

1 A bill to be entitled
 2 An act relating to local government public
 3 construction works; amending s. 255.20, F.S.;
 4 requiring the governing board of a local government to
 5 consider estimated costs of certain projects using
 6 generally accepted cost-accounting principles that
 7 account for specified costs when making a specified
 8 determination; amending s. 336.41, F.S.; requiring
 9 estimated total construction project costs for certain
 10 projects to include specified costs; providing an
 11 effective date.

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 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Paragraph (c) of subsection (1) of section
 16 255.20, Florida Statutes, is amended to read:

17 255.20 Local bids and contracts for public construction
 18 works; specification of state-produced lumber.—

19 (1) A county, municipality, special district as defined in
 20 chapter 189, or other political subdivision of the state seeking
 21 to construct or improve a public building, structure, or other
 22 public construction works must competitively award to an
 23 appropriately licensed contractor each project that is estimated
 24 in accordance with generally accepted cost-accounting principles
 25 to cost more than \$300,000. For electrical work, the local

26 | government must competitively award to an appropriately licensed
27 | contractor each project that is estimated in accordance with
28 | generally accepted cost-accounting principles to cost more than
29 | \$75,000. As used in this section, the term "competitively award"
30 | means to award contracts based on the submission of sealed bids,
31 | proposals submitted in response to a request for proposal,
32 | proposals submitted in response to a request for qualifications,
33 | or proposals submitted for competitive negotiation. This
34 | subsection expressly allows contracts for construction
35 | management services, design/build contracts, continuation
36 | contracts based on unit prices, and any other contract
37 | arrangement with a private sector contractor permitted by any
38 | applicable municipal or county ordinance, by district
39 | resolution, or by state law. For purposes of this section, cost
40 | includes the cost of all labor, except inmate labor, and the
41 | cost of equipment and materials to be used in the construction
42 | of the project. Subject to the provisions of subsection (3), the
43 | county, municipality, special district, or other political
44 | subdivision may establish, by municipal or county ordinance or
45 | special district resolution, procedures for conducting the
46 | bidding process.

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

48 | 1. If the project is undertaken to replace, reconstruct,
49 | or repair an existing public building, structure, or other
50 | public construction works damaged or destroyed by a sudden

51 unexpected turn of events such as an act of God, riot, fire,
52 flood, accident, or other urgent circumstances, and such damage
53 or destruction creates:

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

55 b. Other loss to public or private property which requires
56 emergency government action; or

57 c. An interruption of an essential governmental service.

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

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

64 4. To construction, remodeling, repair, or improvement by
65 a utility commission whose major contracts are to construct and
66 operate a public electric utility system.

67 5. If the project is undertaken as repair or maintenance
68 of an existing public facility. For the purposes of this
69 paragraph, the term "repair" means a corrective action to
70 restore an existing public facility to a safe and functional
71 condition and the term "maintenance" means a preventive or
72 corrective action to maintain an existing public facility in an
73 operational state or to preserve the facility from failure or
74 decline. Repair or maintenance includes activities that are
75 necessarily incidental to repairing or maintaining the facility.

76 Repair or maintenance does not include the construction of any
77 new building, structure, or other public construction works or
78 any substantial addition, extension, or upgrade to an existing
79 public facility. Such additions, extensions, or upgrades shall
80 be considered substantial if the estimated cost of the
81 additions, extensions, or upgrades included as part of the
82 repair or maintenance project exceeds the threshold amount in
83 subsection (1) and exceeds 20 percent of the estimated total
84 cost of the repair or maintenance project using generally
85 accepted cost-accounting principles that fully account for all
86 costs associated with performing and completing the work,
87 including employee compensation and benefits, equipment cost and
88 maintenance, insurance costs, and materials. An addition,
89 extension, or upgrade shall not be considered substantial if it
90 is undertaken pursuant to the conditions specified in
91 subparagraph 1. Repair and maintenance projects and any related
92 additions, extensions, or upgrades may not be divided into
93 multiple projects for the purpose of evading the requirements of
94 this subparagraph.

95 6. If the project is undertaken exclusively as part of a
96 public educational program.

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

101 8. If the local government competitively awarded a project
102 to a private sector contractor and the contractor abandoned the
103 project before completion or the local government terminated the
104 contract.

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

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

151 local government, and any other factor relevant to what is in
152 the public's best interest.

153 10. If the governing board of the local government
154 determines upon consideration of specific substantive criteria
155 that it is in the best interest of the local government to award
156 the project to an appropriately licensed private sector
157 contractor pursuant to administrative procedures established by
158 and expressly set forth in a charter, ordinance, or resolution
159 of the local government adopted before July 1, 1994. The
160 criteria and procedures must be set out in the charter,
161 ordinance, or resolution and must be applied uniformly by the
162 local government to avoid awarding a project in an arbitrary or
163 capricious manner. This exception applies only if all of the
164 following occur:

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

176 and procedures permitted by the preexisting charter, ordinance,
177 or resolution.

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

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

185 (II) The time to competitively award the project will
186 jeopardize the funding for the project, materially increase the
187 cost of the project, or create an undue hardship on the public
188 health, safety, or welfare.

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

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

201 approval required in this paragraph.

202 11. To projects subject to chapter 336.

203 Section 2. Subsection (4) of section 336.41, Florida
204 Statutes, is amended to read:

205 336.41 Counties; employing labor and providing road
206 equipment; accounting; when competitive bidding required.—

207 (4) All construction and reconstruction of roads and
208 bridges, including resurfacing, full scale mineral seal coating,
209 and major bridge and bridge system repairs, to be performed
210 utilizing the proceeds of the 80-percent portion of the surplus
211 of the constitutional gas tax shall be let to contract to the
212 lowest responsible bidder by competitive bid, except for:

213 (a) Construction and maintenance in emergency situations;;
214 ~~and~~

215 (b) In addition to emergency work, construction and
216 reconstruction, including resurfacing, mineral seal coating, and
217 bridge repairs, having a total cumulative annual value not to
218 exceed 5 percent of its 80-percent portion of the constitutional
219 gas tax or \$400,000, whichever is greater;; and

220 (c) Construction of sidewalks, curbing, accessibility
221 ramps, or appurtenances incidental to roads and bridges if each
222 project is estimated in accordance with generally accepted cost-
223 accounting principles to have total construction project costs
224 of less than \$400,000 or as adjusted by the percentage change in
225 the Construction Cost Index from January 1, 2008,

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227 for which the county may utilize its own forces. Estimated total
228 construction project costs shall include all costs associated
229 with performing and completing the work, including employee
230 compensation and benefits, equipment cost and maintenance,
231 insurance costs, and materials. However, if, after proper
232 advertising, no bids are received by a county for a specific
233 project, the county may use its own forces to construct the
234 project, notwithstanding the limitation of this subsection.
235 Nothing in this section shall prevent the county from performing
236 routine maintenance as authorized by law.

237 Section 3. This act shall take effect July 1, 2019.