**A** **BILL**

TO AMEND SECTION 11‑35‑310, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS IN REGARD TO THE CONSOLIDATED PROCUREMENT CODE INCLUDING THE DEFINITION OF A TERM CONTRACT, SO AS TO PROVIDE THAT A SOLICITATION BY COMPETITIVE ONLINE BIDDING MAY NOT BE USED FOR TERM CONTRACTS; AND TO AMEND SECTION 11‑35‑1529, RELATING TO COMPETITIVE ONLINE BIDDING, SO AS TO PROVIDE THAT THESE PROVISIONS DO NOT APPLY TO TERM CONTRACTS.

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

SECTION 1. Section 11‑35‑310(35) of the 1976 Code, as last amended by Act 376 of 2006, is further amended to read:

“(35) ‘Term contract’ means contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements during its term. As provided in the solicitation, if a public procurement unit is offered the same supplies, services, or information technology at a price that is at least ten percent less than the term contract price, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding the term contract meets the lower price, then the governmental body shall purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit. A term contract may be a multi‑term contract as provided in Section 11‑35‑2030. A solicitation by competitive online bidding as provided in Section 11‑35‑1529 may not be used for term contracts as defined in this section.”

SECTION 2. Section 11‑35‑1529 of the 1976 Code, as added by Act 387 of 2000, is amended to read:

“Section 11‑35‑1529. (1) Conditions for Use. When a purchasing agency determines that ~~on‑line~~ online bidding is more advantageous than other procurement methods provided by this code, a contract may be entered into by competitive ~~on‑line~~ online bidding, subject to the provisions of Section 11‑35‑1520 and the ensuing regulations, unless otherwise provided in this section.

(2) Bidding Process. The solicitation must designate both an Opening Date and Time and a Closing Date and Time. The Closing Date and Time need not be a fixed point in time, but may remain dependant on a variable specified in the solicitation. At the Opening Date and Time, the State must begin accepting real‑time electronic bids. The solicitation must remain open until the Closing Date and Time. The State may require bidders to register before the Opening Date and Time and, as a part of that registration, to agree to any terms, conditions, or other requirements of the solicitation. Following receipt of the first bid after the Opening Date and Time, the lowest bid price must be posted electronically to the Internet and updated on a real‑ time basis. At any time before the Closing Date and Time, a bidder may lower the price of its bid, except that after Opening Date and Time, a bidder may not lower its price unless that price is below the then lowest bid. Bid prices may not be increased after Opening Date and Time. Except for bid prices, bids may be modified only as otherwise allowed by this code. A bid may be withdrawn only in compliance with Section 11‑35‑1520. If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the Closing Date and Time, the State may cancel the solicitation in accordance with this code or reopen electronic bidding to all pre‑existing bidders by giving notice to all pre‑existing bidders of both the new Opening Date and Time and the new Closing Date and Time. Notice that electronic bidding will be reopened must be given as specified in the solicitation.

(3) Receipt and Safeguarding of Bids. Other than price, any information provided to the State by a bidder must be safeguarded as required by Section 11‑35‑1520(4).

(4) Provisions Not to Apply. Section 11‑35‑310(35) and Section 11‑35‑1524 and paragraph (5) (Bid Opening) of Section 11‑35‑1520 do not apply to solicitations issued pursuant to this section.”

SECTION 3. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑