

By the Committees on Rules; and Governmental Oversight and Accountability; and Senator Perry

595-04451-20

2020504c2

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:

24
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

595-04451-20

2020504c2

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

595-04451-20

2020504c2

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.

595-04451-20

2020504c2

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, or
114 repair an existing public building, structure, or other public
115 construction works damaged or destroyed by a sudden unexpected
116 turn of events such as an act of God, riot, fire, flood,

595-04451-20

2020504c2

117 accident, or other urgent circumstances, and such damage or
118 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 a
127 public electric or gas utility system if such work on the public
128 utility system is performed by personnel of the system.

129 4. To construction, remodeling, repair, or improvement by a
130 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 of
133 an existing public facility. For the purposes of this paragraph,
134 the term "repair" means a corrective action to restore an
135 existing public facility to a safe and functional condition and
136 the term "maintenance" means a preventive or corrective action
137 to maintain an existing public facility in an operational state
138 or to preserve the facility from failure or decline. Repair or
139 maintenance includes activities that are necessarily incidental
140 to repairing or maintaining the facility. Repair or maintenance
141 does not include the construction of any new building,
142 structure, or other public construction works or any substantial
143 addition, extension, or upgrade to an existing public facility.
144 Such additions, extensions, or upgrades shall be considered
145 substantial if the estimated cost of the additions, extensions,

595-04451-20

2020504c2

146 or upgrades included as part of the repair or maintenance
147 project exceeds the threshold amount in subsection (1) and
148 exceeds 20 percent of the estimated total cost of the repair or
149 maintenance project ~~using generally accepted cost-accounting~~
150 ~~principles that~~ fully accounting ~~account~~ for all costs
151 associated with performing and completing the work, including
152 employee compensation and benefits, equipment cost and
153 maintenance, insurance costs, and the cost of direct materials
154 to be used in the construction of the project, including
155 materials purchased by the local government, and other direct
156 costs, plus a factor of 20 percent for management, overhead, and
157 other indirect costs. An addition, extension, or upgrade shall
158 not be considered substantial if it is undertaken pursuant to
159 the conditions specified in subparagraph 1. Repair and
160 maintenance projects and any related additions, extensions, or
161 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

595-04451-20

2020504c2

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

595-04451-20

2020504c2

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

595-04451-20

2020504c2

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

595-04451-20

2020504c2

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

595-04451-20

2020504c2

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

595-04451-20

2020504c2

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,

595-04451-20

2020504c2

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~~

595-04451-20

2020504c2

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,

381
382 for which the county may utilize its own forces. Estimated total
383 construction project costs must include all costs associated
384 with performing and completing the work, including employee
385 compensation and benefits, equipment cost and maintenance,
386 insurance costs, and the cost of direct materials to be used in
387 the construction of the project, including materials purchased
388 by the local government, and other direct costs, plus a factor
389 of 20 percent for management, overhead, and other indirect
390 costs. However, if, after proper advertising, no bids are
391 received by a county for a specific project, the county may use
392 its own forces to construct the project, notwithstanding the
393 limitation of this subsection. Nothing in this section shall
394 prevent the county from performing routine maintenance as
395 authorized by law.

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