

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 705 Public Works Projects

SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee; Shoaf

TIED BILLS: **IDEN./SIM. BILLS:** SB 594, CS/SB 742

FINAL HOUSE FLOOR ACTION: 80 Y's

32 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/HB 705 passed the House on February 28, 2024, as amended, and subsequently passed the Senate on March 4, 2024.

Current law prohibits the state or any political subdivision that contracts for a public works project using state-appropriated funds from imposing certain requirements on contractors for public works projects, with certain exceptions. Current law defines "public works project" as an activity that is paid for with any state-appropriated funds and that consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof owned in whole or in part by any political subdivision.

The bill amends the definition of "public works project" to include all projects paid for with local funds in addition to state-appropriated funds, and clarifies that the definition does not include the provision of goods, services, or work incidental to the project. The bill maintains the ability of counties and municipalities to preclude certain contractors from participating in the bidding process for public works projects based on the geographic location of a contractor's headquarters or offices, or the residences of its employees, if the county or municipality is the sole source of funding for the project.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on May 28, 2024, ch. 2024-208, L.O.F., and will become effective on July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Competitive Solicitation of Construction Services

Current law specifies the procedures to be followed in the procurement of construction services for public property and public owned buildings.¹ The Department of Management Services (DMS) is responsible for establishing by rule procedures:

- For determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for building construction contracts.
- For awarding each state agency construction project to the lowest qualified bidder.
- To govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state.
- 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.²

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.³ A county, municipality, special district, or other political subdivision seeking to construct or improve a public building must competitively bid the project if the estimated cost is in excess of \$300,000.⁴

For a competitive solicitation⁵ for construction services paid for with state-appropriated funds, a state college, county, municipality, school district, or other political subdivision of the state (local government) may not use a local ordinance or regulation that provides a preference based upon a contractor, subcontractor, or material supplier or carrier:

- Maintaining an office or place of business within a particular local jurisdiction;
- Hiring employees or subcontractors from within a particular local jurisdiction; or
- Prior payment of local taxes, assessments, or duties within a particular local jurisdiction.⁶

If state-appropriated funds are used to pay for the construction services, a local government must disclose in the solicitation document that any of the aforementioned preferences will be prohibited.⁷

Public Works Projects

A “public works project” is an activity that is paid for with any state-appropriated funds and that consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof owned in whole or in part by any political subdivision.⁸

Except as required by federal or state law, the state or any political subdivision that contracts for a public works project with state-appropriated funds may not:

- Prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based on the geographic location of the

¹ See ch. 255, F.S.

² S. 255.29, F.S.

³ See s. 255.0525, F.S.; see also R. 60D-5.002 and 60D-5.0073, F.A.C.

⁴ S. 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost over \$75,000.

⁵ “Competitive solicitation” means an invitation to bid, a request for proposals, or an invitation to negotiate. S. 255.248, F.S.

⁶ S. 255.0991(2), F.S.

⁷ S. 255.0991(3), F.S.

⁸ S. 255.0992(1)(b), F.S.

company headquarters or offices of the contractor, subcontractor, or material supplier or carrier submitting a bid on a public works project or the residences of employees of such contractor, subcontractor, or material supplier or carrier;

- Require a contractor, subcontractor, or material supplier or carrier engaged in the project to:
 - Pay employees a predetermined amount of wages or prescribe any wage rate;
 - Provide employees a specified type, amount, or rate of employee benefits;
 - Control, limit, or expand staffing; or
 - Recruit, train, or hire employees from a designated, restricted, or single source.
- Prohibit any contractor, subcontractor, or material supplier or carrier from receiving information about public works opportunities or submitting a bid on the project if such individual is able to perform the work described and is qualified, licensed, or certified as required by state law, unless that vendor has been placed on the state's convicted vendor or discriminatory vendor lists.⁹

With certain exceptions,¹⁰ these restrictions do not apply to public works projects that are locally funded.

Prior to July 1, 2023, the state or a political subdivision could impose such restrictions on contractors for state-funded public works projects, up to \$1 million; however, in 2023, the Legislature removed the cap and prohibited such restrictions for public works projects using any amount of state-appropriated funds.¹¹

Effect of the Bill

The bill revises the definition of “public works project” to include all projects paid for with local or state funds, and clarifies that the definition does not include the provision of goods, services, or works incidental to the project.¹² This means the aforementioned restrictions are applicable to all public works projects paid for with local or state funds instead of state funds only. However, the bill allows a county or municipality to prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier from participating in the bidding process based on the geographic location of the company headquarters or offices or residences of its employees if the county or municipality is the sole source of funding for the public works project.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁹ S. 255.0992(2), F.S.

¹⁰ Section 255.0992(3), F.S., provides that the restrictions do not apply to contracts executed under ch. 337, F.S., or a use authorized by s. 212.055(1), F.S., that is approved by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.

¹¹ Ch. 2023-134, Laws of Fla.

¹² The bill provides that goods, services, or works incidental to the public works project include provision of security services, janitorial services, landscaping services, maintenance services, transportation services, or other services that do not require a construction contracting license or involve supplying or carrying construction materials for such project.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The prohibition on certain predetermined wage, benefits, and staffing requirements may result in a positive fiscal impact for contractors.

D. FISCAL COMMENTS:

None.