



209328

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/06/2009	.	
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The Committee on Community Affairs (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 255.20, Florida Statutes, is 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



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12 public construction works must competitively award to an
13 appropriately licensed contractor each project that is estimated
14 in accordance with generally accepted cost-accounting principles
15 to cost ~~have total construction project costs of~~ more than
16 \$300,000 ~~\$200,000~~. For electrical work, the local government
17 must competitively award to an appropriately licensed contractor
18 each project that is estimated in accordance with generally
19 accepted cost-accounting principles to ~~have a cost of~~ more than
20 \$75,000 ~~\$50,000~~. As used in this section, the term
21 "competitively award" means to award contracts based on the
22 submission of sealed bids, proposals submitted in response to a
23 request for proposal, proposals submitted in response to a
24 request for qualifications, or proposals submitted for
25 competitive negotiation. This subsection expressly allows
26 contracts for construction management services, design/build
27 contracts, continuation contracts based on unit prices, and any
28 other contract arrangement with a private sector contractor
29 permitted by any applicable municipal or county ordinance, by
30 district resolution, or by state law. For purposes of this
31 section, the term "cost" includes ~~construction costs include~~ the
32 cost of all labor, except inmate labor, and ~~include~~ the cost of
33 equipment and materials to be used in the construction of the
34 project. Subject to the provisions of subsection (3), the
35 county, municipality, special district, or other political
36 subdivision may establish, by municipal or county ordinance or
37 special district resolution, procedures for conducting the
38 bidding process.

39 (a) Notwithstanding any other law ~~to the contrary~~, a
40 governmental entity ~~county, municipality, special district as~~



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41 ~~defined in chapter 189, or other political subdivision of the~~
42 ~~state seeking to construct or improve bridges, roads, streets,~~
43 ~~highways, or railroads, and services incidental thereto, at a~~
44 ~~cost costs~~ in excess of \$250,000 may require that persons
45 interested in performing work under contract first be certified
46 or qualified to perform such work. ~~A Any~~ contractor may be
47 considered ineligible to bid ~~by the governmental entity~~ if the
48 contractor is behind by 10 percent or more on completing an
49 approved progress schedule for the governmental entity ~~by 10~~
50 ~~percent or more~~ at the time of advertisement of the work. A
51 prequalified Any contractor ~~prequalified and~~ considered eligible
52 by the Department of Transportation to bid to perform the type
53 of work described under the contract ~~is shall be~~ presumed to be
54 qualified to perform the work described. The governmental entity
55 may provide an appeal process to overcome that presumption with
56 de novo review based on the record below to the circuit court.

57 (b) For ~~With respect to~~ contractors who are not
58 prequalified by ~~with~~ the Department of Transportation, the
59 governmental entity shall publish prequalification criteria and
60 procedures prior to advertisement or notice of solicitation.
61 Such publications must ~~shall~~ include notice of a public hearing
62 for comment on such criteria and procedures before ~~prior to~~
63 adoption. The procedures shall provide for an appeal process
64 within the authority for making objections to the
65 prequalification process with de novo review based on the record
66 below to the circuit court within 30 days.

67 (c) Any contractor may be considered ineligible to bid by
68 the governmental entity if the contractor has been found guilty
69 by a court of violations of federal labor or employment tax laws



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70 regarding subjects such as safety, tax withholding, workers'
71 compensation, unemployment tax, social security and Medicare
72 tax, wage or hour, or prevailing rate laws within the past 5
73 years.

74 (d)(e) The provisions of this subsection do not apply:

75 1. If ~~When~~ the project is undertaken to replace,
76 reconstruct, or repair ~~an~~ existing public buildings, structures,
77 or other public construction works facility damaged or destroyed
78 by a sudden unexpected turn of events, such as an act of God,
79 riot, fire, flood, accident, or other urgent circumstances, and
80 such damage or destruction creates:

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

82 b. Other loss to public or private property which requires
83 emergency government action; or

84 c. An interruption of an essential governmental service.

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

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

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

94 5. When the project is undertaken as repair or maintenance
95 of an existing public facility. For purposes of this section,
96 "repair" means corrective action to restore an existing public
97 facility to a safe and functional condition, and "maintenance"
98 means preventive or corrective action for the purpose of



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99 maintaining an existing public facility in an operational state
100 or preserving the facility from failure or decline. Repair or
101 maintenance includes activities that are necessarily incidental
102 to repairing or maintaining the facility. Repair or maintenance
103 does not include the construction of any new building,
104 structure, or other public construction works, or any
105 substantial addition, extension, or upgrade to an existing
106 public facility for which the cost of such addition, extension,
107 or upgrade, in accordance with generally accepted cost-
108 accounting principles, is more than 20 percent of the total cost
109 of the repair or maintenance project. With respect to any repair
110 or maintenance project under this subparagraph which includes an
111 addition, extension, or upgrade to an existing public facility
112 and which the local government will perform using its own
113 services, employees, and equipment, the local government shall
114 publish a public notice identifying the project and the
115 components and scope of the work at least 30 days before
116 commencing the repair or maintenance. The public notice shall
117 state the estimated total cost of the project and the cost of
118 the addition, extension, or upgrade, using generally accepted
119 cost-accounting principles that fully account for all costs
120 associated with performing the project, including employee
121 compensation and benefits, equipment cost and maintenance,
122 insurance costs, and materials. Upon publication of the public
123 notice and for 30 days thereafter, the local government shall
124 make available for public inspection during normal business
125 hours at a location specified in the public notice a detailed
126 itemization of each component of the estimated cost of the
127 project and documentation explaining the methodology used to



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128 arrive at the estimated cost.

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

131 7. If ~~When~~ the funding source of the project will be
132 diminished or lost because the time required to competitively
133 award the project after the funds become available exceeds the
134 time within which the funding source must be spent.

135 8. If ~~When~~ the local government ~~has~~ competitively awarded a
136 project to a private sector contractor and the contractor ~~has~~
137 abandoned the project before completion or the local government
138 ~~has~~ terminated the contract.

139 9. If ~~When~~ the governing board of the local government
140 complies with all of the requirements of this subparagraph,
141 ~~after public notice,~~ conducts a public meeting under s. 286.011,
142 and finds by a majority vote of the governing board that it is
143 in the public's best interest to perform the project using its
144 own services, employees, and equipment. The public notice must
145 be published at least 30 ~~14~~ days before ~~prior to~~ the date of the
146 public meeting at which the governing board takes final action
147 ~~to apply this subparagraph.~~ The notice must identify the
148 project, the components and scope of the work, and the estimated
149 cost of the project using generally accepted cost-accounting
150 principles that fully account for all costs associated with
151 performing the project, including employee compensation and
152 benefits, equipment cost and maintenance, insurance costs, and
153 materials. The notice shall, ~~and~~ specify that the purpose for
154 the public meeting is to consider whether it is in the public's
155 best interest to perform the project using the local
156 government's own services, employees, and equipment. Upon



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157 publication of the public notice and for 30 days thereafter, the
158 local government shall make available for public inspection
159 during normal business hours at a location specified in the
160 public notice a detailed itemization of each component of the
161 estimated cost of the project and documentation explaining the
162 methodology used to arrive at the estimated cost. At the public
163 meeting, any qualified contractor or vendor who might have been
164 awarded the project if the project had been competitively bid
165 shall be provided with an adequate opportunity to present
166 evidence to the governing board regarding the project and the
167 accuracy of the local government's estimated cost of the
168 project. In deciding whether it is in the public's best interest
169 for the local government to perform a project using its own
170 services, employees, and equipment, the governing board must ~~may~~
171 consider the estimated cost of the project and the accuracy of
172 such estimated cost in light of any other information presented
173 at the public meeting, and whether the project requires an
174 increase in the number of government employees or,~~7~~ an increase
175 in capital expenditures for public facilities, equipment or
176 other capital assets. The local government may further consider,~~7~~
177 the impact on local economic development, the impact on small
178 and minority business owners, the impact on state and local tax
179 revenues, whether the private sector contractors provide health
180 insurance and other benefits equivalent to those provided by the
181 local government, and any other factor relevant to what is in
182 the public's best interest.

183 10. If ~~When~~ the governing board of the local government
184 determines upon consideration of specific substantive criteria
185 ~~and administrative procedures~~ that it is in the best interest of



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186 the local government to award the project to an appropriately
187 licensed private sector contractor pursuant ~~according~~ to
188 administrative procedures established by and expressly set forth
189 in a charter, ordinance, or resolution of the local government
190 adopted before ~~prior to~~ July 1, 1994. The criteria and
191 procedures must be set out in the charter, ordinance, or
192 resolution and must be applied uniformly by the local government
193 to avoid awarding a ~~award of any~~ project in an arbitrary or
194 capricious manner. This exception applies only if ~~shall apply~~
195 ~~when~~ all of the following occur:

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

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

212 (I) There is one appropriately licensed contractor who is
213 uniquely qualified to undertake the project because that
214 contractor is currently under contract to perform work that is



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215 affiliated with the project; or

216 (II) The time to competitively award the project will
217 jeopardize the funding for the project, ~~or will~~ materially
218 increase the cost of the project, or ~~will~~ create an undue
219 hardship on the public health, safety, or welfare.

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

225 d. ~~In the event~~ The project is to be awarded by a method
226 other than a competitive selection process, and the architect or
227 engineer of record has provided a written recommendation that
228 the project be awarded to the private sector contractor without
229 competitive selection, and the consideration by, and the
230 justification of, the government body are documented, in
231 writing, in the project file and are presented to the governing
232 board prior to the approval required in this paragraph.

233 11. To projects subject to chapter 336.

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

235 1. Is to be awarded based on price, the contract must be
236 awarded to the lowest qualified and responsive bidder in
237 accordance with the applicable county or municipal ordinance or
238 district resolution and in accordance with the applicable
239 contract documents. The county, municipality, or special
240 district may reserve the right to reject all bids and to rebid
241 the project or elect not to proceed with the project. This
242 subsection is not intended to restrict the rights of any local
243 government to reject the low bid of a nonqualified or



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244 nonresponsive bidder and to award the contract to any other
245 qualified and responsive bidder in accordance with the standards
246 and procedures of any applicable county or municipal ordinance
247 or any resolution of a special district.

248 2. ~~If the project~~ Uses a request for proposal or a request
249 for qualifications, the request must be publicly advertised and
250 the contract must be awarded in accordance with the applicable
251 local ordinances.

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

254 (e) If a construction project greater than \$300,000
255 ~~\$200,000~~, or \$75,000 ~~\$50,000~~ for electrical work, is started
256 after October 1, 1999, ~~and~~ is to be performed by a local
257 government using its own employees in a county or municipality
258 that issues registered contractor licenses, and the project
259 would require a ~~licensed~~ contractor licensed under chapter 489
260 if performed by a private sector contractor, the local
261 government must use a person appropriately registered or
262 certified under chapter 489 to supervise the work.

263 (f) 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 that does not
267 issue registered contractor licenses, and the project would
268 require a ~~licensed~~ contractor licensed under chapter 489 if
269 performed by a private sector contractor, the local government
270 must use a person appropriately registered or certified under
271 chapter 489 or a person appropriately licensed under chapter 471
272 to supervise the work.



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

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

280 (i) This subsection does not preempt the requirements of
281 any small-business or disadvantaged-business enterprise program
282 or any local-preference ordinance.

283 (j) A county, municipality, special district as defined in
284 s. 189.403, or any other political subdivision of the state
285 owning or operating a public-use airport as defined in s.
286 332.004 is exempt from this section when performing repairs or
287 maintenance on the airport's buildings, structures, or public
288 construction works using the local government's own services,
289 employees, and equipment.

290 (k) A local government owning or operating a port
291 identified in s. 403.021(9)(b) is exempt from this section when
292 performing repairs or maintenance on the port's buildings,
293 structures, or public construction works using the local
294 government's own services, employees, and equipment.

295 (l) A local government owning or operating a public transit
296 system as defined in s. 343.52, a public transportation system
297 as defined in s. 343.62, or a mass transit system as described
298 in s. 349.04(1)(b), is exempt from this section when performing
299 repairs or maintenance on the buildings, structures, or public
300 construction works of the public transit system, public
301 transportation system, or mass transit system using the local



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302 government's own services, employees, and equipment.

303 (2) The threshold amount of \$300,000 ~~\$200,000~~ for
304 construction or \$75,000 ~~\$50,000~~ for electrical work, as
305 specified in subsection (1), must be adjusted by the percentage
306 change in the Engineering News - Record's Building Costs Index
307 ~~Consumer Price Index~~ from January 1, 2009 ~~1994~~, to January 1 of
308 the year in which the project is scheduled to begin.

309 (3) All county officials, boards of county commissioners,
310 school boards, city councils, city commissioners, and all other
311 public officers of state boards or commissions that are charged
312 with the letting of contracts for public work, for the
313 construction of public bridges, buildings, and other structures
314 must ~~always~~ specify lumber, timber, and other forest products
315 produced and manufactured in this state if ~~whenever~~ such
316 products are available and their price, fitness, and quality are
317 equal. This subsection does not apply to ~~when~~ plywood specified
318 for monolithic concrete forms if, ~~when~~ the structural or service
319 requirements for timber for a particular job cannot be supplied
320 by native species, ~~or when~~ the construction is financed in whole
321 or in part from federal funds with the requirement ~~requirements~~
322 that there be no restrictions as to species or place of
323 manufacture.

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



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

332

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

334 And the title is amended as follows:

335 Delete everything before the enacting clause

336 and insert:

337 A bill to be entitled

338 An act relating to public construction projects;
339 amending s. 255.20, F.S.; increasing the threshold
340 amounts for projects required to be competitively
341 awarded; including specified items within the scope of
342 the term "cost"; specifying additional circumstances
343 under which a contractor may be considered ineligible
344 to bid; revising exceptions to the requirement that
345 certain public projects be competitively awarded;
346 defining the terms "repair" and "maintenance";
347 requiring that a local government publish a notice
348 containing certain information for certain repair or
349 maintenance projects and make certain information
350 available for public inspection for a specified period
351 after publication of the notice; requiring that a
352 local government consider certain information when
353 considering whether it is in the public's best
354 interest for the local government to perform a project
355 using its own services, employees, and equipment;
356 authorizing such a local government to consider
357 certain additional information; providing for
358 applicability of certain exceptions to the requirement
359 that certain public projects be competitively awarded;



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360 requiring that a local government use certain persons
361 to supervise certain projects; exempting certain
362 government entities from certain requirements of state
363 law when performing repairs or maintenance on certain
364 facilities; authorizing the adjustment of threshold
365 amounts for projects required to be competitively
366 awarded according to a specified standard; providing
367 an effective date.