

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 687 Local Bids and Contracts for Public Construction Works

SPONSOR(S): McBurney and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Harrington	Williamson
2) Local & Federal Affairs Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of \$300,000. For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000. An exemption from the requirement to competitively award these projects exists when the local government determines that it is in the public's best interest to use the local government's own services, employees, and equipment.

The bill eliminates the exemption from competitive solicitation for a local government when the governing body deems it in the public's best interest to use the local government's own services, employees, and equipment.

The bill may have an indeterminate fiscal impact on local governments. See Fiscal Comments section for further discussion.

This bill may be a county or municipal mandate. See Section III.A.1. of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The Department of Management Services is responsible for establishing by rule the following:¹

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.

Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must competitively award the project if the projected cost is in excess of \$300,000.² For electrical work, local governments must competitively award projects estimated to cost more than \$75,000. Section 255.20(1), F.S., provides that “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.

Exemption from Competitive Solicitation for Local Governments Performing Work

If the governing board of the local government conducts a public meeting and finds by majority vote that it is in the public’s best interest to perform the project using its own services, employees, and equipment, then the local government is exempt from the requirement to competitively award the contract.³ The meeting of the governing board must have been publicly noticed 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 project, 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 project, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. The notice must state that the purpose of the meeting is to consider whether it is in the best interest of the public to perform the project using the local government’s own services, employees, and equipment.⁴

At the public meeting, the governing board must allow any qualified contractor or vendor who could have been awarded the project had the project been competitively bid to present evidence regarding the project and the accuracy of the local government’s estimated cost of the project. 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 governing body 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 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.⁵

¹ Section 255.29, F.S.

² Section 255.20(1), F.S.

³ Section 255.20(1)(c)9., F.S.

⁴ *Id.*

⁵ *Id.*

Effect of the Bill

The bill eliminates a local government exemption to the requirement to competitively award contracts. Specifically, the bill eliminates the exemption from competitive solicitation for a local government when the governing body deems it in the public's best interest to use the local government's own services, employees, and equipment.

The bill provides an effective date of July 1, 2013.

B. SECTION DIRECTORY:

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.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill eliminates an exemption to the competitive solicitation process for local governments, which may result in local governments competitively awarding more contracts to the private sector.

D. FISCAL COMMENTS:

The bill has an indeterminate fiscal impact on local governments. The bill may result in requiring local governments to competitively procure more contracts for construction projects and prevent those bodies from completing the projects; however, the impact of the bill may result in a net savings to local governments as a result of the competitive process.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of Art. VII, s. 18 of the State Constitution may apply because this bill requires cities and counties to spend money or take an action that requires the expenditure of money; however, an exemption may apply if the bill results in an insignificant fiscal impact to county

or municipal governments. The bill may result in requiring local governments to competitively procure more contracts for construction projects; however, the impact of the bill may result in a net savings to local governments as a result of the competitive process. The exceptions to the mandates provision of Art. VII, s. 18 of the State Constitution do not apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.