3. to give being or form to; to manufacture; make; . . ." Webster's New

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\* This requirement is consistent with the statutory history of Arizona Industries for the Blind. The present statute originated as an amendment to the Assistance to the Blind Act of 1937, Laws 1937, Ch. 71, § 31, adding a new section 70-331 entitled, "Industries for the Blind" in 1953. The original act established a public assistance stipend, granting a monthly allotment to the visually handicapped. In 1948 a residence requirement was added to the act, Laws 1948, 7th S.S. Ch. 20, § 3. In 1972 the Industries for the Blind section of the act was separated from the public assistance provisions and placed under the rehabilitative services section of the Department of Economic Security (A.R.S. § 41-1971). Both the original act and the rehabilitative services eligibility statute, A.R.S. § 23-506.A, require Arizona residency. Thus, the intent of both provisions is to provide services for Arizona residents with visual handicaps.

International Dictionary. See also Armour & Co. v. City of Pittsburgh, 363 Pa. 109, 69 A.2d 405, 408 (1949); Charles Merchant Co. v. Higgins, 36 F.Supp. 792 (D.C.N.Y. 1940).

Therefore, the extent of the preference found in A.R.S. § 41-1974 is limited to products made or manufactured under DES supervision and direction. All goods either produced by other member industries of the National Industries for the Blind ("exchanged" products) or purchased by AIB as companion products to AIB-produced products ("purchased" products) are outside the scope of the preference.

You have asked also for clarification of the "quality" requirement found in A.R.S. § 41-1974—specifically, whether adherence to federal specifications warrants a conclusion that the goods meet State requirements in the absence of State specifications. In order to be entitled to the § 41-1974 preference, goods produced by AIB must meet the requirements of the particular purchasing institution or department as to quality; adherence to federal standards is not material. Reference to the purchaser's current specifications or actual purchases (where there are no detailed current specifications) should indicate quality requirements.

A.R.S. §§ 34-242 and 34-243, about which you also inquired, provide a 5 percent preference for locally manufactured and locally supplied materials competing with out-of-state manufactured or supplied materials in public works contracting. Initially, it would appear that AIB is neither producing nor selling "materials" within the meaning of §§ 34-242 and 34-243. In Atty.Gen.Op.No. 67-24 we noted that tools, implements, apparatus and equipment, i.e., things used by contractors in the prosecution of their work as distinguished from the substance or substances of which something is composed, are not materials. Mops, brooms, sponges, brushes and other cleaning implements produced by AIB would not be "materials" under A.R.S. §§ 34-242 and 34-243 and, therefore, those sections would not be applicable to AIB-produced product bids.

The preference in A.R.S. § 41-1974 contains no percentage differential or out-of-state competition limitation; under A.R.S. § 41-1974 AIB-produced products are preferred absolutely over all other products if they meet the State's requirements for quality, quantity and price. It would appear, therefore, that no reason exists to resort to A.R.S. §§ 34-242 and 34-243 respecting AIB-produced products.

Mr. William Jamieson

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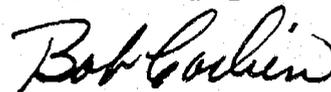
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On the other hand, if AIB offers to sell non-AIB produced "materials", then the provisions of A.R.S. §§ 34-242 and 34-243 would be applicable to the extent that the "materials" offered by AIB were produced or manufactured in this State or furnished by a dealer meeting the requirements of A.R.S. § 34-243.

You have asked also for our advice about establishing the preference and responsibility therefor. The general statutory rule is that all purchases by the State in excess of \$5,000 must be based upon sealed bids with the award of a contract made to the bidder "whose bid conforms to the invitation and will be most advantageous to the State with respect to price, conformity to the specifications and other factors." A.R.S. § 41-730. The declared policy of the State also is to assist the visually handicapped. Therefore, we must read A.R.S. §§ 41-730 and 41-1974 together to determine whether purchases of AIB-produced products are subject to the requirements of A.R.S. § 41-730. In view of the specific provisions of A.R.S. § 41-1974 that AIB-produced products shall have preference and State agencies shall purchase their requirements from AIB whenever AIB-produced products meet the requirements of the purchasing agency respecting quality, quantity and price, in our opinion, State departments and institutions may purchase AIB-produced products without compliance with A.R.S. § 41-730.

With reference to your question concerning compliance or enforcement of the preference, it appears to us that both DES and the purchaser share a joint responsibility. DES is responsible for making known to the various State agencies the AIB-produced products that are available. A.R.S. § 41-1972. DES, it would seem, could fulfill its responsibility by notifying the Purchasing Section of the Finance Division and all purchasing agencies of the AIB-produced products that are available. The Purchasing Section of the Finance Division and the purchasing agencies are responsible, on the other hand, when making purchases of products of the type that AIB produces to purchase AIB-produced products that meet the agencies' requirements irrespective of whether the State has called for bids and, if the State has called for bids, irrespective of whether AIB has submitted a bid.

Very truly yours,



BOB CORBIN  
Attorney General

BC:lp

Mr. William Jamieson

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February 1, 1979

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