

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 545 w/CS Construction managers/State Correctional Facilities
SPONSOR(S): Brown
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Corrections (Sub)</u>	<u>6 Y, 0 N</u>	<u>Whittier</u>	<u>De La Paz</u>
2) <u>Public Safety & Crime Prevention</u>	<u>12 Y, 2 N w/ CS</u>	<u>Whittier</u>	<u>De La Paz</u>
3) <u>State Administration</u>	<u>6 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
4) <u>Public Safety Appropriations</u>	<u>7 Y, 0 N</u>	<u>Davis</u>	<u>DeBeaugrine</u>
5) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 545 w/ CS allows the Department of Corrections (DOC or department) to pre-select construction managers for future projects relating to the construction of state correctional facilities, based upon a continuing contract, rather than having to select construction managers utilizing the project-specific process outlined in s. 255.29, F.S.

The bill provides that the advertising requirements currently in statute are to apply to the process for selecting the construction managers. Section 255.0525, F.S., requires that the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 be publicly advertised once in the Florida Administrative Weekly at least 21 days prior to the established bid opening and that the bids or proposals be received and opened publicly at the location, date, and time established in the bid or proposal advertisements.

The fiscal impact of this bill is indeterminate.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0545f.ap.doc
DATE: April 2, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

HB 545 w/ CS allows the Department of Corrections (DOC or department) to pre-select construction managers for future projects relating to the construction of state correctional facilities, based upon a continuing contract (similar to architect and engineer selection under s. 287.055, F.S.), rather than having to select construction managers utilizing the project-specific process outlined in s. 255.29, F.S.

Section 255.29, F.S., requires the Department of Management Services (DMS) to establish and adopt by rule, for construction contracts, procedures:

- For determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.
- For awarding each state agency construction project to the lowest qualified bidder as well as procedures to be followed in cases in which DMS declares a valid emergency to exist which would necessitate the waiver of the rules governing the awarding of state construction contracts to the lowest qualified bidder.
- To govern negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the secretary of DMS to be in the best interest of the state.
- For entering into performance-based contracts for the development of public facilities when DMS determines the use of such contracts to be in the best interest of the state. The procedures must include, but are not limited to:
 - Prequalification of bidders;
 - Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
 - Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
 - Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.

DOC reports that under the amended legislation, it would rank the top firms and that projects would be contracted based either on order of ranking or by lottery process for each project. The objective is to "invest a great deal of time to select qualified firms once for an array of projects, instead of a significant

amount of time for each individual project,” to yield a significant cost avoidance in administrative processing and staff time, and to ensure that qualified contracting firms are available when needed.

DOC further informs that for most of the major construction projects over the last 10 years, construction managers (similar to general contractors) have been selected utilizing DMS Rules 60-D-5.008, 5.0082, and 5.0091. Some of these projects include the Lowell Annex, Okeechobee Correctional Institution, the Dade Annex, Wakulla Correctional Institution, the Desoto Annex, Santa Rosa Correctional Institution, Gulf Annex, and the expansion of Hillsborough Correctional Institution.

The bill states the advertising requirements currently in s. 255.0525, F.S., are to apply to the process for selecting the construction managers. This section of statute requires that the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 be publicly advertised once in the Florida Administrative Weekly, at least 21 days prior to the established bid opening, and that the bids or proposals be received and opened publicly at the location, date and time established in the bid or proposal advertisements.

DOC states all of the construction projects for which construction managers have been used have exceeded \$200,000, and that this procedure takes considerable time and is open to protest that can potentially delay the completion of critically needed prisons. According to DOC, it takes approximately three to three-and-a-half years to build a prison if the department owns the land.

C. SECTION DIRECTORY:

Section 1 amends s. 944.10, F.S., regarding DOC’s responsibility for providing buildings for state correctional facilities.

Section 2 provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The array of future projects needed for correctional facilities and the amount of contracts with private sector construction managers for future projects in the state is not known.

D. FISCAL COMMENTS:

According to the DOC, “[u]ndetermined cost avoidances may be realized from expediting force account projects and avoiding delays in construction. Cost avoidance in administration may also be realized from reduced use of the formal competitive bid process and potential bid protests and administrative hearings.”

However, open market competition is generally regarded as an effective means to controlling costs. To the extent that competition is reduced, the state, through DOC, may not necessarily avoid costs or realize savings. Taking all these factors into account, the fiscal impact of this bill is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not affect municipal or county government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DMS Comments on the Bill as Amended

The changes allow DOC to select the best qualified for a specific project, which may be a provider on a pre-selected list of qualified providers or from providers responding to a public announcement. The identified change in HB 545, s. 287.055 F.S., is beneficial in that it identifies the top three candidates for negotiations to achieve the best price for the quality output expected from the projects appropriation.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 17, 2004, the Subcommittee on Corrections voted the bill favorably based upon assurance from the sponsor that language in the bill requiring DOC to pre-select construction managers for future projects based upon a continuing contract would be replaced with permissive language, so that if there was a need by the department to select a construction manager on a project-specific basis, it would be able to do so. It was agreed that this amendment would be offered at the next committee of reference.

On March 10, 2004, the Committee on Public Safety & Crime Prevention adopted an amendment allowing DOC to select construction managers on either a project-specific or non-project-specific basis, and passed the bill favorably, with CS, based upon assurance from the sponsor that before the next committee of reference hears the bill, the sponsor would consider further amending the language so that it utilizes the term *pre-qualification* of construction managers rather than *pre-selection*. Also, the Chair requested that the sponsor look into incorporating into the bill best value contracting language.