

By Senator Hooper

21-01660-23

2023830\_\_

1                   A bill to be entitled  
2       An act relating to competitive award of public  
3       construction works contracts; amending s. 255.20,  
4       F.S.; revising the applicability of a requirement that  
5       certain governmental entities must competitively award  
6       certain public construction works contracts; making  
7       technical changes; providing an effective date.  
8

9   Be It Enacted by the Legislature of the State of Florida:  
10

11       Section 1. Paragraph (c) of subsection (1) of section  
12       255.20, Florida Statutes, is amended to read:

13       255.20 Local bids and contracts for public construction  
14       works; specification of state-produced lumber.—

15       (1) A county, municipality, special district as defined in  
16       chapter 189, or other political subdivision of the state seeking  
17       to construct or improve a public building, structure, or other  
18       public construction works must competitively award to an  
19       appropriately licensed contractor each project that is estimated  
20       to cost more than \$300,000. For electrical work, the local  
21       government must competitively award to an appropriately licensed  
22       contractor each project that is estimated to cost more than  
23       \$75,000. As used in this section, the term "competitively award"  
24       means to award contracts based on the submission of sealed bids,  
25       proposals submitted in response to a request for proposal,  
26       proposals submitted in response to a request for qualifications,  
27       or proposals submitted for competitive negotiation. This  
28       subsection expressly allows contracts for construction  
29       management services, design/build contracts, continuation

21-01660-23

2023830\_\_

30 contracts based on unit prices, and any other contract  
31 arrangement with a private sector contractor permitted by any  
32 applicable municipal or county ordinance, by district  
33 resolution, or by state law. For purposes of this section, cost  
34 includes employee compensation and benefits, except inmate  
35 labor, the cost of equipment and maintenance, insurance costs,  
36 and the cost of direct materials to be used in the construction  
37 of the project, including materials purchased by the local  
38 government, and other direct costs, plus a factor of 20 percent  
39 for management, overhead, and other indirect costs. Subject to  
40 the provisions of subsection (3), the county, municipality,  
41 special district, or other political subdivision may establish,  
42 by municipal or county ordinance or special district resolution,  
43 procedures for conducting the bidding process.

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

45 1. If the project is undertaken to replace, reconstruct, or  
46 repair an existing public building, structure, or other public  
47 construction works damaged or destroyed by a sudden unexpected  
48 turn of events such as an act of God, riot, fire, flood,  
49 accident, or other urgent circumstances, and such damage or  
50 destruction creates:

51 a. An immediate danger to the public health or safety;  
52 b. Other loss to public or private property which requires  
53 emergency government action; or

54 c. An interruption of an essential governmental service.

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

58 3. To construction, remodeling, repair, or improvement to a

21-01660-23

2023830\_\_

59 public electric or gas utility system if such work on the public  
60 utility system is performed by personnel of the system.

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

64 5. If the project is undertaken as repair or maintenance of  
65 an existing public facility. For the purposes of this paragraph,  
66 the term "repair" means a corrective action to restore an  
67 existing public facility to a safe and functional condition and  
68 the term "maintenance" means a preventive or corrective action  
69 to maintain an existing public facility in an operational state  
70 or to preserve the facility from failure or decline. Repair or  
71 maintenance includes activities that are necessarily incidental  
72 to repairing or maintaining the facility. Repair or maintenance  
73 does not include the construction of any new building,  
74 structure, or other public construction works or any substantial  
75 addition, extension, or upgrade to an existing public facility.  
76 Such additions, extensions, or upgrades shall be considered  
77 substantial if the estimated cost of the additions, extensions,  
78 or upgrades included as part of the repair or maintenance  
79 project exceeds the threshold amount in subsection (1) and  
80 exceeds 20 percent of the estimated total cost of the repair or  
81 maintenance project fully accounting for all costs associated  
82 with performing and completing the work, including employee  
83 compensation and benefits, equipment cost and maintenance,  
84 insurance costs, and the cost of direct materials to be used in  
85 the construction of the project, including materials purchased  
86 by the local government, and other direct costs, plus a factor  
87 of 20 percent for management, overhead, and other indirect

21-01660-23

2023830\_\_

88 costs. An addition, extension, or upgrade may ~~shall~~ not be  
89 considered substantial if it is undertaken pursuant to the  
90 conditions specified in subparagraph 1., or if a consortium or  
91 cooperative purchasing agreement is utilized. Repair and  
92 maintenance projects and any related additions, extensions, or  
93 upgrades may not be divided into multiple projects for the  
94 purpose of evading the requirements of this subparagraph.

95 6. If the project is undertaken exclusively as part of a  
96 public educational program.

97 7. If the funding source of the project will be diminished  
98 or lost because the time required to competitively award the  
99 project after the funds become available exceeds the time within  
100 which the funding source must be spent.

101 8. If the local government competitively awarded a project  
102 to a private sector contractor and the contractor abandoned the  
103 project before completion or the local government terminated the  
104 contract.

105 9. If the governing board of the local government complies  
106 with all of the requirements of this subparagraph, conducts a  
107 public meeting under s. 286.011 after public notice, and finds  
108 by majority vote of the governing board that it is in the  
109 public's best interest to perform the project using its own  
110 services, employees, and equipment. The public notice must be  
111 published at least 21 days before the date of the public meeting  
112 at which the governing board takes final action. The notice must  
113 identify the project, the components and scope of the work, and  
114 the estimated cost of the project fully accounting for all costs  
115 associated with performing and completing the work, including  
116 employee compensation and benefits, equipment cost and

21-01660-23

2023830\_\_

117 maintenance, insurance costs, and the cost of direct materials  
118 to be used in the construction of the project, including  
119 materials purchased by the local government, and other direct  
120 costs, plus a factor of 20 percent for management, overhead, and  
121 other indirect costs. The notice must specify that the purpose  
122 for the public meeting is to consider whether it is in the  
123 public's best interest to perform the project using the local  
124 government's own services, employees, and equipment. Upon  
125 publication of the public notice and for 21 days thereafter, the  
126 local government shall make available for public inspection,  
127 during normal business hours and at a location specified in the  
128 public notice, a detailed itemization of each component of the  
129 estimated cost of the project and documentation explaining the  
130 methodology used to arrive at the estimated cost. At the public  
131 meeting, any qualified contractor or vendor who could have been  
132 awarded the project had the project been competitively bid shall  
133 be provided with a reasonable opportunity to present evidence to  
134 the governing board regarding the project and the accuracy of  
135 the local government's estimated cost of the project. In  
136 deciding whether it is in the public's best interest for the  
137 local government to perform a project using its own services,  
138 employees, and equipment, the governing board must consider the  
139 estimated cost of the project fully accounting for all costs  
140 associated with performing and completing the work, including  
141 employee compensation and benefits, equipment cost and  
142 maintenance, insurance costs, and the cost of direct materials  
143 to be used in the construction of the project, including  
144 materials purchased by the local government, and other direct  
145 costs, plus a factor of 20 percent for management, overhead, and

21-01660-23

2023830\_\_

146 other indirect costs, and the accuracy of the estimated cost in  
147 light of any other information that may be presented at the  
148 public meeting and whether the project requires an increase in  
149 the number of government employees or an increase in capital  
150 expenditures for public facilities, equipment, or other capital  
151 assets. The local government may further consider the impact on  
152 local economic development, the impact on small and minority  
153 business owners, the impact on state and local tax revenues,  
154 whether the private sector contractors provide health insurance  
155 and other benefits equivalent to those provided by the local  
156 government, and any other factor relevant to what is in the  
157 public's best interest. A report summarizing completed projects  
158 constructed by the local government pursuant to this subsection  
159 must ~~shall~~ be publicly reviewed each year by the governing body  
160 of the local government. The report must ~~shall~~ detail the  
161 estimated costs and the actual costs of the projects constructed  
162 by the local government pursuant to this subsection. The report  
163 must ~~shall~~ be made available for review by the public. The  
164 Auditor General shall review the report as part of his or her  
165 audits of local governments.

166 10. If the governing board of the local government  
167 determines upon consideration of specific substantive criteria  
168 that it is in the best interest of the local government to award  
169 the project to an appropriately licensed private sector  
170 contractor pursuant to administrative procedures established by  
171 and expressly set forth in a charter, ordinance, or resolution  
172 of the local government adopted before July 1, 1994. The  
173 criteria and procedures must be set out in the charter,  
174 ordinance, or resolution and must be applied uniformly by the

21-01660-23

2023830\_\_

175 local government to avoid awarding a project in an arbitrary or  
176 capricious manner. This exception applies only if all of the  
177 following occur:

178 a. The governing board of the local government, after  
179 public notice, conducts a public meeting under s. 286.011 and  
180 finds by a two-thirds vote of the governing board that it is in  
181 the public's best interest to award the project according to the  
182 criteria and procedures established by charter, ordinance, or  
183 resolution. The public notice must be published at least 14 days  
184 before the date of the public meeting at which the governing  
185 board takes final action. The notice must identify the project,  
186 the estimated cost of the project, and specify that the purpose  
187 for the public meeting is to consider whether it is in the  
188 public's best interest to award the project using the criteria  
189 and procedures permitted by the preexisting charter, ordinance,  
190 or resolution.

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

194 (I) There is one appropriately licensed contractor who is  
195 uniquely qualified to undertake the project because that  
196 contractor is currently under contract to perform work that is  
197 affiliated with the project; or

198 (II) The time to competitively award the project will  
199 jeopardize the funding for the project, materially increase the  
200 cost of the project, or create an undue hardship on the public  
201 health, safety, or welfare.

202 c. The project is to be awarded by any method other than a  
203 competitive selection process, and the published notice clearly

21-01660-23

2023830\_\_

204 specifies the ordinance or resolution by which the private  
205 sector contractor will be selected and the criteria to be  
206 considered.

207 d. The project is to be awarded by a method other than a  
208 competitive selection process, and the architect or engineer of  
209 record has provided a written recommendation that the project be  
210 awarded to the private sector contractor without competitive  
211 selection, and the consideration by, and the justification of,  
212 the government body are documented, in writing, in the project  
213 file and are presented to the governing board before ~~prior to~~  
214 the approval required in this paragraph.

215 11. To projects subject to chapter 336.

216 Section 2. This act shall take effect July 1, 2023.