

H 3742

H 3742 General Bill, By Harrell, Toole, Haley, Ballentine, Miller, Cobb-Hunter, Ott, J.H. Neal, Anthony, Phillips, Coleman, Battle, E.H. Pitts, Merrill, Hinson, Huggins, Frye, Clark, Duncan, Bingham, Thompson and Ceips

A BILL TO AMEND SECTION 11-35-1524, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE RESIDENT VENDOR PREFERENCE FOR PURPOSES OF THE SOUTH CAROLINA CONSOLIDATED PROCUREMENT CODE, SO AS TO REPLACE THIS PREFERENCE WITH A BEST-VALUE ANALYSIS OF BIDS FOR THE PURPOSE OF PROMOTING PRODUCTS MADE, MANUFACTURED, AND GROWN IN SOUTH CAROLINA AND FOR THE PURPOSE OF PROMOTING SERVICES PROVIDED BY WORKERS RESIDING IN THIS STATE AND END-PRODUCTS AVAILABLE FROM RESIDENT VENDORS.

03/14/05 House Introduced and read first time HJ-3
03/14/05 House Referred to Committee on Ways and Means HJ-4
03/15/05 House Member(s) request name added as sponsor: Haley, Haley, Ballentine, Miller, Cobb-Hunter, Ott, J.H.Neal, Anthony, Phillips, Coleman, Battle, E.H.Pitts, Merrill, Hinson, Huggins, Frye, Clark, Duncan, Bingham, Thompson, Ceips

VERSIONS OF THIS BILL

[3/14/2005](#)

H. **3742** A BILL

TO AMEND SECTION 11-35-1524, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE RESIDENT VENDOR PREFERENCE FOR PURPOSES OF THE SOUTH CAROLINA CONSOLIDATED PROCUREMENT CODE, SO AS TO REPLACE THIS PREFERENCE WITH A BEST-VALUE ANALYSIS OF BIDS FOR THE PURPOSE OF PROMOTING PRODUCTS MADE, MANUFACTURED, AND GROWN IN SOUTH CAROLINA AND FOR THE PURPOSE OF PROMOTING SERVICES PROVIDED BY WORKERS RESIDING IN THIS STATE AND END-PRODUCTS AVAILABLE FROM RESIDENT VENDORS.

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

SECTION 1. Section 11-35-1524 of the 1976 Code, as last amended by Act 333 of 2002, is further amended to read:

"Section 11-35-1524. (A) ~~A preference of seven percent must be provided to vendors who are residents of South Carolina or whose products are made, manufactured, or grown in South Carolina as set forth in this section.~~

(B) ~~As used in this section, unless the context indicates otherwise, the terms below have the following meanings:~~

(1) ~~'Made' means to assemble, fabricate, or process component parts into a finished end product, the value of which assembly, fabrication or processing is a significant portion of the value of the finished end product.~~

(2) ~~'Manufacture' means to make or process raw materials into a finished end product.~~

(3) ~~'Grown' means to produce, cultivate, raise, or harvest timber, agricultural produce, or livestock on the land, or to cultivate, raise, catch, or harvest products or food from the water which results in an end product that is locally derived from the product cultivated, raised, caught, or harvested.~~

(4) ~~'End product' means the item sought by the governmental body of the State and described in the solicitation including all component parts and in final form and ready for the use intended by the governmental body.~~

(5) ~~'Unreasonable Cost' means:~~

(a) ~~the cost of an item from a resident vendor or an end product made, manufactured, or grown in South Carolina is unreasonable if the bid exceeds by more than seven percent the lowest qualified bid on the same item or end product which is made, manufactured, or grown in other states of the United States, or in a foreign country or territory;~~

(b) ~~the cost of an end product made, manufactured, or grown in other states of the United States is unreasonable if the bid exceeds by more than two percent the lowest qualified bid on the same or similar end product which is made, manufactured, or grown in a foreign country or territory;~~

(6) ~~'Resident vendor' means a vendor who is considered to be a resident of this State if the vendor:~~

(a) ~~is an individual, partnership, association, or corporation that is authorized to transact business within the State,~~

(b) ~~maintains an office in the State,~~

~~(e) maintains an inventory for expendable items which are representative of the general type of commodities on which the bid is submitted and located in South Carolina at the time of the bid having a total value of ten thousand dollars or more based on the bid price, but not to exceed the amount of the contract, or is a manufacturer which is headquartered and has at least a ten million dollar payroll in South Carolina and the product is made or processed from raw materials into a finished end product by such manufacturer or an affiliate (as defined in Section 1563 of the Internal Revenue Code) of such manufacturer, and~~

~~(d) has paid all assessed taxes.~~

~~(C) Application. Competitive procurements made by governmental bodies shall be made from vendors resident to South Carolina or vendors who bid end-products made, manufactured, or grown in South Carolina or in the United States if available, provided that (1) the bidder has certified in writing in the bid that he or she is resident to the State, or (2) the bidder has certified in writing in the bid that the end product was made, manufactured, or grown in South Carolina or in the United States, (3) the end product is available, and (4) the cost of the end product is not unreasonable. In order to receive the award the vendor must be a responsible and responsive bidder, and the bid must otherwise comply with the Procurement Code and Regulations.~~

~~In the case of a request for resident vendor status, this requirement shall apply to the entire solicitation. In the case of a request for end-product status, this requirement shall apply to each line item or each lot in a solicitation to which a separate, responsive bid may be made.~~

~~(D) Exceptions. This section shall not apply:~~

~~(1) to any procurements conducted under Article 9 of the 1976 Code;~~

~~(2) to any prime contractor or subcontractor providing materials or services relating to permanent improvements to real estate;~~

~~(3) to any solicitation, bid, offer, or procurement when the price of a single unit of the end product is more than thirty thousand dollars, whether or not more than one unit is bid or offered;~~

~~(4) to any solicitation, bid, offer, or procurement where the contract award is less than ten thousand dollars;~~

~~(5) to any solicitation conducted under Section 11-35-1530 of the 1976 Code; or~~

~~(6) to any solicitation, bid, offer, or procurement of motor vehicles as defined in Section 56-15-10.~~

~~(E) Enforcement. A bidder shall be suspended or debarred from doing business with the State in accordance with Section 11-35-4220 of the South Carolina Consolidated Procurement Code if the chief procurement officer determines that the certification made by the bidder as to the resident vendor request or the origin of the end-product was filed under false pretenses and is not valid. In addition, if the bidder with the invalid certification of origin was awarded the contract, he shall also pay the State of South Carolina the amount by which the bid based on the invalid certification exceeded the lowest responsible and responsive bid that would have been selected but for the invalid certification.~~

~~If a bidder has not requested the preference, he will neither be entitled to claim any preference against another bidder nor will he be protected from application of another bidder's claim to a preference against his bid in determining contract award.~~

~~(F) If a vendor qualifies as a resident vendor and is bidding a product made, manufactured, or grown in South Carolina, an additional three percent preference must be given if claimed by the bidder. Best Value Preference. A preference must be provided to vendors who show the most positive economic impact based on an economic model to be determined by the Board of Economic Advisors and approved by the State Budget and Control Board. The model may include, but is not limited to, consideration and analysis of economic and employment multiplier effects, net economic benefit to employment and the suitability, capacity, competency and acceptability of the item or service to the specific functions and needs of the State, using State Budget and Control Board approved software that utilizes the following criteria for retaining the maximum dollars within this State including, but not limited to:~~

~~(1) Products made in South Carolina. 'Made' means to assemble, fabricate, or process component parts into a finished end-product, the value of which assembly, fabrication, or processing is a significant portion of the value of the finished end-product.~~

~~(2) Products manufactured in South Carolina. 'Manufactured' means to make or process raw materials into a finished end-product.~~

~~(3) Products grown in South Carolina. 'Grown' means to produce, cultivate, raise, or harvest timber, agricultural produce, or livestock on the land, or to cultivate, raise, catch, or harvest products or food from the water, which results in an end-product that is locally derived from the product cultivated, raised, caught, or harvested.~~

~~(4) Services provided by workers residing in South Carolina.~~

~~(5) End-products from South Carolina. 'End-product' means the item sought by the governmental body of the State and described in the solicitation including all component parts and in final form and ready for the use intended by the governmental body.~~

(B) Application. Competitive procurements made by governmental bodies must be made from vendors based on the impact studies and vendor-provided certified information in connection with those studies as determined pursuant to subsection (A).

(C) Exceptions. This section does not apply to any solicitation, bid, offer, or procurement where the contract award is less than ten thousand dollars.

(D) Enforcement. A bidder must be suspended or debarred from doing business with the State in accordance with Section 11-35-4220 if the chief procurement officer determines that the certification made by the bidder with respect to the information provided in compliance with subsection (A) is not valid."

SECTION 2. This act takes effect upon approval by the Governor and applies for procurements pursuant to the South Carolina Consolidated Procurement Code made after 2005.