

Bill No. CS for SB 1928

Barcode 465024

CHAMBER ACTION

Senate

House

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The Committee on Community Affairs (Haridopolos) recommended
the following amendment:

Senate Amendment (with title amendment)

On page 20, line 25, through
page 21, line 2, delete those lines

and insert:

Section 10. Subsections (1) and (2) of section 255.20,
Florida Statutes, are 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 \$400,000 ~~\$200,000~~. For electrical
work, local government must competitively award to an

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1 appropriately licensed contractor each project that is
2 estimated in accordance with generally accepted
3 cost-accounting principles to have a cost of more than
4 ~~\$100,000~~ ~~\$50,000~~. As used in this section, the term
5 "competitively award" means to award contracts based on the
6 submission of sealed bids, proposals submitted in response to
7 a request for proposal, proposals submitted in response to a
8 request for qualifications, or proposals submitted for
9 competitive negotiation. This subsection expressly allows
10 contracts for construction management services, design/build
11 contracts, continuation contracts based on unit prices, and
12 any other contract arrangement with a private sector
13 contractor permitted by any applicable municipal or county
14 ordinance, by district resolution, or by state law. For
15 purposes of this section, construction costs include the cost
16 of all labor, except inmate labor, and include the cost of
17 equipment and materials to be used in the construction of the
18 project. Subject to the provisions of subsection (3), the
19 county, municipality, special district, or other political
20 subdivision may establish, by municipal or county ordinance or
21 special district resolution, procedures for conducting the
22 bidding process.

23 (a) Notwithstanding any other law to the contrary, a
24 county, municipality, special district as defined in chapter
25 189, or other political subdivision of the state seeking to
26 construct or improve bridges, roads, streets, highways, or
27 railroads, and services incidental thereto, at costs in excess
28 of \$250,000 may require that persons interested in performing
29 work under contract first be certified or qualified to perform
30 such work. Any contractor may be considered ineligible to bid
31 by the governmental entity if the contractor is behind on

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1 completing an approved progress schedule for the governmental
 2 entity by 10 percent or more at the time of advertisement of
 3 the work. Any contractor prequalified and considered eligible
 4 by the Department of Transportation to bid to perform the type
 5 of work described under the contract shall be presumed to be
 6 qualified to perform the work described. The governmental
 7 entity may provide an appeal process to overcome that
 8 presumption with de novo review based on the record below to
 9 the circuit court.

10 (b) With respect to contractors not prequalified with
 11 the Department of Transportation, the governmental entity
 12 shall publish prequalification criteria and procedures prior
 13 to advertisement or notice of solicitation. Such publications
 14 shall include notice of a public hearing for comment on such
 15 criteria and procedures prior to adoption. The procedures
 16 shall provide for an appeal process within the authority for
 17 objections to the prequalification process with de novo review
 18 based on the record below to the circuit court within 30 days.

19 (c) 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.

30 2. When, after notice by publication in accordance
 31 with the applicable ordinance or resolution, the governmental

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1 entity does not receive any responsive bids or responses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 body are documented, in writing, in the project file and are
 2 presented to the governing board prior to the approval
 3 required in this paragraph.

4 11. To projects subject to chapter 336.

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

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

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

26 (e) If a construction project greater than \$400,000
 27 ~~\$200,000~~, or \$100,000 ~~\$50,000~~ for electrical work, is started
 28 after October 1, 1999, and is to be performed by a local
 29 government using its own employees in a county or municipality
 30 that issues registered contractor licenses and the project
 31 would require a licensed contractor under chapter 489 if

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

4 (f) If a construction project greater than \$400,000
5 ~~\$200,000~~, or \$100,000 ~~\$50,000~~ for electrical work, is started
6 after October 1, 1999, and is to be performed by a local
7 government using its own employees in a county that does not
8 issue registered contractor licenses and the project would
9 require a licensed contractor under chapter 489 if performed
10 by a private sector contractor, the local government must use
11 a person appropriately registered or certified under chapter
12 489 or a person appropriately licensed under chapter 471 to
13 supervise the work.

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

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

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

24 (2) The threshold amount of \$400,000 ~~\$200,000~~ for
25 construction or \$100,000 ~~\$50,000~~ for electrical work must be
26 adjusted by the percentage change in the Consumer Price Index
27 from January 1, 2007 ~~1994~~, to January 1 of the year in which
28 the project is scheduled to begin.

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

2 And the title is amended as follows:

3 On page 2, line 14, delete "a threshold"

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5 and insert:

6 thresholds

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