

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 545 selection of construction managers for state correctional facilities
construction projects
SPONSOR(S): Brown
TIED BILLS: **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></u>	<u></u>	<u></u>
3) <u>State Administration</u>	<u></u>	<u></u>	<u></u>
4) <u>Public Safety Appropriations (Sub)</u>	<u></u>	<u></u>	<u></u>
5) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 545 requires 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 selecting construction managers utilizing the project-specific process outlined in s. 255.29, F.S.

Language in the bill states that the process for selecting construction managers "shall" not be project-specific." This would prevent them from ever selecting the managers on a project-specific basis. The bill also states that the pre-selection of construction managers for future projects be based upon a continuing contract "similar" to the selection process used in s. 255.0525, 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 department states that 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 the department, it takes approximately three to three-and-a-half years to build a prison if the department owns the land

According to the DOC, undetermined cost avoidances may be realized from expediting projects and avoiding delays in construction and in administration from reduced use of the formal competitive bid process, potential bid protests, and administrative hearings.

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

STORAGE NAME: h0545a.ps.doc
DATE: February 17, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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 requires 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 selecting construction managers utilizing the project-specific process outlined in s. 255.29, F.S.

Section 255.29, F.S., lists the following procedures that Department of Management Services (DMS) are 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.
- Procedures for awarding each state agency construction project to the lowest qualified bidder as well as procedures to be followed in cases in which the Department of Management Services 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.
- Procedures to govern negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the secretary of the Department of Management Services to be in the best interest of the state.
- Procedures for entering into performance-based contracts for the development of public facilities when the Department of Management Services determines the use of such contracts to be in the best interest of the state. The procedures shall 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.

Language in the bill states that the process for selecting construction managers “shall” not be project-specific.” This would prevent them from ever selecting the managers on a project-specific basis. The bill also states that the pre-selection of construction managers for future projects be based upon a continuing contract “similar” to the selection process used in s. 287.055, F.S.

The department reports that under this 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 being 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 they are needed.

The department further informs that for most of the major construction projects over the last ten years, construction managers (similar to general contractors) have been selected utilizing Department of Management 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 that 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.

The DOC states that 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 the department, 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 the Department of Corrections’ 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:

See Fiscal Comments.

2. Expenditures:

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, undetermined cost avoidances may be realized from expediting projects and avoiding delays in construction and in administration from reduced use of the formal competitive bid process, potential bid protests, and administrative hearings.

The department reports that during this fiscal year, there is approximately \$68,000,000 under contract with construction managers who are constructing the Franklin Correctional Institution and the Santa Rosa Annex.

The DMS notes that although there will be less time involved in the selection of construction managers, limited or poor selection choices might affect the quality and associated costs of future facilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments by the Department of Management Services

[The bill] would limit the selection of construction managers to a pre-selected group that may not include the best-qualified providers, which would otherwise have competed for projects that they have specific skills and abilities to perform. Pre-selection does streamline the selection process but eliminating the option of going to the general population of construction managers may result in less than expected outcomes. Pre-

selected construction managers may not have the specialized knowledge or technology required for unique projects.

The DMS also states, "when using prototype or reuse construction, the pre-selected provider would most likely have the most experience with the specific construction requirements of the project."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Corrections voted the bill favorably, on February 17, 2004, based upon assurance from the sponsor that language in the bill that *requires* the Department of Corrections 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, they still will be able to do so. It was agreed that this amendment would be offered at the next committee of reference.