

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: State Affairs Committee
 2 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, are 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
 unit method of all permits or fees which may be required by the
 local government as a part of the contract and a listing of all

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

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

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

37 (1) A county, municipality, special district as defined in
38 chapter 189, or other political subdivision of the state seeking
39 to construct or improve a public building, structure, or other
40 public construction works must competitively award to an
41 appropriately licensed contractor each project that is estimated

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42 ~~in accordance with generally accepted cost-accounting principles~~
43 to cost more than \$300,000. For electrical work, the local
44 government must competitively award to an appropriately licensed
45 contractor each project that is estimated ~~in accordance with~~
46 ~~generally accepted cost-accounting principles~~ to cost more than
47 \$75,000. As used in this section, the term "competitively award"
48 means to award contracts based on the submission of sealed bids,
49 proposals submitted in response to a request for proposal,
50 proposals submitted in response to a request for qualifications,
51 or proposals submitted for competitive negotiation. This
52 subsection expressly allows contracts for construction
53 management services, design/build contracts, continuation
54 contracts based on unit prices, and any other contract
55 arrangement with a private sector contractor permitted by any
56 applicable municipal or county ordinance, by district
57 resolution, or by state law. For purposes of this section, cost
58 includes employee compensation and benefits ~~the cost of all~~
59 ~~labor~~, except inmate labor, ~~and the cost of equipment and the~~
60 cost of direct materials to be used in the construction of the
61 project including materials purchased by the local government,
62 and other direct costs, plus a factor of 20 percent for
63 management, overhead, and other indirect costs. Subject to the
64 provisions of subsection (3), the county, municipality, special
65 district, or other political subdivision may establish, by

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66 municipal or county ordinance or special district resolution,
67 procedures for 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
89 for an appeal process within the authority for making objections

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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
114 paragraph, the term "repair" means a corrective action to

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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, the cost
133 of direct materials to be used in the construction of the
134 project including materials purchased by the local government,
135 and other direct costs, plus a factor of 20 percent for
136 management, overhead, and other indirect costs ~~equipment cost~~
137 ~~and maintenance, insurance costs, and materials.~~ An addition,
138 extension, or upgrade shall not be considered substantial if it
139 is undertaken pursuant to the conditions specified in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

265 11. To projects subject to chapter 336.

266 (d) If the project:

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

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

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

286 (e) If a construction project greater than \$300,000, or
287 \$75,000 for electrical work, is started after October 1, 1999,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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363 for which the county may utilize its own forces. Estimated total
364 construction project costs must include all costs associated
365 with performing and completing the work, including employee
366 compensation and benefits, the cost of direct materials to be
367 used in the construction of the project including materials
368 purchased by the local government, and other direct costs, plus
369 a factor of 20 percent for management, overhead, and other
370 indirect costs. However, if, after proper advertising, no bids
371 are received by a county for a specific project, the county may
372 use 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 An act relating to local government public construction
382 works; amending s. 218.80, F.S.; revising disclosure
383 requirements for bidding documents and other requests for
384 proposals issued for bids by a local governmental entity and
385 public contracts entered into between local governmental
386 entities and contractors; amending s. 255.20, F.S.; revising the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 279 (2020)

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

398