

Introduced by Senator RunnerFebruary 22, 2012

An act to amend Section 2807 of the Penal Code, and to amend Sections 10295 and 10332 of, and to add Section 2003 to, the Public Contract Code, relating to the Prison Industry Authority.

LEGISLATIVE COUNSEL'S DIGEST

SB 1162, as introduced, Runner. Prison Industry Authority: purchases by state entities.

Existing law establishes the Prison Industry Authority to operate industrial, agricultural, and service enterprises to provide products and services needed by the state, or any political subdivision thereof, or by the federal government, or any department, agency, or corporation thereof, or for any other public use. Existing law requires state entities to purchase these products and services at the prices fixed by the authority and exempts those purchases from provisions that generally govern public contracts, including the bidding process.

This bill would authorize, rather than require, state entities to purchase goods produced by the authority and would provide that if a state entity elects to purchase goods from the authority, that purchase is exempt from the requirements governing public contracts. In all other circumstances, the bill would require the state entity to comply with the provisions governing public contracts and, prior to publishing a solicitation for bids, to notify the authority that the state entity will comply with those provisions. The bill would require a state entity, notwithstanding any other law requiring a state entity to award contracts to the lowest responsible bidder, to grant a preference of not more than 10% above the lowest responsible bid meeting specifications submitted

by a private entity with respect to any responsible bid meeting specifications submitted by the Prison Industry Authority.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2807 of the Penal Code is amended to
 2 read:

3 2807. (a) The authority is hereby authorized and empowered
 4 to operate industrial, agricultural, and service enterprises ~~which~~
 5 *that* will provide ~~products~~ *goods* and services needed by the state,
 6 or any political subdivision thereof, or by the federal government,
 7 or any department, agency, or corporation thereof, or for any other
 8 public use. ~~Products~~ *Goods* may be purchased by state agencies
 9 to be offered for sale to inmates of the department and to any other
 10 person under the care of the state who resides in state-operated
 11 institutional facilities. Fresh meat may be purchased by food service
 12 operations in state-owned facilities and sold for onsite
 13 consumption.

14 (b) ~~(1) All things~~ *goods* authorized to be produced ~~under~~
 15 *pursuant to* subdivision (a) ~~shall be purchased by the state, or any~~
 16 ~~agency thereof, and may be purchased by any county, city, district,~~
 17 ~~or political subdivision, or any agency thereof, or by any state~~
 18 ~~agency to offer for sale to persons residing in state-operated~~
 19 ~~institutions, at the prices fixed by the Prison Industry Authority.~~
 20 ~~State agencies shall make maximum utilization of these products,~~
 21 ~~and shall consult with the staff of the authority to develop new~~
 22 ~~products and adapt existing products to meet their needs.~~

23 (2) *All goods authorized to be produced pursuant to subdivision*
 24 *(a) may be purchased by the state, or any agency thereof, as*
 25 *follows:*

26 (A) *If the state entity elects to purchase the goods from the*
 27 *authority at the prices fixed by the authority, that purchase shall*
 28 *be exempt from the requirements of the Public Contract Code.*

29 (B) *If the state entity does not proceed pursuant to subparagraph*
 30 *(A), the state entity shall comply with the requirements of the Public*
 31 *Contract Code, including, but not limited to Section 2003 of the*
 32 *Public Contract Code. Prior to publishing a solicitation for bids,*
 33 *the state entity shall notify the authority that the entity intends to*

1 *follow the purchasing procedures established in the Public*
2 *Contract Code.*

3 (c) All products and services provided by the authority may be
4 offered for sale to a nonprofit organization, provided that all of
5 the following conditions are met:

6 (1) The nonprofit organization is located in California and is
7 exempt from taxation under Section 501(c)(3) of Title 26 of the
8 United States Code.

9 (2) The nonprofit organization has entered into a memorandum
10 of understanding with a local education agency. As used in this
11 section, “local education agency” means a school district, county
12 office of education, state special school, or charter school.

13 (3) The products and services are provided to public school
14 students at no cost to the students or their families.

15 SEC. 2. Section 2003 is added to the Public Contract Code, to
16 read:

17 2003. Notwithstanding any other provision of law requiring a
18 state entity to award contracts to the lowest responsible bidder, a
19 state agency shall grant a preference of not more than 10 percent
20 above the lowest responsible bid meeting specifications submitted
21 by a private entity to any responsible bid meeting specifications
22 from the Prison Industry Authority.

23 SEC. 3. Section 10295 of the Public Contract Code is amended
24 to read:

25 10295. (a) All contracts entered into by any state agency for
26 (1) the acquisition of goods or elementary school textbooks, (2)
27 services, whether or not the services involve the furnishing or use
28 of goods or are performed by an independent contractor, (3) the
29 construction, alteration, improvement, repair, or maintenance of
30 property, real or personal, or (4) the performance of work or
31 services by the state agency for or in cooperation with any person,
32 or public body, are void unless and until approved by the
33 department. Every contract shall be transmitted with all papers,
34 estimates, and recommendations concerning it to the department
35 and, if approved by the department, shall be effective from the
36 date of the approval.

37 (b) This section applies to any state agency that by general or
38 specific statute is expressly or impliedly authorized to enter into
39 transactions referred to in this section.

40 (c) This section does not apply to the following:

1 (1) Any transaction entered into by the Trustees of the California
 2 State University, by the Board of Governors of the California
 3 Community Colleges, or by a department under the State Contract
 4 Act or the California State University Contract Law.

5 (2) Any contract of a type specifically mentioned and authorized
 6 to be entered into by the Department of Transportation under
 7 Section 14035 or 14035.5 of the Government Code, Sections 99316
 8 to 99319, inclusive, of the Public Utilities Code, or the Streets and
 9 Highways Code.

10 (3) Any contract entered into by the Department of
 11 Transportation that is not funded by money derived by state tax
 12 sources but, rather, is funded by money derived from federal or
 13 local tax sources.

14 (4) Any contract entered into by the Department of Personnel
 15 Administration for state employee benefits, occupational health
 16 and safety, training services, or combination thereof.

17 (5) Any contract let by the Legislature.

18 (6) Any contract entered into under the authority of Chapter 4
 19 (commencing with Section 11770) of Part 3 of Division 2 of the
 20 Insurance Code.

21 (7) *Any contract that is exempt from the Public Contract Code*
 22 *pursuant to Section 2807 of the Penal Code.*

23 SEC. 4. Section 10332 of the Public Contract Code is amended
 24 to read:

25 10332. Any state agency that receives delegated authority to
 26 acquire goods shall be authorized, at a minimum, to make the
 27 following types of acquisitions:

28 (a) Acquisitions not exceeding the dollar value established
 29 pursuant to Section 10330.

30 (b) Acquisitions in any amount of goods available under an
 31 unexpired statewide or regional contract. Acquisitions of goods
 32 for which a valid statewide or regional contract is in effect may
 33 not be made, without the approval of the office, from a supplier
 34 other than the supplier with whom the state has a valid contract.

35 (c) Acquisitions in any amount of goods that state agencies ~~are~~
 36 ~~required, by Section 2807 of the Penal Code, to~~ acquire from the
 37 Prison Industry Authority *pursuant to Section 2807 of the Penal*
 38 *Code.*

39 (d) Acquisitions not exceeding the dollar amount, established
 40 pursuant to Section 10330, of goods designated in price schedules

1 that the office has established with suppliers. Acquisitions not
2 exceeding the dollar amount, established pursuant to Section 10330,
3 of goods designated in price schedules may be made from a
4 supplier other than the supplier specified on a price schedule if
5 another supplier offers the same or equivalent goods at a price
6 lower than the price established in the price schedule. The agency
7 shall notify the office prior to making the acquisition. The
8 acquisition may be made 48 hours after receipt of the notice by
9 the office unless the office advises the agency that the goods to be
10 acquired are not the same or equivalent to the goods specified on
11 a price schedule.

12 (e) Acquisitions not exceeding the dollar value, established
13 pursuant to Section 10330, of goods that are available from the
14 state warehouses but which the state agency can acquire from
15 another supplier at a price lower than the price charged by the
16 department. The agency shall notify the office prior to making the
17 acquisition. The acquisition may be made 48 hours after receipt
18 of the notice by the office unless the office advises the agency that
19 the goods to be acquired are not the same or equivalent to the goods
20 available from the state warehouses.

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