

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 279 Local Government Public Construction Works

SPONSOR(S): State Affairs Committee; Oversight, Transparency & Public Management Subcommittee; Smith, D. and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	11 Y, 3 N, As CS	Toliver	Smith
2) Business & Professions Subcommittee	8 Y, 2 N	Thompson	Anstead
3) State Affairs Committee	21 Y, 0 N, As CS	Toliver	Williamson

SUMMARY ANALYSIS

Counties, municipalities, special districts, and other political subdivisions seeking to construct or improve a public building or structure must competitively bid the project if the projected cost is in excess of \$300,000. For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000. An exemption from the requirement to competitively award these projects exists when the governing board of a local government determines that it is in the public's best interest to use the local government's own services, employees, and equipment.

Current law also requires counties to competitively bid and award to the lowest bidder all projects for construction and reconstruction of roads and bridges that utilize the proceeds of the 80-percent portion of the surplus of the constitutional gas tax. An exception to this requirement allows a county to use its own forces for these construction and reconstruction projects if the estimated cost of a project is less than specified thresholds depending upon the type of project.

The bill specifies the manner in which the estimated cost of a public building construction project must be determined when a governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. Specifically, the bill requires the estimated project cost to fully account for all costs associated with performing and completing the work, including employee compensation and benefits; the cost of direct materials to be used in the construction of the project including materials to be purchased by the local government; and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs. The bill also requires local governments to consider the same costs when determining the estimated cost of road and bridge construction and reconstruction projects performed utilizing proceeds from the constitutional gas tax.

The bill requires local governments issuing bidding documents or other requests for proposals to include a listing of all other governmental entities that may have additional permits or fees generated by the project.

The bill requires a local government performing a public building construction project using its own services, employees, and equipment to create a report summarizing completed projects constructed by the local government, which must be publicly reviewed each year by the governing body. The Auditor General must review the report as part of his or her audits of local governments.

The bill does not appear to have a fiscal impact on state government, but it may have an indeterminate positive fiscal impact on local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed for the procurement of construction services for public property and publicly owned buildings. The Department of Management Services is responsible for establishing the following by rule:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.¹

Counties, municipalities, special districts, and other political subdivisions seeking to construct or improve a public building, structure, or other public construction works must competitively award the project if the projected cost is in excess of \$300,000.² For electrical work, local governments must competitively award³ projects estimated to cost more than \$75,000.⁴ These threshold amounts are adjusted by the percentage change in the Engineering News-Record's Building Cost Index⁵ from January 1, 2009, to January 1 of the year in which the project is scheduled to begin.⁶

Exemption from Competitive Solicitation for Local Governments Performing Work

If the governing board of a local government seeking to construct or improve a public building or structure conducts a public meeting and finds by majority vote that it is in the public's best interest to perform the project using its own services, employees, and equipment, then the local government is exempt from the requirement to competitively award the contract for the project.⁷ The meeting of the governing board must have been publicly noticed at least 21 days before the date of the public meeting at which the governing board takes final action.⁸ The notice must identify the project, the components and scope of the project, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the project, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials.⁹ The notice must state that the purpose of the meeting is to consider whether it is in the best interest of the public to perform the project using the local government's own services, employees, and equipment.¹⁰

¹ Section 255.29, F.S.

² Section 255.20(1), F.S.

³ The term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. *Id.*

⁴ *Id.*

⁵ The Engineering News-Record is a weekly private-sector publication that publishes, monthly, a Building Cost index (BCI). *Construction Economics*, ENGINEERING NEWS-RECORD, <https://www.enr.com/economics> (last visited Feb. 12, 2020).

The BCI serves to inform those in the engineering profession and construction industry about general construction costs across the United States. *Id.* The BCI has a material component that incorporates the actual cost of construction materials and a labor component incorporating the actual cost of labor. *Using ENR Indexes*, ENGINEERING NEWS-RECORD, <https://www.enr.com/economics/faq> (last visited Feb. 12, 2020).

⁶ Section 255.20(2), F.S.

⁷ Section 255.20(1)(c)9., F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

At the public meeting, the governing board must allow any qualified contractor or vendor who could have been awarded the project had the project been competitively bid to present evidence regarding the project and the accuracy of the local government's estimated cost of the project.¹¹ In making a determination, the governing board must consider the estimated cost of the project and the accuracy of the estimated cost in light of any other information presented at the public meeting. In addition, the board must consider whether the project requires an increase in the number of government employees or an increase in capital expenditures for public facilities, equipment, or other capital assets.¹² The governing body may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.¹³

Construction and Maintenance of Roads and Bridges

Current law authorizes counties to employ labor and provide road equipment to construct and open new roads or bridges and to repair and maintain any existing roads and bridges under certain circumstances.¹⁴ However, counties must competitively bid and award to the lowest bidder all projects for construction and reconstruction of roads and bridges, including resurfacing, that utilize the proceeds of the 80-percent portion of the surplus of the constitutional gas tax.¹⁵ An exception to this requirement allows a county to use its own forces for these construction and reconstruction projects under the following circumstances:

- In emergencies;
- When a construction or reconstruction project has a total cumulative annual value not to exceed 5 percent of its 80-percent portion of the constitutional gas tax or \$400,000, whichever is greater; or
- When constructing sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of less than \$400,000.¹⁶

In addition, if, after proper advertising, the county receives no bids for a specific project, the county may use its own forces to construct the project.¹⁷ A county is not prohibited from performing routine maintenance as authorized by law.¹⁸

Effect of the Bill

The bill specifies the manner in which the estimated cost of a public building construction project must be determined when a governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. Specifically, the bill requires the estimated cost of the project to fully account for all costs associated with performing and completing the work, including employee compensation and benefits; the cost of direct materials to be used in the construction of the project including materials to be purchased by the local government; and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs. The bill also requires local governments to consider the same costs when determining the estimated cost of road and bridge construction and reconstruction projects performed utilizing proceeds from the constitutional gas tax.

The bill requires local governments issuing bidding documents or other requests for proposals to include a listing of all other governmental entities that may have additional permits or fees generated by the project.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Section 336.41, F.S.

¹⁵ Section 336.41(4), F.S.; *see also* Art. XII, s. 9(c)(4), FLA. CONST.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

The bill requires a local government performing a public building construction project using its own services, employees, and equipment to create a report summarizing completed projects constructed by the local government. The report must detailed the estimated costs and the actual costs of the projects constructed by the local government and must be publicly reviewed each year by the governing body of the local government. In addition, the report must be made available for review by the public. Finally, the Auditor General must review the report as part of his or her audits of local governments.

B. SECTION DIRECTORY:

Section 1 amends s. 218.80, F.S., relating to the Public Bid Disclosure Act.

Section 2 amends s. 255.20, F.S., relating to local bids and contracts for public construction works.

Section 3 amends s. 336.41, F.S., relating to counties; employing labor and providing road equipment; accounting; when competitive bidding required.

Section 4 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may have an indeterminate positive fiscal impact on local governments if the estimated cost for a local government to complete a construction project causes governing boards to select private contractors that can perform the projects at a lower cost. Any increase in projects awarded to private contractors would result in a positive fiscal impact on the private sector.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2020, the Oversight, Transparency & Public Management Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment raised the threshold above which a political subdivision seeking to construct or improve a public building or structure must competitively bid the project from \$300,000 to \$400,000, and raised the same threshold for electrical work from \$75,000 to \$100,000.

On February 27, 2020, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed all references to “generally accepted cost-accounting principles;”
- Required local governments that issue bidding documents or other requests for proposals to include a listing of all other governmental entities that may have additional permits or fees generated by the project;
- Removed provisions that would have increased the projected-cost threshold above which a local government must competitively award a project;
- Revised the term “cost” to include specified information and required local governments to consider certain estimated costs before deciding to use their own services; and
- Required local governments that use their own services to issue a report, reviewed publicly, summarizing the cost of the completed projects.

The analysis is drafted to the committee substitute as approved by the State Affairs Committee.