

July 22, 1994
ILR 94-E

President R. Lane Beattie
Senator Rex Black
Utah State Senate
319 State Capitol
Salt Lake City, Utah 84114

Subject: Furniture Purchase

Dear President Beattie and Senator Black:

As you requested, my staff has reviewed the circumstances surrounding a furniture purchase made by the State Office of Education (SOE) during March 1994. At that time, the SOE purchased \$92,996 of office furniture from Utah Correctional Industries (UCI). This purchase has been controversial because State Purchasing originally bid the purchase out to private vendors but rescinded the bids after the Department of Corrections protested. The local business that originally thought it had won the bid filed a formal protest with the State Procurement Officer. As a result of the dispute, you asked my office to review the facts involved in this purchase and advise you about whether State Purchasing used the most cost-effective alternative to purchase furniture for the SOE. While SOE management is satisfied with both the price and quality of the furniture purchased from UCI, the process has further alienated an already sensitive business community about UCI's role in competing in the local furniture market.

Utah Code Requires State Agencies to Purchase from UCI

To understand what happened in this instance, you need some background information. First, you should understand that this is one of a number of disputes over **Utah Code** 63-56-35.6 which directs state agencies to purchase products produced by UCI. In 1985, the Utah Legislature amended the Utah Procurement Code to require state agencies to purchase prison industry goods. The statute states:

- (3) *State departments, agencies, and institutions may not purchase any goods or services provided by the Correctional Industries Division from any other source unless it has been determined in writing by the director of Correctional Industries and the state procurement officer or in the case of institutions of higher education, the institutional procurement officer, that purchase from the Correctional Industries Division is not feasible due to one of the following circumstances:*
- (a) *the goods or service offered by the division does not meet the reasonable requirements of the purchasing agency;*
 - (b) *the goods or service cannot be supplied within a reasonable time by the division; or*
 - (c) *the cost of the goods or service, including basic price, transportation costs, and other expenses of acquisition, is not competitive with the cost of procuring the item from another source. In cases of disagreement, the decision may be appealed to a board consisting of the director of the Department of Corrections, the director of Administrative Services, and a neutral third party agreed upon by the other two members or, in the case of institutions of higher education, the president of the involved institution shall make the final decision.*

Local Furniture Dealers Opposed to Statutory Mandate

An ongoing dispute exists over the statutory requirement that state agencies must purchase furniture from UCI. Our purpose is not to attempt to resolve this public policy dispute, but mention it because it is important in understanding the dispute over the SOE furniture purchase.

For some time, local furniture vendors and manufactures have been concerned that this statute places them at an unfair disadvantage when competing for the state's furniture business. In fact, legislative hearings were held by the 1993 Judiciary Interim Committee. In the hearings, private businesses argued that UCI has an unfair advantage because of the wages they pay, the absence of mortgage and lease payments on facilities, and other costs

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that UCI does not have to pay. They also believe that private vendors must adhere to much more stringent quality standards.

The Department of Corrections has defended its program by indicating that they are following the legislature's intent to provide meaningful jobs to prisoners placed in their custody. They explain that the statute gives them a limited market, state agencies, to provide job training skills for inmates. According to UCI, these training programs are totally funded out of revenues generated from the sale of UCI products and participation in these programs reduces recidivism at the prison.

SOE Furniture Purchase Contributed to Dispute

In our opinion, the facts involved in this purchase further contributed to the ongoing public policy dispute between the state and local furniture dealers. To keep these conflicts to a minimum, State Purchasing needs to encourage state agencies to deal directly with UCI about furniture purchases before involving local furniture dealers. The local dealer involved in this incident is most concerned about the time and expense his company spent in preparing a bid that at the time he did not realize he had little chance of winning.

At the end of the 1994 Legislative Session, the State Superintendent of Public Instruction approached the State Procurement Officer about buying replacement furniture for the remodeled SOE Building. He indicated that he did not want to purchase the furniture from UCI. At that time, he believed that Kimball office furniture offered by a local dealer was cheaper and better quality. He also felt that UCI could not meet the delivery schedule needed for SOE to move back into their remodeled building. The State Superintendent also was concerned because a number of years before SOE had to return board room tables built by UCI due to poor quality.

The State Procurement Officer requested a letter from the State Superintendent explaining his concerns. On February 17, 1994, the State Procurement Officer received a letter from the Superintendent. In part, the letter stated that, "We have personally examined both the Kimball office furniture in the Affinity line and the UCI office furniture in the Bountiful line. It is our unanimous opinion that the Kimball office furniture is a better, more consistent quality than the UCI furniture." The letter goes on to state that initial price comparisons between UCI's catalog price and the Kimball line found that the Kimball line was less expensive. Also, the Superintendent indicated in his letter that it was his understanding that UCI could not meet the delivery date because of an impending lock down of inmates. Because the concerns outlined in the Superintendent's letter potentially met the exceptions granted in the Utah Procurement Code, the State Procurement Officer decided to prepare a bid request for the furniture. He was concerned that if he did not move ahead that SOE would be without furniture when it moved back to its remodeled building.

The Department of Corrections immediately protested the State Procurement Officer's action. In a letter dated February 25, 1994, the UCI director reminded the State Procurement Officer that the Department of Corrections had to agree in writing before the SOE could purchase furniture from a private vendor. He explained that he was convinced that UCI's products were priced competitively and compared favorably in quality with the Kimball furniture mentioned by the

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State Superintendent. Also, he indicated that they could deliver the furniture within 30 days and were willing to give SOE a ten-year warranty.

As a result of the dispute, the State Procurement Officer arranged meetings between SOE and UCI. At one of these meetings, UCI brought furniture from its assembly line to show SOE officials. As a result of this meeting, the State Superintendent and his staff agreed that UCI could meet SOE's furniture needs. However, this meeting did not resolve the dispute. Bids received back from private vendors and UCI indicated that a local furniture dealer offered a lower price. The local dealer bid the Kimball Affinity line at \$96,110, while UCI bid its furniture line at \$97,280. It should be noted that this amount was approximately 15% lower than UCI's published catalog price. The UCI furniture did include some features not included in the Kimball furniture. In the discussions between UCI, SOE, and the State Procurement Officer, UCI agreed to lower their bid. Their bid amount was reduced by \$4,284 to \$92,996. With this reduction, the State Procurement Officer voided the bids and awarded the contract to UCI.

Needless to say, the local firm believed they had been unfairly dealt with and filed a formal protest with the State Procurement Officer. The State Procurement Officer reviewed the protest and explained his reasons for voiding the bids. He explained in his review that "Since the determination was made to purchase these items through UCI as provided by statutory preference, it was necessary to void the subject bid process and reject all bids." He explained in his letter that he regretted that the firm felt it had been treated unfairly but believed that because UCI products received preferential treatment under Utah Code that he was required to void the bids and follow the statute. The local vendor did not formally appeal the State Procurement Officer's decision.

Local Dealer Concerned About Cost of Bid Preparation

While the local dealer involved in this instance is concerned about the preference given to UCI by statute, their most immediate concern was the time and expense they went to in working with SOE and preparing their bid. They believe it is inappropriate and unfair to go to the work necessary to find out what a state agency wants and prepare the necessary bid documents when in reality they have little chance of actually making a sale. This dealer and others believe that they are being taken advantage of by state agencies to obtain specification and pricing guidelines that are used to negotiate purchases with UCI.

You asked us whether State Purchasing used the most cost effective alternative to obtain furniture for the SOE. In our opinion, SOE received a good price and SOE staff indicate they are satisfied with the quality. Furthermore, SOE staff told us that UCI met their delivery date. However, this purchase has contributed to the ongoing conflict between local furniture vendors and UCI. During the 1993 Judiciary Interim Committee hearings, furniture dealers complained that state agencies are using local businesses to obtain prices and specifications for guidelines when obtaining furnishings through UCI. In a 1991 letter to the chairman of the state Privatization Policy Board one local dealer complained that; "We have been contacted by various entities and departments of state government to supply proposals and bids for furnishings. After spending the time to prepare these bids, we find they are being used as guidelines for specifications and pricing for providing these furnishings through the state prison

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facilities." In our discussions with the local firm who lost the SOE furniture bid, they had basically the same complaint. The local vendor was extremely frustrated over the time and cost of preparing the bid and having it rescinded.

In our discussions with the State Procurement Officer, we discussed why the issues of price and quality were not worked out before requesting bids from private vendors. He explained that it was a matter of timing. He was concerned that SOE would not accept UCI furniture and that they would not have the furniture needed to move back to the newly remodeled building. He decided to pursue a parallel course of soliciting bids from local firms while trying to work out the issues of price and quality between SOE and UCI. He explained that if a mistake was made it was in requesting bids from private firms. He indicated that this was an isolated incident; and under normal circumstances, the decision about purchasing UCI furniture is made first before bids are sought from the private sector. However, he felt that to meet SOE's needs he had to pursue this alternative. Also, asking for bids allowed them to eventually negotiate a lower price from UCI.

We discussed this issue with the director of the Department of Administrative Services. She prepared a letter for us indicating she has the authority needed to avoid this situation from happening again. In her letter, she stated, "The State Code provides me with all the information and authority I need to have in order to see that the agencies and institutions of state government use the products and services of UCI as directed by the Legislature. It will be my practice to see that the directions in the code are vigorously administered." Her intent is to try to strengthen the state's relationship with the local business community by avoiding these situations in the future. Strengthening this relationship, however, is complicated because she does not have the authority to ensure that UCI prices are competitive or lower than the local market. She told us that state agencies want to use private vendors because they believe UCI prices are too high. The only mechanism she has available is a periodic market survey conducted by the State Purchasing Division.

Periodically, State Purchasing conducts a market survey comparing UCI prices with other comparable lines of furniture. In the most recent survey, State Purchasing concluded that several of UCI's lines "...are priced higher than comparable furniture in the market." UCI has been advised of the survey results and is considering price changes. Completing this survey is difficult because the State Purchasing Division must contact local furniture dealers to obtain comparable information which causes further bad feelings between the state and local businesses because they don't want to provide any information that may aid UCI. Also, State Purchasing has organized a furniture committee made up of state agencies who buy from UCI. According to State Purchasing this committee works closely with UCI marketing personnel in making changes to improve UCI quality. State Purchasing reports that UCI quality has improved.

If these controls are not adequate to control price and quality, another action you might consider is a review of UCI pricing structure and quality control measures. We have not attempted to address this issue in detail but believe that it should be brought to your attention. In our opinion, a question still exists about how you provide some price and quality controls for UCI since they have basically an exclusive contract to provide furniture to state agencies. As this situation illustrates, when competition is involved substantial savings can result. As explained earlier, UCI originally bid \$97,280 then reduced it to \$92,996 for a savings of \$4,284.

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We hope the information provided answers your concerns. We would be happy to meet with you to further discuss this issue.

Sincerely,

Wayne Welsh
Auditor General

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