

Amendment No. 01s (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Community Affairs offered the following:

**Amendment (with title amendment)**

Remove from the bill: Everything after the enacting clause  
and insert in lieu thereof:

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

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

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of more than \$200,000. For electrical work, local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles

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1 to have a cost of more than \$50,000. As used in this section,  
2 the term "competitively award" means to award contracts based  
3 on the submission of sealed bids, proposals submitted in  
4 response to a request for proposal, proposals submitted in  
5 response to a request for qualifications, or proposals  
6 submitted for competitive negotiation. This subsection  
7 expressly allows contracts for construction management  
8 services, design/build contracts, continuation contracts based  
9 on unit prices, and any other contract arrangement with a  
10 private sector contractor permitted by any applicable  
11 municipal or county ordinance, by district resolution, or by  
12 state law. For purposes of this section, construction costs  
13 include the cost of all labor, except inmate labor, and  
14 include the cost of equipment and materials to be used in the  
15 construction of the project. Subject to the provisions of  
16 subsection (3), the county, municipality, special district, or  
17 other political subdivision may establish, by municipal or  
18 county ordinance or special district resolution, procedures  
19 for conducting the bidding process.

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

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

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

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

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

31 2. When, after notice by publication in accordance

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1 with the applicable ordinance or resolution, the governmental  
2 entity does not receive any responsive bids or responses.

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

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

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

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

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

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

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

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

28           a. When the governing board of the local government,  
29 after public notice, conducts a public meeting under s.  
30 286.011 and finds by a two-thirds vote of the governing board  
31 that it is in the public's best interest to award the project

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

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

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

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

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

27 d. In the event the project is to be awarded by a  
28 method other than a competitive selection process, the  
29 architect or engineer of record has provided a written  
30 recommendation that the project be awarded to the private  
31 sector contractor without competitive selection; and the

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1 consideration by, and the justification of, the government  
2 body are documented, in writing, in the project file and the  
3 findings and documentation required by s. 255.04(2) and (3)  
4 are presented to the governing board prior to the approval  
5 required in this paragraph.

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

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

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

27 (c) If a construction project greater than \$200,000,  
28 or \$50,000 for electrical work, is started after July 1,  
29 1996, and is to be performed by a local government using its  
30 own employees in a county or municipality that issues  
31 registered contractor licenses and the project would require a

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1 licensed contractor under chapter 489 if performed by a  
2 private sector contractor, the local government must use a  
3 person appropriately registered or certified under chapter 489  
4 to supervise the work.

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

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

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

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

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

30 (3) All county officials, boards of county  
31 commissioners, school boards, city councils, city

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

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

21 Section 2. This act shall take effect October 1, 1999.

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 24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 On page 1, lines 6-8  
 27 remove from the title of the bill: all of said lines  
 28  
 29 and insert in lieu thereof:  
 30 electrical work; providing the certain  
 31 qualified contractors or vendors shall have