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LEGISLATIVE ACTION

Senate

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House

The Committee on Community Affairs (Brandes) recommended the following:

Senate Amendment (with title amendment)

Before line 15

insert:

Section 1. Paragraphs (b) and (c) of subsection (1) of section 255.20, Florida Statutes, are amended to read:

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

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking



11 to construct or improve a public building, structure, or other
12 public construction works must competitively award to an
13 appropriately licensed contractor each project that is estimated
14 in accordance with generally accepted cost-accounting principles
15 to cost more than \$300,000. For electrical work, the local
16 government must competitively award to an appropriately licensed
17 contractor each project that is estimated in accordance with
18 generally accepted cost-accounting principles to cost more than
19 \$75,000. As used in this section, the term "competitively award"
20 means to award contracts based on the submission of sealed bids,
21 proposals submitted in response to a request for proposal,
22 proposals submitted in response to a request for qualifications,
23 or proposals submitted for competitive negotiation. This
24 subsection expressly allows contracts for construction
25 management services, design/build contracts, continuation
26 contracts based on unit prices, and any other contract
27 arrangement with a private sector contractor permitted by any
28 applicable municipal or county ordinance, by district
29 resolution, or by state law. For purposes of this section, cost
30 includes the cost of all labor, except inmate labor, and the
31 cost of equipment and materials to be used in the construction
32 of the project. Subject to the provisions of subsection (3), the
33 county, municipality, special district, or other political
34 subdivision may establish, by municipal or county ordinance or
35 special district resolution, procedures for conducting the
36 bidding process.

37 (b) For contractors who are not prequalified by the
38 Department of Transportation, the governmental entity shall
39 publish prequalification criteria and procedures prior to



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40 advertisement or notice of solicitation. In establishing
41 prequalification criteria, the governmental entity may not
42 impose more stringent qualification standards than such
43 standards required by the Department of Transportation to
44 perform the type of work described in the advertisement or
45 notice of solicitation. Such publications must include notice of
46 a public hearing for comment on such criteria and procedures
47 prior to adoption. The procedures must provide for an appeal
48 process within the authority for making objections to the
49 prequalification process with de novo review based on the record
50 below to the circuit court within 30 days.

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

52 1. If the project is undertaken to replace, reconstruct, or
53 repair an existing public building, structure, or other public
54 construction works damaged or destroyed by a sudden unexpected
55 turn of events such as an act of God, riot, fire, flood,
56 accident, or other urgent circumstances, and such damage or
57 destruction creates:

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

59 b. Other loss to public or private property which requires
60 emergency government action; or

61 c. An interruption of an essential governmental service.

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

65 3. To construction, remodeling, repair, or improvement to a
66 public electric or gas utility system if such work on the public
67 utility system is performed by personnel of the system.

68 4. To construction, remodeling, repair, or improvement by a



69 utility commission whose major contracts are to construct and
70 operate a public electric utility system.

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



98 6. If the project is undertaken exclusively as part of a
99 public educational program.

100 7. If the funding source of the project will be diminished
101 or lost because the time required to competitively award the
102 project after the funds become available exceeds the time within
103 which the funding source must be spent.

104 8. If the local government competitively awarded a project
105 to a private sector contractor and the contractor abandoned the
106 project before completion or the local government terminated the
107 contract.

108 9. If the governing board of the local government complies
109 with all of the requirements of this subparagraph, conducts a
110 public meeting under s. 286.011 after public notice, and finds
111 by majority vote of the governing board that it is in the
112 public's best interest to perform the project using its own
113 services, employees, and equipment. The public notice must be
114 published at least 21 days before the date of the public meeting
115 at which the governing board takes final action. The notice must
116 identify the project, the components and scope of the work, and
117 the estimated cost of the project using generally accepted cost-
118 accounting principles that fully account for all costs
119 associated with performing and completing the work, including
120 employee compensation and benefits, equipment cost and
121 maintenance, insurance costs, and materials. The notice must
122 specify that the purpose for the public meeting is to consider
123 whether it is in the public's best interest to perform the
124 project using the local government's own services, employees,
125 and equipment. Upon publication of the public notice and for 21
126 days thereafter, the local government shall make available for



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

152 10. If the governing board of the local government
153 determines upon consideration of specific substantive criteria
154 that it is in the best interest of the local government to award
155 the project to an appropriately licensed private sector



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156 contractor pursuant to administrative procedures established by
157 and expressly set forth in a charter, ordinance, or resolution
158 of the local government adopted before July 1, 1994. The
159 criteria and procedures must be set out in the charter,
160 ordinance, or resolution and must be applied uniformly by the
161 local government to avoid awarding a project in an arbitrary or
162 capricious manner. This exception applies only if all of the
163 following occur:

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

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

180 (I) There is one appropriately licensed contractor who is
181 uniquely qualified to undertake the project because that
182 contractor is currently under contract to perform work that is
183 affiliated with the project; or

184 (II) The time to competitively award the project will



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185 jeopardize the funding for the project, materially increase the
186 cost of the project, or create an undue hardship on the public
187 health, safety, or welfare.

188 c. The project is to be awarded by any method other than a
189 competitive selection process, and the published notice clearly
190 specifies the ordinance or resolution by which the private
191 sector contractor will be selected and the criteria to be
192 considered.

193 d. The project is to be awarded by a method other than a
194 competitive selection process, and the architect or engineer of
195 record has provided a written recommendation that the project be
196 awarded to the private sector contractor without competitive
197 selection, and the consideration by, and the justification of,
198 the government body are documented, in writing, in the project
199 file and are presented to the governing board prior to the
200 approval required in this paragraph.

201 11. To projects subject to chapter 337 ~~336~~.

202
203 ===== T I T L E A M E N D M E N T =====

204 And the title is amended as follows:

205 Delete line 2

206 and insert:

207 An act relating to public works projects; amending s.
208 255.20, F.S.; providing a limitation with respect to
209 prequalification criteria that a governmental entity
210 may require in connection with bids and contracts for
211 public construction works; revising an exception to
212 the competitive bid requirements; providing