

1 A bill to be entitled
 2 An act relating to public construction projects; amending
 3 s. 255.20, F.S.; increasing the threshold amount for which
 4 certain public projects must be competitively awarded;
 5 revising exceptions to the requirement that certain public
 6 projects be competitively awarded; defining the terms
 7 "repair" and "maintenance"; requiring local governments to
 8 provide notice for certain public projects; providing
 9 notice requirements; extending the notice period for
 10 specified public meetings; requiring a local government to
 11 support a decision to perform a project with its own
 12 employees and to make a factual finding that the project
 13 cost will be the same or less than the lowest bid;
 14 providing additional exceptions for projects related to
 15 public-use airports, certain ports, and certain public
 16 transit or transportation systems; revising the index and
 17 year on which the required adjustment of the threshold
 18 amounts is based; revising provisions for certain
 19 contractors and vendors to challenge a local government's
 20 actions; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 255.20, Florida Statutes, is amended to
 25 read:

26 255.20 Local bids and contracts for public construction
 27 works; specification of state-produced lumber.--

28 (1) A county, municipality, special district as defined in

29 | chapter 189, or other political subdivision of the state seeking
 30 | to construct or improve a public building, structure, or other
 31 | public construction works must competitively award to an
 32 | appropriately licensed contractor each project that is estimated
 33 | in accordance with generally accepted cost-accounting principles
 34 | to cost ~~have total construction project costs of~~ more than
 35 | \$300,000 ~~\$200,000~~. For electrical work, the local government
 36 | must competitively award to an appropriately licensed contractor
 37 | each project that is estimated in accordance with generally
 38 | accepted cost-accounting principles to ~~have a cost of~~ more than
 39 | \$75,000 ~~\$50,000~~. As used in this section, the term
 40 | "competitively award" means to award contracts based on the
 41 | submission of sealed bids, proposals submitted in response to a
 42 | request for proposal, proposals submitted in response to a
 43 | request for qualifications, or proposals submitted for
 44 | competitive negotiation. This subsection expressly allows
 45 | contracts for construction management services, design/build
 46 | contracts, continuation contracts based on unit prices, and any
 47 | other contract arrangement with a private sector contractor
 48 | permitted by any applicable municipal or county ordinance, by
 49 | district resolution, or by state law. For purposes of this
 50 | section, cost includes ~~construction costs include~~ the cost of
 51 | all labor, except inmate labor, and ~~include~~ the cost of
 52 | equipment and materials to be used in the construction of the
 53 | project. Subject to the provisions of subsection (3), the
 54 | county, municipality, special district, or other political
 55 | subdivision may establish, by municipal or county ordinance or
 56 | special district resolution, procedures for conducting the

57 bidding process.

58 (a) Notwithstanding any other law ~~to the contrary~~, a
 59 governmental entity ~~a county, municipality, special district as~~
 60 ~~defined in chapter 189, or other political subdivision of the~~
 61 state seeking to construct or improve bridges, roads, streets,
 62 highways, or railroads, and services incidental thereto, at a
 63 cost ~~costs~~ in excess of \$250,000 may require that persons
 64 interested in performing work under contract first be certified
 65 or qualified to perform such work. A ~~Any~~ contractor may be
 66 considered ineligible to bid ~~by the governmental entity~~ if the
 67 contractor is behind by 10 percent or more on completing an
 68 approved progress schedule for the governmental entity ~~by 10~~
 69 ~~percent or more~~ at the time of advertising ~~advertisement~~ of the
 70 work. A prequalified ~~Any~~ contractor ~~prequalified and~~ considered
 71 eligible by the Department of Transportation to bid to perform
 72 the type of work described under the contract is ~~shall be~~
 73 presumed to be qualified to perform the work described. The
 74 governmental entity may provide an appeal process to overcome
 75 that presumption with de novo review based on the record below
 76 to the circuit court.

77 (b) For ~~With respect to~~ contractors who are not
 78 prequalified by ~~with~~ the Department of Transportation, the
 79 governmental entity shall publish prequalification criteria and
 80 procedures prior to advertisement or notice of solicitation.
 81 Such publications must ~~shall~~ include notice of a public hearing
 82 for comment on such criteria and procedures prior to adoption.
 83 The procedures must ~~shall~~ provide for an appeal process within
 84 the authority for making objections to the prequalification

85 process with de novo review based on the record below to the
 86 circuit court within 30 days.

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

88 1. If ~~When~~ the project is undertaken to replace,
 89 reconstruct, or repair an existing public building, structure,
 90 or other public construction works ~~facility~~ damaged or destroyed
 91 by a sudden unexpected turn of events, such as an act of God,
 92 riot, fire, flood, accident, or other urgent circumstances, and
 93 such damage or destruction creates:

- 94 a. An immediate danger to the public health or safety;
- 95 b. Other loss to public or private property which requires
 96 emergency government action; or

97 c. An interruption of an essential governmental service.

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

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

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

107 5. If ~~When~~ the project is undertaken as repair or
 108 maintenance of an existing public facility. For the purposes of
 109 this section, the term "repair" means a corrective action to
 110 restore an existing public facility to a safe and functional
 111 condition and the term "maintenance" means a preventive or
 112 corrective action to maintain an existing public facility in an

113 operational state or to preserve the facility from failure or
114 decline. Repair or maintenance includes activities that are
115 necessarily incidental to repairing or maintaining the facility.
116 Repair or maintenance does not include the construction of any
117 new building, structure, or other public construction works or
118 any substantial addition, extension, or upgrade to an existing
119 public facility in which the cost of that addition, extension,
120 or upgrade, in accordance with generally accepted cost-
121 accounting principles, is more than 20 percent of the total cost
122 of the repair or maintenance project. With respect to any repair
123 or maintenance project under this subparagraph which includes an
124 addition, extension, or upgrade to an existing public facility
125 and which the local government will perform using its own
126 services, employees, and equipment, the local government shall
127 publish a public notice identifying the project and the
128 components and scope of the work at least 30 days prior to
129 commencing the repair or maintenance. The public notice shall
130 state the estimated total cost of the project and the cost of
131 the addition, extension, or upgrade using generally accepted
132 cost-accounting principles that fully account for all costs
133 associated with performing the project, including employee
134 compensation and benefits, equipment cost and maintenance,
135 insurance costs, and materials. Upon publication of the public
136 notice and for 30 days thereafter, the local government shall
137 make available for public inspection, during normal business
138 hours and at a location specified in the public notice, a
139 detailed breakdown of each component of the estimated cost of
140 the project and documentation explaining the methodology used to

141 arrive at the estimated cost.

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

144 7. ~~If~~ ~~When~~ the funding source of the project will be
145 diminished or lost because the time required to competitively
146 award the project after the funds become available exceeds the
147 time within which the funding source must be spent.

148 8. ~~If~~ ~~When~~ the local government ~~has~~ competitively awarded
149 a project to a private sector contractor and the contractor ~~has~~
150 abandoned the project before completion or the local government
151 ~~has~~ terminated the contract.

152 9. ~~If~~ ~~When~~ the governing board of the local government
153 complies with all of the requirements of this subparagraph,
154 ~~after public notice,~~ conducts a public meeting under s. 286.011,
155 and finds by a majority vote of the governing board that it is
156 in the public's best interest to perform the project using its
157 own services, employees, and equipment. The public notice must
158 be published at least 30 ~~14~~ days before ~~prior to~~ the date of the
159 public meeting at which the governing board takes final action
160 ~~to apply this subparagraph.~~ The notice must identify the
161 project, the components and scope of the work, and the estimated
162 cost of the project using generally accepted cost-accounting
163 principles that fully account for all costs associated with
164 performing the project, including employee compensation and
165 benefits, equipment cost and maintenance, insurance costs, and
166 materials. The notice must specify that the purpose for the
167 public meeting is to consider whether it is in the public's best
168 interest to perform the project using the local government's own

169 | services, employees, and equipment. Upon publication of the
 170 | public notice and for 30 days thereafter, the local government
 171 | shall make available for public inspection, during normal
 172 | business hours and at a location specified in the public notice,
 173 | a detailed breakdown of each component of the estimated cost of
 174 | the project and documentation explaining the methodology used to
 175 | arrive at the estimated cost. At the public meeting, any
 176 | qualified contractor or vendor who could have been awarded the
 177 | project had the project been competitively bid shall be provided
 178 | with an adequate opportunity to present evidence to the
 179 | governing board regarding the project and the accuracy of the
 180 | local government's estimated cost of the project. In deciding
 181 | whether it is in the public's best interest for the local
 182 | government to perform a project using its own services,
 183 | employees, and equipment, the governing board must ~~may~~ consider
 184 | the estimated cost of the project, and the accuracy of the
 185 | estimated cost in light of any other information that may be
 186 | presented at the public meeting and whether the project requires
 187 | an increase in the number of government employees, or an
 188 | increase in capital expenditures for public facilities,
 189 | equipment, or other capital assets. The local government may
 190 | further consider, the impact on local economic development, the
 191 | impact on small and minority business owners, the impact on
 192 | state and local tax revenues, whether the private sector
 193 | contractors provide health insurance and other benefits
 194 | equivalent to those provided by the local government, and any
 195 | other factor relevant to what is in the public's best interest.
 196 | 10. If ~~When~~ the governing board of the local government

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197 determines upon consideration of specific substantive criteria
198 ~~and administrative procedures~~ that it is in the best interest of
199 the local government to award the project to an appropriately
200 licensed private sector contractor pursuant ~~according~~ to
201 administrative procedures established by and expressly set forth
202 in a charter, ordinance, or resolution of the local government
203 adopted before ~~prior to~~ July 1, 1994. The criteria and
204 procedures must be set out in the charter, ordinance, or
205 resolution and must be applied uniformly by the local government
206 to avoid awarding a award ~~of any~~ project in an arbitrary or
207 capricious manner. This exception applies only if ~~shall apply~~
208 ~~when~~ all of the following occur:

209 a. ~~When~~ The governing board of the local government, after
210 public notice, conducts a public meeting under s. 286.011 and
211 finds by a two-thirds vote of the governing board that it is in
212 the public's best interest to award the project according to the
213 criteria and procedures established by charter, ordinance, or
214 resolution. The public notice must be published at least 14 days
215 before ~~prior to~~ the date of the public meeting at which the
216 governing board takes final action ~~to apply this subparagraph~~.
217 The notice must identify the project, the estimated cost of the
218 project, and specify that the purpose for the public meeting is
219 to consider whether it is in the public's best interest to award
220 the project using the criteria and procedures permitted by the
221 preexisting charter, ordinance, or resolution.

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

225 (I) There is one appropriately licensed contractor who is
 226 uniquely qualified to undertake the project because that
 227 contractor is currently under contract to perform work that is
 228 affiliated with the project; or

229 (II) The time to competitively award the project will
 230 jeopardize the funding for the project, ~~or will~~ materially
 231 increase the cost of the project, or will create an undue
 232 hardship on the public health, safety, or welfare.

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

238 d. ~~In the event~~ The project is to be awarded by a method
 239 other than a competitive selection process, and the architect or
 240 engineer of record has provided a written recommendation that
 241 the project be awarded to the private sector contractor without
 242 competitive selection, and the consideration by, and the
 243 justification of, the government body are documented, in
 244 writing, in the project file and are presented to the governing
 245 board prior to the approval required in this paragraph.

246 11. To projects subject to chapter 336.

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

248 1. Is to be awarded based on price, the contract must be
 249 awarded to the lowest qualified and responsive bidder in
 250 accordance with the applicable county or municipal ordinance or
 251 district resolution and in accordance with the applicable
 252 contract documents. The county, municipality, or special

253 district may reserve the right to reject all bids and to rebid
 254 the project, or elect not to proceed with the project. This
 255 subsection is not intended to restrict the rights of any local
 256 government to reject the low bid of a nonqualified or
 257 nonresponsive bidder and to award the contract to any other
 258 qualified and responsive bidder in accordance with the standards
 259 and procedures of any applicable county or municipal ordinance
 260 or any resolution of a special district.

261 2. ~~If the project~~ Uses a request for proposal or a request
 262 for qualifications, the request must be publicly advertised and
 263 the contract must be awarded in accordance with the applicable
 264 local ordinances.

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

267 (e) If a construction project greater than \$300,000
 268 ~~\$200,000~~, or \$75,000 ~~\$50,000~~ for electrical work, is started
 269 after October 1, 1999, ~~and~~ is to be performed by a local
 270 government using its own employees in a county or municipality
 271 that issues registered contractor licenses, and the project
 272 would require a ~~licensed~~ contractor licensed under chapter 489
 273 if performed by a private sector contractor, the local
 274 government must use a person appropriately registered or
 275 certified under chapter 489 to supervise the work.

276 (f) If a construction project greater than \$300,000
 277 ~~\$200,000~~, or \$75,000 ~~\$50,000~~ for electrical work, is started
 278 after October 1, 1999, ~~and~~ is to be performed by a local
 279 government using its own employees in a county that does not
 280 issue registered contractor licenses, and the project would

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281 require a ~~licensed~~ contractor licensed under chapter 489 if
282 performed by a private sector contractor, the local government
283 must use a person appropriately registered or certified under
284 chapter 489 or a person appropriately licensed under chapter 471
285 to supervise the work.

286 (g) Projects performed by a local government using its own
287 services and employees must be inspected in the same manner ~~as~~
288 ~~inspections~~ required for work performed by private sector
289 contractors.

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

293 (i) This subsection does not preempt the requirements of
294 any small-business or disadvantaged-business enterprise program
295 or any local-preference ordinance.

296 (j) A county, municipality, special district as defined in
297 s. 189.403, or any other political subdivision of the state that
298 owns or operates a public-use airport as defined in s. 332.004
299 is exempt from this section when performing repairs or
300 maintenance on the airport's buildings, structures, or public
301 construction works using the local government's own services,
302 employees, and equipment.

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

308 (l) A local government that owns or operates a public

309 transit system as defined in s. 343.52, a public transportation
310 system as defined in s. 343.62, or a mass transit system
311 described in s. 349.04(1)(b) is exempt from this section when
312 performing repairs or maintenance on the buildings, structures,
313 or public construction works of the public transit system,
314 public transportation system, or mass transit system using the
315 local government's own services, employees, and equipment.

316 (2) The threshold amount of \$300,000 ~~\$200,000~~ for
317 construction or \$75,000 ~~\$50,000~~ for electrical work, as
318 specified in subsection (1), must be adjusted by the percentage
319 change in the Engineering News Records Building Cost Consumer
320 Price Index from January 1, 2009 ~~1994~~, to January 1 of the year
321 in which the project is scheduled to begin.

322 (3) All county officials, boards of county commissioners,
323 school boards, city councils, city commissioners, and all other
324 public officers of state boards or commissions that are charged
325 with the letting of contracts for public work, for the
326 construction of public bridges, buildings, and other structures
327 must ~~always~~ specify lumber, timber, and other forest products
328 produced and manufactured in this state if ~~whenever~~ such
329 products are available and their price, fitness, and quality are
330 equal. This subsection does not apply to ~~when~~ plywood specified
331 for monolithic concrete forms, if ~~when~~ the structural or service
332 requirements for timber for a particular job cannot be supplied
333 by native species, or if ~~when~~ the construction is financed in
334 whole or in part from federal funds with the requirement
335 ~~requirements~~ that there be no restrictions as to species or
336 place of manufacture.

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337 (4) Any qualified contractor or vendor who could have been
338 awarded the project had the project been competitively bid has
339 ~~shall have~~ standing to challenge a ~~the propriety of the~~ local
340 government's actions to determine if the local government has
341 complied with ~~when the local government seeks to invoke the~~
342 ~~provisions of~~ this section. The prevailing party in such action
343 is ~~shall be~~ entitled to recover its reasonable attorney's fees.

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