

1 A bill to be entitled
 2 An act relating to local government public
 3 construction works; amending s. 255.20, F.S.; revising
 4 the amount at which specified entities must
 5 competitively award certain projects; requiring the
 6 governing board of a local government to consider
 7 estimated costs of certain projects using generally
 8 accepted cost-accounting principles that account for
 9 specified costs when making a specified determination;
 10 requiring a local government that performs a project
 11 using its own services, employees, and equipment to
 12 disclose the actual costs of the project after
 13 completion to the Auditor General; requiring the
 14 Auditor General to review such disclosures as part of
 15 his or her routine audits of local governments;
 16 amending s. 336.41, F.S.; requiring estimated total
 17 construction project costs for certain projects to
 18 include specified costs; providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

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 22 Section 1. Subsection (1) of section 255.20, Florida
 23 Statutes, is amended to read:

24 255.20 Local bids and contracts for public construction
 25 works; specification of state-produced lumber.—

26 (1) A county, municipality, special district as defined in
27 chapter 189, or other political subdivision of the state seeking
28 to construct or improve a public building, structure, or other
29 public construction works must competitively award to an
30 appropriately licensed contractor each project that is estimated
31 in accordance with generally accepted cost-accounting principles
32 to cost more than \$400,000 ~~\$300,000~~. For electrical work, the
33 local government must competitively award to an appropriately
34 licensed contractor each project that is estimated in accordance
35 with generally accepted cost-accounting principles to cost more
36 than \$100,000 ~~\$75,000~~. As used in this section, the term
37 "competitively award" means to award contracts based on the
38 submission of sealed bids, proposals submitted in response to a
39 request for proposal, proposals submitted in response to a
40 request for qualifications, or proposals submitted for
41 competitive negotiation. This subsection expressly allows
42 contracts for construction management services, design/build
43 contracts, continuation contracts based on unit prices, and any
44 other contract arrangement with a private sector contractor
45 permitted by any applicable municipal or county ordinance, by
46 district resolution, or by state law. For purposes of this
47 section, cost includes the cost of all labor, except inmate
48 labor, and the cost of equipment and materials to be used in the
49 construction of the project. Subject to the provisions of
50 subsection (3), the county, municipality, special district, or

51 other political subdivision may establish, by municipal or
52 county ordinance or special district resolution, procedures for
53 conducting the bidding process.

54 (a) Notwithstanding any other law, a governmental entity
55 seeking to construct or improve bridges, roads, streets,
56 highways, or railroads, and services incidental thereto, at a
57 cost in excess of \$250,000 may require that persons interested
58 in performing work under contract first be certified or
59 qualified to perform such work. A contractor may be considered
60 ineligible to bid if the contractor is behind by 10 percent or
61 more on completing an approved progress schedule for the
62 governmental entity at the time of advertising the work. A
63 prequalified contractor considered eligible by the Department of
64 Transportation to bid to perform the type of work described
65 under the contract is presumed to be qualified to perform the
66 work described. The governmental entity may provide an appeal
67 process to overcome that presumption with de novo review based
68 on the record below to the circuit court.

69 (b) For contractors who are not prequalified by the
70 Department of Transportation, the governmental entity shall
71 publish prequalification criteria and procedures prior to
72 advertisement or notice of solicitation. Such publications must
73 include notice of a public hearing for comment on such criteria
74 and procedures prior to adoption. The procedures must provide
75 for an appeal process within the authority for making objections

76 | to the prequalification process with de novo review based on the
 77 | record below to the circuit court within 30 days.

78 | (c) ~~The provisions of~~ This subsection does ~~de~~ not apply:

79 | 1. If the project is undertaken to replace, reconstruct,
 80 | or repair an existing public building, structure, or other
 81 | public construction works damaged or destroyed by a sudden
 82 | unexpected turn of events such as an act of God, riot, fire,
 83 | flood, accident, or other urgent circumstances, and such damage
 84 | or destruction creates:

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

86 | b. Other loss to public or private property which requires
 87 | emergency government action; or

88 | c. An interruption of an essential governmental service.

89 | 2. If, after notice by publication in accordance with the
 90 | applicable ordinance or resolution, the governmental entity does
 91 | not receive any responsive bids or proposals.

92 | 3. To construction, remodeling, repair, or improvement to
 93 | a public electric or gas utility system if such work on the
 94 | public utility system is performed by personnel of the system.

95 | 4. To construction, remodeling, repair, or improvement by
 96 | a utility commission whose major contracts are to construct and
 97 | operate a public electric utility system.

98 | 5. If the project is undertaken as repair or maintenance
 99 | of an existing public facility. For the purposes of this
 100 | paragraph, the term "repair" means a corrective action to

101 restore an existing public facility to a safe and functional
102 condition and the term "maintenance" means a preventive or
103 corrective action to maintain an existing public facility in an
104 operational state or to preserve the facility from failure or
105 decline. Repair or maintenance includes activities that are
106 necessarily incidental to repairing or maintaining the facility.
107 Repair or maintenance does not include the construction of any
108 new building, structure, or other public construction works or
109 any substantial addition, extension, or upgrade to an existing
110 public facility. Such additions, extensions, or upgrades shall
111 be considered substantial if the estimated cost of the
112 additions, extensions, or upgrades included as part of the
113 repair or maintenance project exceeds the threshold amount in
114 subsection (1) and exceeds 20 percent of the estimated total
115 cost of the repair or maintenance project using generally
116 accepted cost-accounting principles that fully account for all
117 costs associated with performing and completing the work,
118 including employee compensation and benefits, equipment cost and
119 maintenance, insurance costs, and materials. An addition,
120 extension, or upgrade shall not be considered substantial if it
121 is undertaken pursuant to the conditions specified in
122 subparagraph 1. Repair and maintenance projects and any related
123 additions, extensions, or upgrades may not be divided into
124 multiple projects for the purpose of evading the requirements of
125 this subparagraph.

126 6. If the project is undertaken exclusively as part of a
127 public educational program.

128 7. If the funding source of the project will be diminished
129 or lost because the time required to competitively award the
130 project after the funds become available exceeds the time within
131 which the funding source must be spent.

132 8. If the local government competitively awarded a project
133 to a private sector contractor and the contractor abandoned the
134 project before completion or the local government terminated the
135 contract.

136 9. If the governing board of the local government complies
137 with all of the requirements of this subparagraph, conducts a
138 public meeting under s. 286.011 after public notice, and finds
139 by majority vote of the governing board that it is in the
140 public's best interest to perform the project using its own
141 services, employees, and equipment. The public notice must be
142 published at least 21 days before the date of the public meeting
143 at which the governing board takes final action. The notice must
144 identify the project, the components and scope of the work, and
145 the estimated cost of the project using generally accepted cost-
146 accounting principles that fully account for all costs
147 associated with performing and completing the work, including
148 employee compensation and benefits, equipment cost and
149 maintenance, insurance costs, and materials. The notice must
150 specify that the purpose for the public meeting is to consider

151 whether it is in the public's best interest to perform the
152 project using the local government's own services, employees,
153 and equipment. Upon publication of the public notice and for 21
154 days thereafter, the local government shall make available for
155 public inspection, during normal business hours and at a
156 location specified in the public notice, a detailed itemization
157 of each component of the estimated cost of the project and
158 documentation explaining the methodology used to arrive at the
159 estimated cost. At the public meeting, any qualified contractor
160 or vendor who could have been awarded the project had the
161 project been competitively bid shall be provided with a
162 reasonable opportunity to present evidence to the governing
163 board regarding the project and the accuracy of the local
164 government's estimated cost of the project. In deciding whether
165 it is in the public's best interest for the local government to
166 perform a project using its own services, employees, and
167 equipment, the governing board must consider the estimated cost
168 of the project using generally accepted cost-accounting
169 principles that fully account for all costs associated with
170 performing and completing the work, including employee
171 compensation and benefits, equipment costs and maintenance,
172 insurance costs, and the cost of materials, and the accuracy of
173 the estimated cost in light of any other information that may be
174 presented at the public meeting and whether the project requires
175 an increase in the number of government employees or an increase

176 in capital expenditures for public facilities, equipment, or
177 other capital assets. The local government may further consider
178 the impact on local economic development, the impact on small
179 and minority business owners, the impact on state and local tax
180 revenues, whether the private sector contractors provide health
181 insurance and other benefits equivalent to those provided by the
182 local government, and any other factor relevant to what is in
183 the public's best interest. A local government that performs a
184 project using its own services, employees, and equipment must
185 disclose the actual costs of the project after completion to the
186 Auditor General. The Auditor General shall review such
187 disclosures as part of his or her routine audits of local
188 governments.

189 10. If the governing board of the local government
190 determines upon consideration of specific substantive criteria
191 that it is in the best interest of the local government to award
192 the project to an appropriately licensed private sector
193 contractor pursuant to administrative procedures established by
194 and expressly set forth in a charter, ordinance, or resolution
195 of the local government adopted before July 1, 1994. The
196 criteria and procedures must be set out in the charter,
197 ordinance, or resolution and must be applied uniformly by the
198 local government to avoid awarding a project in an arbitrary or
199 capricious manner. This exception applies only if all of the
200 following occur:

201 a. The governing board of the local government, after
202 public notice, conducts a public meeting under s. 286.011 and
203 finds by a two-thirds vote of the governing board that it is in
204 the public's best interest to award the project according to the
205 criteria and procedures established by charter, ordinance, or
206 resolution. The public notice must be published at least 14 days
207 before the date of the public meeting at which the governing
208 board takes final action. The notice must identify the project,
209 the estimated cost of the project, and specify that the purpose
210 for the public meeting is to consider whether it is in the
211 public's best interest to award the project using the criteria
212 and procedures permitted by the preexisting charter, ordinance,
213 or resolution.

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

217 (I) There is one appropriately licensed contractor who is
218 uniquely qualified to undertake the project because that
219 contractor is currently under contract to perform work that is
220 affiliated with the project; or

221 (II) The time to competitively award the project will
222 jeopardize the funding for the project, materially increase the
223 cost of the project, or create an undue hardship on the public
224 health, safety, or welfare.

225 c. The project is to be awarded by any method other than a

226 competitive selection process, and the published notice clearly
227 specifies the ordinance or resolution by which the private
228 sector contractor will be selected and the criteria to be
229 considered.

230 d. The project is to be awarded by a method other than a
231 competitive selection process, and the architect or engineer of
232 record has provided a written recommendation that the project be
233 awarded to the private sector contractor without competitive
234 selection, and the consideration by, and the justification of,
235 the government body are documented, in writing, in the project
236 file and are presented to the governing board prior to the
237 approval required in this paragraph.

238 11. To projects subject to chapter 336.

239 (d) If the project:

240 1. Is to be awarded based on price, the contract must be
241 awarded to the lowest qualified and responsive bidder in
242 accordance with the applicable county or municipal ordinance or
243 district resolution and in accordance with the applicable
244 contract documents. The county, municipality, or special
245 district may reserve the right to reject all bids and to rebid
246 the project, or elect not to proceed with the project. This
247 subsection is not intended to restrict the rights of any local
248 government to reject the low bid of a nonqualified or
249 nonresponsive bidder and to award the contract to any other
250 qualified and responsive bidder in accordance with the standards

251 and procedures of any applicable county or municipal ordinance
252 or any resolution of a special district.

253 2. Uses a request for proposal or a request for
254 qualifications, the request must be publicly advertised and the
255 contract must be awarded in accordance with the applicable local
256 ordinances.

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

259 (e) If a construction project greater than \$300,000, or
260 \$75,000 for electrical work, is started after October 1, 1999,
261 is to be performed by a local government using its own employees
262 in a county or municipality that issues registered contractor
263 licenses, and the project would require a contractor licensed
264 under chapter 489 if performed by a private sector contractor,
265 the local government must use a person appropriately registered
266 or certified under chapter 489 to supervise the work.

267 (f) If a construction project greater than \$300,000, or
268 \$75,000 for electrical work, is started after October 1, 1999,
269 is to be performed by a local government using its own employees
270 in a county that does not issue registered contractor licenses,
271 and the project would require a contractor licensed under
272 chapter 489 if performed by a private sector contractor, the
273 local government must use a person appropriately registered or
274 certified under chapter 489 or a person appropriately licensed
275 under chapter 471 to supervise the work.

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

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

282 (i) This subsection does not preempt the requirements of
283 any small-business or disadvantaged-business enterprise program
284 or any local-preference ordinance.

285 (j) A county, municipality, special district as defined in
286 s. 189.012, or any other political subdivision of the state that
287 owns or operates a public-use airport as defined in s. 332.004
288 is exempt from this section when performing repairs or
289 maintenance on the airport's buildings, structures, or public
290 construction works using the local government's own services,
291 employees, and equipment.

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

297 (l) A local government that owns or operates a public
298 transit system as defined in s. 343.52, a public transportation
299 system as defined in s. 343.62, or a mass transit system
300 described in s. 349.04(1)(b) is exempt from this section when

301 performing repairs or maintenance on the buildings, structures,
 302 or public construction works of the public transit system,
 303 public transportation system, or mass transit system using the
 304 local government's own services, employees, and equipment.

305 (m) Any contractor may be considered ineligible to bid by
 306 the governmental entity if the contractor has been found guilty
 307 by a court of any violation of federal labor or employment tax
 308 laws regarding subjects such as safety, tax withholding,
 309 workers' compensation, reemployment assistance or unemployment
 310 tax, social security and Medicare tax, wage or hour, or
 311 prevailing rate laws within the past 5 years.

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

314 336.41 Counties; employing labor and providing road
 315 equipment; accounting; when competitive bidding required.-

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

322 (a) Construction and maintenance in emergency situations;;
 323 ~~and~~

324 (b) In addition to emergency work, construction and
 325 reconstruction, including resurfacing, mineral seal coating, and

326 bridge repairs, having a total cumulative annual value not to
327 exceed 5 percent of its 80-percent portion of the constitutional
328 gas tax or \$400,000, whichever is greater;~~7~~ and

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

335

336 for which the county may utilize its own forces. Estimated total
337 construction project costs shall include all costs associated
338 with performing and completing the work, including employee
339 compensation and benefits, equipment costs and maintenance,
340 insurance costs, and the cost of materials. However, if, after
341 proper advertising, no bids are received by a county for a
342 specific project, the county may use its own forces to construct
343 the project, notwithstanding the limitation of this subsection.
344 Nothing in this section shall prevent the county from performing
345 routine maintenance as authorized by law.

346 Section 3. This act shall take effect July 1, 2020.