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Indicates New Matter

COMMITTEE REPORT

April 18, 2013

**H. 3860**

Introduced by Rep. White

S. Printed 4/18/13--H.

Read the first time March 21, 2013.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 3860) to amend Section 11‑35‑3005, Code of Laws of South Carolina, 1976, relating to the project delivery methods authorized for procurement of infrastructure facilities under, etc., respectfully

**REPORT:**

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

W. BRIAN WHITE for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The State Budget and Control Board indicate there is no fiscal impact with the adoption of this bill.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND SECTION 11‑35‑3005, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PROJECT DELIVERY METHODS AUTHORIZED FOR PROCUREMENT OF INFRASTRUCTURE FACILITIES UNDER THE SOUTH CAROLINA CONSOLIDATED PROCUREMENT CODE, SO AS TO PROVIDE THAT AN ENTITY OR INDIVIDUAL OFFERING TO CONTRACT FOR DESIGN‑BUILD, DESIGN‑BUILD‑OPERATE‑MAINTAIN, OR DESIGN‑BUILD‑FINANCE‑OPERATE‑MAINTAIN PROJECT DELIVERY METHODS IS NOT REQUIRED TO HOLD A LICENSE OTHERWISE REQUIRED BY TITLE 40, SO LONG AS THE PERSON WHO ACTUALLY PERFORMS WORK REGULATED BY TITLE 40 HOLDS THE APPROPRIATE LICENSE; AND TO AMEND SECTION 11‑35‑3030, RELATING TO BOND AND SECURITY UNDER THE CONSOLIDATED PROCUREMENT CODE, SO AS TO REQUIRE PERFORMANCE AND PAYMENT BONDS EQUAL TO ONE HUNDRED PERCENT OF THE VALUE OF DESIGNATED PORTIONS OF CONSTRUCTION, PRIOR TO THE COMMENCEMENT OF WORK ON THOSE PORTIONS OF THE PROJECT.

Whereas, the Consolidated Procurement Code was amended in 2008 to provide greater flexibility in meeting the construction needs of the State, including provisions for alternative project delivery methods; and

Whereas, increased flexibility in the requirements for payment and performance security, as applied to these alternative project delivery methods, would result in cost savings; and

Whereas, the licensing requirements of Title 40, when applied to the alternative project delivery methods authorized by the Consolidated Procurement Code, have been subject to different and sometimes conflicting interpretations and could disadvantage South Carolina’s construction industry; and

Whereas, the relationship between the licensing and procurement laws needs clarification to assure maximum competition for State construction projects, consistent with the principle that no design or construction shall be performed without the appropriate authorization required by Title 40. Now, therefore,

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

SECTION 1. Section 11‑35‑3005 of the 1976 Code is amended by adding a subsection at the end to read:

“(4) A business contracting or offering to contract for a project delivery method specified in Section 11‑35‑3005(1)(d) (design‑build), Section 11‑35‑3005(1)(e) (design‑build‑operate‑maintain), or Section 11‑35‑3005(1)(f) (design‑build‑finance‑operate‑maintain) is not required to hold a license required by or issued in accordance with Title 40. Any person or entity who, pursuant or relating to a contract awarded for one of the project delivery methods specified in this subsection, directly and personally practices or engages in a profession or occupation regulated by a board or commission administered by the Department of Labor, Licensing and Regulation must hold a valid authorization to practice as otherwise required by law.”

SECTION 2. Section 11‑35‑3030(2)(a) of the 1976 Code is amended to read:

“(a) When Required‑Amounts. 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 (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 (i) and (ii) above have been satisfied. Additionally, the solicitation may provide that bonds or security as described in (i) and (ii) above may be furnished for one or more designated portions of the project, in an amount equal to one hundred percent of the value of the construction of each designated portion; and may also prescribe the time of delivery of the bonds or security. In no event shall construction of any portion of the work commence until the appropriate bonds or security have been delivered to the governmental body.

(v) in the case of a design‑build, design‑build‑operate‑maintain, or design‑build‑finance‑operate‑maintain contract, the solicitation may provide that bonds or security as described in (i) and (ii) above may be furnished for one or more designated portions of the project, in an amount equal to one hundred percent of the value of the design and construction of each designated portion; and may also prescribe the time of delivery of the bonds or security. In no event shall construction of any portion of the work commence until the appropriate bonds or security have been delivered to the governmental body.”

SECTION 3. This act takes effect upon approval by the Governor and applies to contracts formed and offers made after June 30, 2012.

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