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ECONOMIC DEVELOPMENT THROUGH LOCAL VENDOR PREFERENCE POLICY: THE CASE OF HORRY COUNTY, SOUTH CAROLINA

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ABSTRACT

In the wake of the worst recession since the 1930's, local communities actively seek ways to stimulate business development, economic activity and job creation. The economic development imperative arises at a time of public pressure to limit government programs and overall reduce size and cost of government. This paper provides an overview of one means by which local governments can achieve economic stimulus inducement by strategic use of its own fiscal resources. The use of ***local vendor preference purchasing laws*** *provides a means by which communities can focus locally generated tax dollars to prime both public and private economic activity. The article surveys the state of these policies in the context of the case of Horry County, South Carolina. It examines the legal environment of Federal and state laws toward such policies. Horry County's situation is not dissimilar to that faced by other counties in the coastal regions of the Carolinas. The article stimulates new thinking on a theme of local efforts-self reliance to encourage growth and business development.*

INTRODUCTION

In 2007 the United States entered the deepest and longest economic recession since the 1930’s *Great Depression*. Beginning with an extraordinary sub-prime mortgage crisis, the economy quickly fell into severe, prolonged contraction, threatening the underpinnings of global financial markets. The ensuing meltdown of domestic real estate markets, record bank failures and home foreclosures spread to double digit unemployment, net loss of over 5 million jobs and a fall in the average work week not seen since 1964. Capital markets nearly collapsed from an acute fall in stock markets, massive wealth destruction in the wake of *Madoff* (and other) Wall Street financial scandals, bankruptcies of large investment banking houses, near-collapse of AIG and major money centered banks. From its high to low point the economy contracted by an estimated 18%

State and local governments were battered by the direct fallout in employment and precipitous decline in tax revenues. At its low point, second quarter 2009, U.S. state and local government revenues declined by 11.4%. High unemployment led to unprecedented demand for social and economic services. Most states and local governments confronted actual or near deficits, cutbacks in public employment (layoffs, furloughs) and tax increases.

How were states to handle this extraordinary situation? Conventional economic development could not respond quickly and the private sector lacked the quick stimulus of new industry development in most cases. States resorted to acceptance of Federal stimulus funds to stay afloat 2009-2011. As a temporary expedient, the Federal Government through its own heavy borrowing initiated a program of economic stimulus to the states providing subsidies for two years. But as the recession has slowly turned and the national politic shifted to reduction of Federal spending, states find they can no longer depend on Federal supports of their economies and local governments find their state governments fiscally constrained in providing local support. Local counties and municipalities have been thrust into a new era of self help and self innovation.

This paper examines how local governments can help lever economic development and local economic stimulus through the use of their own purchasing power to stimulate increased economic activity. Such *preferences* may well help prime the pump for further economic growth and development in the private sector without adding to increased taxes or necessarily increased government spending. We focus in this paper on the potential impact and use of such technique in Horry County, South Carolina, the largest county in land area in the State of South Carolina located along its Northeast Atlantic Coast. Known primarily for its resort tourism and golf in Myrtle Beach, the county's economy also includes key features of agriculture, manufacturing, services, government and education.

THE RECESSION: SOUTH CAROLINA AND HORRY COUNTY

The "Great Recession of 2008-2009" had a profound effect in the State of South Carolina, a state that heretofore was in a rapid growth mode. By 2007 South Carolina's General Revenue state budget of over $7 billion, declined in 2010 to $5.1 billion and is estimated to decline to approximately $4.7 billion in FY 2011 with a projected budget gap of approximately $800 million.

For November 2010, South Carolina's unemployment rate of 10.6% was the sixth (6th) highest in the United States behind Nevada, Michigan California, Florida and Rhode Island. (At the recession's peak South Carolina was third highest.) While Horry County remained stronger than other counties within the state, its 11.5% unemployment rate has had significant negative local impact due to the area's high dependence on the cyclical tourism industry, government and related employment in the economic slowdown. (At the peak of the recession, Horry County unemployment exceeded 13% while the national average reached 10 %.)

According to the Federal Government's Recovery Website, from 2009-10, South Carolina received $2.6 billion in Federal stimulus block grants and $191.5 million in loans. Horry County received $407,000 to which the U.S. government estimated created only 7 jobs.

Particularly hard hit in Horry County has been the construction and cyclical-related services industry (primarily, tourism). Construction reached a record peak in Horry County in FY2006-2007, subsequently declining in the recession 52%. Commercial construction, alone, in the county declined 28%. Likewise, tourism 2009-2010 saw a decline indicated by a 4% decrease in occupancy rates and 10% decrease in revenue-per-available-room.

Horry County, the largest county in the State, has prided itself on its history of self reliance (its motto: the *Independent Republic*) through, among other things, its voter approved exclusive county sales taxes to fund improvement in roads (1%)(RIDE) and K-12 and higher education infrastructure construction (1%). Horry County's population of over 264,000 is the fastest growing population in South Carolina [The 2010 Census announced that Horry County grew in the last decade 37%]. Coupled with its hosting nearly 14 million visitors each year, it has realized increased value added in property and tourism-related taxes. (Horry County provides 14%-15% of annual aggregate tax revenue to the State, itself) Servicing this growth, however, has required substantial public purchases and capital investment by Horry County government each year to advance the community.

WHY ENACT A LOCAL VENDOR PURCHASING PREFERENCE POLICY?

At the outset, it would be useful to address why such a policy is valuable to business and the public, and, not an imposition into the *free market* or an undue cost to local taxpayers. Purchasing locally or nationally as a *leadership* signal to encourage domestic investment is a policy long-standing to the foundation of the American Republic. George Washington signaled the importance of setting domestic purchase policy as a theme for the nations' future in his 1789 inauguration as the first President of the United States. Rejecting the styles of Europe [or wearing his Continental Army uniform], Washington ordered a double-breasted brown suit from the Woolen Manufactory of Hartford, Connecticut, specifically to signal the need for Americans to stimulate American manufacturers.

Local vendor purchasing preference is one of a number of longstanding public policies in which states legally provide preferences to their state and local residents. The most obvious of which is in-state tuition discounts at public universities. For example, in Horry County at Coastal Carolina University (a state comprehensive university), a South Carolina resident pays $8,950 per academic year in tuition while a non-South Carolina resident pays $18,770 per academic year, a local preference of 52.3%. Similar in-state preferences are in place at all other South Carolina state colleges and universities; a policy followed in virtually all U.S. states.

At the local level, Horry County in accordance with State law provides a resident preference in the assessment of residential property taxes of 2% of assessed value. Qualified local resident property tax receives an assessment ratio of 4%, non-residents 6%.

Three key factors compel the consideration of local business preferences:

- Investment Capture Principal of public policy
- Local Economic Stimulus Effects
- Ensuring Fair Trade in Free Market Bidding

The two previous prominent examples point out the long standing ***Investment Capture*** principal of public policy described as follows:

> *Government favoritism of in-state residents is manifest...consideration of political fairness and public finance efficiency support the notion that states may reserve exclusively to their own citizens the benefit of those programs that are funded by state taxpayers and that cannot be shared equally with non-residents without jeopardizing state citizens' access to such programs.*

South Carolina has long recognized such policy in its own purchasing at the state level.

Economic Stimulus: Local Vendor Purchasing preferences, as will be described later, have a major local economic stimulus effect. This is particularly useful during times of declining or weak economic conditions, but also continues to incentivize businesses during normal growth economic times.

Horry County is a major local economic player in this regard. In its own right Horry County, together with the Horry County School District, represents the single largest direct employer in the County. The County's annual budget of $327.2 million includes annual purchases of goods and services of nearly $16 million and a five-year capital improvement plan of over $85.7 million (excluding capital improvements by local municipalities in the county). These purchases provide a major strategic opportunity for Horry County to use its procurement leverage to recycle dollars into the community to create further investment, employment and help advance economic development and diversification of the County's economy.

Fair Trade in Free Trade: Finally, local vendor purchasing preferences are actually one means by which a government entity can *level the playing field* in the procurement of goods and services in a free market. The concept of a free market in bidding *assumes* that all bidders operate along relatively same rules and economic conditions. However, this is not always the case in the area of government purchases. Other counties/ municipalities within a state, out-of-state and out-of-nation vendors (it now being a competitive global economy) often operate on differential tax and operating subsidies that directly impact the cost basis of their public bids. Thus, a local preference is necessary to ensure a pure free market does not advantage *free riders*. Indeed, it may actually make both the out-of-area vendor (OAV) and local vendor (LV) *more* competitive to the benefit of the public.

In reality out-of-area (OAV) bidders who receive public contracts more often than not realize economic benefits while not contributing to like underlying local support costs via taxes or commercial responsibilities of local bidders. Local residents, as one Federal Court of Appeals observed, "*are unlikely to pay for local government services, if they must bear the cost, but the entire nation may receive the benefits.*" Since states and counties cannot tax non-residents to equalize the cost differential enjoyed by the OAV, the state or county can legitimately mitigate this factor by giving local preference to its publically funded contracts. The result is not necessary a *per se advantage*, but rather a leveling of the economic playing field.

Let us take for example the states of California and Nevada. A business in California is subject to a state income tax and higher corporation fees than the comparable business in Nevada. Without a local purchasing preference (and most California cities have such policies), California businesses would be at a competitive disadvantage to the Nevada bidder. This could then result in a large number of California dollars crossing the border to Nevada, taking with them jobs, recycling of contract dollars and their concomitant tax generation that is preserved or re-captured in the case of public contracts going to local vendors. This has long been evident with the close proximity of Reno and Carson City, Nevada to its shared border with the Lake Tahoe region of California and the ease of cross border business in the region.

This may also be observed in the specific situation of Horry County, South Carolina (which borders North Carolina). An OAV would bring in vehicles and equipment licensed in another state or county. Hence, the vendor would not be paying personal property taxes that contribute to Horry County schools. Its primary offices and facilities, residing elsewhere do not contribute property taxes to Horry County or its municipalities. And to the extent it disproportionately purchases materials and supplies out of the area, it is not contributing to Horry County's particular sales taxes that support RIDE (transportation), education infrastructure, and in the case of the City of Myrtle Beach, tourism promotion. Local vendors pay these taxes and more as part of their cost of doing business in Horry County and hence are differentially cost disadvantaged to an OAV.

Research to date could find no evidence of bidders refusing to bid on public contracts because of the presence of a Local Vendor Preference Policy. Indeed, the policy mitigates that possibility because the preference (at least as envisioned in Horry County) only extends to giving a certified local vendor a chance to match the lowest bid from out-of-area vendors. Absent the match, the lowest bid is still accepted by the County regardless of location of vendor.

In short, a Local Vendor Purchasing Preference would allow Horry County, consistent with its history, to create its own controlled positive economic stimulus without significant costs or mandates typically attached with grants and funds from the State or Federal governments. The County thus can make due reasonable deference to vendors who live and invest in the community.

LOCAL VENDOR PURCHASING PREFERENCE

Local governments, providing a preference in the purchase of goods, services and construction, has been a long standing public policy at the federal state and local level. Such polices are also referred to as "selective purchasing laws" or "procurement preferences." Local purchasing preference standards have existed at the Federal level since the Civil War. The United States government, for example, has often required so-called "Buy American" provisions as part of Federal procurement policy. Locally, regional mass transit agencies operate under such provisions when purchasing any mass transit equipment purchased over $100,000 with federal funds; purchases that must meet U.S. content standards.

At the state level according to the National Association of State Purchasing Officials (NASPO), over 39 states now use some form of purchasing preference and even more implemented locally at county and municipality level. South Carolina, within certain rules and restrictions, maintains a state purchasing preference of 7% on State purchases up to $30,000. South Carolina Code does not restrict local government discretion in its procurement ordinances for local preference.

Local purchasing preferences are prevalent in the State of South Carolina. In an initial search on-line we found local purchasing preferences being used or under consideration by South Carolina counties and municipalities. Currently, approximately 35 percent of South Carolina counties have such laws; particularly counties bordering Georgia and North Carolina, and the list is growing. The following examples include but are not limited to:

**SOUTH CAROLINA COUNTIES, CITIES AND TOWNS
WITH LOCAL VENDOR PREFERENCE LAWS IN PLACE 2010**

COUNTIES	CITIES AND TOWNS
Aiken	Bluffton
Beauford	Clemson
Berkeley	Columbia
Colleton	Florence
Charleston	Gaffney
Cherokee	Greer
Colleton	Hardeeville
Darlington	Hilton Head
Dorchester	Mount Pleasant
Jasper	North Charleston
Lancaster	Waterboro
Oconee	
Orangeburg	
Richland	
Sumter	
York	

These local preference policies run a wide variety in their application. However, we found that the types of vendor preferences fall into the following categories.

- **TIE-BREAKERS**: these are vendor preferences that in the event of a procurement bid tie, award the contract to the local vendor. Approximately 39 states have such provision. These are the least costly to the taxpayer as they do not subsidize any purchase, but defer a matching bid to the local vendor.

- **PERCENTAGE PREFERENCES**: these are policies that provide a local vendor a preference of from 5% to 15% in calculating the "lowest bid" for the purposes of awarding a contract. (In South Carolina we found no ordinance that exceeded 5%.) Typically, these policies apply only to relatively small contracts (less than $200,000), often in a graduated percentage amounts, which may impact their overall effectiveness as an economic development tool.

- **ABSOLUTE PREFERENCE**: an extremely small number of states require that certain goods they purchase be only from vendors in their state. While rare, these may be seen in purchases of protected commodities, for example printing, coal, concrete and lumber, milk and certain food products in states such as New York and South Dakota.

In many cases both the *Percentage Preference* and *Tie Breaker* provisions are used. For the purposes of stimulating the greatest positive impact for local economic development, we recommend and concentrate on the ***percentage preferences or a tie-breaker provision***. These are easy to administer and have the most immediate potential economic impact by providing a very clear and marked incentive to businesses to locate and invest in a county, create the jobs and economic value-added.

A second factor in creating a local vendor preference is to substantially raise the cap on procurement contracts subject to the local vendor preference. Given that the key policy intention is to attract jobs and investment, it would appear inconsistent for communities to limit the local preference to very small contracts. In reviewing local preferences in South Carolina, we found more often the local preference only applying to contracts of no larger than $10,000. While these may create a positive political appearance, their economic development and stimulus effect is marginal at best and are weak. For example, a 5% preference on such a contract (equal to $500) is hardly the incentive to businesses to make the magnitude of investment in the county or to create jobs the public needs. In the case of Horry County a window of opportunity exists to make a major impact by being perhaps the only county in the State to place a very high cap threshold on its local vendor preference policy where there currently is no state statutory restriction or limitation.

A high contract value cap makes intuitive sense because of the size and impact Horry County's fiscal program suggests for local economic stimulus. The County is engaged in major road projects, education building projects funded by the County's own penny sales tax and its own property tax revenue designated for that purpose. And, to the extent there are no prohibitions with monies coming from the State or Federal government, this sets the groundwork for eventual job creation and investment, to the extent County contracts are involved when such projects as the construction of [interstate highway] I-73 begin to flow into Horry County.

Consequently, Horry County is examining an initial limit of the preference to contracts up to $10 million (a potential local vendor having a $500,000 advantage in consideration of the bid) which provides a local vendor advantage sufficient to induce hiring and local capital investment. The policy under review provides a proviso allowing the County Council to apply the preference, in advance, to special projects beyond the $10 million limit.

Good local vendor policies are those whose requirements offer a balance to, on the one hand not be overly restrictive, but on the other, to prevent fraudulent, sham (or "fly-by- night") awarding of local preferences to businesses, not truly invested in the county. Often these policies will require a local physical business presence for 12 to 24 months prior to contract bid, evidence of local business license and tax payments, and, in some cases, evidence of residency of a percentage of employees. These requirements are relatively easy to police as state and local governments maintain or have access to the relevant data to validate bidders. Many do so already, even in the absence of an enumerated preference law.

ECONOMIC DEVELOPMENT BENEFITS

The obvious question arises as to what are the benefits of a local vendor preference? Do they really work or are they just a cost to the public versus taking the lowest bid from an out of county vendor? In doing our initial research we could find no studies analyzing the economic impact in South Carolina. A literature review, however, reveals a number of studies in which the use of local vendor preferences has been analyzed as to their economic impact.

Arizona Study

A frequently quoted major study comparing local procurement preference of office supplies by the State of Arizona vs. major retailers (Office Depot, Office Max, Staples) in 2007 by Civic Economics found that when using the local vendor, 33.4% of total contract revenue remained in the community, nearly three times more than the next highest OAV vendor. The study also found that the major factors behind the local vendor's contribution to the state economy included:

1. a larger local payroll
2. a larger share of net profits returned to the state
3. more goods and services purchased from other Arizona based businesses; and
4. greater involvement and contributions by the local vendor to local charities.

West Michigan (Grand Rapids) Study

In a study, "Local Works! Expanding the Impact of Local Business on the West Michigan Economy," September 2008, researchers for Civic Economics found that a small change in consumer purchasing by 10% to local vendors would result in an estimated 1,600 new jobs, $53 million in wages, and $137 million economic impact to the West Michigan region. [Note: a similar impact was found in a San Francisco study].

Great Britain Study

A study in Great Britain described a county council finding that local vendors, when used for county contracts, spent 76% of their county contract revenue locally (wages, goods and services purchased) as compared to 36% of contract revenue spent locally when contracts were awarded to out-of-county vendors.

Bloomberg BusinessWeek in a recent article on the movement to "Buy Local," stated studies indicated for every $100 spent locally in purchases, $45 remains in the local economy compared to $13 per $100 spent when using an outside vendor.

Finally, a more striking benefit impact is to view benefits that would flow to the community from the ***economic multiplier effect***. This economic formula calculates the total gross economic benefits of dollars spent in the local community as they turnover, recycle or multiply within the local economy. Past economic studies by Dr. Donald Schunk, while Research Economist at the BB&T Center for Community and Economic Development at Coastal Carolina University, have generally found the multiplier for Horry County to be 1.75. [This figure was also found to be used in an Oregon study].

Utilizing the above multiplier we can see the positive potential impact in the case of Horry County, South Carolina. Suppose Horry County posts a $10 million contract bid and provides a 5% local vendor preference. The preference would initially result in a value to a local vendor of $500,000. Assuming the local vendor then matches the non-local best bid, the local vendor by award of the contract would generate an estimated $17.5 million of indirect and induced economic activity in the local community over a year or more. ($7.5 million induced economic local value generated from the original $10 million contract). In short, the benefit-cost ratio of such a local vendor preference would be approximately as high as 15:1.

Another way to look at it is that every $1 million of local contracts awarded creates or retains at minimum ten (10) jobs. Thus, a $10 million contract award has the potential impact of 100 job creation/retention, critical in a county with double digit unemployment. Interestingly, such a singular policy in Horry County would create or retain 14 times the jobs created by the past year's Federal Stimulus program grants to the County.

POTENTIAL POLICY COSTS

"**Reciprocal" Laws:** Some states have adopted "Reciprocal" Laws to local vendor purchasing policies. These laws add into an out of state bid price, the same percentage that state's government gives as a preference to its own vendors. Thus, for example, a South Carolina bidder from a county giving a 5% preference decides to bid on an Ohio county project, then that Ohio county may add 5% to the bid of the South Carolina bidder. Approximately 35 states have such laws. To the extent local companies in Horry County bid on out of state contracts this may be an impediment. However, if their bids are sufficiently low, the reciprocal law would not be a bar to their receiving the out of state contract.

Communication-Political: It is oftentimes difficult for the public to understand why a public body might allow for 5% more for vendor purchases in the short run during hard economic times or times in which local governments may be raising taxes. This is a matter of ensuring good communication and future economic analysis that can demonstrate to the public substantial economic benefits they realize from a modest local preference compared to simply adhering to a rigid lowest bid from an out of area vendor.

The public can readily understand a Benefit-to-Cost ratio of up to 15:1. Or if one could show the local vendor's taxes paid in the community exceed the initial preference, the public is then assured that the policy is neither a give-away nor an increased cost to County citizens.

Because County government is inherently *political*, there is always the risk of the issue becoming fodder for an anti-incumbent challenger, an election time political "red herring" unless there is clear understanding by the public on the down stream benefits.

Vendors who lose a bid, even with a local preference, can at times attempt to blame the ordinance rather than their firm's management skill on the lost bid or otherwise exert political influence on public officials. This, of course, is the case with all public policies and its effect depends on the rigor of the preference ordinance and dedication of public officials to the policy in place. In the extreme disgruntled bidders might attempt to sue though the courts. But courts have rarely reversed preference policies based in a demonstrable *compelling state interest*. Legal and successful challenges appear to be rare.

Transparency: A properly run system needs to be above board. If the county puts out a bid and despite the local vendor preference an OAV bidder presents a lower bid, an attempt to simply cancel the project (because it did not get the desired outcome for the local business) would destroy the credibility of the program. There needs to be very good rules and training for local vendors so they understand the preference is a plus but not a guarantee to obtaining a contract award. In the end, the county government must get the very best deal for the public. The public needs to be assured the policy is not simply "cronyism" but a legitimate attempt to improve the economic welfare of the local community.

Administration: Local vendor preferences generally are simple to administer. County data on business licenses, taxes and the like are readily available and most localities in South Carolina with a preference maintain simple forms of self reporting. State and local fraud penalties are available for those caught falsifying information. Increased technology, in fact, allows in many cases automation of these functions as well as spot checks on accuracy. To the extent the policy may deter qualified out of state bidders from bidding on contracts, the vendor preference could be a bar to some economic location in the county, but there is no evidence to suggest this has or will happen at this time from any of the studies reviewed in the States of South Carolina or Florida. Evidence of the overwhelming positives of local vendor preference policies appear to far outweigh any perceived or actual negatives.

LEGALITY OF LOCAL VENDOR PREFERENCE POLICIES

Local vendor preference laws have been strongly upheld in the overwhelming majority of cases by the Federal courts against challenges by out of state vendors claiming Constitutional violations of the *Interstate Commerce Clause* (U.S. Constitution Art. 1, §. 8, Cl. 3) or the *Privileges and Immunities Clause* (U.S. Constitution Amend. XIV, §1, Cl. 2). The Courts allow for the "market participant" exceptions recognizing that a state as a purchaser of products has a right to favor its own citizens over others. Courts generally uphold such policies as long as they are *rationally related to a legitimate state interest* under a low or intermediate scrutiny standard established by the U.S. Supreme Court.

For example, in *Associate General Contractors, Inc. v. San Francisco* (813 F.2d 922 (U.S. Ninth Circuit, 1987) the court ruled that a bid preference ordinance granting a 5-percent bidding preference to locally owned business enterprises did not violate the *Equal Protection Clause* of the Constitution's Fourteenth Amendment.

At the state level, for example, in *APAC-Mississippi, Inc. v. Deep South Construction Co.* (288 Ark. 277 (1986)) the Supreme Court of Arkansas ruled that a bid preference was legal where the State had "a legitimate and substantial interest in granting the preference and the criteria established in the bid preference statute were reasonable and non-discriminatory." [Also, see like ruling in *Galesburg Construction Co. v. Board of Trustees* (642 P2d. 745, Wyo. (1982)].

A WestLaw search found a small number of cases from Arizona where that State's local purchasing law came into constraint by Arizona courts. However, this was due to a defect in the construction and implementation of the specific Arizona statute at the time, not the overall constitutionality of a local vendor preference policy, itself. The WestLaw review suggests that since 1990 there appears to have been no major state case challenging the validity of the use of local government vendor preference policies in economic development. With regard to South Carolina, there have been no challenges to local vendor preference laws in the South Carolina's appellate courts or Supreme Court.

The bellwether case upholding the legitimate use of local vendor preference laws, ironically, involved the State of South Carolina. In *Smith Setzer & Sons, Inc. v. South Carolina Procurement Review Panel, (Hugh Letherman, Chair)* 20 F. 3d 1311, (U.S. Fourth Circuit, 1994), the appeals Court upheld the right of South Carolina's then 5% local vendor preference as a legal state right to achieve a legitimate state purpose. The Court stated:

> *The statute is designed to protect South Carolina's legitimate interest in directing benefits, generated by state purchases, to the citizens of South Carolina--"the people who fund the state treasury from which the purchases are made and the people whom the state was created to serve.*

(South Carolina in fact demonstrated in this case that even though Smith Setzer provided an initial savings to South Carolina of $50,000, the State's economy, were it to have awarded the out of state bid, would suffer an overall economic loss [jobs, tax revenue, etc]; the case itself establishing economic benefits of such a preference).

South Carolina state law recognizes a preference for South Carolina products. The provisions governing state purchases are included in the *South Carolina Code of Laws* Section 11-35-1524. State law does not restrict local counties and municipalities from enacting their own local preference ordinances. Hence, the policy is used throughout the state at the County and municipal level as noted previously.

There are some situations in which a local preference may not be allowed by Federal law. For example, in Federal transportation projects the Federal Surface Transportation Act contains "Buy American" provisions, but at the same time requires full competitive bidding absent a local bid preference in any road where Federal funds are involved. Likewise, in our global economy where foreign firms seek economic development incentives to locate facilities (foreign transplants) to local U.S. counties and cities, care must be taken to avoid restrictions in local preference [sic. subsidies] established by the World Trade Organization (WTO), Agreement on Government Procurement (GPA). (The U.S. is a party and signatory to the Agreement, January 1, 1996.)

IMPLEMENTATION: TAKING REASONABLE COST EFFECTIVE STEPS

The logical next step for Horry County or any local government implementing a local vendor preference policy is the crafting of a structure by ordinance (local law) that allows for effective and efficient implementation. A key goal is establishing a framework that does not present an undue burden on local business or county administration while at the same time protecting the public from sham vendors who might abuse the system and usurp its economic development objectives. This has been a significant criticism historically of the entire Federal procurement system. In its efforts to target local and domestic procurement, the Federal government has created such a bureaucratic labyrinth as to in effect deter the very vendors it sought to attract.

In reviewing the totality of local vendor preference ordinances in South Carolina and a sampling from other states, a common implementation theme is evident for key components to a sound system verifying true local qualified vendors:

1. Maintenance of a valid business license in the county or its municipalities
2. Physical presence in the county for a period of over one year.
3. Typically some threshold of local employees (25%-50%) with local residences employed by the firm or its subcontractors.
4. Currency in business or property taxes within the county.
5. A state or local fraud law to deter cheating.

These five components are typically well in place or readily accessible to Horry County and other counties within the State. The County, itself, has readily available electronic data on business licenses and property taxes. Typically, the physical presence is also included in both data sets. Thus, conditions #1, 2 and 4 can easily be verified. Confirming the residences of employees may also be accessed by primary or secondary sources. Typically, that can be supplied by the vendor from the vendor's own payroll information and verified by spot check through the South Carolina Department of Revenue tax withholding records. The number or type of spot checks would be a function of the level of concern the County would have for improper filings.

As with all government filings the ultimate control is the threat of sanctions in law for fraudulent filing or defrauding a government entity. Counties are protected by various State False Claim Act statutes, and, to the extent a county purchase involves Federal funds, the Federal False Claims Act may apply. Additionally, these statutes contain *whistleblower* protections for employees who alert to improper activity within federal, state or county government in the contract-purchaser process. In addition to the potential civil and criminal penalties risked, a vendor attempting to subvert the local preference might well be "disbarred" from future County and/or State business.

With these in mind the foregoing chart demonstrates how a simplified local vendor preference would be implemented in Horry County, South Carolina. Consistent with the Five Component Structure previously discussed the County would publicize and have available on its web site with each bid request a form for local vendor certification. The vendor would provide under penalty of perjury the following key information certifying that for eighteen (18) months prior to bid:

1. Paid business license with the County or with a municipality in the County. (This also confirms legality of operating in the State of South Carolina).
2. Proof of payment of all outstanding County/Municipality taxes and fees
3. Evidence of a physical business presence in the County.
4. Evidence that 30% or more of the vendor's employees are residents of the County. (If General Contractor, that 50% of the subcontractors meet conditions #1-3).

Once the aforementioned conditions are satisfied, the County then lists the vendor as a qualified Local Vendor for the procurement process.

Counties vary as to the type of vendor preference offered. In our model we demonstrate the *zero cost*-type option which simply allows a local vendor whose bid falls within a 5% zone of the lowest out-of-area bidder a period of time to match the non-local bid. Here the public is paying no additional funds for the local preference, or compromising the quality of the final product or service (since the quality standard has been specified in the bid itself and subject to contract administration compliance).

Consequently, the system of local vendor preference under the "Zero Cost" preference option provides for four potential outcomes:

1. If the *local vendor* is the low bid of all bidders, the local vendor is awarded the contract.
2. If the *local vendor* bid ties the best non-local bidder, the preference goes to the local vendor who is awarded the contract.
3. If the *local vendor* bid is within 5% of the lowest non-local bidder, the local preference invokes a notice by the County within one day to the local bidder and a period of seven days is provided to the local bidder to match the lowest bid. If the local vendor at least matches the bid, the local vendor is awarded the contract.
4. If the *local vendor* fails to provide a matching bid to the non-local vendor, the contract is then awarded to the non-local vendor.

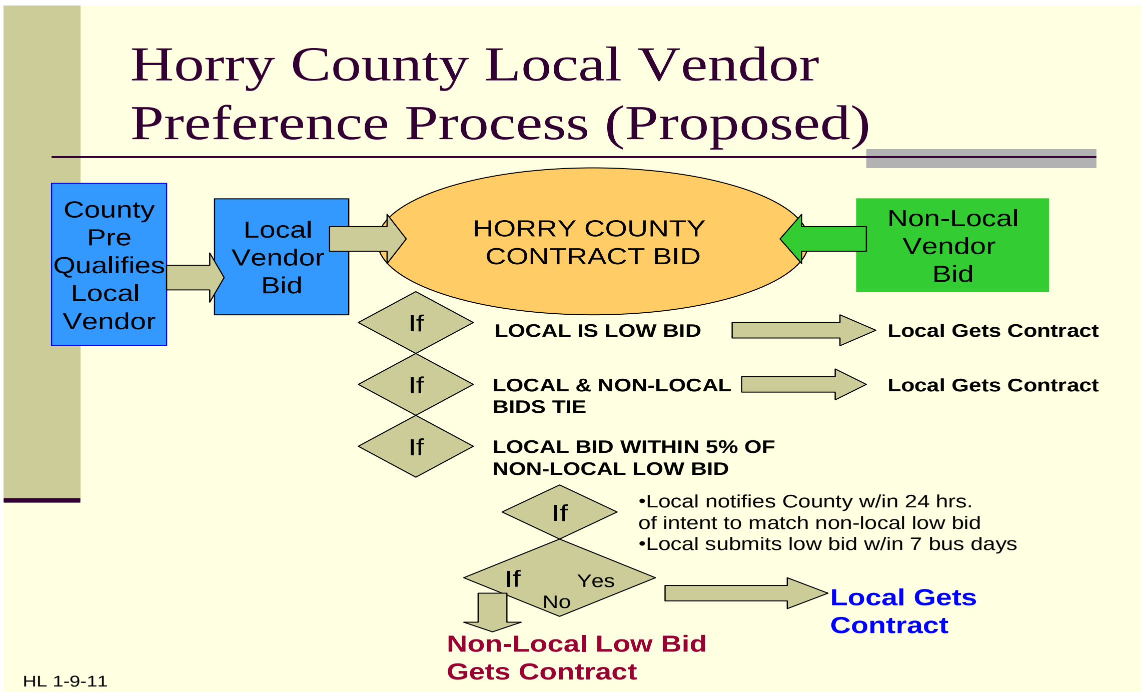
This method, by virtue of giving the local bidder only a fair "second bite of the apple," in meeting the best cost-value bid of a non-local bidder, provides the public with two positive outcomes. First, as the paper has summarized, it provides a means by which local vendors have the best chance of obtaining county business, county dollars and recycling the funds into the local economy. This helps induce additional local business and jobs.

The second key factor is the presence of such ordinance, makes non-local vendors more competitive. Those vendors know that their bids will have to significantly outperform the bid of a local vendor. Hence, the non-local vendors are motivated to provide the County the very best bid, saving the taxpayer money. To the extent County business is economically significant and potentially multi-year, a non-local vendor also faces a significant incentive to locate a business unit or subsidiary in the County, thus investing in the community and contributing to economic development.

The Local Vendor Preference structure for Horry County presented provides a means for business to operate in a highly competitive manner for public business contracts that provides intended spillover benefits of job creation, multiplier effect of local purchases, and potential decisions by non-local vendors to invest in local business operations within the County; capitalizing on increased public spending. The latter is a prime business incentive posed in Horry County, the fastest growing county in the State of South

Carolina. With the promise of millions of dollars in infrastructure growth, local vendor preference, if enacted, would certainly play a key role in advancing local economic development goals.

SAMPLE PROPOSED STRUCTURE FOR LOCAL VENDOR PREFERENCE: *ZERO COST* MODEL FOR HORRY COUNTY, SC



SUMMARY AND CONCLUSIONS

In an era of government austerity at Federal and state levels, local governments in the Coastal region of the Carolina's must look to legitimate ideas and techniques to enhance their own economic development, job creation and community benefit. Local Vendor Preference Policies provide a key means for using local purchases by government to lever economic benefit to their communities.

As shown in the case of Horry County, South Carolina, such a policy can be extremely beneficial in using the purchasing power of the County alone to infuse nearly $100 million in local purchases that reverberate in the community in terms of an economic multiplier effect of secondary purchases and ultimately, job creation and future government revenue. In this case, using the economic indicators of past studies, and assuming 90% local purchase, a local purchasing preference could potentially generate nearly $158 million in economic activity, creating/retaining a minimum of 160 jobs; all by local policy absent the costly strings attached so often to programs from the State or U.S. governments! Positive impact of such a policy also has the potential to influence changes in State and Federal policies that restrict local vendor preference in projects using State and Federal funds. Were such policies augmented, the local economic stimulus impact could be much greater.

Of course, no one policy, local or otherwise, can be viewed as a panacea to counter a national, or even world-wide recession. Nevertheless, the collective impact of using local revenue sources to local effect is one way by which local governments can play a key role in effecting an improvement in their economies and long term needs of their communities and the businesses that employ and sustain their citizenry.

> *It is a mistake to try to look too far ahead. The chain of destiny can only be grasped one link at a time.* Sir Winston Churchill (1874-1965)

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