

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 113 Local Government Construction Preferences

SPONSOR(S): State Affairs Committee; Local Government Affairs Subcommittee; Government Operations Subcommittee; Perry & others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 778

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	9 Y, 4 N, As CS	Harrington	Williamson
2) Local Government Affairs Subcommittee	6 Y, 5 N, As CS	Zaborske	Miller
3) Appropriations Committee	19 Y, 9 N	White	Leznoff
4) State Affairs Committee	10 Y, 8 N, As CS	Harrington	Camechis

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 50 percent or more of the cost is to be paid from funds appropriated by the state, then a state college, county, municipality, school district, or other political subdivision may not use a local ordinance or regulation that provides a preference based upon the contractor'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.

The bill defines the term "state-appropriated funds" to mean all funds appropriated in the General Appropriations Act, excluding federal funds.

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 except for when 50 percent or more of the costs for construction services will be funded from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision is not prevented from awarding a contract to a contractor 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.

The bill has an effective date of July 1, 2015.

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.

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.² 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 \$300,000.³ 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.⁴ 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.⁵

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 (FAR) 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 FAR, 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.⁶

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 qualifications⁷ to those of non-residents.⁸ If a construction contract is funded by local funds, the contract may contain such a provision.⁹ In addition, a 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.¹⁰

Effect of the Bill

¹ Section 255.29, F.S.

² See chapter 60D-5.002 and 60D-5.0073, F.A.C.; see also s. 255.0525, F.S.

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

⁴ *Id.*

⁵ *Id.*

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

⁷ 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."

⁸ Section 255.099(1), F.S.

⁹ *Id.*

¹⁰ Section 255.099(1)(b), F.S.

The bill prohibits the use of certain local ordinances or regulations when construction services are procured by a state college, county, municipality, school district, or other political subdivision if 50 percent or more of the costs will be paid from state-appropriated funds. Specifically, the local ordinance or regulation may not provide a preference based upon the contractor'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.

The bill defines the term "state-appropriated funds" to mean all funds appropriated in the General Appropriations Act, excluding federal funds.

When 50 percent or more of the costs will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision must disclose in the solicitation document the amount of such funds or the percentage of such funds as compared to the anticipated total cost of the construction services.

The bill also provides that except for when 50 percent or more of the costs for construction services will be funded from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision is not prevented from awarding a contract to a contractor in accordance with applicable state laws or local ordinances or regulations.

B. SECTION DIRECTORY:

Section 1. creates s. 255.0991, F.S., defining "state-appropriated" funds; prohibiting the use of local ordinances or regulations that provide a geographical preference when awarding certain contracts for construction services.

Section 2. provides an effective date of July 1, 2015.

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 may result in more business being awarded to state certified contractors as a result of prohibiting certain local ordinances and regulations that may otherwise restrict a non-local contractor from competing.

D. FISCAL COMMENTS:

None.

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 requiring the expenditure 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2015, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute.

The strike-all amendment clarified that a local government could not use a local ordinance or regulation providing a geographical preference when awarding certain contracts for construction services. The bill prohibited the use of a local ordinance or regulation that prohibited certain vendors from competing for the contract. The strike-all amendment also:

- Narrowed the scope of the bill by making it applicable to contracts for construction services only; and
- Relocated the provisions to chapter 255, F.S., because the chapter regulates construction services for public property and publicly owned buildings.

On March 3, 2015, the Local Government Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment increases the prohibition threshold from 20 percent to 50 percent or more of the cost to be paid from funds appropriated by the state. The amendment also provides a technical amendment by changing the term “vendor” to “contractor” in the bill.

On April 8, 2015, the State Affairs Committee adopted one amendment and reported the bill favorably with committee substitute. The amendment defines the term “state-appropriated funds” to mean all funds appropriated in the General Appropriations Act, excluding federal funds.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.