

1                                   A bill to be entitled  
 2           An act relating to local government public  
 3           construction works; amending s. 218.80, F.S.; revising  
 4           disclosure requirements for bidding documents and  
 5           other requests for proposals issued for bids by a  
 6           local governmental entity and public contracts entered  
 7           into between local governmental entities and  
 8           contractors; amending s. 255.20, F.S.; revising the  
 9           term cost to include specified information; requiring  
 10          the governing board of a local government to consider  
 11          estimated costs of certain projects that account for  
 12          specified costs when the board is making a specified  
 13          determination; requiring that a local government that  
 14          performs projects using its own services, employees,  
 15          and equipment provide a report to the local governing  
 16          board with certain information; requiring that the  
 17          Auditor General review the report as part of his or  
 18          her audits of local governments; amending s. 336.41,  
 19          F.S.; requiring estimated total construction project  
 20          costs for certain projects to include specified costs;  
 21          providing an effective date.

22  
 23   Be It Enacted by the Legislature of the State of Florida:

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 25           Section 1.   Subsection (3) of section 218.80, Florida

26 Statutes, is amended to read:

27 218.80 Public Bid Disclosure Act.—

28 (3) Bidding documents or other request for proposal issued  
29 for bids by a local governmental entity, or any public contract  
30 entered into between a local governmental entity and a  
31 contractor shall disclose each permit or fee which the  
32 contractor will have to pay before or during construction, and  
33 ~~shall include~~ the dollar amount or the percentage method or the  
34 unit method of all permits or fees which may be required by the  
35 local government as a part of the contract and a listing of all  
36 other governmental entities that may have additional permits or  
37 fees generated by the project. If the request for proposal does  
38 not require the response to include a final fixed price, the  
39 local governmental entity is not required to disclose any fees  
40 or assessments in the request for proposal. However, at least 10  
41 days prior to requiring the contractor to submit a final fixed  
42 price for the project, the local governmental entity shall make  
43 the disclosures required in this section. Any of the local  
44 governmental entity's permits or fees that ~~which~~ are not  
45 disclosed in the bidding documents, other request for proposal,  
46 or a contract between a local government and a contractor shall  
47 not be assessed or collected after the contract is let. No local  
48 government shall halt construction under any public contract or  
49 delay completion of the contract in order to collect any permits  
50 or fees which were not provided for or specified in the bidding

51 documents, other request for proposal, or the contract.

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

54 255.20 Local bids and contracts for public construction  
55 works; specification of state-produced lumber.—

56 (1) A county, municipality, special district as defined in  
57 chapter 189, or other political subdivision of the state seeking  
58 to construct or improve a public building, structure, or other  
59 public construction works must competitively award to an  
60 appropriately licensed contractor each project that is estimated  
61 ~~in accordance with generally accepted cost-accounting principles~~  
62 to cost more than \$300,000. For electrical work, the local  
63 government must competitively award to an appropriately licensed  
64 contractor each project that is estimated ~~in accordance with~~  
65 ~~generally accepted cost-accounting principles~~ to cost more than  
66 \$75,000. As used in this section, the term "competitively award"  
67 means to award contracts based on the submission of sealed bids,  
68 proposals submitted in response to a request for proposal,  
69 proposals submitted in response to a request for qualifications,  
70 or proposals submitted for competitive negotiation. This  
71 subsection expressly allows contracts for construction  
72 management services, design/build contracts, continuation  
73 contracts based on unit prices, and any other contract  
74 arrangement with a private sector contractor permitted by any  
75 applicable municipal or county ordinance, by district

76 resolution, or by state law. For purposes of this section, cost  
77 includes employee compensation and benefits ~~the cost of all~~  
78 ~~labor~~, except inmate labor, ~~and~~ the cost of equipment and  
79 maintenance, insurance costs, and the cost of direct materials  
80 to be used in the construction of the project, including  
81 materials purchased by the local government, and other direct  
82 costs, plus a factor of 20 percent for management, overhead, and  
83 other indirect costs. Subject to the provisions of subsection  
84 (3), the county, municipality, special district, or other  
85 political subdivision may establish, by municipal or county  
86 ordinance or special district resolution, procedures for  
87 conducting the bidding process.

88 (a) Notwithstanding any other law, a governmental entity  
89 seeking to construct or improve bridges, roads, streets,  
90 highways, or railroads, and services incidental thereto, at a  
91 cost in excess of \$250,000 may require that persons interested  
92 in performing work under contract first be certified or  
93 qualified to perform such work. A contractor may be considered  
94 ineligible to bid if the contractor is behind by 10 percent or  
95 more on completing an approved progress schedule for the  
96 governmental entity at the time of advertising the work. A  
97 prequalified contractor considered eligible by the Department of  
98 Transportation to bid to perform the type of work described  
99 under the contract is presumed to be qualified to perform the  
100 work described. The governmental entity may provide an appeal

101 process to overcome that presumption with de novo review based  
102 on the record below to the circuit court.

103 (b) For contractors who are not prequalified by the  
104 Department of Transportation, the governmental entity shall  
105 publish prequalification criteria and procedures prior to  
106 advertisement or notice of solicitation. Such publications must  
107 include notice of a public hearing for comment on such criteria  
108 and procedures prior to adoption. The procedures must provide  
109 for an appeal process within the authority for making objections  
110 to the prequalification process with de novo review based on the  
111 record below to the circuit court within 30 days.

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

113 1. If the project is undertaken to replace, reconstruct,  
114 or repair an existing public building, structure, or other  
115 public construction works damaged or destroyed by a sudden  
116 unexpected turn of events such as an act of God, riot, fire,  
117 flood, accident, or other urgent circumstances, and such damage  
118 or destruction creates:

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

120 b. Other loss to public or private property which requires  
121 emergency government action; or

122 c. An interruption of an essential governmental service.

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

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

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

132           5. If the project is undertaken as repair or maintenance  
 133 of an existing public facility. For the purposes of this  
 134 paragraph, the term "repair" means a corrective action to  
 135 restore an existing public facility to a safe and functional  
 136 condition and the term "maintenance" means a preventive or  
 137 corrective action to maintain an existing public facility in an  
 138 operational state or to preserve the facility from failure or  
 139 decline. Repair or maintenance includes activities that are  
 140 necessarily incidental to repairing or maintaining the facility.  
 141 Repair or maintenance does not include the construction of any  
 142 new building, structure, or other public construction works or  
 143 any substantial addition, extension, or upgrade to an existing  
 144 public facility. Such additions, extensions, or upgrades shall  
 145 be considered substantial if the estimated cost of the  
 146 additions, extensions, or upgrades included as part of the  
 147 repair or maintenance project exceeds the threshold amount in  
 148 subsection (1) and exceeds 20 percent of the estimated total  
 149 cost of the repair or maintenance project ~~using generally~~  
 150 ~~accepted cost-accounting principles that fully~~ accounting

151 ~~account~~ for all costs associated with performing and completing  
152 the work, including employee compensation and benefits,  
153 equipment cost and maintenance, insurance costs, and the cost of  
154 direct materials to be used in the construction of the project,  
155 including materials purchased by the local government, and other  
156 direct costs, plus a factor of 20 percent for management,  
157 overhead, and other indirect costs. An addition, extension, or  
158 upgrade shall not be considered substantial if it is undertaken  
159 pursuant to the conditions specified in subparagraph 1. Repair  
160 and maintenance projects and any related additions, extensions,  
161 or upgrades may not be divided into multiple projects for the  
162 purpose of evading the requirements of this subparagraph.

163 6. If the project is undertaken exclusively as part of a  
164 public educational program.

165 7. If the funding source of the project will be diminished  
166 or lost because the time required to competitively award the  
167 project after the funds become available exceeds the time within  
168 which the funding source must be spent.

169 8. If the local government competitively awarded a project  
170 to a private sector contractor and the contractor abandoned the  
171 project before completion or the local government terminated the  
172 contract.

173 9. If the governing board of the local government complies  
174 with all of the requirements of this subparagraph, conducts a  
175 public meeting under s. 286.011 after public notice, and finds

176 | by majority vote of the governing board that it is in the  
177 | public's best interest to perform the project using its own  
178 | services, employees, and equipment. The public notice must be  
179 | published at least 21 days before the date of the public meeting  
180 | at which the governing board takes final action. The notice must  
181 | identify the project, the components and scope of the work, and  
182 | the estimated cost of the project ~~using generally accepted cost-~~  
183 | ~~accounting principles that~~ fully accounting ~~account~~ for all  
184 | costs associated with performing and completing the work,  
185 | including employee compensation and benefits, equipment cost and  
186 | maintenance, insurance costs, and the cost of direct materials  
187 | to be used in the construction of the project, including  
188 | materials purchased by the local government, and other direct  
189 | costs, plus a factor of 20 percent for management, overhead, and  
190 | other indirect costs. The notice must specify that the purpose  
191 | for the public meeting is to consider whether it is in the  
192 | public's best interest to perform the project using the local  
193 | government's own services, employees, and equipment. Upon  
194 | publication of the public notice and for 21 days thereafter, the  
195 | local government shall make available for public inspection,  
196 | during normal business hours and at a location specified in the  
197 | public notice, a detailed itemization of each component of the  
198 | estimated cost of the project and documentation explaining the  
199 | methodology used to arrive at the estimated cost. At the public  
200 | meeting, any qualified contractor or vendor who could have been



201 awarded the project had the project been competitively bid shall  
202 be provided with a reasonable opportunity to present evidence to  
203 the governing board regarding the project and the accuracy of  
204 the local government's estimated cost of the project. In  
205 deciding whether it is in the public's best interest for the  
206 local government to perform a project using its own services,  
207 employees, and equipment, the governing board must consider the  
208 estimated cost of the project fully accounting for all costs  
209 associated with performing and completing the work, including  
210 employee compensation and benefits, equipment cost and  
211 maintenance, insurance costs, and the cost of direct materials  
212 to be used in the construction of the project, including  
213 materials purchased by the local government, and other direct  
214 costs, plus a factor of 20 percent for management, overhead, and  
215 other indirect costs, and the accuracy of the estimated cost in  
216 light of any other information that may be presented at the  
217 public meeting and whether the project requires an increase in  
218 the number of government employees or an increase in capital  
219 expenditures for public facilities, equipment, or other capital  
220 assets. The local government may further consider the impact on  
221 local economic development, the impact on small and minority  
222 business owners, the impact on state and local tax revenues,  
223 whether the private sector contractors provide health insurance  
224 and other benefits equivalent to those provided by the local  
225 government, and any other factor relevant to what is in the

226 public's best interest. A report summarizing completed projects  
 227 constructed by the local government pursuant to this subsection  
 228 shall be publicly reviewed each year by the governing body of  
 229 the local government. The report shall detail the estimated  
 230 costs and the actual costs of the projects constructed by the  
 231 local government pursuant to this subsection. The report shall  
 232 be made available for review by the public. The Auditor General  
 233 shall review the report as part of his or her audits of local  
 234 governments.

235 10. If the governing board of the local government  
 236 determines upon consideration of specific substantive criteria  
 237 that it is in the best interest of the local government to award  
 238 the project to an appropriately licensed private sector  
 239 contractor pursuant to administrative procedures established by  
 240 and expressly set forth in a charter, ordinance, or resolution  
 241 of the local government adopted before July 1, 1994. The  
 242 criteria and procedures must be set out in the charter,  
 243 ordinance, or resolution and must be applied uniformly by the  
 244 local government to avoid awarding a project in an arbitrary or  
 245 capricious manner. This exception applies only if all of the  
 246 following occur:

247 a. The governing board of the local government, after  
 248 public notice, conducts a public meeting under s. 286.011 and  
 249 finds by a two-thirds vote of the governing board that it is in  
 250 the public's best interest to award the project according to the

251 criteria and procedures established by charter, ordinance, or  
252 resolution. The public notice must be published at least 14 days  
253 before the date of the public meeting at which the governing  
254 board takes final action. The notice must identify the project,  
255 the estimated cost of the project, and specify that the purpose  
256 for the public meeting is to consider whether it is in the  
257 public's best interest to award the project using the criteria  
258 and procedures permitted by the preexisting charter, ordinance,  
259 or resolution.

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

263 (I) There is one appropriately licensed contractor who is  
264 uniquely qualified to undertake the project because that  
265 contractor is currently under contract to perform work that is  
266 affiliated with the project; or

267 (II) The time to competitively award the project will  
268 jeopardize the funding for the project, materially increase the  
269 cost of the project, or create an undue hardship on the public  
270 health, safety, or welfare.

271 c. The project is to be awarded by any method other than a  
272 competitive selection process, and the published notice clearly  
273 specifies the ordinance or resolution by which the private  
274 sector contractor will be selected and the criteria to be  
275 considered.

276 d. The project is to be awarded by a method other than a  
277 competitive selection process, and the architect or engineer of  
278 record has provided a written recommendation that the project be  
279 awarded to the private sector contractor without competitive  
280 selection, and the consideration by, and the justification of,  
281 the government body are documented, in writing, in the project  
282 file and are presented to the governing board prior to the  
283 approval required in this paragraph.

284 11. To projects subject to chapter 336.

285 (d) If the project:

286 1. Is to be awarded based on price, the contract must be  
287 awarded to the lowest qualified and responsive bidder in  
288 accordance with the applicable county or municipal ordinance or  
289 district resolution and in accordance with the applicable  
290 contract documents. The county, municipality, or special  
291 district may reserve the right to reject all bids and to rebid  
292 the project, or elect not to proceed with the project. This  
293 subsection is not intended to restrict the rights of any local  
294 government to reject the low bid of a nonqualified or  
295 nonresponsive bidder and to award the contract to any other  
296 qualified and responsive bidder in accordance with the standards  
297 and procedures of any applicable county or municipal ordinance  
298 or any resolution of a special district.

299 2. Uses a request for proposal or a request for  
300 qualifications, the request must be publicly advertised and the

301 contract must be awarded in accordance with the applicable local  
302 ordinances.

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

305 (e) If a construction project greater than \$300,000, or  
306 \$75,000 for electrical work, is started after October 1, 1999,  
307 is to be performed by a local government using its own employees  
308 in a county or municipality that issues registered contractor  
309 licenses, and the project would require a contractor licensed  
310 under chapter 489 if performed by a private sector contractor,  
311 the local government must use a person appropriately registered  
312 or certified under chapter 489 to supervise the work.

313 (f) If a construction project greater than \$300,000, or  
314 \$75,000 for electrical work, is started after October 1, 1999,  
315 is to be performed by a local government using its own employees  
316 in a county that does not issue registered contractor licenses,  
317 and the project would require a contractor licensed under  
318 chapter 489 if performed by a private sector contractor, the  
319 local government must use a person appropriately registered or  
320 certified under chapter 489 or a person appropriately licensed  
321 under chapter 471 to supervise the work.

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

325 (h) A construction project provided for in this subsection

326 | may not be divided into more than one project for the purpose of  
 327 | evading this subsection.

328 |       (i) This subsection does not preempt the requirements of  
 329 | any small-business or disadvantaged-business enterprise program  
 330 | or any local-preference ordinance.

331 |       (j) A county, municipality, special district as defined in  
 332 | s. 189.012, or any other political subdivision of the state that  
 333 | owns or operates a public-use airport as defined in s. 332.004  
 334 | is exempt from this section when performing repairs or  
 335 | maintenance on the airport's buildings, structures, or public  
 336 | construction works using the local government's own services,  
 337 | employees, and equipment.

338 |       (k) A local government that owns or operates a port  
 339 | identified in s. 403.021(9)(b) is exempt from this section when  
 340 | performing repairs or maintenance on the port's buildings,  
 341 | structures, or public construction works using the local  
 342 | government's own services, employees, and equipment.

343 |       (l) A local government that owns or operates a public  
 344 | transit system as defined in s. 343.52, a public transportation  
 345 | system as defined in s. 343.62, or a mass transit system  
 346 | described in s. 349.04(1)(b) is exempt from this section when  
 347 | performing repairs or maintenance on the buildings, structures,  
 348 | or public construction works of the public transit system,  
 349 | public transportation system, or mass transit system using the  
 350 | local government's own services, employees, and equipment.

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

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

360 336.41 Counties; employing labor and providing road  
361 equipment; accounting; when competitive bidding required.-

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

368 (a) Construction and maintenance in emergency situations,  
369 and

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

375 (c) Construction of sidewalks, curbing, accessibility

376 ramps, or appurtenances incidental to roads and bridges if each  
377 project is estimated ~~in accordance with generally accepted cost-~~  
378 ~~accounting principles~~ to have total construction project costs  
379 of less than \$400,000 or as adjusted by the percentage change in  
380 the Construction Cost Index from January 1, 2008, for which the  
381 county may utilize its own forces. Estimated total construction  
382 project costs must include all costs associated with performing  
383 and completing the work, including employee compensation and  
384 benefits, equipment cost and maintenance, insurance costs, and  
385 the cost of direct materials to be used in the construction of  
386 the project, including materials purchased by the local  
387 government, and other direct costs, plus a factor of 20 percent  
388 for management, overhead, and other indirect costs. However, if,  
389 after proper advertising, no bids are received by a county for a  
390 specific project, the county may use its own forces to construct  
391 the project, notwithstanding the limitation of this subsection.  
392 Nothing in this section shall prevent the county from performing  
393 routine maintenance as authorized by law.

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