

1 A bill to be entitled
 2 An act relating to public construction projects; amending
 3 s. 255.20, F.S.; revising exceptions to the requirement
 4 that certain public projects be competitively awarded;
 5 defining the term "maintenance"; prohibiting an exception
 6 if the local government contributed to a delay in funding
 7 or awarding a project; requiring a local government to
 8 support a decision to perform a project with its own
 9 employees and to make a factual finding that the project
 10 cost will be the same or less than the lowest bid;
 11 providing additional exceptions for projects related to
 12 public-use airports, certain ports, and certain public
 13 transit systems; authorizing a project to be awarded to a
 14 contractor that maintains a local presence under certain
 15 circumstances; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 255.20, Florida Statutes, is amended to
 20 read:

21 255.20 Local bids and contracts for public construction
 22 works; specification of state-produced lumber.--

23 (1) A county, municipality, special district as defined in
 24 chapter 189, or other political subdivision of the state seeking
 25 to construct, ~~or~~ improve, or repair a public building,
 26 structure, or other public construction works must competitively
 27 award to an appropriately licensed contractor each project that
 28 is estimated in accordance with generally accepted cost-

HB 611

2009

29 | accounting principles to cost ~~have total construction project~~
30 | ~~costs of~~ more than \$200,000. For electrical work, the local
31 | government must competitively award to an appropriately licensed
32 | contractor each project that is estimated in accordance with
33 | generally accepted cost-accounting principles to ~~have a cost of~~
34 | more than \$50,000. As used in this section, the term
35 | "competitively award" means to award contracts based on the
36 | submission of sealed bids, proposals submitted in response to a
37 | request for proposal, proposals submitted in response to a
38 | request for qualifications, or proposals submitted for
39 | competitive negotiation. This subsection expressly allows
40 | contracts for construction management services, design/build
41 | contracts, continuation contracts based on unit prices, and any
42 | other contract arrangement with a private sector contractor
43 | permitted by any applicable municipal or county ordinance, by
44 | district resolution, or by state law. For purposes of this
45 | section, cost includes ~~construction costs include~~ the cost of
46 | all labor, except inmate labor, and ~~include~~ the cost of
47 | equipment and materials to be used in the construction of the
48 | project. Subject to the provisions of subsection (3), the
49 | county, municipality, special district, or other political
50 | subdivision may establish, by municipal or county ordinance or
51 | special district resolution, procedures for conducting the
52 | bidding process.

53 | (a) Notwithstanding any other law ~~to the contrary~~, a
54 | governmental entity ~~a county, municipality, special district as~~
55 | ~~defined in chapter 189, or other political subdivision of the~~
56 | ~~state~~ seeking to construct or improve bridges, roads, streets,

57 highways, or railroads, and services incidental thereto, at a
 58 cost ~~costs~~ in excess of \$250,000 may require that persons
 59 interested in performing work under contract first be certified
 60 or qualified to perform such work. A ~~Any~~ contractor may be
 61 considered ineligible to bid ~~by the governmental entity~~ if the
 62 contractor is behind by 10 percent or more on completing an
 63 approved progress schedule for the governmental entity ~~by 10~~
 64 ~~percent or more~~ at the time of advertising ~~advertisement~~ of the
 65 work. A prequalified ~~Any~~ contractor ~~prequalified and~~ considered
 66 eligible by the Department of Transportation to bid to perform
 67 the type of work described under the contract is ~~shall be~~
 68 presumed to be qualified to perform the work described. The
 69 governmental entity may provide an appeal process to overcome
 70 that presumption with de novo review based on the record below
 71 to the circuit court.

72 (b) For ~~With respect to~~ contractors who are not
 73 prequalified by ~~with~~ the Department of Transportation, the
 74 governmental entity shall publish prequalification criteria and
 75 procedures prior to advertisement or notice of solicitation.
 76 Such publications must ~~shall~~ include notice of a public hearing
 77 for comment on such criteria and procedures prior to adoption.
 78 The procedures must ~~shall~~ provide for an appeal process within
 79 the authority for making objections to the prequalification
 80 process with de novo review based on the record below to the
 81 circuit court within 30 days.

82 (c) The provisions of this subsection do not apply:

- 83 1. If ~~When~~ the project is undertaken to replace,
 84 reconstruct, or repair an existing public building, structure,

85 or other public construction works facility damaged or destroyed
 86 by a sudden unexpected turn of events, such as an act of God,
 87 riot, fire, flood, accident, or other urgent circumstances, and
 88 such damage or destruction creates:

- 89 a. An immediate danger to the public health or safety;
- 90 b. Other loss to public or private property which requires
 91 emergency government action; or
- 92 c. An interruption of an essential governmental service.

93 2. If ~~When~~, after notice by publication in accordance with
 94 the applicable ordinance or resolution, the governmental entity
 95 does not receive any responsive bids or proposals ~~responses~~.

96 3. To construction, remodeling, repair, or improvement to
 97 a public electric or gas utility system if ~~when~~ such work on the
 98 public utility system is performed by personnel of the system.

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

102 5. If ~~When~~ the project consists exclusively of ~~is~~
 103 undertaken as repair or maintenance to a public building,
 104 structure, or other public construction works of an existing
 105 public facility. For the purposes of this section, the term
 106 "maintenance" means those minor repairs and associated tasks
 107 necessary to prevent the failure or decline of such facility
 108 without having to undertake any new construction, additions, or
 109 extensions.

110 6. If ~~When~~ the project is undertaken exclusively as part
 111 of a public educational program.

112 7. If ~~When~~ the funding source of the project will be

113 diminished or lost because the time required to competitively
 114 award the project after the funds become available exceeds the
 115 time within which the funding source must be spent, and the
 116 governmental entity undertaking the project has not materially
 117 contributed to a delay in funding or in competitively awarding
 118 the project.

119 8. If ~~When~~ the local government ~~has~~ competitively awarded
 120 a project to a private sector contractor and the contractor ~~has~~
 121 abandoned the project before completion or the local government
 122 ~~has~~ terminated the contract.

123 9. If the local government, after receiving competitive
 124 bids or proposals, decides to perform the project using its own
 125 services, employees, and equipment and complies with the
 126 provisions of this subparagraph. If the local government
 127 receives bids or proposals that are responsive but are all at
 128 least 10 percent greater than the local government's estimated
 129 cost of the project, ~~When~~ the governing board of the local
 130 government, after public notice, shall conduct ~~conducts~~ a public
 131 meeting under s. 286.011 and may decide ~~finds~~ by a majority vote
 132 ~~of the governing board that it is in the public's best interest~~
 133 to perform the project using its own services, employees, and
 134 equipment. The public notice must be published at least 14 days
 135 before ~~prior to~~ the date of the public meeting at which the
 136 governing board takes final action ~~to apply this subparagraph.~~
 137 The notice must identify the project and, the estimated cost of
 138 the project, and specify that the purpose for the public meeting
 139 is to consider whether ~~it is in the public's best interest to~~
 140 perform the project using the local government's own services,

HB 611

2009

141 employees, and equipment. The local government's decision in
142 ~~deciding whether it is in the public's best interest for local~~
143 ~~government~~ to perform a project using its own services,
144 employees, and equipment must be supported by a factual finding,
145 subject to challenge under subsection (5), that the local
146 government can perform the project at a cost equal to or less
147 than the lowest cost-responsive bid or proposal received, using
148 generally accepted cost-accounting principles that fully account
149 for all local government costs associated with performing the
150 project, including employee compensation and benefits,
151 equipment, and materials, ~~the governing board may consider the~~
152 ~~cost of the project, whether the project requires an increase in~~
153 ~~the number of government employees, an increase in capital~~
154 ~~expenditures for public facilities, equipment or other capital~~
155 ~~assets, the impact on local economic development, the impact on~~
156 ~~small and minority business owners, the impact on state and~~
157 ~~local tax revenues, whether the private sector contractors~~
158 ~~provide health insurance and other benefits equivalent to those~~
159 ~~provided by the local government, and any other factor relevant~~
160 ~~to what is in the public's best interest.~~

161 10. If ~~when~~ the governing board of the local government
162 determines upon consideration of specific substantive criteria
163 ~~and administrative procedures~~ that it is in the best interest of
164 the local government to award the project to an appropriately
165 licensed private sector contractor pursuant ~~according~~ to
166 administrative procedures established by and expressly set forth
167 in a charter, ordinance, or resolution of the local government
168 adopted before ~~prior to~~ July 1, 1994. The criteria and

169 procedures must be set out in the charter, ordinance, or
 170 resolution and must be applied uniformly by the local government
 171 to avoid awarding a ~~award of any~~ project in an arbitrary or
 172 capricious manner. This exception applies only if ~~shall apply~~
 173 ~~when~~ all of the following occur:

174 a. ~~When~~ The governing board of the local government, after
 175 public notice, conducts a public meeting under s. 286.011 and
 176 finds by a two-thirds vote of the governing board that it is in
 177 the public's best interest to award the project according to the
 178 criteria and procedures established by charter, ordinance, or
 179 resolution. The public notice must be published at least 14 days
 180 before ~~prior to~~ the date of the public meeting at which the
 181 governing board takes final action ~~to apply this subparagraph~~.
 182 The notice must identify the project, the estimated cost of the
 183 project, and specify that the purpose for the public meeting is
 184 to consider whether it is in the public's best interest to award
 185 the project using the criteria and procedures permitted by the
 186 preexisting charter, ordinance, or resolution.

187 b. ~~In the event~~ The project is to be awarded by any method
 188 other than a competitive selection process, and the governing
 189 board finds ~~must find~~ evidence that:

190 (I) There is one appropriately licensed contractor who is
 191 uniquely qualified to undertake the project because that
 192 contractor is currently under contract to perform work that is
 193 affiliated with the project; or

194 (II) The time to competitively award the project will
 195 jeopardize the funding for the project, ~~or will~~ materially
 196 increase the cost of the project, or will create an undue

197 hardship on the public health, safety, or welfare.

198 c. ~~In the event~~ The project is to be awarded by any method
 199 other than a competitive selection process, and the published
 200 notice ~~must~~ clearly specifies ~~specify~~ the ordinance or
 201 resolution by which the private sector contractor will be
 202 selected and the criteria to be considered.

203 d. ~~In the event~~ The project is to be awarded by a method
 204 other than a competitive selection process, and the architect or
 205 engineer of record has provided a written recommendation that
 206 the project be awarded to the private sector contractor without
 207 competitive selection, and the consideration by, and the
 208 justification of, the government body are documented, in
 209 writing, in the project file and are presented to the governing
 210 board prior to the approval required in this paragraph.

211 11. To projects subject to chapter 336.

212 (d)~~1.~~ If the project:

213 1. Is to be awarded based on price, the contract must be
 214 awarded to the lowest qualified and responsive bidder in
 215 accordance with the applicable county or municipal ordinance or
 216 district resolution and in accordance with the applicable
 217 contract documents. The county, municipality, or special
 218 district may reserve the right to reject all bids and to rebid
 219 the project, or elect not to proceed with the project. This
 220 subsection is not intended to restrict the rights of any local
 221 government to reject the low bid of a nonqualified or
 222 nonresponsive bidder and to award the contract to any other
 223 qualified and responsive bidder in accordance with the standards
 224 and procedures of any applicable county or municipal ordinance

225 or any resolution of a special district.

226 2. ~~If the project~~ Uses a request for proposal or a request
 227 for qualifications, the request must be publicly advertised and
 228 the contract must be awarded in accordance with the applicable
 229 local ordinances.

230 3. ~~If the project~~ Is subject to competitive negotiations,
 231 the contract must be awarded in accordance with s. 287.055.

232 (e) If a construction project greater than \$200,000, or
 233 \$50,000 for electrical work, is started after October 1, 1999,
 234 ~~and~~ is to be performed by a local government using its own
 235 employees in a county or municipality that issues registered
 236 contractor licenses, and requires a ~~the project would require a~~
 237 ~~licensed~~ contractor licensed under chapter 489 if performed by a
 238 private sector contractor, the local government must use a
 239 person appropriately registered or certified under chapter 489
 240 to supervise the work.

241 (f) If a construction project greater than \$200,000, or
 242 \$50,000 for electrical work, is started after October 1, 1999,
 243 ~~and~~ is to be performed by a local government using its own
 244 employees in a county that does not issue registered contractor
 245 licenses, and requires a ~~the project would require a licensed~~
 246 contractor licensed under chapter 489 if performed by a private
 247 sector contractor, the local government must use a person
 248 appropriately registered or certified under chapter 489 or a
 249 person appropriately licensed under chapter 471 to supervise the
 250 work.

251 (g) Projects performed by a local government using its own
 252 services and employees must be inspected in the same manner ~~as~~

253 ~~inspections~~ required for work performed by private sector
 254 contractors.

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

258 (i) This subsection does not preempt the requirements of
 259 any small-business or disadvantaged-business enterprise program
 260 or any local-preference ordinance.

261 (j) A local government that owns or operates a public-use
 262 airport as defined in s. 332.004 is exempt from this section
 263 when performing repairs or maintenance on the airport's
 264 buildings, structures, or public construction works using the
 265 local government's own services, employees, and equipment.

266 (k) A local government that owns or operates a port
 267 identified in s. 403.021(9)(b) is exempt from this section when
 268 performing repairs or maintenance on the port's buildings,
 269 structures, or public construction works using the local
 270 government's own services, employees, and equipment.

271 (l) A local government that owns or operates a public
 272 transit system as defined in s. 343.52, a public transportation
 273 system as defined in s. 343.62, or a mass transit system
 274 described in s. 349.04(1)(b), is exempt from this section when
 275 performing repairs or maintenance on the buildings, structures,
 276 or public construction works of the public transit system,
 277 public transportation system, or mass transit system using the
 278 local government's own services, employees, and equipment.

279 (2) The threshold amount of \$200,000 for construction or
 280 \$50,000 for electrical work must be adjusted by the percentage

281 change in the Consumer Price Index from January 1, 1994, to
 282 January 1 of the year in which the project is scheduled to
 283 begin.

284 (3) All county officials, boards of county commissioners,
 285 school boards, city councils, city commissioners, and all other
 286 public officers of state boards or commissions that are charged
 287 with the letting of contracts for public work, for the
 288 construction of public bridges, buildings, and other structures
 289 must ~~always~~ specify lumber, timber, and other forest products
 290 produced and manufactured in this state if ~~whenever~~ such
 291 products are available and their price, fitness, and quality are
 292 equal. This subsection does not apply to ~~when~~ plywood specified
 293 for monolithic concrete forms, if ~~when~~ the structural or service
 294 requirements for timber for a particular job cannot be supplied
 295 by native species, or if ~~when~~ the construction is financed in
 296 whole or in part from federal funds with the requirement
 297 ~~requirements~~ that there be no restrictions as to species or
 298 place of manufacture.

299 (4) If two or more responsive bids or proposals for a
 300 project to be competitively awarded under this section are
 301 otherwise equal with respect to price, quality, and service, the
 302 local government may give preference to the contractor who
 303 maintains the greatest local presence within the local
 304 government's jurisdiction when awarding the project. For
 305 purposes of this subsection, "local presence" includes
 306 maintaining an office within the jurisdiction and employing
 307 individuals or hiring subcontractors within the jurisdiction.
 308 Except as provided in this subsection, a local government may

HB 611

2009

309 not give any consideration to a contractor's local presence or
310 similar criteria when evaluating bids or proposals or awarding a
311 project.

312 (5)~~(4)~~ Any qualified contractor or vendor who could have
313 been awarded the project had the project been competitively bid
314 has ~~shall have~~ standing to challenge the propriety of a ~~the~~
315 local government's actions taken pursuant to ~~when the local~~
316 ~~government seeks to invoke the provisions of~~ this section. The
317 prevailing party in such action is ~~shall be~~ entitled to recover
318 its reasonable attorney's fees.

319 Section 2. This act shall take effect July 1, 2009.