

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 602

INTRODUCER: Senator Hukill

SUBJECT: Local Bids and Contracts for Public Construction Works

DATE: March 14, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	Pre-meeting
2.			GO	
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 602 eliminates specified conditions under which a local government is exempt from the requirement to competitively award contracts. This bill will eliminate the exemption for local governments to not competitively award contracts when the governing body deems it in the public's best interest to use their own services, employees, and equipment.

This bill substantially amends section 255.20 of the Florida Statutes.

II. Present Situation:

Local bids and contracts for public construction works

A county, municipality, special district¹, or other political subdivision of the state² seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$300,000. For electrical work, the local government must competitively award to an appropriately licensed

¹ Section 189.403(1), F.S. – “Special district” means a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), special districts shall be treated as municipalities. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

² Section 1.01(8), F.S. – The words “public body,” “body politic,” or “political subdivision” include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$75,000.

The term “competitively award” means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. Current law expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. Cost includes the cost of all labor, except inmate labor, and the cost of equipment and materials to be used in the construction of the project.³

Exemption for Local Governments Who Use Own Services, Employees, and Equipment

If the governing board of the local government complies with all of the statutory requirements⁴, conducts a public meeting under s. 286.011, F.S. after public notice, and finds by majority vote of the governing board that it is in the public’s best interest to perform the project using its own services, employees, and equipment, then they are exempt from having to competitively award the contract. The public notice must be published at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the work, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. The notice must specify that the purpose for the public meeting is to consider whether it is in the public’s best interest to perform the project using the local government’s own services, employees, and equipment.

Upon publication of the public notice and for 21 days thereafter, the local government shall make available for public inspection, during normal business hours and at a location specified in the public notice, a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimated cost. At the public meeting, any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall be provided with a reasonable opportunity to present evidence to the governing board regarding the project and the accuracy of the local government’s estimated cost of the project.

In deciding whether it is in the public’s best interest for the local government to perform a project using its own services, employees, and equipment, the governing board must consider the estimated cost of the project and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting and whether the project requires an increase in the number of government employees or an increase in capital expenditures for public facilities, equipment, or other capital assets. The local government may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health

³ See s. 255.20, F.S.

⁴ Section 255.20(1)(c)(9), F.S.

insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.

III. Effect of Proposed Changes:

Section 1 amends s. 255.20, F.S., eliminating specified conditions under which a local government is exempt from the requirement to competitively award contracts.

Section 2 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Sec. 18, of the Constitution of the State of Florida excuses local governments from complying with state mandates that impose negative fiscal consequences. Subsection (a) provides, "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds" unless certain requirements are met. However, several exemptions and exceptions exist.

Subsection (d) of Art. VII, Sec. 18, exempts those laws that have an insignificant fiscal impact from the requirements of the mandates provision. Whether a particular bill results in a significant impact must be determined on an aggregate, statewide basis. Laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.9 million for FY 2012-2013⁵), are exempt.⁶

Counties, municipalities, and special districts not already competitively awarding public construction works contracts over \$300,000 and electrical contracts over \$75,000 may incur additional expense if required to competitively award such contracts. The overall collective financial impact would appear unlikely to exceed \$1.9 million per year in the aggregate, in light of the potential savings some counties, municipalities, and special districts may experience as a result of the influence of the competitive process. Accordingly, it would appear as if the bill is exempt from paragraph (a) because the bill's net aggregate fiscal impact on cities and counties does not exceed \$1.9 million.

B. Public Records/Open Meetings Issues:

None.

⁵ Based on the Demographic Estimating Conference's final population estimate for April 1, 2012, which was adopted on November 7, 2012. The Executive Summary can be found at:

<http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf> (Last visited on March 5, 2013).

⁶ See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Fiscal Impact*, (September 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited on March 5, 2013).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By eliminating the exemption for local governments who use their own services, employees, and equipment it may result in more contracts for private contractors.

C. Government Sector Impact:

This bill will eliminate the exemption for local governments to not competitively award contracts when the governing body deems it in the public's best interest to use their own services, employees, and equipment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.