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COMMITTEE REPORT

May 12, 2009

**S. 697**

Introduced by Senator Leatherman

S. Printed 5/12/09--S.

Read the first time April 14, 2009.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (S. 697) to amend Chapter 35, Title 11 of the 1976 Code relating to Consolidated Procurement Code, to provide that where a procurement involves the expenditure of a federal grant, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

HUGH K. LEATHERMAN, SR. for Committee.

**A** **BILL**

TO AMEND CHAPTER 35, TITLE 11 OF THE 1976 CODE RELATING TO CONSOLIDATED PROCUREMENT CODE, TO PROVIDE THAT WHERE A PROCUREMENT INVOLVES THE EXPENDITURE OF A FEDERAL GRANT, THE GOVERNMENTAL BODY SHALL ALSO COMPLY WITH FEDERAL LAW AND AUTHORIZED REGULATIONS, TO PROVIDE THAT WHERE FEDERAL ASSISTANCE, GRANT, OR CONTRACT FUNDS ARE USED IN A PROCUREMENT BY A GOVERNMENTAL BODY, THE PROCUREMENT CODE INCLUDING ANY REQUIREMENTS THAT ARE MORE RESTRICTIVE THAN FEDERAL REQUIREMENTS MUST BE FOLLOWED, EXCEPT TO THE EXTENT THAT THE ACTION WOULD RENDER THE GOVERNMENTAL BODY INELIGIBLE TO RECEIVE FEDERAL FUNDS WHOSE RECEIPT IS CONDITIONED ON COMPLIANCE WITH MANDATORILY APPLICABLE FEDERAL LAW, TO PROVIDE FOR BID PROCEDURES FOR CONSTRUCTION CONTRACTS, TO PROVIDE FOR CONFIDENTIALITY IN THE PROCUREMENT REVIEW PANEL PROCESS, AND TO REPEAL SECTIONS 11‑35‑3025 AND 11‑35‑3310.

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

SECTION 1. Section 11‑35‑40(3) of the 1976 Code is amended to read:

“(3) Compliance with Federal Requirements. Where a procurement involves the expenditure of federal assistance, grant, or contract funds, the governmental body shall also comply with ~~such~~ federal ~~law and~~ laws, including authorized regulations, as are mandatorily applicable and which are not presently reflected in ~~the code~~ this code. Notwithstanding, where federal assistance, grant, or contract funds are used in a procurement by a governmental body as defined in Section 11‑35‑310(18), this code, including any requirements that are more restrictive than federal requirements ~~shall~~ must be followed, except to the extent that the action would render the governmental body ineligible to receive federal funds whose receipt is conditioned on compliance with mandatorily applicable federal law. In those circumstances, the solicitation must identify and explain the impact of such federal laws on the procurement process, including any required deviation from this code.”

SECTION 2. Section 11‑35‑1520(1) of the 1976 Code is amended to read:

“(1) Condition for Use. Contracts greater than fifty thousand dollars, or greater than one hundred thousand dollars for construction contracts, must be awarded by competitive sealed bidding except as otherwise provided in Section 11‑35‑1510.”

SECTION 3. Section 11‑35‑1550(1), (2), and (3) of the 1976 Code is amended to read:

“(1) Authority. The following small purchase procedures may be utilized only in conducting procurements for governmental bodies that are up to ~~fifty thousand dollars~~ the specified amount in actual or potential value. A governmental body may conduct its own procurement up to fifty thousand dollars, and up to one hundred thousand dollars for construction, in actual or potential value, and a governmental body that has received procurement certification pursuant to Section 11‑35‑1210 to handle the type and estimated value of the procurement may conduct the procurement under its own authority in accordance with this code. Procurement requirements must not be artificially divided by governmental bodies so as to constitute a small purchase pursuant to this section.

(2) Competition and Price Reasonableness.

(a) ~~Purchases not in excess of two thousand five hundred dollars~~ No Competition. Small purchases not exceeding two thousand five hundred dollars, and not exceeding ten thousand dollars for construction, may be accomplished without securing competitive quotations if the prices are considered reasonable. The purchasing office must annotate the purchase requisition: ‘Price is fair and reasonable’ and sign. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase ‘not in excess of’ may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the procurement officer of the governmental body suspects that the price may not be reasonable, comparison to previous price paid, or personal knowledge of the item involved.

(b) ~~Purchases over two thousand five hundred dollars to ten thousand dollars~~ Three Written Quotes. Solicitation of written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition for a small purchase over two thousand five hundred dollars but not in excess of ten thousand dollars, or for a small purchase of construction over ten thousand dollars but not in excess of one hundred thousand dollars. The award must be made to the lowest responsive and responsible sources. The solicitation of written quotes must be distributed equitably among qualified suppliers. When practicable, a quotation must be solicited from other than the previous supplier before placing a repeat order.

(c) ~~Purchases over ten thousand dollars up to fifty thousand dollars~~ Written Solicitation. Written solicitation of written quotes, bids, or proposals must be made for a small purchase, other than a small purchase of construction, over ten thousand dollars but not in excess of fifty thousand dollars. The procurement must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the designated board office. A copy of the written solicitation and written quotes must be attached to the purchase requisition. The award must be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror.

(3) Advertising. All competitive procurements above ten thousand dollars, or above one hundred thousand dollars for construction procurements, must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the designated board office. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.”

SECTION 4. Section 11‑35‑3030(1)(a) and (2)(a) of the 1976 Code are amended to read:

“(1) Bid Security.

(a) Requirement for Bid Security. Bid security is required for all competitive sealed bidding for construction contracts in a design‑bid‑build procurement in excess of ~~fifty~~ one hundred thousand dollars and other contracts as may be prescribed by the State Engineer’s Office. Bid security is a bond provided by a surety company meeting the criteria established by the regulations of the board or otherwise supplied in a form that may be established by regulation of the board.

(2) Contract Performance Payment Bonds.

(a) ~~When Required‑Amounts. The~~ Every contract of construction shall require the following bonds or security ~~must be delivered to the governmental body and become binding on the parties upon the execution of the contract for construction~~:

(i) a performance bond satisfactory to the State, executed by a surety company meeting the criteria established by the board in regulations, or otherwise secured in a manner satisfactory to the State, in an amount equal to one hundred percent of the portion of the contract price that does not include the cost of operation, maintenance, and finance;

(ii) a payment bond satisfactory to the State, executed by a surety company meeting the criteria established by the board in regulations, or otherwise secured in a manner satisfactory to the State, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond must be in an amount equal to one hundred percent of the portion of the contract price that does not include the cost of operation, maintenance, and finance;

(iii) in the case of a construction contract valued at fifty thousand dollars or less, the governmental body may waive the requirements of subitems (i) and (ii) above, if the governmental body has protected the State;

(iv) in the case of a construction manager at‑risk contract, the solicitation may provide that bonds or security are not required during the project’s preconstruction or design phase, if construction does not commence until the requirements of subitems (i) and (ii) above have been satisfied.”

SECTION 5. Section 11‑35‑3230(1) and (2) of the 1976 Code is amended to read:

“(1) Procurement Procedures for Certain Contracts. A governmental body securing architect‑engineer, construction management, or land surveying ~~service which is~~ services which are estimated not to exceed ~~twenty‑five~~ one hundred thousand dollars may award contracts by direct negotiation and selection, taking into account:

(a) the nature of the project;

(b) the proximity of the architect‑engineer or land surveying services to the project;

(c) the capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time;

(d) past performance; and

(e) ability to meet project budget requirements.

(2) Maximum Fees Payable to One Person or Firm. Fees paid during the twenty‑four month period immediately preceding negotiation of the contract by a single governmental body for professional services performed by an architectural‑engineering, construction management, or land surveying firm pursuant to Section 11‑35‑3230(1) may not exceed ~~seventy‑five~~ three hundred thousand dollars. Persons or firms seeking to render professional services pursuant to this section shall furnish the governmental body with whom the firm is negotiating a list of professional services, including fees paid for them, performed for the governmental body during the fiscal year immediately preceding the fiscal year in which the negotiations are occurring and during the fiscal year in which the negotiations are occurring.”

SECTION 6. Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑4430. Unless required for the disposition of ex parte matters authorized by law, members or employees of the panel assigned to render a decision or to make findings of fact and conclusions of law in a matter pending before the panel shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor in connection with any issue of law, with any party or his representatives, except upon notice and opportunity for all parties to participate. A panel member may communicate with other members of the panel and may have the aid and advice of one or more personal assistants. Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than two hundred fifty dollars or imprisoned for not more than six months.”

SECTION 7. Sections 11‑35‑3025 and 11‑35‑3310 of the 1976 Code are repealed.

SECTION 8. This act takes effect upon approval by the Governor.

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