

By Senator Hays

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1 A bill to be entitled
2 An act relating to local bids and contracts for public
3 construction works; amending s. 255.20, F.S.;
4 eliminating specified conditions under which a local
5 government is exempt from the requirement to
6 competitively award contracts; providing an effective
7 date.

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9 Be It Enacted by the Legislature of the State of Florida:

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11 Section 1. Paragraph (c) of subsection (1) of section
12 255.20, Florida Statutes, is amended to read:

13 255.20 Local bids and contracts for public construction
14 works; specification of state-produced lumber.—

15 (1) A county, municipality, special district as defined in
16 chapter 189, or other political subdivision of the state seeking
17 to construct or improve a public building, structure, or other
18 public construction works must competitively award to an
19 appropriately licensed contractor each project that is estimated
20 in accordance with generally accepted cost-accounting principles
21 to cost more than \$300,000. For electrical work, the local
22 government must competitively award to an appropriately licensed
23 contractor each project that is estimated in accordance with
24 generally accepted cost-accounting principles to cost more than
25 \$75,000. As used in this section, the term "competitively award"
26 means to award contracts based on the submission of sealed bids,
27 proposals submitted in response to a request for proposal,
28 proposals submitted in response to a request for qualifications,
29 or proposals submitted for competitive negotiation. This

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30 subsection expressly allows contracts for construction
31 management services, design/build contracts, continuation
32 contracts based on unit prices, and any other contract
33 arrangement with a private sector contractor permitted by any
34 applicable municipal or county ordinance, by district
35 resolution, or by state law. For purposes of this section, cost
36 includes the cost of all labor, except inmate labor, and the
37 cost of equipment and materials to be used in the construction
38 of the project. Subject to the provisions of subsection (3), the
39 county, municipality, special district, or other political
40 subdivision may establish, by municipal or county ordinance or
41 special district resolution, procedures for conducting the
42 bidding process.

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

44 1. If the project is undertaken to replace, reconstruct, or
45 repair an existing public building, structure, or other public
46 construction works damaged or destroyed by a sudden unexpected
47 turn of events such as an act of God, riot, fire, flood,
48 accident, or other urgent circumstances, and such damage or
49 destruction creates:

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

51 b. Other loss to public or private property which requires
52 emergency government action; or

53 c. An interruption of an essential governmental service.

54 2. If, after notice by publication in accordance with the
55 applicable ordinance or resolution, the governmental entity does
56 not receive any responsive bids or proposals.

57 3. To construction, remodeling, repair, or improvement to a
58 public electric or gas utility system if such work on the public

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59 utility system is performed by personnel of the system.

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

63 5. If the project is undertaken as repair or maintenance of
64 an existing public facility. For the purposes of this paragraph,
65 the term "repair" means a corrective action to restore an
66 existing public facility to a safe and functional condition and
67 the term "maintenance" means a preventive or corrective action
68 to maintain an existing public facility in an operational state
69 or to preserve the facility from failure or decline. Repair or
70 maintenance includes activities that are necessarily incidental
71 to repairing or maintaining the facility. Repair or maintenance
72 does not include the construction of any new building,
73 structure, or other public construction works or any substantial
74 addition, extension, or upgrade to an existing public facility.
75 Such additions, extensions, or upgrades shall be considered
76 substantial if the estimated cost of the additions, extensions,
77 or upgrades included as part of the repair or maintenance
78 project exceeds the threshold amount in subsection (1) and
79 exceeds 20 percent of the estimated total cost of the repair or
80 maintenance project using generally accepted cost-accounting
81 principles that fully account for all costs associated with
82 performing and completing the work, including employee
83 compensation and benefits, equipment cost and maintenance,
84 insurance costs, and materials. An addition, extension, or
85 upgrade shall not be considered substantial if it is undertaken
86 pursuant to the conditions specified in subparagraph 1. Repair
87 and maintenance projects and any related additions, extensions,

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88 or upgrades may not be divided into multiple projects for the
89 purpose of evading the requirements of this subparagraph.

90 6. If the project is undertaken exclusively as part of a
91 public educational program.

92 7. If the funding source of the project will be diminished
93 or lost because the time required to competitively award the
94 project after the funds become available exceeds the time within
95 which the funding source must be spent.

96 8. If the local government competitively awarded a project
97 to a private sector contractor and the contractor abandoned the
98 project before completion or the local government terminated the
99 contract.

100 ~~9. If the governing board of the local government complies~~
101 ~~with all of the requirements of this subparagraph, conducts a~~
102 ~~public meeting under s. 286.011 after public notice, and finds~~
103 ~~by majority vote of the governing board that it is in the~~
104 ~~public's best interest to perform the project using its own~~
105 ~~services, employees, and equipment. The public notice must be~~
106 ~~published at least 21 days before the date of the public meeting~~
107 ~~at which the governing board takes final action. The notice must~~
108 ~~identify the project, the components and scope of the work, and~~
109 ~~the estimated cost of the project using generally accepted cost-~~
110 ~~accounting principles that fully account for all costs~~
111 ~~associated with performing and completing the work, including~~
112 ~~employee compensation and benefits, equipment cost and~~
113 ~~maintenance, insurance costs, and materials. The notice must~~
114 ~~specify that the purpose for the public meeting is to consider~~
115 ~~whether it is in the public's best interest to perform the~~
116 ~~project using the local government's own services, employees,~~

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117 ~~and equipment. Upon publication of the public notice and for 21~~
118 ~~days thereafter, the local government shall make available for~~
119 ~~public inspection, during normal business hours and at a~~
120 ~~location specified in the public notice, a detailed itemization~~
121 ~~of each component of the estimated cost of the project and~~
122 ~~documentation explaining the methodology used to arrive at the~~
123 ~~estimated cost. At the public meeting, any qualified contractor~~
124 ~~or vendor who could have been awarded the project had the~~
125 ~~project been competitively bid shall be provided with a~~
126 ~~reasonable opportunity to present evidence to the governing~~
127 ~~board regarding the project and the accuracy of the local~~
128 ~~government's estimated cost of the project. In deciding whether~~
129 ~~it is in the public's best interest for the local government to~~
130 ~~perform a project using its own services, employees, and~~
131 ~~equipment, the governing board must consider the estimated cost~~
132 ~~of the project and the accuracy of the estimated cost in light~~
133 ~~of any other information that may be presented at the public~~
134 ~~meeting and whether the project requires an increase in the~~
135 ~~number of government employees or an increase in capital~~
136 ~~expenditures for public facilities, equipment, or other capital~~
137 ~~assets. The local government may further consider the impact on~~
138 ~~local economic development, the impact on small and minority~~
139 ~~business owners, the impact on state and local tax revenues,~~
140 ~~whether the private sector contractors provide health insurance~~
141 ~~and other benefits equivalent to those provided by the local~~
142 ~~government, and any other factor relevant to what is in the~~
143 ~~public's best interest.~~

144 9.10. If the governing board of the local government
145 determines upon consideration of specific substantive criteria

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146 that it is in the best interest of the local government to award
147 the project to an appropriately licensed private sector
148 contractor pursuant to administrative procedures established by
149 and expressly set forth in a charter, ordinance, or resolution
150 of the local government adopted before July 1, 1994. The
151 criteria and procedures must be set out in the charter,
152 ordinance, or resolution and must be applied uniformly by the
153 local government to avoid awarding a project in an arbitrary or
154 capricious manner. This exception applies only if all of the
155 following occur:

156 a. The governing board of the local government, after
157 public notice, conducts a public meeting under s. 286.011 and
158 finds by a two-thirds vote of the governing board that it is in
159 the public's best interest to award the project according to the
160 criteria and procedures established by charter, ordinance, or
161 resolution. The public notice must be published at least 14 days
162 before the date of the public meeting at which the governing
163 board takes final action. The notice must identify the project,
164 the estimated cost of the project, and specify that the purpose
165 for the public meeting is to consider whether it is in the
166 public's best interest to award the project using the criteria
167 and procedures permitted by the preexisting charter, ordinance,
168 or resolution.

169 b. The project is to be awarded by any method other than a
170 competitive selection process, and the governing board finds
171 evidence that:

172 (I) There is one appropriately licensed contractor who is
173 uniquely qualified to undertake the project because that
174 contractor is currently under contract to perform work that is

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175 affiliated with the project; or

176 (II) The time to competitively award the project will
177 jeopardize the funding for the project, materially increase the
178 cost of the project, or create an undue hardship on the public
179 health, safety, or welfare.

180 c. The project is to be awarded by any method other than a
181 competitive selection process, and the published notice clearly
182 specifies the ordinance or resolution by which the private
183 sector contractor will be selected and the criteria to be
184 considered.

185 d. The project is to be awarded by a method other than a
186 competitive selection process, and the architect or engineer of
187 record has provided a written recommendation that the project be
188 awarded to the private sector contractor without competitive
189 selection, and the consideration by, and the justification of,
190 the government body are documented, in writing, in the project
191 file and are presented to the governing board prior to the
192 approval required in this paragraph.

193 ~~10.11.~~ To projects subject to chapter 336.

194 Section 2. This act shall take effect July 1, 2012.