**South Carolina General Assembly**

119th Session, 2011-2012

**H. 4429**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Ballentine, Atwater and Long

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Introduced in the House on January 10, 2012

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

Summary: Chief procurement officers of governmental bodies

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

11/29/2011 House Prefiled

11/29/2011 House Referred to Committee on **Ways and Means**

1/10/2012 House Introduced and read first time ([House Journal‑page 35](file:///h:\hj%20archive\2012\01-10-12.docx))

1/10/2012 House Referred to Committee on **Ways and Means** ([House Journal‑page 35](file:///h:\hj%20archive\2012\01-10-12.docx))

**VERSIONS OF THIS BILL**

[11/29/2011](file:///p:\pprever\2011-12\4429_20111129.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 11‑35‑3017 SO AS TO REQUIRE CHIEF PROCUREMENT OFFICERS OF GOVERNMENTAL BODIES TO UNDERTAKE LIFE CYCLE COST ANALYSIS FOR ALL PUBLIC WORKS CONSTRUCTION PROJECTS THAT ARE EXPECTED TO COST MORE THAN ONE MILLION DOLLARS; AND TO AMEND SECTION 11‑35‑3020, RELATING TO ADDITIONAL BIDDING PROCEDURES FOR CONSTRUCTION PROCUREMENT, SO AS TO AUTHORIZE ALTERNATE INFRASTRUCTURE BIDDING PROCEDURES FOR PUBLIC WORKS CONSTRUCTION PROJECTS.

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

SECTION 1. Subarticle 3, Article 9, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑3017. Notwithstanding another provision of law, the chief procurement officer of a governmental body shall undertake a life cycle cost analysis for all public works construction projects that are expected to cost more than one million dollars. The life cycle cost analysis is defined as a process for evaluating the total economic worth of a highway project by analyzing initial costs and discounted future costs, such as structural maintenance, user costs, reconstruction, rehabilitation, restoring and resurfacing costs, over at least a fifty‑year period. The chief procurement officer shall use actual material life and maintenance cost data when available and a discount rate that reflects the actual inflation rate of each material.”

SECTION 2. Section 11‑35‑3020 of the 1976 Code is amended to read:

“Section 11‑35‑3020. (A) Exceptions in Competitive Sealed Bidding Procedures. The process of competitive sealed bidding as required by Section 11‑35‑3015(2)(b) must be performed in accordance with the procedures outlined in Article 5 of ~~this code~~the 1976 Code subject to the following exceptions:

~~(a)~~(1) Invitation for Bids. Each governmental body is responsible for developing a formal invitation for bids for each state construction project. The invitation must include, but not be limited to, all contractual terms and conditions applicable to the procurement. A copy of each invitation for bids must be filed with the State Engineer’s Office and must be advertised formally in an official state government publication. The manner in which this official state government publication must be published, the content of the publication itself, the frequency of the publication, the method of subscription to the publication, and the manner by which the publication is distributed must be established by regulation of the board.

~~(b)~~(2) Bid Acceptance. Instead of Section 11‑35‑1520(6), the following provision applies. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized ~~in this code~~. The governmental body’s invitation for bids must set forth all requirements of the bid including, but not limited to:

~~(i)~~(a) The governmental body, in consultation with the architect‑engineer assigned to the project, shall identify by specialty in the invitation for bids all subcontractors who are expected to perform work for the prime contractor to or about the construction when those subcontractors’ contracts are each expected to exceed three percent of the prime contractor’s total base bid. In addition, the governmental body, in consultation with the architect‑engineer assigned to the project, may identify by specialty in the invitation for bids a subcontractor who is expected to perform work ~~which~~that is vital to the project. The determination of which subcontractors are included in the list provided in the invitation for bids is not protestable pursuant to Section 11‑35‑4210 or another provision of this code. A bidder in response to an invitation for bids shall set forth in his bid the name of only those subcontractors to perform the work as identified in the invitation for bids. If the bidder determines to use his own employees to perform a portion of the work for which he would otherwise be required to list a subcontractor, and if the bidder is qualified to perform that work under the terms of the invitation for bids, the bidder shall list himself in the appropriate place in his bid and not subcontract that work except with the approval of the governmental body for good cause shown.

~~(ii)~~(b) Failure to complete the list provided in the invitation for bids renders the bidder’s bid unresponsive.

~~(iii)~~(c) The governmental body shall send all responsive bidders a copy of the bid tabulation within ten working days following the bid opening.

~~(c)~~(3) Instead of Section 11‑35‑1520(10), the following provisions apply:

~~(i)~~(a) Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice at a location that is specified in the invitation for bids. The invitation for bids and the posted notice must contain a statement of the bidder’s right to protest pursuant to Section 11‑35‑4210(1) and the date and location of posting must be announced at bid opening. In addition to posting notice, the governmental body promptly shall send all responsive bidders a copy of the notice of intended award and of the bid tabulation. The mailed notice must indicate the posting date and must contain a statement of the bidder’s right to protest pursuant to Section 11‑35‑4210(1).

~~(ii)~~(b) After ten days’ notice is given, the governmental body may enter into a contract with the bidder named in the notice in accordance with the provisions of this code and of the bid solicited. The procurement officer must comply with Section 11‑35‑1810.

~~(iii)~~(c) If, at bid opening, only one bid is received and determined to be responsive and responsible and within the governmental body’s construction budget, award may be made without the ten‑day waiting period.

~~(d)~~(4) Negotiations after Unsuccessful Competitive Sealed Bidding. Instead of Section 11‑35‑1540, the following provisions apply:

~~(i)~~(a) If bids received pursuant to an invitation for bids exceed available funds, and it is determined in writing by the governmental body that circumstances do not permit the delay required to resolicit competitive sealed bids, and the base bid, less deductive alternates, does not exceed available funds by an amount greater than ten percent of the construction budget established for that portion of the work, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder. The governmental body may change the scope of the work to reduce the cost to be within the established construction budget but may not reduce the cost below the established construction budget more than ten percent without a written request by the agency and the written approval of the chief procurement officer based on the best interest of the State.

~~(ii)~~(b) If the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the governmental body is able to identify additional funds for the project, as certified by the appropriate fiscal officers, in the amount of the difference between the lowest base bid and the approved available funds for the project, the governmental body shall submit its request to use those additional funds to the board and the Joint Bond Review Committee in accordance with Sections 2‑47‑40 and 2‑47‑50.

(B) Notwithstanding another provision of law, the chief procurement officer of a governmental body is authorized to utilize alternate infrastructure type bidding for public works construction projects. The term alternate infrastructure-type bidding is defined as a process under which the governmental body determines, from engineering and economic analysis, including the American Association of State Highway and Transportation Official’s Mechanistic Empirical Design Guide, that two or more initial project designs utilizing different construction materials and methods and their forecasted performance and life‑cycle costs are comparable or similar enough to warrant solicitation of bids on more than one design for a project.”

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

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