

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 801 Preference in Award of State Contracts  
**SPONSOR(S):** Government Operations Subcommittee; Fitzenhagen  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 612

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	9 Y, 0 N, As CS	Harrington	Williamson
2) Local & Federal Affairs Committee			
3) Appropriations Committee			
4) State Affairs Committee			

### SUMMARY ANALYSIS

Contracts for construction services over a specified, projected threshold cost must be competitively awarded. Florida law provides a preference for the employment of state residents in construction contracts funded by money appropriated with state funds. Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal qualifications to those of non-residents. If a construction contract is funded by local funds, the contract may contain such a provision.

The bill provides that for a competitive solicitation for construction services in which 20 percent or more of the cost is to be paid from funds appropriated by the state, a local ordinance or regulation may not restrict a certified contractor from competing for the award based on the vendor's:

- Maintaining an office or place of business within a particular local jurisdiction;
- Hiring employees or subcontractors from within a particular local jurisdiction; or
- Prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

It requires a state college, county, municipality, school district, or other political subdivision to disclose certain information regarding the use of funds appropriated by the state in its competitive solicitation document. The bill also provides that other than the requirements imposed for solicitations involving state funds, a state college, county, municipality, school district, or other political subdivision of the state is not prevented from awarding a contract to any vendor in accordance with applicable state laws or local ordinances or regulations.

The bill does not appear to have a fiscal impact on state or local governments.

# 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:<sup>1</sup>

- 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.

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively awarded.<sup>2</sup> 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.<sup>3</sup> 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 for qualifications, or proposals submitted for competitive negotiation.<sup>4</sup> Counties, municipalities, special districts, and other political subdivisions may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.<sup>5</sup>

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Register at least 21 days prior to the established bid opening. If the construction project is projected to exceed \$500,000, the advertisement must be published at least 30 days prior to the bid opening in the Florida Administrative Register, and at least once 30 days prior to the bid opening in a newspaper of general circulation in the county where the project is located.<sup>6</sup>

##### *Florida Preference to State Residents*

Florida law provides a preference for the employment of state residents in construction contracts funded by money appropriated with state funds. Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal qualifications<sup>7</sup> to those of non-residents.<sup>8</sup> If a construction contract is funded by local funds, the contract may contain such a provision.<sup>9</sup> In addition, the contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.<sup>10</sup>

#### **Effect of the Bill**

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<sup>1</sup> Section 255.29, F.S.

<sup>2</sup> See chapters 60D-5.002 and 60D-5.0073, F.A.C.; see also s. 255.0525, F.S.

<sup>3</sup> See s. 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> For counties, municipalities, and political subdivisions, similar publishing provisions apply. Section 255.0525(2), F.S.

<sup>7</sup> Section 255.099(1)(a), F.S., defines substantially equal qualifications as the "qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons."

<sup>8</sup> Section 255.099(1), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 255.099(1)(b), F.S.

The bill provides that for a competitive solicitation for construction services in which 20 percent or more of the cost is to be paid from funds appropriated by the state, a local ordinance or regulation may not restrict a certified contractor <sup>11</sup> from competing for the award based upon the vendor's:

- Maintaining an office or place of business within a particular local jurisdiction;
- Hiring employees or subcontractors from within a particular local jurisdiction; or
- Prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

When payment for the purchase of construction services is to be made, in whole or in part, from state appropriated funds, a state college, county, municipality, school district, or other political subdivision must disclose in the solicitation document the funding source as well as the amount of such funds or the percentage of such funds as compared to the anticipated total cost of the purchase.

The bill also provides that, except for when state appropriated funds are used for construction services, a state college, county, municipality, school district, or other political subdivision is not prevented from awarding a contract to any vendor in accordance with applicable state laws or local ordinances or regulations.

**B. SECTION DIRECTORY:**

Section 1. creates s. 255.0991, F.S.; prohibiting local ordinances and regulations from restricting certified contractor's competition for award of contract for construction services based upon certain conditions; requiring state college, school district, or other political subdivision to make specified disclosures in competitive solicitation documents; providing applicability.

Section 2. provides an effective date of July 1, 2014.

**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:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This bill could result in more business being awarded to in-state vendors as a result of prohibiting certain local restrictions for construction services.

**D. FISCAL COMMENTS:**

None.

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<sup>11</sup> Section 489.105(8), F.S., defines certified contractor as a contractor who possesses a certificate of competency issued by the Department of Business and Professional Regulation, and who is authorized to contract statewide.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action regarding the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### Other Comments: Prohibition Unclear

The bill provides that a local government is prohibited from restricting a certified contractor from competing for an award based on three specified criteria. It is unclear if this will prohibit the use of local preferences or if it strictly prohibits the use of local ordinances and regulations that "restrict" contractors from competing.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2014, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The amendment:

- Relocated provisions pertaining to construction services to chapter 255, F.S., which is the chapter that regulates the purchase of construction services;
- Narrowed the scope of the bill by making it applicable to construction services only; and
- Provided that certain local restrictions are prohibited when state appropriated funds are used to pay for construction services.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.