

By Senator Haridopolos

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

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Section 255.20, Florida Statutes, is amended to
 22 read:

23 255.20 Local bids and contracts for public construction
 24 works; specification of state-produced lumber.—

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

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

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

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

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

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

85 1. If ~~When~~ the project is undertaken to replace,
86 reconstruct, or repair an existing public building, structure,
87 or other public construction works ~~facility~~ damaged or destroyed

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88 by a sudden unexpected turn of events, such as an act of God,
89 riot, fire, flood, accident, or other urgent circumstances, and
90 such damage or destruction creates:

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

92 b. Other loss to public or private property which requires
93 emergency government action; or

94 c. An interruption of an essential governmental service.

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

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

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

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

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

114 7. If ~~When~~ the funding source of the project will be
115 diminished or lost because the time required to competitively
116 award the project after the funds become available exceeds the

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117 time within which the funding source must be spent, and the
118 governmental entity undertaking the project has not materially
119 contributed to a delay in funding or in competitively awarding
120 the project.

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

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

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

163 10. If ~~When~~ the governing board of the local government
164 determines upon consideration of specific substantive criteria
165 ~~and administrative procedures~~ that it is in the best interest of
166 the local government to award the project to an appropriately
167 licensed private sector contractor pursuant ~~according~~ to
168 administrative procedures established by and expressly set forth
169 in a charter, ordinance, or resolution of the local government
170 adopted before ~~prior to~~ July 1, 1994. The criteria and
171 procedures must be set out in the charter, ordinance, or
172 resolution and must be applied uniformly by the local government
173 to avoid awarding a ~~award of any~~ project in an arbitrary or
174 capricious manner. This exception applies only if ~~shall apply~~

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175 ~~when~~ all of the following occur:

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

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

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

196 (II) The time to competitively award the project will
197 jeopardize the funding for the project, ~~or will~~ materially
198 increase the cost of the project, or will create an undue
199 hardship on the public health, safety, or welfare.

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

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204 selected and the criteria to be considered.

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

213 11. To projects subject to chapter 336.

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

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

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

232 ~~3. If the project~~ Is subject to competitive negotiations,

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233 the contract must be awarded in accordance with s. 287.055.

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

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

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

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

260 (i) This subsection does not preempt the requirements of
261 any small-business or disadvantaged-business enterprise program

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262 or any local-preference ordinance.

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

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

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

281 (2) The threshold amount of \$200,000 for construction or
282 \$50,000 for electrical work must be adjusted by the percentage
283 change in the Consumer Price Index from January 1, 1994, to
284 January 1 of the year in which the project is scheduled to
285 begin.

286 (3) All county officials, boards of county commissioners,
287 school boards, city councils, city commissioners, and all other
288 public officers of state boards or commissions that are charged
289 with the letting of contracts for public work, for the
290 construction of public bridges, buildings, and other structures

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291 must ~~always~~ specify lumber, timber, and other forest products
292 produced and manufactured in this state ~~if whenever~~ such
293 products are available and their price, fitness, and quality are
294 equal. This subsection does not apply to ~~when~~ plywood specified
295 for monolithic concrete forms, ~~if when~~ the structural or service
296 requirements for timber for a particular job cannot be supplied
297 by native species, or ~~if when~~ the construction is financed in
298 whole or in part from federal funds with the requirement
299 ~~requirements~~ that there be no restrictions as to species or
300 place of manufacture.

301 (4) If two or more responsive bids or proposals for a
302 project to be competitively awarded under this section are
303 otherwise equal with respect to price, quality, and service, the
304 local government may give preference to the contractor who
305 maintains the greatest local presence within the local
306 government's jurisdiction when awarding the project. For
307 purposes of this subsection, "local presence" includes
308 maintaining an office within the jurisdiction and employing
309 individuals or hiring subcontractors within the jurisdiction.
310 Except as provided in this subsection, a local government may
311 not give any consideration to a contractor's local presence or
312 similar criteria when evaluating bids or proposals or awarding a
313 project.

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

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320 its reasonable attorney's fees.

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