

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Smith, D. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (3) of section 218.80, Florida Statutes, is amended to read:

218.80 Public Bid Disclosure Act.—

(3) Bidding documents or other request for proposal issued for bids by a local governmental entity, or any public contract entered into between a local governmental entity and a contractor shall disclose each permit or fee which the contractor will have to pay before or during construction, ~~and shall include~~ the dollar amount or the percentage method or the

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14 unit method of all permits or fees which may be required by the
15 local government as a part of the contract and a listing of all
16 other governmental entities that may have additional permits or
17 fees generated by the project. If the request for proposal does
18 not require the response to include a final fixed price, the
19 local governmental entity is not required to disclose any fees
20 or assessments in the request for proposal. However, at least 10
21 days prior to requiring the contractor to submit a final fixed
22 price for the project, the local governmental entity shall make
23 the disclosures required in this section. Any of the local
24 governmental entity's permits or fees that ~~which~~ are not
25 disclosed in the bidding documents, other request for proposal,
26 or a contract between a local government and a contractor shall
27 not be assessed or collected after the contract is let. No local
28 government shall halt construction under any public contract or
29 delay completion of the contract in order to collect any permits
30 or fees which were not provided for or specified in the bidding
31 documents, other request for proposal, or the contract.

32 Section 2. Subsection (1) of section 255.20, Florida
33 Statutes, is amended to read:

34 255.20 Local bids and contracts for public construction
35 works; specification of state-produced lumber.—

36 (1) A county, municipality, special district as defined in
37 chapter 189, or other political subdivision of the state seeking
38 to construct or improve a public building, structure, or other

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39 public construction works must competitively award to an
40 appropriately licensed contractor each project that is estimated
41 ~~in accordance with generally accepted cost-accounting principles~~
42 to cost more than \$300,000. For electrical work, the local
43 government must competitively award to an appropriately licensed
44 contractor each project that is estimated ~~in accordance with~~
45 ~~generally accepted cost-accounting principles~~ to cost more than
46 \$75,000. As used in this section, the term "competitively award"
47 means to award contracts based on the submission of sealed bids,
48 proposals submitted in response to a request for proposal,
49 proposals submitted in response to a request for qualifications,
50 or proposals submitted for competitive negotiation. This
51 subsection expressly allows contracts for construction
52 management services, design/build contracts, continuation
53 contracts based on unit prices, and any other contract
54 arrangement with a private sector contractor permitted by any
55 applicable municipal or county ordinance, by district
56 resolution, or by state law. For purposes of this section, cost
57 includes employee compensation and benefits ~~the cost of all~~
58 ~~labor~~, except inmate labor, ~~and~~ the cost of equipment and
59 maintenance, insurance costs, and the cost of direct materials
60 to be used in the construction of the project, including
61 materials purchased by the local government, and other direct
62 costs, plus a factor of 20 percent for management, overhead, and
63 other indirect costs. Subject to the provisions of subsection

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64 (3), the county, municipality, special district, or other
65 political subdivision may establish, by municipal or county
66 ordinance or special district resolution, procedures for
67 conducting the bidding process.

68 (a) Notwithstanding any other law, a governmental entity
69 seeking to construct or improve bridges, roads, streets,
70 highways, or railroads, and services incidental thereto, at a
71 cost in excess of \$250,000 may require that persons interested
72 in performing work under contract first be certified or
73 qualified to perform such work. A contractor may be considered
74 ineligible to bid if the contractor is behind by 10 percent or
75 more on completing an approved progress schedule for the
76 governmental entity at the time of advertising the work. A
77 prequalified contractor considered eligible by the Department of
78 Transportation to bid to perform the type of work described
79 under the contract is presumed to be qualified to perform the
80 work described. The governmental entity may provide an appeal
81 process to overcome that presumption with de novo review based
82 on the record below to the circuit court.

83 (b) For contractors who are not prequalified by the
84 Department of Transportation, the governmental entity shall
85 publish prequalification criteria and procedures prior to
86 advertisement or notice of solicitation. Such publications must
87 include notice of a public hearing for comment on such criteria
88 and procedures prior to adoption. The procedures must provide

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89 for an appeal process within the authority for making objections
90 to the prequalification process with de novo review based on the
91 record below to the circuit court within 30 days.

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

93 1. If the project is undertaken to replace, reconstruct,
94 or repair an existing public building, structure, or other
95 public construction works damaged or destroyed by a sudden
96 unexpected turn of events such as an act of God, riot, fire,
97 flood, accident, or other urgent circumstances, and such damage
98 or destruction creates:

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

100 b. Other loss to public or private property which requires
101 emergency government action; or

102 c. An interruption of an essential governmental service.

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

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

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

112 5. If the project is undertaken as repair or maintenance
113 of an existing public facility. For the purposes of this

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114 paragraph, the term "repair" means a corrective action to
115 restore an existing public facility to a safe and functional
116 condition and the term "maintenance" means a preventive or
117 corrective action to maintain an existing public facility in an
118 operational state or to preserve the facility from failure or
119 decline. Repair or maintenance includes activities that are
120 necessarily incidental to repairing or maintaining the facility.
121 Repair or maintenance does not include the construction of any
122 new building, structure, or other public construction works or
123 any substantial addition, extension, or upgrade to an existing
124 public facility. Such additions, extensions, or upgrades shall
125 be considered substantial if the estimated cost of the
126 additions, extensions, or upgrades included as part of the
127 repair or maintenance project exceeds the threshold amount in
128 subsection (1) and exceeds 20 percent of the estimated total
129 cost of the repair or maintenance project ~~using generally~~
130 ~~accepted cost-accounting principles that~~ fully accounting
131 ~~account~~ for all costs associated with performing and completing
132 the work, including employee compensation and benefits,
133 equipment cost and maintenance, insurance costs, and the cost of
134 direct materials to be used in the construction of the project,
135 including materials purchased by the local government, and other
136 direct costs, plus a factor of 20 percent for management,
137 overhead, and other indirect costs. An addition, extension, or
138 upgrade shall not be considered substantial if it is undertaken

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139 pursuant to the conditions specified in subparagraph 1. Repair
140 and maintenance projects and any related additions, extensions,
141 or upgrades may not be divided into multiple projects for the
142 purpose of evading the requirements of this subparagraph.

143 6. If the project is undertaken exclusively as part of a
144 public educational program.

145 7. If the funding source of the project will be diminished
146 or lost because the time required to competitively award the
147 project after the funds become available exceeds the time within
148 which the funding source must be spent.

149 8. If the local government competitively awarded a project
150 to a private sector contractor and the contractor abandoned the
151 project before completion or the local government terminated the
152 contract.

153 9. If the governing board of the local government complies
154 with all of the requirements of this subparagraph, conducts a
155 public meeting under s. 286.011 after public notice, and finds
156 by majority vote of the governing board that it is in the
157 public's best interest to perform the project using its own
158 services, employees, and equipment. The public notice must be
159 published at least 21 days before the date of the public meeting
160 at which the governing board takes final action. The notice must
161 identify the project, the components and scope of the work, and
162 the estimated cost of the project ~~using generally accepted cost-~~
163 ~~accounting principles that~~ fully accounting account for all

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164 costs associated with performing and completing the work,
165 including employee compensation and benefits, equipment cost and
166 maintenance, insurance costs, and the cost of direct materials
167 to be used in the construction of the project, including
168 materials purchased by the local government, and other direct
169 costs, plus a factor of 20 percent for management, overhead, and
170 other indirect costs. The notice must specify that the purpose
171 for the public meeting is to consider whether it is in the
172 public's best interest to perform the project using the local
173 government's own services, employees, and equipment. Upon
174 publication of the public notice and for 21 days thereafter, the
175 local government shall make available for public inspection,
176 during normal business hours and at a location specified in the
177 public notice, a detailed itemization of each component of the
178 estimated cost of the project and documentation explaining the
179 methodology used to arrive at the estimated cost. At the public
180 meeting, any qualified contractor or vendor who could have been
181 awarded the project had the project been competitively bid shall
182 be provided with a reasonable opportunity to present evidence to
183 the governing board regarding the project and the accuracy of
184 the local government's estimated cost of the project. In
185 deciding whether it is in the public's best interest for the
186 local government to perform a project using its own services,
187 employees, and equipment, the governing board must consider the
188 estimated cost of the project fully accounting for all costs

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189 associated with performing and completing the work, including
190 employee compensation and benefits, equipment cost and
191 maintenance, insurance costs, and the cost of direct materials
192 to be used in the construction of the project, including
193 materials purchased by the local government, and other direct
194 costs, plus a factor of 20 percent for management, overhead, and
195 other indirect costs, and the accuracy of the estimated cost in
196 light of any other information that may be presented at the
197 public meeting and whether the project requires an increase in
198 the number of government employees or an increase in capital
199 expenditures for public facilities, equipment, or other capital
200 assets. The local government may further consider the impact on
201 local economic development, the impact on small and minority
202 business owners, the impact on state and local tax revenues,
203 whether the private sector contractors provide health insurance
204 and other benefits equivalent to those provided by the local
205 government, and any other factor relevant to what is in the
206 public's best interest. A report summarizing completed projects
207 constructed by the local government pursuant to this subsection
208 shall be publicly reviewed each year by the governing body of
209 the local government. The report shall detail the estimated
210 costs and the actual costs of the projects constructed by the
211 local government pursuant to this subsection. The report shall
212 be made available for review by the public. The Auditor General

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213 shall review the report as part of his or her audits of local
214 governments.

215 10. If the governing board of the local government
216 determines upon consideration of specific substantive criteria
217 that it is in the best interest of the local government to award
218 the project to an appropriately licensed private sector
219 contractor pursuant to administrative procedures established by
220 and expressly set forth in a charter, ordinance, or resolution
221 of the local government adopted before July 1, 1994. The
222 criteria and procedures must be set out in the charter,
223 ordinance, or resolution and must be applied uniformly by the
224 local government to avoid awarding a project in an arbitrary or
225 capricious manner. This exception applies only if all of the
226 following occur:

227 a. The governing board of the local government, after
228 public notice, conducts a public meeting under s. 286.011 and
229 finds by a two-thirds vote of the governing board that it is in
230 the public's best interest to award the project according to the
231 criteria and procedures established by charter, ordinance, or
232 resolution. The public notice must be published at least 14 days
233 before the date of the public meeting at which the governing
234 board takes final action. The notice must identify the project,
235 the estimated cost of the project, and specify that the purpose
236 for the public meeting is to consider whether it is in the
237 public's best interest to award the project using the criteria

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238 and procedures permitted by the preexisting charter, ordinance,
239 or resolution.

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

243 (I) There is one appropriately licensed contractor who is
244 uniquely qualified to undertake the project because that
245 contractor is currently under contract to perform work that is
246 affiliated with the project; or

247 (II) The time to competitively award the project will
248 jeopardize the funding for the project, materially increase the
249 cost of the project, or create an undue hardship on the public
250 health, safety, or welfare.

251 c. The project is to be awarded by any method other than a
252 competitive selection process, and the published notice clearly
253 specifies the ordinance or resolution by which the private
254 sector contractor will be selected and the criteria to be
255 considered.

256 d. The project is to be awarded by a method other than a
257 competitive selection process, and the architect or engineer of
258 record has provided a written recommendation that the project be
259 awarded to the private sector contractor without competitive
260 selection, and the consideration by, and the justification of,
261 the government body are documented, in writing, in the project

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262 file and are presented to the governing board prior to the
263 approval required in this paragraph.

264 11. To projects subject to chapter 336.

265 (d) If the project:

266 1. Is to be awarded based on price, the contract must be
267 awarded to the lowest qualified and responsive bidder in
268 accordance with the applicable county or municipal ordinance or
269 district resolution and in accordance with the applicable
270 contract documents. The county, municipality, or special
271 district may reserve the right to reject all bids and to rebid
272 the project, or elect not to proceed with the project. This
273 subsection is not intended to restrict the rights of any local
274 government to reject the low bid of a nonqualified or
275 nonresponsive bidder and to award the contract to any other
276 qualified and responsive bidder in accordance with the standards
277 and procedures of any applicable county or municipal ordinance
278 or any resolution of a special district.

279 2. Uses a request for proposal or a request for
280 qualifications, the request must be publicly advertised and the
281 contract must be awarded in accordance with the applicable local
282 ordinances.

283 3. Is subject to competitive negotiations, the contract
284 must be awarded in accordance with s. 287.055.

285 (e) If a construction project greater than \$300,000, or
286 \$75,000 for electrical work, is started after October 1, 1999,

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287 is to be performed by a local government using its own employees
288 in a county or municipality that issues registered contractor
289 licenses, and the project would require a contractor licensed
290 under chapter 489 if performed by a private sector contractor,
291 the local government must use a person appropriately registered
292 or certified under chapter 489 to supervise the work.

293 (f) If a construction project greater than \$300,000, or
294 \$75,000 for electrical work, is started after October 1, 1999,
295 is to be performed by a local government using its own employees
296 in a county that does not issue registered contractor licenses,
297 and the project would require a contractor licensed under
298 chapter 489 if performed by a private sector contractor, the
299 local government must use a person appropriately registered or
300 certified under chapter 489 or a person appropriately licensed
301 under chapter 471 to supervise the work.

302 (g) Projects performed by a local government using its own
303 services and employees must be inspected in the same manner
304 required for work performed by private sector contractors.

305 (h) A construction project provided for in this subsection
306 may not be divided into more than one project for the purpose of
307 evading this subsection.

308 (i) This subsection does not preempt the requirements of
309 any small-business or disadvantaged-business enterprise program
310 or any local-preference ordinance.

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311 (j) A county, municipality, special district as defined in
312 s. 189.012, or any other political subdivision of the state that
313 owns or operates a public-use airport as defined in s. 332.004
314 is exempt from this section when performing repairs or
315 maintenance on the airport's buildings, structures, or public
316 construction works using the local government's own services,
317 employees, and equipment.

318 (k) A local government that owns or operates a port
319 identified in s. 403.021(9)(b) is exempt from this section when
320 performing repairs or maintenance on the port's buildings,
321 structures, or public construction works using the local
322 government's own services, employees, and equipment.

323 (l) A local government that owns or operates a public
324 transit system as defined in s. 343.52, a public transportation
325 system as defined in s. 343.62, or a mass transit system
326 described in s. 349.04(1)(b) is exempt from this section when
327 performing repairs or maintenance on the buildings, structures,
328 or public construction works of the public transit system,
329 public transportation system, or mass transit system using the
330 local government's own services, employees, and equipment.

331 (m) Any contractor may be considered ineligible to bid by
332 the governmental entity if the contractor has been found guilty
333 by a court of any violation of federal labor or employment tax
334 laws regarding subjects such as safety, tax withholding,
335 workers' compensation, reemployment assistance or unemployment

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336 tax, social security and Medicare tax, wage or hour, or
337 prevailing rate laws within the past 5 years.

338 Section 3. Subsection (4) of section 336.41, Florida
339 Statutes, is amended to read:

340 336.41 Counties; employing labor and providing road
341 equipment; accounting; when competitive bidding required.-

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

348 (a) Construction and maintenance in emergency situations,
349 and

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

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

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 362 for which the county may utilize its own forces. Estimated total
 363 construction project costs must include all costs associated
 364 with performing and completing the work, including employee
 365 compensation and benefits, equipment cost and maintenance,
 366 insurance costs, and the cost of direct materials to be used in
 367 the construction of the project, including materials purchased
 368 by the local government, and other direct costs, plus a factor
 369 of 20 percent for management, overhead, and other indirect
 370 costs. However, if, after proper advertising, no bids are
 371 received by a county for a specific project, the county may use
 372 its own forces to construct the project, notwithstanding the
 373 limitation of this subsection. Nothing in this section shall
 374 prevent the county from performing routine maintenance as
 375 authorized by law.

376 Section 4. This act shall take effect July 1, 2020.

377
 378 -----
 379 **T I T L E A M E N D M E N T**

380 Remove everything before the enacting clause and insert:

381 A bill to be entitled

382 An act relating to local government public
 383 construction works; amending s. 218.80, F.S.; revising
 384 disclosure requirements for bidding documents and
 385 other requests for proposals issued for bids by a

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386 local governmental entity and public contracts entered
387 into between local governmental entities and
388 contractors; amending s. 255.20, F.S.; revising the
389 term cost to include specified information; requiring
390 the governing board of a local government to consider
391 estimated costs of certain projects that account for
392 specified costs when the board is making a specified
393 determination; requiring that a local government that
394 performs projects using its own services, employees,
395 and equipment provide a report to the local governing
396 board with certain information; requiring that the
397 Auditor General review the report as part of his or
398 her audits of local governments; amending s. 336.41,
399 F.S.; requiring estimated total construction project
400 costs for certain projects to include specified costs;
401 providing an effective date.

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