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- 01/14/2020 Received by Lt. Gov & Speaker 05/13/2020

H 01/14/2020 Referred to Committee

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**DEPARTMENT OF TRANSPORTATION**

CHAPTER 63

Statutory Authority: 1976 Code Section 57-5-1650

63-307. Contractor Performance Evaluation.

**Synopsis:**

South Carolina Department of Transportation (SCDOT) proposes to amend Regulation 63-307 to clarify that the contract performance evaluation system applies to enhancement projects, school sidewalk projects, and beautification projects as well as the usual highway and bridge construction contracts. Also, SCDOT proposes to amend the Regulation to substitute the word “time” for “schedule” in Section (A)(1)(a) to avoid confusion with the contractor’s Critical Path Method (CPM) schedule.

A Notice of Drafting for the proposed amendments to Regulation 63-307 was published in the *State Register* on September 27, 2019. The proposed amended regulations were published in the *State Register* on October 25, 2019. No comments were received nor was a hearing requested. Therefore, the amendments have been promulgated and are submitted for General Assembly review and approval.

**Instructions:**

Replace Regulation 63-307 as shown below.

**Text:**

63-307. Contractor Performance Evaluation.

 A. Contract Performance Evaluation System.

 1. The South Carolina Department of Transportation may use a contract performance evaluation system to evaluate the performance of a contractor on construction projects and to assign a contractor performance score. The Department shall use evaluation criteria and quality audits that include, but are not limited to:

 (a) Objective evaluation of how well the contractor completed projects on time and within the bid amount;

 (b) Field audits conducted during construction that evaluate the contractor’s performance on active projects;

 (c) Objective evaluation of the merit of claims filed by the contractor based on the proportional amount of each claim that was upheld and awarded to the contractor;

 (d) Evaluations by the Resident Construction Engineers on the contractor’s completed projects, which include rating of the contractor’s performance in such areas as safety, environmental issues, the contractor’s personnel and equipment, public relations, and compliance with Equal Employment Opportunities statutes, the Davis Bacon Act, and Disadvantaged Business Enterprise goals.

 2. The Department may revise the evaluation criteria as it deems necessary to ensure equitable evaluation of all contractors.

 B. Minimum Required Contractor Performance Score.

 The Department may require bidders to have a minimum contractor performance score to bid on a project. The Department shall determine the appropriate minimum score for a project based on an evaluation of criteria that includes, but is not limited to: design complexity, critical time constraints, environmental sensitivity, complex traffic control, location in densely populated areas, need for specialized equipment, high traffic volume, and project cost. All prequalified contractors whose contractor performance score is below the minimum shall not be allowed to bid on projects that require a minimum required contractor performance score. Prequalified contractors who have never had or do not have a current contractor performance score will not be subject to this bidding restriction.

 C. Definitions.

 1. Minimum Required Contractor Performance Score: A minimum contractor performance score set by the Department for a particular project for acceptance of bids. The minimum score shall be set based on criteria established by the Department.

 2. State Highway Engineer: The Deputy Secretary of Transportation of SCDOT.

 D. Contractor Performance Score. A contractor performance score for each contractor may be determined by the Department using performance evaluations and quality audits of the contractor’s performance compiled by the Department. All active contractors shall be periodically notified of their contractor performance score.

 E. Contractor’s Right to Review of its Performance Score. A contractor may request a conference to review the calculation of its contractor performance score and the information upon which the score is determined by requesting a review conference with the Director of Construction or his or her designee.

 F. Contractor’s Right to Appeal Its Contractor Performance Score. A contractor may appeal its contractor performance score to the State Highway Engineer. The appeal must be in writing and include the basis for the appeal. The State Highway Engineer may consider evidence submitted by the contractor and any other relevant evidence and consult with SCDOT staff and any other person or entity for recommendations concerning the appeal. The State Highway Engineer shall make a recommendation to the Secretary, who shall issue a final agency decision on the appeal within ninety (90) days of the receipt of the appeal.

**Fiscal Impact Statement:**

There should be no costs to the State or its political subdivisions to comply with the proposed amendments to the regulations.

**Statement of Rationale:**

SCDOT needs to clarify that the contractor performance evaluation system applies to enhancement projects, school sidewalk projects and beautification projects, as well as traditional highway and bridge projects. Also, SCDOT needs to clarify that the contractor will be evaluated on whether the contractor completes the contract on time, as measured by contract time, not the Critical Path Method (CPM) schedule. Therefore, the Regulation needs to be amended to make the above clarifications.