

By the Committee on Comprehensive Planning, Local and Military Affairs; and Senators Sebesta and Dyer

316-1950-99

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           electrical work; providing that certain  
7           qualified contractors or vendors shall have  
8           standing to challenge the propriety of a local  
9           government's action under certain  
10          circumstances; providing for the award of  
11          reasonable attorney's fees under certain  
12          circumstances; providing an effective date.

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

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

18           255.20 Local bids and contracts for public  
19 construction works; specification of state-produced lumber.--

20           (1) A county, municipality, special district as  
21 defined in chapter 189, or other political subdivision of the  
22 state seeking to construct or improve a public building,  
23 structure, or other public construction works must  
24 competitively award to an appropriately licensed contractor  
25 each project that is estimated in accordance with generally  
26 accepted cost-accounting principles to have total construction  
27 project costs of more than \$200,000. For electrical work,  
28 local government must competitively award to an appropriately  
29 licensed contractor each project that is estimated in  
30 accordance with generally accepted cost-accounting principles  
31 to have a cost of more than \$50,000. As used in this section,

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

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

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

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

26 b. Other loss to public or private property which  
27 requires emergency government action; or

28 c. An interruption of an essential governmental  
29 service.

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

4           3. To construction, remodeling, repair, or improvement  
5 to a public electric or gas utility system when such work on  
6 the public utility system is performed by personnel of the  
7 system.

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

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

13           6. When the project is undertaken exclusively as part  
14 of a public educational program.

15           7. When the funding source of the project will be  
16 diminished or lost because the time required to competitively  
17 award the project after the funds become available exceeds the  
18 time within which the funding source must be spent.

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

23           9. When the governing board of the local government,  
24 after public notice, conducts a public meeting under s.  
25 286.011 and finds by a majority vote of the governing board  
26 that it is in the public's best interest to perform the  
27 project using its own services, employees, and equipment. The  
28 public notice must be published at least 14 days prior to the  
29 date of the public meeting at which the governing board takes  
30 final action to apply this subparagraph. The notice must  
31 identify the project, the estimated cost of the project and

1 specify that the purpose for the public meeting is to consider  
2 whether it is in the public's best interest to perform the  
3 project using the local government's own services, employees,  
4 and equipment. In deciding whether it is in the public's best  
5 interest for local government to perform a project using its  
6 own services, employees, and equipment, the governing board  
7 may consider the cost of the project, whether the project  
8 requires an increase in the number of government employees, an  
9 increase in capital expenditures for public facilities,  
10 equipment or other capital assets, the impact on local  
11 economic development, the impact on small and minority  
12 business owners, the impact on state and local tax revenues,  
13 whether the private sector contractors provide health  
14 insurance and other benefits equivalent to those provided by  
15 the local government, and any other factor relevant to what is  
16 in the public's best interest.

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

28 This exception shall apply when all of the following occur:

29           a. When the governing board of the local government,  
30 after public notice, conducts a public meeting under s.  
31 286.011 and finds by a two-thirds vote of the governing board

1 that it is in the public's best interest to award the project  
2 according to the criteria and procedures established by  
3 charter, ordinance, or resolution. The public notice must be  
4 published at least 14 days prior to the date of the public  
5 meeting at which the governing board takes final action to  
6 apply this subparagraph. The notice must identify the  
7 project, the estimated cost of the project, and specify that  
8 the purpose for the public meeting is to consider whether it  
9 is in the public's best interest to award the project using  
10 the criteria and procedures ~~method~~ permitted by the  
11 preexisting ordinance.

12 b. In the event the project is to be awarded by any  
13 method other than a competitive selection process, the  
14 governing board must find evidence that:

15 (I) There is one appropriately licensed contractor who  
16 is uniquely qualified to undertake the project because that  
17 contractor is currently under contract to perform work that is  
18 affiliated with the project; or

19 (II) The time to competitively award the project will  
20 jeopardize the funding for the project, or will materially  
21 increase the cost of the project or will create an undue  
22 hardship on the public health, safety, or welfare.

23 c. In the event the project is to be awarded by any  
24 method other than a competitive selection process, the  
25 published notice must clearly specify the ordinance or  
26 resolution ~~method~~ by which the private sector contractor will  
27 be selected and the criteria to be considered.

28 d. In the event the project is to be awarded by a  
29 method other than a competitive selection process, the  
30 architect or engineer of record has provided a written  
31 recommendation that the project be awarded to the private

1 sector contractor without competitive selection; and the  
2 consideration by, and the justification of, the government  
3 body are documented, in writing, in the project file and the  
4 ~~findings and documentation required by s. 255.04(2) and (3)~~  
5 are presented to the governing board prior to the approval  
6 required in this paragraph.

7 (b)1. If the project is to be awarded based on price,  
8 the contract must be awarded to the lowest qualified and  
9 responsive bidder in accordance with the applicable county or  
10 municipal ordinance or district resolution and in accordance  
11 with the applicable contract documents. The county,  
12 municipality, or special district may reserve the right to  
13 reject all bids and to rebid the project or elect not to  
14 proceed with the project. This subsection is not intended to  
15 restrict the rights of any local government to reject the low  
16 bid of a nonqualified or nonresponsive bidder and to award the  
17 contract to any other qualified and responsive bidder in  
18 accordance with the standards and procedures of any applicable  
19 county or municipal ordinance or any resolution of a special  
20 district.

21 2. If the project uses a request for proposal or a  
22 request for qualifications, the request must be publicly  
23 advertised and the contract must be awarded in accordance with  
24 the applicable local ordinances.

25 3. If the project is subject to competitive  
26 negotiations, the contract must be awarded in accordance with  
27 s. 287.055.

28 (c) If a construction project greater than \$200,000,  
29 or \$50,000 for electrical work, is started after October 1,  
30 1999 ~~July 1, 1996~~, and is to be performed by a local  
31 government using its own employees in a county or municipality

1 that issues registered contractor licenses and the project  
2 would require a licensed contractor under chapter 489 if  
3 performed by a private sector contractor, the local government  
4 must use a person appropriately registered or certified under  
5 chapter 489 to supervise the work.

6 (d) If a construction project greater than \$200,000,  
7 or \$50,000 for electrical work, is started after October 1,  
8 1999 ~~July 1, 1996~~, and is to be performed by a local  
9 government using its own employees in a county that does not  
10 issue registered contractor licenses and the project would  
11 require a licensed contractor under chapter 489 if performed  
12 by a private sector contractor, the local government must use  
13 a person appropriately registered or certified under chapter  
14 489 or a person appropriately licensed under chapter 471 to  
15 supervise the work.

16 (e) Projects performed by a local government using its  
17 own services and employees must be inspected in the same  
18 manner as inspections required for work performed by private  
19 sector contractors.

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

23 (g) This subsection does not preempt the requirements  
24 of any small-business or disadvantaged-business enterprise  
25 program or any local-preference ordinance.

26 (2) The threshold amount of \$200,000 for construction  
27 or \$50,000 for electrical work must be adjusted by the  
28 percentage change in the Consumer Price Index from January 1,  
29 1994, to January 1 of the year in which the project is  
30 scheduled to begin.

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

16           (4) Any qualified contractor or vendor who could have  
17 been awarded the project had the project been competitively  
18 bid shall have standing to challenge the propriety of the  
19 local government's actions when the local government seeks to  
20 invoke the provisions of this section. The prevailing party  
21 in such action shall be entitled to recover its reasonable  
22 attorney's fees.

23           Section 2. This act shall take effect October 1, 1999.  
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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   Senate Bill 1906

4     The CS removes most of the provisions in the bill as filed,  
5     while retaining the following substantially amended  
6     provisions:

7     It amends s. 255.20, F.S., to establish a new threshold level  
8     of \$50,000 for electrical projects that must be competitively  
9     bid by local governments;

10    Amends s. 255.20(1)(a)10., F.S., to require that when the  
11    local governing board of the local government decides that it  
12    is in the best interest to award to a private sector  
13    contractor, that it does so upon consideration of specific  
14    substantive criteria and administrative procedures expressly  
15    set forth in a charter, ordinance, or resolution adopted prior  
16    to July 1, 1994; to require that the criteria and procedure be  
17    applied uniformly by the local government to avoid award of  
18    any project in an arbitrary or capricious manner; to require  
19    that if the project is to be awarded by method other than a  
20    competitive selection process, the architect or engineer of  
21    record has provided a written recommendation that the project  
22    be awarded to the private sector contractor without a  
23    competitive selection and the considerations and  
24    justifications for the decision by the local government are  
25    documented in writing.

26    Creates s. 255.20(4), F.S. to provide that licensed contractor  
27    or vendor who could have been awarded a project had the  
28    project been competitively bid has standing to challenge the  
29    local government, and provides that the prevailing party is  
30    entitled to recover its reasonable attorney's fees.

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