

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; authorizing  
 17          governmental entities to consider certain contractors  
 18          ineligible to bid; revising the index and year on which  
 19          the required adjustment of the threshold amounts is based;  
 20          revising provisions for certain contractors and vendors to  
 21          challenge a local government's actions; providing an  
 22          effective date.

23  
 24   Be It Enacted by the Legislature of the State of Florida:

25  
 26           Section 1.   Section 255.20, Florida Statutes, is amended to  
 27   read:  
 28           255.20   Local bids and contracts for public construction

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

57 subdivision may establish, by municipal or county ordinance or  
58 special district resolution, procedures for conducting the  
59 bidding process.

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

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

85 The procedures must ~~shall~~ provide for an appeal process within  
 86 the authority for making objections to the prequalification  
 87 process with de novo review based on the record below to the  
 88 circuit court within 30 days.

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

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

96 a. An immediate danger to the public health or safety;

97 b. Other loss to public or private property which requires  
 98 emergency government action; or

99 c. An interruption of an essential governmental service.

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

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

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

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

113 condition and the term "maintenance" means a preventive or  
114 corrective action to maintain an existing public facility in an  
115 operational state or to preserve the facility from failure or  
116 decline. Repair or maintenance includes activities that are  
117 necessarily incidental to repairing or maintaining the facility.  
118 Repair or maintenance does not include the construction of any  
119 new building, structure, or other public construction works or  
120 any substantial addition, extension, or upgrade to an existing  
121 public facility. Such additions, extensions, or upgrades shall  
122 be considered substantial if the estimated cost of the  
123 additions, extensions, or upgrades included as part of the  
124 repair or maintenance project exceeds the threshold amount in  
125 subsection (1) and exceeds 20 percent of the estimated total  
126 cost of the repair or maintenance project using generally  
127 accepted cost-accounting principles that fully account for all  
128 costs associated with performing and completing the work,  
129 including employee compensation and benefits, equipment cost and  
130 maintenance, insurance costs, and materials. An addition,  
131 extension, or upgrade shall not be considered substantial if it  
132 is undertaken pursuant to the conditions specified in  
133 subparagraph 1. Repair and maintenance projects and any related  
134 additions, extensions, or upgrades may not be divided into  
135 multiple projects for the purpose of evading the requirements of  
136 this subparagraph.

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

139 7. If ~~When~~ the funding source of the project will be  
140 diminished or lost because the time required to competitively

141 award the project after the funds become available exceeds the  
142 time within which the funding source must be spent.

143 8. ~~If~~ When the local government ~~has~~ competitively awarded  
144 a project to a private sector contractor and the contractor ~~has~~  
145 abandoned the project before completion or the local government  
146 ~~has~~ terminated the contract.

147 9. ~~If~~ When the governing board of the local government  
148 complies with all of the requirements of this subparagraph,  
149 ~~after public notice,~~ conducts a public meeting under s. 286.011  
150 after public notice, and finds by a majority vote of the  
151 governing board that it is in the public's best interest to  
152 perform the project using its own services, employees, and  
153 equipment. The public notice must be published at least 21 ~~14~~  
154 days before ~~prior to~~ the date of the public meeting at which the  
155 governing board takes final action ~~to apply this subparagraph.~~  
156 The notice must identify the project, the components and scope  
157 of the work, and the estimated cost of the project using  
158 generally accepted cost-accounting principles that fully account  
159 for all costs associated with performing and completing the  
160 work, including employee compensation and benefits, equipment  
161 cost and maintenance, insurance costs, and materials. The notice  
162 must specify that the purpose for the public meeting is to  
163 consider whether it is in the public's best interest to perform  
164 the project using the local government's own services,  
165 employees, and equipment. Upon publication of the public notice  
166 and for 21 days thereafter, the local government shall make  
167 available for public inspection, during normal business hours  
168 and at a location specified in the public notice, a detailed

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

192 10. If ~~When~~ the governing board of the local government  
 193 determines upon consideration of specific substantive criteria  
 194 ~~and administrative procedures~~ that it is in the best interest of  
 195 the local government to award the project to an appropriately  
 196 licensed private sector contractor pursuant ~~according~~ to

197 administrative procedures established by and expressly set forth  
 198 in a charter, ordinance, or resolution of the local government  
 199 adopted before ~~prior to~~ July 1, 1994. The criteria and  
 200 procedures must be set out in the charter, ordinance, or  
 201 resolution and must be applied uniformly by the local government  
 202 to avoid awarding a award of any project in an arbitrary or  
 203 capricious manner. This exception applies only if ~~shall apply~~  
 204 ~~when~~ all of the following occur:

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

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

221 (I) There is one appropriately licensed contractor who is  
 222 uniquely qualified to undertake the project because that  
 223 contractor is currently under contract to perform work that is  
 224 affiliated with the project; or



225 (II) The time to competitively award the project will  
 226 jeopardize the funding for the project, ~~or will~~ materially  
 227 increase the cost of the project, or will create an undue  
 228 hardship on the public health, safety, or welfare.

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

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

242 11. To projects subject to chapter 336.

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

244 1. Is to be awarded based on price, the contract must be  
 245 awarded to the lowest qualified and responsive bidder in  
 246 accordance with the applicable county or municipal ordinance or  
 247 district resolution and in accordance with the applicable  
 248 contract documents. The county, municipality, or special  
 249 district may reserve the right to reject all bids and to rebid  
 250 the project, or elect not to proceed with the project. This  
 251 subsection is not intended to restrict the rights of any local  
 252 government to reject the low bid of a nonqualified or

253 nonresponsive bidder and to award the contract to any other  
 254 qualified and responsive bidder in accordance with the standards  
 255 and procedures of any applicable county or municipal ordinance  
 256 or any resolution of a special district.

257 2. ~~If the project~~ Uses a request for proposal or a request  
 258 for qualifications, the request must be publicly advertised and  
 259 the contract must be awarded in accordance with the applicable  
 260 local ordinances.

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

263 (e) If a construction project greater than \$300,000  
 264 ~~\$200,000~~, or \$75,000 ~~\$50,000~~ for electrical work, is started  
 265 after October 1, 1999, ~~and~~ is to be performed by a local  
 266 government using its own employees in a county or municipality  
 267 that issues registered contractor licenses, and the project  
 268 would require a ~~licensed~~ contractor licensed under chapter 489  
 269 if performed by a private sector contractor, the local  
 270 government must use a person appropriately registered or  
 271 certified under chapter 489 to supervise the work.

272 (f) If a construction project greater than \$300,000  
 273 ~~\$200,000~~, or \$75,000 ~~\$50,000~~ for electrical work, is started  
 274 after October 1, 1999, ~~and~~ is to be performed by a local  
 275 government using its own employees in a county that does not  
 276 issue registered contractor licenses, and the project would  
 277 require a ~~licensed~~ contractor licensed under chapter 489 if  
 278 performed by a private sector contractor, the local government  
 279 must use a person appropriately registered or certified under  
 280 chapter 489 or a person appropriately licensed under chapter 471

281 to supervise the work.

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

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

289 (i) This subsection does not preempt the requirements of  
 290 any small-business or disadvantaged-business enterprise program  
 291 or any local-preference ordinance.

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

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

304 (l) A local government that owns or operates a public  
 305 transit system as defined in s. 343.52, a public transportation  
 306 system as defined in s. 343.62, or a mass transit system  
 307 described in s. 349.04(1)(b) is exempt from this section when  
 308 performing repairs or maintenance on the buildings, structures,

309 or public construction works of the public transit system,  
 310 public transportation system, or mass transit system using the  
 311 local government's own services, employees, and equipment.

312 (m) Any contractor may be considered ineligible to bid by  
 313 the governmental entity if the contractor has been found guilty  
 314 by a court of any violation of federal labor or employment tax  
 315 laws regarding subjects such as safety, tax withholding, workers  
 316 compensation, unemployment tax, social security and Medicare  
 317 tax, wage or hour, or prevailing rate laws within the past 5  
 318 years.

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

325 (3) All county officials, boards of county commissioners,  
 326 school boards, city councils, city commissioners, and all other  
 327 public officers of state boards or commissions that are charged  
 328 with the letting of contracts for public work, for the  
 329 construction of public bridges, buildings, and other structures  
 330 must ~~always~~ specify lumber, timber, and other forest products  
 331 produced and manufactured in this state if ~~whenever~~ such  
 332 products are available and their price, fitness, and quality are  
 333 equal. This subsection does not apply to ~~when~~ plywood specified  
 334 for monolithic concrete forms, if ~~when~~ the structural or service  
 335 requirements for timber for a particular job cannot be supplied  
 336 by native species, or if ~~when~~ the construction is financed in

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337 whole or in part from federal funds with the requirement  
338 ~~requirements~~ that there be no restrictions as to species or  
339 place of manufacture.

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

347 Section 2. This act shall take effect October 1, 2009.  
348