

1979 WL 43623 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 27, 1979

*1 Mr. William T. Putnam
Executive Director
State Budget & Control Board
Wade Hampton Office Building
Columbia, South Carolina 29211

Dear Mr. Putnam:

Questions concerning several recent State contracts have led this Office to conclude that successful bidders which are foreign (out-of-state) individuals, corporations, partnerships or associations should be required to qualify to do business within this State or, as a minimum alternative, to agree to submit to the jurisdiction of the courts of this State as to all questions arising under the specific contract, including the performance of the contract.

In the case of foreign corporations which are required by statute to become qualified to do business in the State [See Sections 33-23-10, *et seq.*, 1976 Code], the failure to do so deprives the State of certain franchise and other taxes. An example is the license tax under [Section 12-19-70, 1976 Code](#). Although penalties are provided for failure to qualify [Section 33-23-150], this is a cumbersome procedure and does not aid the State in resolution of disputes involving the contract itself, or licenses or taxes due.

There are also certain contract activities which a foreign corporation may undertake which exempt it from the qualification requirements of Section 33-23-10, such that an absolute policy requiring qualification in all cases might well discourage highly-desirable vendors-contractors from bidding, because of certain income tax problems and other reasons.

Further legal complications arise if the vendor-contractor is a foreign individual, partnership or association to which statutes requiring qualification to do corporate business and obtaining franchise licenses do not apply. Questions of State court jurisdiction, service of process, and similar matters are even more complex than when dealing with a foreign corporation.

For these reasons, it is recommended that all Requests for Proposals (bid invitations) issued by the State and its agencies and institutions should include a provision substantially as follows:

Upon award of a contract under this Request for Proposals, the person, partnership, association or corporation to whom the award is made must comply with the laws of South Carolina which require such person or entity to be authorized and/or licensed to do business in this State. Notwithstanding the fact that applicable statutes may exempt or exclude the successful bidder from requirements that it be authorized and/or licensed to do business in this State, it shall enter into an agreement as a condition of the contract, that subjects it to the jurisdiction and process of the courts of the State of South Carolina as to all matters and disputes arising or to arise under the contract and the performance thereof, including any questions as to liability for taxes, licenses or fees levied by the State or its political subdivisions.

By copies of this letter, we are calling attention to this matter to the Division of General Services and to the Division of Computer Systems Management. We solicit any comments or questions.

*2 Upon concurrence of the State Budget and Control Board, we recommend this provision be directed to the attention of financing, contracting and legal offices of affected State agencies and institutions.

Sincerely,

Frank K. Sloan
Deputy Attorney General

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