

By Senators Sebesta and Dyer

20-1482-99

See HB 867

1 A bill to be entitled
2 An act relating to public construction;
3 amending s. 255.20, F.S.; lowering the
4 threshold amount required for competitive
5 awards of local bids and contracts for public
6 construction; revising provisions with respect
7 to exceptions; providing that certain properly
8 licensed contractors or vendors shall have
9 standing to challenge the propriety of a local
10 government's action under certain
11 circumstances; providing for the award of
12 reasonable attorney's fees under certain
13 circumstances; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 255.20, Florida Statutes, is
18 amended to read:

19 255.20 Local bids and contracts for public
20 construction works; specification of state-produced lumber.--

21 (1) A county, municipality, special district as
22 defined in chapter 189, or other political subdivision of the
23 state seeking to construct or improve a public building,
24 structure, or other public construction works must
25 competitively award to an appropriately licensed contractor
26 each project that is estimated in accordance with generally
27 accepted cost-accounting principles to have construction costs
28 of more than \$50,000 ~~\$200,000~~. As used in this section, the
29 term "competitively award" means to award contracts based on
30 the submission of sealed bids, proposals submitted in response
31 to a request for proposal, proposals submitted in response to

1 a request for qualifications, or proposals submitted for
2 competitive negotiation. This subsection expressly allows
3 contracts for construction management services, design/build
4 contracts, continuation contracts based on unit prices, and
5 any other contract arrangement with a private sector
6 contractor permitted by any applicable municipal or county
7 ordinance, by district resolution, or by state law. For
8 purposes of this section, construction costs include the cost
9 of all labor, except inmate labor, and includes the cost of
10 all overhead, and ~~include~~ the cost of equipment and materials
11 to be used in the construction of the project. Subject to the
12 provisions of subsection (3), the county, municipality,
13 special district, or other political subdivision shall ~~may~~
14 establish, by municipal or county ordinance or special
15 district resolution, procedures for conducting the bidding
16 process.

17 (a) The provisions of this subsection do not apply:

18 1. When the project is undertaken to replace,
19 reconstruct, or repair an existing facility damaged or
20 destroyed by a sudden unexpected turn of events, such as an
21 act of God, riot, fire, flood, accident, or other urgent
22 circumstances, and such damage or destruction creates:

23 a. An immediate danger to the public health or safety;

24 b. Other loss to public or private property which
25 requires emergency government action; or

26 c. An interruption of an essential governmental
27 service.

28 2. When, after notice by publication in accordance
29 with the applicable ordinance or resolution, the governmental
30 entity does not receive any responsive bids or responses.

31

1 3. To construction, remodeling, repair, or improvement
2 to a public electric or gas utility system when such work on
3 the public utility system is performed by personnel of the
4 system and the work to be performed requires the use of forces
5 specially trained to work with electricity or combustible
6 gases.

7 ~~4. To construction, remodeling, repair, or improvement~~
8 ~~by a utility commission whose major contracts are to construct~~
9 ~~and operate a public electric utility system.~~

10 ~~5. When the project is undertaken as repair or~~
11 ~~maintenance of an existing public facility.~~

12 4.6. When the project is undertaken exclusively for
13 the purpose of education or training as part of a public
14 educational program.

15 ~~5.7.~~ When, through no fault of the owner, the funding
16 source of the project will be diminished or lost because the
17 time required to competitively award the project after the
18 funds become available exceeds the time within which the
19 funding source must be spent.

20 ~~6.8.~~ When the local government has competitively
21 awarded a project to a private sector contractor and the
22 contractor has abandoned the project before completion or the
23 local government has terminated the contract.

24 ~~7.9.~~ When the governing board of the local government,
25 after public notice, conducts a public meeting under s.
26 286.011 and finds by a ~~majority~~ vote of at least a majority
27 plus one of the governing board that it is in the public's
28 best interest to perform the project using its own services,
29 employees, and equipment because the construction costs for
30 the local government would be less than for private sector
31 contractors. The public notice must be published at least 14

1 days prior to the date of the public meeting at which the
2 governing board takes final action to apply this subparagraph.
3 The notice must identify the project, the estimated cost of
4 the project and specify that the purpose for the public
5 meeting is to consider whether it is in the public's best
6 interest to perform the project using the local government's
7 own services, employees, and equipment. In deciding whether it
8 is in the public's best interest for local government to
9 perform a project using its own services, employees, and
10 equipment, the governing board shall ~~may~~ consider the
11 construction costs ~~cost~~ of the project, whether the project
12 requires an increase in the number of government employees, an
13 increase in capital expenditures for public facilities,
14 equipment or other capital assets, the impact on local
15 economic development, the impact on small and minority
16 business owners, the impact on state and local tax revenues,
17 ~~whether the private sector contractors provide health~~
18 ~~insurance and other benefits equivalent to those provided by~~
19 ~~the local government,~~ and may consider any other factor
20 relevant to what is in the public's best interest.

21 ~~8.10.~~ When the governing board of the local government
22 determines upon consideration of specific substantive criteria
23 and administrative procedures that it is in the best interest
24 of the local government to award the project to an
25 appropriately licensed private sector contractor according to
26 the substantive criteria and administrative procedures
27 established by and expressly set forth in a charter,
28 ordinance, or resolution of the local government adopted prior
29 to July 1, 1994. The criteria and procedures must be set out
30 in the charter, ordinance, or resolution and must be applied
31 uniformly by the local government to avoid award of any

1 project in an arbitrary or capricious manner.This exception
2 shall apply when all of the following occur:
3 a. When the governing board of the local government,
4 after public notice, conducts a public meeting under s.
5 286.011 and finds by a two-thirds vote of the governing board
6 that it is in the public's best interest to award the project
7 according to the criteria and procedures established by
8 charter, ordinance, or resolution. The public notice must be
9 published at least 14 days prior to the date of the public
10 meeting at which the governing board takes final action to
11 apply this subparagraph. The notice must identify the
12 project, the estimated cost of the project, and specify that
13 the purpose for the public meeting is to consider whether it
14 is in the public's best interest to award the project using
15 the criteria other than competitive selection and procedures
16 ~~method~~ permitted by the preexisting ordinance.
17 b. In the event the project is to be awarded by any
18 method other than a competitive selection process, the
19 governing board must find upon substantial credible evidence
20 that:
21 (I) There is one appropriately licensed contractor who
22 is uniquely qualified to undertake the project because that
23 contractor is currently under contract to perform work that is
24 affiliated with the project and the work is of a specialized
25 nature that obtaining competitive bids is not possible; or
26 (II) The time to competitively award the project
27 through no fault of the public owner or its agents will
28 jeopardize the funding for the project, or will materially
29 increase the cost of the project or will create an undue
30 hardship on the public health, safety, or welfare.
31

1 c. In the event the project is to be awarded by any
2 method other than a competitive selection process, the
3 published notice must clearly specify the procedure method by
4 which the private sector contractor will be selected and the
5 criteria to be considered.

6 d. In the event the project is to be awarded by a
7 method other than a competitive selection process, the
8 architect or engineer of record has provided a written
9 recommendation that the project be awarded to the private
10 sector contractors without competitive selection; and the
11 consideration by, and the justifications of, the governmental
12 body are documented, in writing, in the project file and the
13 findings and documentation required by s. 255.04(2) and (3)
14 are presented to the governing board prior to the approval
15 required in this paragraph.

16 (b)

17 1. If the project is to be awarded based on price, the
18 contract must be awarded to the lowest qualified and
19 responsive bidder in accordance with the applicable county or
20 municipal ordinance or district resolution and in accordance
21 with the applicable contract documents. The county,
22 municipality, or special district may reserve the right to
23 reject all bids and to rebid the project or elect not to
24 proceed with the project. This subsection is not intended to
25 restrict the rights of any local government to reject the low
26 bid of a nonqualified or nonresponsive bidder and to award the
27 contract to any other qualified and responsive bidder in
28 accordance with the standards and procedures of any applicable
29 county or municipal ordinance or any resolution of a special
30 district.

1 2. If the project uses a request for proposal or a
2 request for qualifications, the request must be publicly
3 advertised and the contract must be awarded in accordance with
4 the applicable local ordinances.

5 3. If the project is subject to competitive
6 negotiations, the contract must be awarded in accordance with
7 s. 287.055.

8 (c) If a construction project greater than \$50,000
9 ~~\$200,000~~ is started after July 1, 1999 ~~1996~~, and is to be
10 performed by a local government using its own employees in a
11 county or municipality that issues registered contractor
12 licenses and the project would require a licensed contractor
13 under chapter 489 if performed by a private sector contractor,
14 the local government must use a person appropriately
15 registered or certified under chapter 489 to supervise the
16 work.

17 (d) If a construction project greater than \$50,000
18 ~~\$200,000~~ is started after July 1, 1999 ~~1996~~, and is to be
19 performed by a local government using its own employees in a
20 county that does not issue registered contractor licenses and
21 the project would require a licensed contractor under chapter
22 489 if performed by a private sector contractor, the local
23 government must use a person appropriately registered or
24 certified under chapter 489 or a person appropriately licensed
25 under chapter 471 to supervise the work.

26 (e) Projects performed by a local government using its
27 own services and employees must be inspected in the same
28 manner as inspections required for work performed by private
29 sector contractors.

30
31

1 (f) A construction project provided for in this
2 subsection may not be divided into more than one project for
3 the purpose of evading this subsection.

4 (g) This subsection does not preempt the requirements
5 of any small-business or disadvantaged-business enterprise
6 program or any local-preference ordinance.

7 (2) The threshold amount of ~~\$50,000~~~~\$200,000~~ must be
8 adjusted by the percentage change in the Consumer Price Index
9 from January 1, 1999 ~~1994~~, to January 1 of the year in which
10 the project is scheduled to begin.

11 (3) All county officials, boards of county
12 commissioners, school boards, city councils, city
13 commissioners, and all other public officers of state boards
14 or commissions that are charged with the letting of contracts
15 for public work, for the construction of public bridges,
16 buildings, and other structures must always specify lumber,
17 timber, and other forest products produced and manufactured in
18 this state whenever such products are available and their
19 price, fitness, and quality are equal. This subsection does
20 not apply when plywood specified for monolithic concrete
21 forms, when the structural or service requirements for timber
22 for a particular job cannot be supplied by native species, or
23 when the construction is financed in whole or in part from
24 federal funds with the requirements that there be no
25 restrictions as to species or place of manufacture.

26 (4) Any properly licensed contractor or vendor
27 interested in submitting an offer to perform work encompassed
28 by this section shall have standing to challenge the propriety
29 of the local government's actions when the local government
30 seeks to invoke the provisions of this section. Any person
31 challenging, whether in an administrative proceeding or

1 litigation, the propriety of a local government's actions
2 under this section is entitled to recover its reasonable
3 attorney's fees unless a court finds that the challenge was
4 frivolous.

5 Section 2. This act shall take effect July 1, 1999.

6

7 *****

8 LEGISLATIVE SUMMARY

9

10 Revises a provision of law governing local bids and
11 contracts for public construction projects to lower to
12 \$100,000 the threshold amount required for competitive
13 awards of local bids and contracts, to revise exceptions
14 to the operation of the law, to provide that described
properly licensed contractors or vendors shall have
standing to challenge the action of a local government
under the law, and to provide for the award of reasonable
attorney's fees in described circumstances. (See bill
for details.)

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31