

**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.)

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

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BILL: CS/SB 934

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Brandes

SUBJECT: Public Works Projects

DATE: March 20, 2015      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 934 creates an unnumbered section of law relating to public works projects. The bill defines the terms “political subdivision,” “project labor agreement,” and “public works” or “public works project.” The bill prohibits state and political subdivisions that contract for construction, maintenance, repair, or improvement of public works from imposing certain conditions on contractors, subcontractors, or material suppliers or carriers.

Except as required by federal or state law, the bill prohibits the state or a political subdivision from requiring a contractor, subcontractor, or material supplier or carrier to become a party to any agreement with employees, their representatives, or any labor organization, including any area-wide, regional, or state building or construction trade or crafts council, organization, association, or similar body, as a condition of bidding, negotiating, being awarded any bid or contract, or performing work on a public works project.

CS/SB 934 also prohibits the state or a political subdivision from restricting a qualified contractor, subcontractor, or material supplier or carrier from submitting bids, being awarded a bid or contract, or performing work on a public works project.

## II. Present Situation:

### The Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for design professional services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of design professionals.

Florida's Consultants' Competitive Negotiation Act (CCNA), was enacted by the Legislature in 1973<sup>1</sup> to specify the procedures to be followed when procuring professional services by an agency.<sup>2</sup>

Currently, the CCNA, codified in s. 287.055, F.S., specifies the process to be followed when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper. The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:<sup>3</sup>

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The public notice must provide a general description of the project and describe how the interested consultants may apply for consideration.

The CCNA provides a two-phase selection process.<sup>4</sup> In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the bidders, ranked in order of preference, and considers the most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the most highly qualified bidders.<sup>5</sup>

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid.<sup>6</sup> Section 287.055(2)(d), F.S., defines the term "compensation" to mean "the amount paid by the agency for professional services regardless of whether stated as compensation" or as other types of rates.

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<sup>1</sup> Chapter 73-19, L.O.F.

<sup>2</sup> Section 287.055(2)(b), F.S., defines "Agency" as "the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. 380.06, F.S., or ss. 163.3220-163.3243, F.S."

<sup>3</sup> Section 287.055(3)(a)1., F.S.

<sup>4</sup> Sections 287.055(4) and (5), F.S.

<sup>5</sup> The following is a full listing of the factors that s. 287.055(4)(b), F.S., requires agencies to consider: the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and, the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

<sup>6</sup> Section 287.055(4)(b), F.S.

In the second phase, the “competitive negotiation,” the agency then negotiates compensation with the most qualified of the three selected firms for professional services at compensation which the agency determines is “fair, competitive, and reasonable.”<sup>7</sup> If a satisfactory contract cannot be negotiated, the agency must formally terminate negotiations with that firm and must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract.<sup>8</sup> If a satisfactory contract cannot be negotiated with any of the three selected, the agency must select additional firms in order of their competence and qualifications and continue negotiations until a contract is reached.<sup>9</sup> Once negotiations with a firm are terminated, the agency cannot resume negotiations with that firm for the project.

In October 2011, the Attorney General opined that local governments could not create a hybrid procurement process for awarding projects but instead is limited to utilizing the statutorily defined procedures.<sup>10</sup>

### **Procurement of Construction Services for Public Property and Publicly Owned Buildings**

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., requires the Department of Management Services (DMS) establish, through the adoption of rules,<sup>11</sup> the following construction contract procedures:

- For determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.
- For awarding each state agency construction project to the lowest qualified bidder as well as procedures to be followed in cases in which DMS declares a valid emergency to exist which would necessitate the waiver of the rules governing the award of state construction contracts to the lowest qualified bidder.
- For governing negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the DMS secretary to be in the best interest of the state.
- For entering into performance-based contracts for the development of public facilities when DMS determines the use of such contracts to be in the best interest of the state.

These procedures must include, but are not limited to:<sup>12</sup>

- Prequalification of bidders;

<sup>7</sup> Section 287.055(5)(a), F.S.

<sup>8</sup> Section 287.055(5)(b), F.S.

<sup>9</sup> Section 287.055(5)(c), F.S.

<sup>10</sup> Op. Att’y Gen. Fla. 2011-21 (2011).

<sup>11</sup> Chapter 60D-5, F.A.C., establishes the procedures for s. 255.29, F. S., which requires procedures be followed in advertising for bids for construction contracts; in determining the eligibility of potential bidders to submit proposals for construction contracts; in awarding construction contracts; for waiver of non-material bid deviations; for rejection of bids; for disqualification of contractors; and in requesting authority to negotiate contracts and in negotiating contracts.

<sup>12</sup> Section 255.29(4)(a)-(d), F.S.

- Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
- Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
- Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.<sup>13</sup> County, municipal, or other political subdivision contracts for construction projects that are projected to cost in excess of \$200,000 must also be competitively bid.<sup>14</sup> Counties, municipalities, special districts,<sup>15</sup> 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.<sup>16</sup>

The solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 must be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening.<sup>17</sup> If the construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening, and at least once in a newspaper of general circulation in the county where the project is located 30 days prior to the bid opening.<sup>18</sup>

### **Preference for Employment of State Residents in Construction Contracts Funded By State Funds**

Florida law provides a preference for the employment of state residents in construction contracts funded by money appropriated with state funds.<sup>19</sup> 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>20</sup> to those of non-residents.<sup>21</sup> If a construction contract is funded by local funds, the contract may contain such a provision.<sup>22</sup> 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.<sup>23</sup>

<sup>13</sup> Section 255.0525(1), F.S. Also, see Rules 60D-5.002(2) and 60D-5.0073, F.A.C.

<sup>14</sup> Section 255.0525(2), F.S.

<sup>15</sup> Section 255.20(1), F.S. (Special district as defined in ch. 189, F.S.).

<sup>16</sup> *Id.* For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

<sup>17</sup> Section 255.0525(1), F.S.

<sup>18</sup> *Id.* Similar publishing provisions apply to construction projects projected to cost more than \$200,000 for counties, municipalities, and political subdivisions. *See* Section 255.0525(2), F.S.

<sup>19</sup> Section 255.099(1), F.S.

<sup>20</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>21</sup> Section 255.099(1), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 255.099(1)(b), F.S.

## Department of Transportation Construction Projects

Chapter 337, F.S., governs contracting by the Department of Transportation (DOT). Any person who wants to bid for a construction contract in excess of \$250,000 must be certified by DOT as qualified.<sup>24</sup> Certification is also required to bid on road, bridge, or public transportation construction projects of more than \$250,000.<sup>25</sup> The purpose of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders “with respect to equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification.”<sup>26</sup>

Each application for certification of qualification must be accompanied by the latest annual financial statement of the applicant completed within the last 12 months.<sup>27</sup> If the application or the annual financial statement shows the financial condition of the applicant more than 4 months prior to the date on which the application is received by DOT, then an audited interim financial statement must be submitted and accompanied by an updated application.<sup>28</sup> If the applicant meets the qualifications, DOT issues a certificate of qualification that is valid for 18 months after the date of the applicant’s financial statement, or shorter time period as DOT prescribes.<sup>29</sup> Such certificate of qualification may be revoked by DOT for a contractor who is deemed delinquent on a previously awarded contract.<sup>30</sup>

DOT does not prohibit a qualified, licensed or certified contractor from bidding; however, a contract may not be awarded if the bid is determined to be irregular or non-responsive. DOT does require training for certain work categories, such as bridge work and other technical road and bridge areas.

## Federal Labor and Wage Laws

The National Labor Relations Act of 1935<sup>31</sup> and the Labor Management Relations Act of 1947<sup>32</sup> constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

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<sup>24</sup> Section 337.14(1), F.S. and ch. 14-22, F.A.C.

<sup>25</sup> Section 337.14(2), F.S.

<sup>26</sup> Section 337.14(1), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Section 337.14(4), F.S.

<sup>30</sup> Section 337.16, F.S.

<sup>31</sup> 29 U.S.C. ss. 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

<sup>32</sup> 29 U.S.C. ss. 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

The Fair Labor Standards Act (FLSA) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.<sup>33</sup> A state may set the rate higher than the federal minimum, but not lower.<sup>34</sup> It also requires employers to pay time and a half to its employees for overtime hours worked,<sup>35</sup> and establishes standards for recordkeeping<sup>36</sup> and child labor.<sup>37</sup> Over 135 million workers are covered under the act,<sup>38</sup> most jobs are covered by the FLSA, but not all jobs are covered. In addition, some jobs are covered, but are considered “exempt” from the FLSA overtime requirements.<sup>39</sup>

On February 12, 2014, President Obama signed Executive Order 13658, which establishes a minimum wage for certain federal contractors.<sup>40</sup> The Executive Order requires parties who contract with the federal government to pay workers performing work on or in connection with covered federal contracts at least \$10.10 per hour beginning on January 1, 2015. Beginning January 1, 2016, and annually thereafter, such workers must be paid an amount determined by the Secretary of Labor in accordance with the Executive Order. The order stated that “[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs.”<sup>41</sup>

### **State Labor and Wage Regulations**

Article I, Section 6 of the State Constitution creates a constitutional right to collectively bargain for public sector employees. It provides, in pertinent part, that “[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.<sup>42</sup>

In addition, the State Constitution provides that “[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.”<sup>43</sup> The State Constitution requires that employers pay employees no less than the minimum wage for all hours

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<sup>33</sup> 29 U.S.C. s. 206.

<sup>34</sup> 29 U.S.C. s. 218(a).

<sup>35</sup> 29 U.S.C. s. 207.

<sup>36</sup> 29 U.S.C. s. 211.

<sup>37</sup> 29 U.S.C. s. 212.

<sup>38</sup> <http://www.dol.gov/whd/workers.htm> (last visited March 18, 2015).

<sup>39</sup> 29 U.S.C. s. 213; [www.dol.gov/whd/regs/compliance/whdfs14.pdf](http://www.dol.gov/whd/regs/compliance/whdfs14.pdf) (last visited March 18, 2015).

<sup>40</sup> A copy of the Executive Order can be found online at: <http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors> (last visited March 18, 2015).

<sup>41</sup> *Id.*

<sup>42</sup> See *Hillsborough Cnty. Gov'tl Emps. Ass'n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So.2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm'n*, 410 So.2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass'n v. Legislature of Fla.*, 269 So.2d 684 (Fla. 1972).

<sup>43</sup> Article X, s. 24(a), FLA. CONST. and s. 448.110, F.S.

worked in Florida.<sup>44</sup> The current state minimum wage is \$8.05 per hour,<sup>45</sup> which is higher than the federal rate.<sup>46</sup>

### **Federal Project Labor Agreements**

In 2009, President Barack Obama signed Executive Order 13502 authorizing the use of project labor agreements for federal construction projects.<sup>47</sup> The Executive Order defines the term “project labor agreement” as “a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).” The Executive Order provides that executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor where such an agreement will advance the federal government’s goal of achieving economy and efficiency in procurement, produce labor-management stability, and ensure compliance with laws and regulations concerning safety, health, equal employment opportunity, and labor and employment standards.

### **Federal Prevailing Wage Requirements**

The Davis-Bacon Act applies to contractors and subcontractors performing work on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public works projects or public buildings.<sup>48</sup> The United States Department of Labor, Wage and Hour Division, issues two types of wage determinations: general determinations (also known as area determinations) and project determinations. The wage and fringe benefits<sup>49</sup> in the applicable Davis-Bacon wage determination must be the minimum paid by contractors and subcontractors to laborers and mechanics.<sup>50</sup>

## **III. Effect of Proposed Changes:**

**Section 1** creates an unnumbered section of law relating to public works projects. The following terms are defined:

- “Political subdivision” means a separate agency or unit of local government created or established by law or ordinance and the officers thereof<sup>51</sup> and is authorized to expend public funds for construction, maintenance, repair, or improvement of public works.

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<sup>44</sup> Article X, s. 24(c), FLA. CONST.

<sup>45</sup> <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notice> (last visited March 18, 2015).

<sup>46</sup> The federal minimum wage is \$7.25 per hour. For more information about federal minimum wage provisions, see <http://www.dol.gov/whd/minimumwage.htm> (last visited March 18, 2015).

<sup>47</sup> A copy of the Executive Order can be found online at:

[http://www.whitehouse.gov/the\\_press\\_office/ExecutiveOrderUseofProjectLaborAgreementsforFederalConstructionProjects](http://www.whitehouse.gov/the_press_office/ExecutiveOrderUseofProjectLaborAgreementsforFederalConstructionProjects) (last visited March 18, 2015); the Executive Order is codified in subpart 22.5 of the Federal Acquisition Regulation.

<sup>48</sup> 40 U.S.C. s. 3142(a).

<sup>49</sup> Examples of fringe benefits include life insurance, health insurance, pension, vacation, holidays, sick leave, and other “bona fide” fringe benefits. <http://www.dol.gov/whd/programs/dbra/faqs/fringes.htm#Fringe> (last visited March 18, 2015).

<sup>50</sup> 40 U.S.C. s. 3142(b).

<sup>51</sup> The bill notes that the term “political subdivision” includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, tax district, water management district, board, public corporation, institution of higher education, or other public agency or body.

- “Project labor agreement” means an arrangement mentioned, detailed, or outlined within the project plans, the specifications, or any bidding document of a public works project that:
  - Imposes requirements, controls, or limitations on:
    - Staffing,
    - Sources of employee referrals,
    - Assignments of work,
    - Sources of insurance or benefits, including health, life, and disability insurance and retirement pensions, training programs or standards, or wages; or
  - Requires a contractor to enter into any sort of agreement as a condition of submitting a bid that directly or indirectly limits or requires the contractor to recruit, train, or hire employees from a particular source to perform work on public works or a public works project.
- “Public works” or “public works project” means a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof, including repair, renovation, or remodeling, owned, in whole or in part, by any political subdivision that is to be paid in whole or in part with state funds.

This section prohibits the state or any political subdivision from requiring a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair, or improvement of public works to:

- Pay employees a predetermined amount of wages or wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control or limit staffing;
- Recruit, train, or hire employees from a designated or single source;
- Designate any particular assignment of work for employees;
- Participate in proprietary training programs unless such training is a condition or a product warranty or guarantee; or
- Enter into any type of project labor agreement.

However, the prohibition on the imposition of certain conditions by a state or any political subdivision does not apply if the payment of prevailing or minimum wages to persons working on projects funded in whole or in part by federal funds is required by federal law. The prohibition also does not apply if it would conflict with the requirements of another federal or state law.

The bill also prohibits the state or a political subdivision that contracts for a public works project from requiring a contractor, subcontractor, or material supplier or carrier to become a party to any agreement with employees, their representatives, or any labor organization, including any area-wide, regional, or state building or construction trade or crafts council, organization, association, or similar body, as a condition of bidding, negotiating, being awarded any bid or contract, or performing work on a public works project.

Additionally, the bill provides that the state or a political subdivision that contracts for a public works project may not prohibit a contractor, subcontractor, or material supplier or carrier who is



qualified, licensed, or certified as required by state law from submitting bids, being awarded a bid or contract, negotiating a contract, or performing work on a public works project.

**Section 2** provides that this act shall take effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

#### **Right to Work**

Florida is a “right to work” state. Article I, Section 6 of the State Constitution protects Florida citizens from employers’ actions relating to their membership, or non-membership, in a labor union. This section also protects employees’ right to collectively bargain and prohibits public employees from striking. The Florida Supreme Court has stated that “[t]here is little question that Article I, section 6 was intended to, and does, benefit all employees, public or private.”<sup>52</sup> The right to collectively bargain is a fundamental right vested in all Florida employees by the State Constitution and any government action attempting to restrict the enjoyment thereof is subject to strict scrutiny and must be justified by a compelling state interest.<sup>53</sup>

The bill may impact existing agreements that local government subdivisions have with labor organizations.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

<sup>52</sup> *Hillsborough*, 522 So.2d at 362.

<sup>53</sup> *Coastal Fla. Police Benevolent Ass’n, Inc. v. Williams*, 838 So.2d 543 (Fla. 2003).

**B. Private Sector Impact:**

Indeterminate. The bill appears to conflict with Florida's law providing a preference for employment of state residents in construction projects funded by state funds,<sup>54</sup> and this could potentially result in fewer qualified Floridians being hired for these projects.

**C. Government Sector Impact:**

Significant. Fiscal impacts could be realized by DOT due to the proposed relief from certain warranty requirements imposed by suppliers since the bill would operate to prohibit DOT from requiring specific training certifications from designated or single sources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill appears to conflict with Florida's law providing a preference for employment of state residents in construction projects funded by state funds,<sup>55</sup> and this could potentially result in fewer qualified Floridians being hired for these projects.

**Impact on DOT**

DOT noted the following concerns regarding this legislation.<sup>56</sup>

- The bill imposes a wide-ranging and general prohibition against DOT placing any requirement upon a bidding contractor or supplier beyond simply being either qualified, licensed or certified in order for that contractor or supplier to submit bids, to be awarded any bid or contract, or to perform work on a public works project. Given the nature of DOT projects, simply being a qualified, licensed or certified contractor or supplier is not necessarily sufficient; e.g., a general contractor should not be qualified to bid on a bridge contract. Currently, DOT does not award contracts in response to non-compliant bidders for any number of reasons, including the failure of the bidder to meet specification requirements crucial to the safe and effective completion of transportation projects. The broad provision within the bill removes the authority of DOT to impose these requirements.
- Also, the bill is inconsistent with pre-certification requirements found in ch. 337, F.S., which require that bidders must first be certified by DOT as qualified pursuant to statute and rules of the agency. The existing mandated pre-qualification process set forth in ch. 14-22, F.A.C., imposes more stringent requirements than the bill's requirements that the contractor be qualified, licensed or certified.
- Additionally, the bill will impact DOT procurement and contract procedures with its suppliers and contractors. The potential elimination of the pre-qualification process will have

<sup>54</sup> Section 255.099, F.S.

<sup>55</sup> Section 255.099, F.S.

<sup>56</sup> See DOT legislative bill analysis dated February 12, 2015. A copy of this analysis is on file with the Governmental Oversight and Accountability Committee.

effects on the quality and durability of DOT projects. The specific bidding and certification requirements of ch. 14-22, F.A.C., could be abrogated by the bill. The bill expands the number of contractors and suppliers that will be eligible to bid on public works projects by reducing or eliminating certain pre-qualification standards. The bill appears to be less stringent in its requirements than current procurement methods, contract administration and governance used by DOT.

- The legislation may impede DOT's ability to provide a quality and safe product. Contractors or subcontractors may be authorized to work or provide a product without the proper training. Also, the contractor may prevail in a contract award bid protest whereby the bid did not meet the advertisement criteria or specifications of the project. A contractor using this bill as a result of not being awarded a contract would delay projects and jeopardize the safety, health and welfare of the traveling public.
- Further, the provision contained in subsection (4) of section 1 of the bill in which the state or a political subdivision cannot prohibit any contractor, subcontractor, or material supplier or carrier from negotiating a contract upon being awarded a public works contract concerns DOT as ch. 337, F.S., does not allow such negotiation after a contract is awarded.<sup>57</sup>

### **Impact on State Agencies and Local Government**

The bill allows “any” bidder to submit a bid and this would make it difficult for DMS or state agencies to compare bids because it prevents DMS from coordinating scopes of work in bid packages, and effectively eliminate the authority of DMS and all agencies to prequalify bidders as required under ss. 255.29(1) and 287.055, F. S. The lack of tangible qualifications may also create a significant increase in workload for agencies due to an increase in the receipt of bids from “unqualified” bidders.

### **VIII. Statutes Affected:**

This bill creates an unnumbered section of law relating to public works projects.

### **IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS by Governmental Oversight and Accountability on March 10, 2015:**

Provides that participation in proprietary training programs cannot be prohibited if such training is a condition of a product warranty or guarantee. Also, the committee substitute clarifies that the requirement for certification is “as required by state law.” Additionally, the state or political subdivision cannot prohibit any contractor, subcontractor, or material supplier or carrier from negotiating a contract upon being awarded a public works contract.

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<sup>57</sup> Meeting with DOT and Government Oversight and Accountability Committee Staff on March 11, 2015.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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