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# The State of South Carolina



## Office of the Attorney General

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July 1, 1992

The Honorable Joe Wilson  
Senator, District No. 23  
Gressette Senate Office Building  
Suite 606  
Columbia, SC 29202

Dear Senator Wilson:

You have asked whether a domesticated foreign corporation can qualify for in-state preference in procurement.

The in-state preference is set forth in §11-35-1520(9). In subsection (e) of that section, the statute provides in part that

A vendor is considered to be a resident of this State if the vendor is an individual, partnership, association, or corporation that is authorized to do business within the State, maintains an office in the State, maintains a representative inventory of commodities on which the bid is submitted, and has paid all assessed taxes.

The above-quoted sub-section clearly indicates that domesticated foreign corporations are eligible for consideration for the in-state preference when the procurement involves the sale of goods or services.

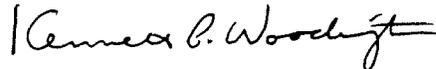
The Procurement Review Panel has consistently held that a domesticated foreign corporation is entitled to the resident vendor preference, assuming all other statutory requirements have been met. The Panel first so held in 1982 in Durr-Fillauer Medical, Inc., Case No. 1982-1. On Page 4 of its decision (copy enclosed), the Panel held that a resident vendor must be "a resident of the State or a foreign corporation authorized to do business in the State . . . ." (emphasis added). This conclusion has been reiterated by the Panel in a number of subsequent cases.

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This does not address the question as it might arise in other contexts, notably construction contracts. However, the in-state preference becomes a factor in these situations only in the unlikely event of a tie bid. I have inquired at the State Engineer's Office concerning this, and was informed that a tie bid situation has never occurred on a construction contract and that moreover, the last time an out-of-state construction contractor won a state contract was about twenty years ago.

Since the in-state preference issue therefore only seems to arise in connection with the procurement of goods or services, I assume that your question deals with that issue, which is resolved by the terms of the statute as quoted above. If I am incorrect about what you are requesting, please let me know, and I will attempt to determine what the statute means in contexts other than procurements of goods.

Sincerely yours,

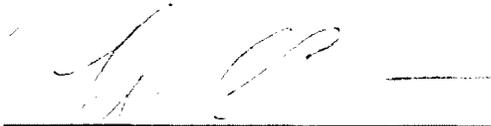


Kenneth P. Woodington  
Senior Assistant Attorney General

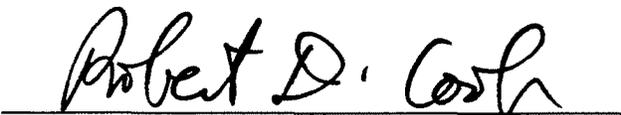
KPW/rho

Enclosure

REVIEWED AND APPROVED:



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