

The State of South Carolina



Office of the Attorney General

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November 4, 1988

The Honorable Alex Harvin, III
The Majority Leader Emeritus
House of Representatives
Post Office Box 266
Summerton, South Carolina 29148

Dear Representative Harvin:

By your letter of September 23, 1988, you had inquired as to the applicability of the South Carolina Consolidated Procurement Code, and particularly the in-state bidder's preference, to the purchasing of South Carolina-produced or -processed agricultural products by state agencies subject to the requirements of the Procurement Code.

The Procurement Code, at Section 11-35-710(i), Code of Laws of South Carolina (1976, as revised), exempts from the required purchasing procedures, "[f]resh fruits, vegetables, meats, fish, milk and eggs[.]" While there is no requirement to purchase these items through Procurement Code procedures, such is certainly not prohibited. State agencies or institutions may wish to promote the State's economy and agricultural business by giving preference to South Carolina producers in this manner. You or the Agriculture Study Committee may wish to suggest legislative changes within the Procurement Code in this respect.

As to agricultural or food products processed in this State, Section 11-35-1520(9) contains the general rules for application of the in-state preference. That section contains four specific provisions in various cases of tie bids, the general rule being that ties must be resolved in favor of the in-state bidder. In cases where there is not a tie bid, Section 11-35-1520(9)(e) provides that the in-state bidder must be awarded the contract if his bid is within two percent of the

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lowest bid (for procurements under \$2.5 million) or within one percent of the lowest bid (for procurements over \$2.5 million). That section further provides that the in-state preference shall not be given when a single unit of the item to be purchased costs over \$10,000, a situation unlikely to occur in this context.

Where and when the in-state preference will operate depends upon the precise facts of the pending procurement. Too, as to fresh fruits, vegetables, and other products enumerated in Section 11-35-710(i), while the Procurement Code and its in-state bidder's preference do not expressly apply, the Procurement Code and the in-state bidder's preference certainly may be utilized. To enhance the State's economy and particularly the agriculture business, legislative action might be appropriate, at least to encourage an in-state producer's or processor's preference in the procurement of these goods.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:sds

REVIEWED AND APPROVED BY:

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