

By the Committee on Community Affairs; and 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.; increasing the threshold
4 amounts for projects required to be competitively
5 awarded; including specified items within the scope of
6 the term "cost"; specifying additional circumstances
7 under which a contractor may be considered ineligible
8 to bid; revising exceptions to the requirement that
9 certain public projects be competitively awarded;
10 defining the terms "repair" and "maintenance";
11 requiring that a local government publish a notice
12 containing certain information for certain repair or
13 maintenance projects and make certain information
14 available for public inspection for a specified period
15 after publication of the notice; requiring that a
16 local government consider certain information when
17 considering whether it is in the public's best
18 interest for the local government to perform a project
19 using its own services, employees, and equipment;
20 authorizing such a local government to consider
21 certain additional information; providing for
22 applicability of certain exceptions to the requirement
23 that certain public projects be competitively awarded;
24 requiring that a local government use certain persons
25 to supervise certain projects; exempting certain
26 government entities from certain requirements of state
27 law when performing repairs or maintenance on certain
28 facilities; authorizing the adjustment of threshold
29 amounts for projects required to be competitively

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30 awarded according to a specified standard; providing
31 an effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Section 255.20, Florida Statutes, is amended to
36 read:

37 255.20 Local bids and contracts for public construction
38 works; specification of state-produced lumber.-

39 (1) A county, municipality, special district as defined in
40 chapter 189, or other political subdivision of the state seeking
41 to construct or improve a public building, structure, or other
42 public construction works must competitively award to an
43 appropriately licensed contractor each project that is estimated
44 in accordance with generally accepted cost-accounting principles
45 to cost ~~have total construction project costs of~~ more than
46 \$300,000 ~~\$200,000~~. For electrical work, the local government
47 must competitively award to an appropriately licensed contractor
48 each project that is estimated in accordance with generally
49 accepted cost-accounting principles to ~~have a cost of~~ more than
50 \$75,000 ~~\$50,000~~. As used in this section, the term
51 "competitively award" means to award contracts based on the
52 submission of sealed bids, proposals submitted in response to a
53 request for proposal, proposals submitted in response to a
54 request for qualifications, or proposals submitted for
55 competitive negotiation. This subsection expressly allows
56 contracts for construction management services, design/build
57 contracts, continuation contracts based on unit prices, and any
58 other contract arrangement with a private sector contractor

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59 permitted by any applicable municipal or county ordinance, by
60 district resolution, or by state law. For purposes of this
61 section, the term "cost" includes ~~construction costs include~~ the
62 cost of all labor, except inmate labor, and ~~include~~ the cost of
63 equipment and materials to be used in the construction of the
64 project. Subject to the provisions of subsection (3), the
65 county, municipality, special district, or other political
66 subdivision may establish, by municipal or county ordinance or
67 special district resolution, procedures for conducting the
68 bidding process.

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

87 (b) For ~~With respect to~~ contractors who are not

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88 prequalified by ~~with~~ the Department of Transportation, the
89 governmental entity shall publish prequalification criteria and
90 procedures prior to advertisement or notice of solicitation.
91 Such publications must ~~shall~~ include notice of a public hearing
92 for comment on such criteria and procedures before ~~prior to~~
93 adoption. The procedures shall provide for an appeal process
94 within the authority for making objections to the
95 prequalification process with de novo review based on the record
96 below to the circuit court within 30 days.

97 (c) Any contractor may be considered ineligible to bid by
98 the governmental entity if the contractor has been found guilty
99 by a court of violations of federal labor or employment tax laws
100 regarding subjects such as safety, tax withholding, workers'
101 compensation, unemployment tax, social security and Medicare
102 tax, wage or hour, or prevailing rate laws within the past 5
103 years.

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

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

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

112 b. Other loss to public or private property which requires
113 emergency government action; or

114 c. An interruption of an essential governmental service.

115 2. If ~~When~~, after notice by publication in accordance with
116 the applicable ordinance or resolution, the governmental entity

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117 does not receive any responsive bids or proposals ~~responses~~.

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

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

124 5. When the project is undertaken as repair or maintenance
125 of an existing public facility. For purposes of this section,
126 "repair" means corrective action to restore an existing public
127 facility to a safe and functional condition, and "maintenance"
128 means preventive or corrective action for the purpose of
129 maintaining an existing public facility in an operational state
130 or preserving the facility from failure or decline. Repair or
131 maintenance includes activities that are necessarily incidental
132 to repairing or maintaining the facility. Repair or maintenance
133 does not include the construction of any new building,
134 structure, or other public construction works, or any
135 substantial addition, extension, or upgrade to an existing
136 public facility for which the cost of such addition, extension,
137 or upgrade, in accordance with generally accepted cost-
138 accounting principles, is more than 20 percent of the total cost
139 of the repair or maintenance project. With respect to any repair
140 or maintenance project under this subparagraph which includes an
141 addition, extension, or upgrade to an existing public facility
142 and which the local government will perform using its own
143 services, employees, and equipment, the local government shall
144 publish a public notice identifying the project and the
145 components and scope of the work at least 30 days before

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146 commencing the repair or maintenance. The public notice shall
147 state the estimated total cost of the project and the cost of
148 the addition, extension, or upgrade, using generally accepted
149 cost-accounting principles that fully account for all costs
150 associated with performing the project, including employee
151 compensation and benefits, equipment cost and maintenance,
152 insurance costs, and materials. Upon publication of the public
153 notice and for 30 days thereafter, the local government shall
154 make available for public inspection during normal business
155 hours at a location specified in the public notice a detailed
156 itemization of each component of the estimated cost of the
157 project and documentation explaining the methodology used to
158 arrive at the estimated cost.

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

161 7. If ~~When~~ the funding source of the project will be
162 diminished or lost because the time required to competitively
163 award the project after the funds become available exceeds the
164 time within which the funding source must be spent.

165 8. If ~~When~~ the local government ~~has~~ competitively awarded a
166 project to a private sector contractor and the contractor ~~has~~
167 abandoned the project before completion or the local government
168 ~~has~~ terminated the contract.

169 9. If ~~When~~ the governing board of the local government
170 complies with all of the requirements of this paragraph, after
171 ~~public notice,~~ conducts a public meeting under s. 286.011, and
172 finds by a majority vote of the governing board that it is in
173 the public's best interest to perform the project using its own
174 services, employees, and equipment. The public notice must be

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175 published at least 30 ~~14~~ days before ~~prior to~~ the date of the
176 public meeting at which the governing board takes final action
177 ~~to apply this subparagraph~~. The notice must identify the
178 project, the components and scope of the work, and the estimated
179 cost of the project using generally accepted cost-accounting
180 principles that fully account for all costs associated with
181 performing the project, including employee compensation and
182 benefits, equipment cost and maintenance, insurance costs, and
183 materials. The notice shall, ~~and~~ specify that the purpose for
184 the public meeting is to consider whether it is in the public's
185 best interest to perform the project using the local
186 government's own services, employees, and equipment. Upon
187 publication of the public notice and for 30 days thereafter, the
188 local government shall make available for public inspection
189 during normal business hours at a location specified in the
190 public notice a detailed itemization of each component of the
191 estimated cost of the project and documentation explaining the
192 methodology used to arrive at the estimated cost. At the public
193 meeting, any qualified contractor or vendor who might have been
194 awarded the project if the project had been competitively bid
195 shall be provided with an adequate opportunity to present
196 evidence to the governing board regarding the project and the
197 accuracy of the local government's estimated cost of the
198 project. In deciding whether it is in the public's best interest
199 for the local government to perform a project using its own
200 services, employees, and equipment, the governing board must ~~may~~
201 consider the estimated cost of the project and the accuracy of
202 such estimated cost in light of any other information presented
203 at the public meeting, and whether the project requires an

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204 increase in the number of government employees or, an increase
205 in capital expenditures for public facilities, equipment or
206 other capital assets. The local government may further consider,
207 the impact on local economic development, the impact on small
208 and minority business owners, the impact on state and local tax
209 revenues, whether the private sector contractors provide health
210 insurance and other benefits equivalent to those provided by the
211 local government, and any other factor relevant to what is in
212 the public's best interest.

213 10. If ~~When~~ the governing board of the local government
214 determines upon consideration of specific substantive criteria
215 ~~and administrative procedures~~ that it is in the best interest of
216 the local government to award the project to an appropriately
217 licensed private sector contractor pursuant ~~according~~ to
218 administrative procedures established by and expressly set forth
219 in a charter, ordinance, or resolution of the local government
220 adopted before ~~prior to~~ July 1, 1994. The criteria and
221 procedures must be set out in the charter, ordinance, or
222 resolution and must be applied uniformly by the local government
223 to avoid awarding a ~~award of any~~ project in an arbitrary or
224 capricious manner. This exception applies only if ~~shall apply~~
225 ~~when~~ all of the following occur:

226 a. ~~When~~ The governing board of the local government, after
227 public notice, conducts a public meeting under s. 286.011 and
228 finds by a two-thirds vote of the governing board that it is in
229 the public's best interest to award the project according to the
230 criteria and procedures established by charter, ordinance, or
231 resolution. The public notice must be published at least 14 days
232 before ~~prior to~~ the date of the public meeting at which the

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233 governing board takes final action ~~to apply this subparagraph.~~
234 The notice must identify the project, the estimated cost of the
235 project, and specify that the purpose for the public meeting is
236 to consider whether it is in the public's best interest to award
237 the project using the criteria and procedures permitted by the
238 preexisting charter, ordinance, or resolution.

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

242 (I) There is one appropriately licensed contractor who is
243 uniquely qualified to undertake the project because that
244 contractor is currently under contract to perform work that is
245 affiliated with the project; or

246 (II) The time to competitively award the project will
247 jeopardize the funding for the project, ~~or will~~ materially
248 increase the cost of the project, or will create an undue
249 hardship on the public health, safety, or welfare.

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

255 d. ~~In the event~~ The project is to be awarded by a method
256 other than a competitive selection process, and the architect or
257 engineer of record has provided a written recommendation that
258 the project be awarded to the private sector contractor without
259 competitive selection, ~~and~~ and the consideration by, and the
260 justification of, the government body are documented, in
261 writing, in the project file and are presented to the governing

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262 board prior to the approval required in this paragraph.

263 11. To projects subject to chapter 336.

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

265 1. Is to be awarded based on price, the contract must be
266 awarded to the lowest qualified and responsive bidder in
267 accordance with the applicable county or municipal ordinance or
268 district resolution and in accordance with the applicable
269 contract documents. The county, municipality, or special
270 district may reserve the right to reject all bids and to rebid
271 the project or elect not to proceed with the project. This
272 subsection is not intended to restrict the rights of any local
273 government to reject the low bid of a nonqualified or
274 nonresponsive bidder and to award the contract to any other
275 qualified and responsive bidder in accordance with the standards
276 and procedures of any applicable county or municipal ordinance
277 or any resolution of a special district.

278 ~~2. If the project~~ Uses a request for proposal or a request
279 for qualifications, the request must be publicly advertised and
280 the contract must be awarded in accordance with the applicable
281 local ordinances.

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

284 (e) If a construction project greater than \$300,000
285 ~~\$200,000~~, or \$75,000 ~~\$50,000~~ for electrical work, is started
286 after October 1, 1999, ~~and~~ is to be performed by a local
287 government using its own employees in a county or municipality
288 that issues registered contractor licenses, and the project
289 would require a ~~licensed~~ contractor licensed under chapter 489
290 if performed by a private sector contractor, the local

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291 government must use a person appropriately registered or
292 certified under chapter 489 to supervise the work.

293 (f) If a construction project greater than \$300,000
294 ~~\$200,000~~, or \$75,000 ~~\$50,000~~ for electrical work, is started
295 after October 1, 1999, ~~and~~ is to be performed by a local
296 government using its own employees in a county that does not
297 issue registered contractor licenses, and the project would
298 require a ~~licensed~~ contractor licensed under chapter 489 if
299 performed by a private sector contractor, the local government
300 must use a person appropriately registered or certified under
301 chapter 489 or a person appropriately licensed under chapter 471
302 to supervise the work.

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

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

310 (i) This subsection does not preempt the requirements of
311 any small-business or disadvantaged-business enterprise program
312 or any local-preference ordinance.

313 (j) A county, municipality, special district as defined in
314 s. 189.403, or any other political subdivision of the state
315 owning or operating a public-use airport as defined in s.
316 332.004 is exempt from this section when performing repairs or
317 maintenance on the airport's buildings, structures, or public
318 construction works using the local government's own services,
319 employees, and equipment.

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

325 (l) A local government owning or operating a public transit
326 system as defined in s. 343.52, a public transportation system
327 as defined in s. 343.62, or a mass transit system as described
328 in s. 349.04(1)(b), is exempt from this section when performing
329 repairs or maintenance on the buildings, structures, or public
330 construction works of the public transit system, public
331 transportation system, or mass transit system using the local
332 government's own services, employees, and equipment.

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

339 (3) All county officials, boards of county commissioners,
340 school boards, city councils, city commissioners, and all other
341 public officers of state boards or commissions that are charged
342 with the letting of contracts for public work, for the
343 construction of public bridges, buildings, and other structures
344 must ~~always~~ specify lumber, timber, and other forest products
345 produced and manufactured in this state if ~~whenever~~ such
346 products are available and their price, fitness, and quality are
347 equal. This subsection does not apply to ~~when~~ plywood specified
348 for monolithic concrete forms if, ~~when~~ the structural or service

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349 requirements for timber for a particular job cannot be supplied
350 by native species, ~~or when~~ the construction is financed in whole
351 or in part from federal funds with the requirement ~~requirements~~
352 that there be no restrictions as to species or place of
353 manufacture.

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

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