

REPORT OF THE GENERAL GOVERNMENT, PERSONNEL & BENEFITS SUBCOMMITTEE

(Battle, Herbkersman, J.H. Neal, Pitts & Whitmire - Staff Contact: Kara Brurok)

HOUSE BILL 4640

H. 4640 -- Reps. Anthony, Bingham, Ott, Harrell and White: A BILL TO AMEND SECTION 11-35-1524, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO RESIDENT VENDOR PREFERENCES UNDER THE CONSOLIDATED PROCUREMENT CODE, SO AS TO REVISE THE RESIDENT VENDOR PREFERENCES AND THE MANNER AND PROCEDURES UNDER WHICH THEY ARE COMPUTED.

Summary of Bill:

This bill revises the resident vendor preferences under the state's Consolidated Procurement Code including the manner and procedures under which they are computed.

Introduced:

1/19/2012

Received by Ways and Means:

1/19/2012

Estimated Fiscal Impact:

Pending

Subcommittee Recommendation:

Adopted

Full Committee Recommendation:

Other Notes/Comments:

Adopted with attached amendment.

HOUSE
AMENDMENT

THIS AMENDMENT
ADOPTED

DRAFFIN/PAIR
MARCH 22, 2012

CLERK OF THE HOUSE

THE GENERAL GOVERNMENT, PERSONNEL AND
BENEFITS SUBCOMMITTEE PROPOSES THE FOLLOWING
AMENDMENT No. TO H. 4640 (H-
WM\KARA\LEGISLATION DOCUMENTS 12-13\H. 4640
ANTHONY BING\SUBCOMMITTEE AMENDMENT):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, SECTION
11-35-1524, AS CONTAINED IN SECTION 1,
BEGINNING ON PAGE 1, BY STRIKING SUBSECTION
(A) IN ITS ENTIRETY AND INSERTING:**

/ (A) FOR PURPOSES OF THIS SECTION:

**(1) END PRODUCT MEANS THE TANGIBLE
PRODUCT DESCRIBED IN THE SOLICITATION
INCLUDING ALL COMPONENT PARTS AND IN FINAL**

FORM AND READY FOR THE STATE'S INTENDED USE.

(2)·GROWN· MEANS TO PRODUCE, CULTIVATE, RAISE, OR HARVEST TIMBER, AGRICULTURAL PRODUCE, OR LIVESTOCK ON THE LAND, OR TO CULTIVATE, RAISE, CATCH, OR HARVEST PRODUCTS OR FOOD FROM THE WATER WHICH RESULTS IN AN END PRODUCT THAT IS LOCALLY DERIVED FROM THE PRODUCT CULTIVATED, RAISED, CAUGHT, OR HARVESTED.

(3)·LABOR COST· MEANS SALARY AND FRINGE BENEFITS.

(4)·MADE· MEANS TO ASSEMBLE, FABRICATE, OR PROCESS COMPONENT PARTS INTO AN END PRODUCT, THE VALUE OF WHICH, ASSEMBLY, FABRICATION, OR PROCESSING IS A SUBSTANTIAL PORTION OF THE PRICE OF THE END PRODUCT.

(5)·MANUFACTURED· MEANS TO MAKE OR PROCESS RAW MATERIALS INTO AN END PRODUCT.

(6) OFFICE MEANS A NONMOBILE PLACE FOR THE REGULAR TRANSACTION OF BUSINESS OR PERFORMANCE OF A PARTICULAR SERVICE WHICH HAS BEEN OPERATED AS SUCH BY THE BIDDER FOR AT LEAST ONE YEAR BEFORE THE BID OPENING AND DURING THAT YEAR THE PLACE HAS BEEN STAFFED FOR AT LEAST FIFTY WEEKS BY AT LEAST TWO EMPLOYEES FOR AT LEAST THIRTY-FIVE HOURS A WEEK EACH.

(7) SERVICES MEANS SERVICES AS DEFINED BY SECTION 11-35-310(29) AND ALSO INCLUDES SERVICES AS DEFINED IN SECTION 11-35-310(1)(D).

~~(8) SOUTH CAROLINA END PRODUCT MEANS AN END PRODUCT MADE, MANUFACTURED, OR GROWN IN SOUTH CAROLINA.~~

~~(9) UNITED STATES END PRODUCT MEANS AN END PRODUCT MADE, MANUFACTURED, OR GROWN IN THE UNITED STATES OF AMERICA. /~~

**AMEND FURTHER, SECTION 11-35-1524, PAGE 6,
AFTER LINE 25, BY ADDING A NEW SUBSECTION
TO READ:**

**/(F) SUBJECT TO THE PREFERENCE LIMITS
CONTAINED IN THIS SECTION, THE PREFERENCE
FOR ALL APPLICABLE PREFERENCES SHALL BE
APPLIED TO THE TOTAL VALUE OF THE
CONTRACT PRICE FOR THE SOLICITATION AND
NOT TO INCREMENTAL PORTIONS THEREOF. /**

RENUMBER SECTIONS TO CONFORM.

AMEND TITLE TO CONFORM.

South Carolina General Assembly
119th Session, 2011-2012

H. 4640

STATUS INFORMATION

General Bill

Sponsors: Reps. Anthony, Bingham, Ott, Harrell and White

Document Path: l:\council\bill\dk\3896sd12.docx

Introduced in the House on January 19, 2012

Currently residing in the House Committee on **Ways and Means**

Summary: Consolidated procurement code

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/19/2012	House	Introduced and read first time (House Journal-page 5)
1/19/2012	House	Referred to Committee on Ways and Means (House Journal-page 5)

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VERSIONS OF THIS BILL

[1/19/2012](#)

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3
4
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9 **A BILL**

10
11 TO AMEND SECTION 11-35-1524, CODE OF LAWS OF
12 SOUTH CAROLINA, 1976, RELATING TO RESIDENT
13 VENDOR PREFERENCES UNDER THE CONSOLIDATED
14 PROCUREMENT CODE, SO AS TO REVISE THE RESIDENT
15 VENDOR PREFERENCES AND THE MANNER AND
16 PROCEDURES UNDER WHICH THEY ARE COMPUTED.

17
18 Be it enacted by the General Assembly of the State of South
19 Carolina:

20
21 SECTION 1. Section 11-35-1524 of the 1976 Code is amended to
22 read:

23
24 “Section 11-35-1524. (A) For purposes of this section:

25 (1) ‘End product’ means the tangible product described in
26 the solicitation including all component parts and in final form and
27 ready for the state’s intended use.

28 (2) ~~‘Grown’ means to produce, cultivate, raise, or harvest~~
29 ~~timber, agricultural produce, or livestock on the land, or to~~
30 ~~cultivate, raise, catch, or harvest products or food from the water~~
31 ~~which results in an end product that is locally derived from the~~
32 ~~product cultivated, raised, caught, or harvested.~~

33 (3) ‘Labor cost’ means salary and fringe benefits.

34 (4)(3) ‘Made’ means to assemble, fabricate, or process
35 component parts into an end product, the value of which,
36 assembly, fabrication, or processing is a substantial portion of the
37 price of the end product.

38 (5)(4) ‘Manufactured’ means to make or process raw
39 materials into an end product.

40 (6)(5) ‘Office’ means a nonmobile place for the regular
41 transaction of business or performance of a particular service
42 which has been operated as such by the bidder for at least one year

1 before the bid opening and during that year the place has been
2 staffed for at least fifty weeks by at least two employees for at least
3 thirty-five hours a week each.

4 ~~(7)(6)~~ 'Services' means services as defined by Section
5 11-35-310(29) and also includes services as defined in Section
6 11-35-310(1)(d).

7 ~~(8) 'South Carolina end product' means an end product~~
8 ~~made, manufactured, or grown in South Carolina.~~

9 ~~(9) 'United States end product' means an end product made,~~
10 ~~manufactured, or grown in the United States of America.~~

11 ~~(B)(1) When evaluating pricing for purposes of making an~~
12 ~~award determination, the procurement officer shall decrease by~~
13 ~~seven percent the price of any offer for a South Carolina end~~
14 ~~product.~~

15 ~~(2) When evaluating pricing for purposes of making an~~
16 ~~award determination, the procurement officer shall decrease by~~
17 ~~two percent the price of any offer for a United States end product.~~
18 ~~This preference does not apply to an item to which the South~~
19 ~~Carolina end product preference has been applied.~~

20 ~~(3) Whether award is to be made by item or lot, the~~
21 ~~preferences must be applied to the price of each line item of end~~
22 ~~product. A preference must not be applied to an item for which a~~
23 ~~bidder does not qualify.~~

24 ~~(4) If a contract is awarded to a bidder that received the~~
25 ~~award as a result of the South Carolina end product or United~~
26 ~~States end product preference, the contractor may not substitute a~~
27 ~~nonqualifying end product for a qualified end product. A~~
28 ~~substitution in violation of this item is grounds for debarment~~
29 ~~pursuant to Section 11-35-4220. If a contractor violates this~~
30 ~~provision, the State may terminate the contract for cause and, in~~
31 ~~addition, the contractor shall pay to the State an amount equal to~~
32 ~~twice the difference between the price paid by the State and the~~
33 ~~bidder's evaluated price for a substituted item.~~

34 ~~(5) If a bidder is requesting this preference, the bidder, upon~~
35 ~~request of the procurement officer, must provide documentation~~
36 ~~that establishes the bidder's qualifications for the preference.~~
37 ~~Bidder's failure to provide this information promptly is grounds to~~
38 ~~deny the preference and for enforcement pursuant to subsection~~
39 ~~(E)(6). Reserved.~~

40 (C)(1) When evaluating pricing for purposes of making an
41 award determination, the procurement officer shall decrease a
42 bidder's price by ~~seven~~ nine percent if the bidder maintains an
43 office in this State and either (i) maintains at a location in South

1 Carolina at the time of the bid an inventory of expendable items
2 which are representative of the general type of commodities on
3 which the award will be made and which have a minimum total
4 value, based on the bid price, equal to the lesser of fifty thousand
5 dollars or the annual amount of the contract; (ii) is a manufacturer
6 headquartered and having an annual payroll of at least one million
7 dollars in South Carolina and the end product is made or processed
8 from raw materials into a finished end product by that
9 manufacturer or its affiliate (as defined in Section 1563 of the
10 Internal Revenue Code); or (iii) at the time of bidding, directly
11 employs or has a documented commitment with individuals
12 domiciled in South Carolina that will perform services expressly
13 required by the solicitation and the total direct labor cost to bidder
14 for those individuals to provide those services exceeds fifty percent
15 of the bidder's total bid price.

16 ~~(2) Whether award is to be made by item or lot, the~~
17 ~~preferences must be applied to the price of each line item of end~~
18 ~~product or work, as applicable. A preference must not be applied~~
19 ~~to an item for which a bidder does not qualify.~~

20 (3) If a bidder is requesting this preference, the bidder, upon
21 request by the procurement officer, must provide documentation
22 that establishes the bidder's qualifications for the preference and,
23 for the preference claimed pursuant to subsection (C)(1)(iii), must
24 identify the persons domiciled in South Carolina that will perform
25 the services involved in the procurement upon which bidder relies
26 in qualifying for the preference, the services those individuals are
27 to perform, and documentation of the bidder's labor cost for each
28 person identified. Bidder's failure to provide this information
29 promptly is grounds to deny the preference and for enforcement
30 under subsection (E)(6)(4) below.

31 (D)(1) When evaluating pricing for purposes of making an
32 award determination, the procurement officer shall decrease a
33 bidder's price by two percent if:

34 (a) the bidder has a documented commitment from a
35 single proposed first-tier subcontractor to perform some portion of
36 the services expressly required by the solicitation; and

37 (b) at the time of the bidding, the subcontractor directly
38 employs or has a documented commitment with individuals
39 domiciled in South Carolina that will perform services expressly
40 required by the solicitation and the total direct labor cost to the
41 subcontractor for those individuals to provide those services
42 exceeds twenty percent of bidder's total bid price.

1 (2) When evaluating pricing for purposes of making an
2 award determination, the procurement officer shall decrease a
3 bidder's price by four percent if:

4 (a) the bidder has a documented commitment from a
5 single proposed first-tier subcontractor to perform some portion of
6 the services expressly required by the solicitation; and

7 (b) at the time of the bidding, the subcontractor directly
8 employs or has a documented commitment with individuals
9 domiciled in South Carolina that will perform services expressly
10 required by the solicitation and the total direct labor cost to the
11 subcontractor for those individuals to provide those services
12 exceeds forty percent of bidder's total bid price.

13 ~~(3) Whether award is to be made by item or lot, the~~
14 ~~preferences must be applied to the price of each line item of work.~~
15 ~~A preference must not be applied to an item for which a bidder~~
16 ~~does not qualify.~~

17 (4) Subject to other limits in this section, an offeror may
18 benefit from applying for more than one of, or from multiple
19 applications of, the preferences allowed by items (1) and (2).

20 ~~(5)~~(4)(a) In its bid, a bidder requesting any of the preferences
21 allowed by items (1) and (2) must identify the subcontractor to
22 perform the work, the work the subcontractor is to perform, and
23 the bidder's factual basis for concluding that the subcontractor's
24 work constitutes the required percentage of the work to be
25 performed in the procurement.

26 (b) If a bidder is requesting a preference allowed by items
27 (1) or (2), upon request by the procurement officer, the bidder shall
28 identify the persons domiciled in South Carolina that are to
29 perform the services involved in the procurement upon which the
30 bidder relies in qualifying for the preference, the services those
31 individuals are to perform, the employer of those persons, the
32 bidder's relationship with the employer, and documentation of the
33 subcontractor's labor cost for each person identified. Bidder's
34 failure to provide this information promptly will be grounds to
35 deny the preference and for enforcement pursuant to subsection
36 ~~(E)(6)~~(4) below.

37 (c) If a contract is awarded to a bidder that received the
38 award as a result of a preference allowed by items (1) or (2), the
39 contractor may not substitute any business for the subcontractor on
40 which the bidder relied to qualify for the preference, unless first
41 approved in writing by the procurement officer. A substitution in
42 violation of this subitem is grounds for debarment pursuant to
43 Section 11-35-4220. If a contractor violates this provision, the

1 procurement officer may terminate the contract for cause. If the
2 contract is not terminated, the procurement officer may require the
3 contractor to pay the State an amount equal to twice the difference
4 between the price paid by the State and the price offered by the
5 next lowest bidder, unless the substituted subcontractor qualifies
6 for the preference.

7 (E)(1) A business is not entitled to any preferences unless the
8 business, to the extent required by law, has:

9 (a) paid all taxes assessed by the State; and

10 (b) registered with the South Carolina Secretary of State
11 and the South Carolina Department of Revenue.

12 ~~(2) The preferences provided in subsections (B) and~~
13 ~~(C)(1)(i) and (ii) do not apply to a single unit of an item with a~~
14 ~~price in excess of fifty thousand dollars or a single award with a~~
15 ~~total potential value in excess of five hundred thousand dollars.~~

16 ~~(3) The preferences provided in subsections (C)(1)(iii) and~~
17 ~~(D) do not apply to a bid for an item of work by the bidder if the~~
18 ~~annual price of the bidder's work exceeds fifty thousand dollars or~~
19 ~~the total potential price of the bidder's work exceeds five hundred~~
20 ~~thousand dollars.~~

21 (4) A solicitation must provide potential bidders an
22 opportunity to request the preferences that apply to a procurement.
23 By submitting a bid and requesting that a preference be applied to
24 that bid, a business certifies that its bid qualifies for the preference
25 for that procurement. For purposes of applying this section, a
26 bidder is not qualified for a preference unless the bidder makes a
27 request for the preference as required in the solicitation. If a
28 solicitation specifies which preferences, if any, apply to a
29 procurement, the applicability of preferences to that procurement is
30 conclusively determined by the solicitation unless the solicitation
31 document is timely protested as provided in Section 11-35-4210.
32 If two or more bidders are tied after the application of the
33 preferences allowed by this section, the tie must be resolved as
34 provided in Section 11-35-1520(9). Price adjustments required by
35 this section for purposes of evaluation and application of the
36 preferences do not change the actual price offered by the bidder.

37 ~~(5)(3)~~ This section does not apply to an acquisition of motor
38 vehicles as defined in Section 56-15-10 or an acquisition of
39 supplies or services relating to construction. This section does not
40 apply to a procurement conducted pursuant to Section
41 11-35-1550(2)(a) or (b), Section 11-35-1530, or Article 9, Chapter
42 35.

1 (6)(4) Pursuant to Section 11-35-4220, a business may be
2 debarred if (i) the business certified that it qualified for a
3 preference, (ii) the business is not qualified for the preference
4 claimed, and (iii) the certification was made in bad faith or under
5 false pretenses. If a contractor has invalidly certified that a
6 preference is applicable, the chief procurement officer may
7 terminate the contract for cause, and the chief procurement officer
8 may require the contractor to pay the State an amount equal to
9 twice the difference between the price paid by the State and the
10 price offered by the next lowest bidder.

11 (7)(5) The sum of all preferences allowed by items (D)(1)
12 and (D)(2), ~~when applied to the price of a line item of work,~~ may
13 not exceed six percent unless the bidder maintains an office in this
14 State. Under no circumstances may the cumulative preferences
15 applied to any bidder's ~~the price of a line item~~ exceed ten percent.
16 The cumulative value of the adjustments to a bidder's price for all
17 applicable preferences may not exceed fifty thousand dollars.

18 (8)(6) As used in items (C)(1)(iii), (D)(1)(b), and (D)(2)(b),
19 the term 'documented commitment' means a written commitment
20 by the bidder to employ directly an individual, and by the
21 individual to be employed by the bidder, both contingent on the
22 bidder receiving the award.

23 (9)(7) The remedies available in this section are cumulative
24 of and in addition to all other remedies available at law and
25 equity."

26
27 SECTION 2. This act takes effect upon approval by the Governor.

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