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February 5, 2020

VIA EMAIL ONLY
The Honorable Edward R. Tallon, Sr.
Subcommittee Chair
Legislative Oversight Committee
South Carolina House of Representatives
Post Office Box 11867
Columbia, SC 29211

RE: Vendor Preference for Vendors Employing Former Offenders

Dear Representative Tallon:

Thank you for the opportunity to provide input to the House Legislative Oversight Committee's query concerning preferences for vendors who employ former offenders. There are several issues to consider in determining if this type of preference is one that should be initiated to effectuate this type of social policy through the State's Consolidated Procurement Code (the Code).

In-State Preference
South Carolina's resident vendor preferences are found in the Code at Section 11-35-1524. The obvious intent is to give South Carolina resident vendors who respond to qualified solicitations an advantage based upon established criteria listed in the Code. This raises the question for this discussion of what the criteria will be for this type of preference. For example, will the preference be available for all vendors seeking to contract with the State? Will the preference be available to vendors based on a set percentage of former offenders being employed by the vendor, or will employment of a single former offender qualify a vendor to receive the preference? Will certain prior convictions of former offenders be a basis for denying application of the preference? Will certain industries be restricted from hiring certain former offenders based on their prior conviction and therefore not be eligible to take advantage of the preference? What vocational programs (certifications) will qualify and will the legislation apply to former offenders who completed a qualified vocational program (certification) before enactment of the preference legislation? These are just a few observations of several issues for the Committee to consider as it deliberates this issue.

Implications
Preferences are created to give the local vendor community a competitive advantage over out-of-state vendors. The purpose for doing so, as the argument goes, is to keep State tax dollars in the local economy with the idea that economic growth might occur and be sustained. However, along with the creation of in-state preferences can come unintended consequences. One such unintended

consequence is reciprocity. Reciprocity occurs when other states enact legislation that either prohibits a purchasing entity from doing business with a vendor located in a state with a local preference or applies the state's preference against the vendor. Reciprocity has the potential of limiting South Carolina vendors' ability to effectively compete for government contracts in other states. The General Assembly recognized this possibility years ago when it excluded application of Section 11-35-1524 to the acquisition of motor vehicles.

Preferences may have a particularly limiting impact on small and minority businesses seeking to do business with governmental entities outside the borders of their home state. Preferences also have a negative budgetary impact as the costs of goods and services are increased when a preference is applied; thus, not yielding the best value for the State. The hallmark of a public purchasing system is to ensure an open and competitive process takes place in the award of government contracts. Preferences, however, have the potential of limiting competition among vendors and are viewed by some procurement professionals as an impediment to achieving cost effective acquisitions.

A preference that lacks clarity creates ambiguity in its application. Such ambiguity leads to protests and appeals of contract awards. This results in delays and disruption of the State's and vendors' business operations.

Possible Alternative

Preferences are often created to address some worthwhile social concern, as in the present discussion, but doing so can run counter to sustaining an open and competitive procurement system. As an alternative to enacting a preference in this instance, the Committee may want to consider providing a tax credit to businesses that employ former offenders much like the Code allows for businesses who contract with the State to claim a tax credit for subcontracting with minority businesses. (See Code Section 11-35-5230). Allowing a tax credit does not impede competition nor does it increase the costs of public purchasing. Also, implementation of a tax credit for hiring former offenders is something that can be employed in the private sector as well. We believe the tax credit is a viable option because in our experience preferences have very little impact in determining the outcome of contract awards.

Please let us know if we may provide you further assistance in this matter.

Sincerely,

Delbert H. Singleton, Jr.

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Date: 2020.02.05
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Delbert H. Singleton, Jr.
Division Director
Division of Procurement Services