

# CHAPTER 99-181

## House Bill No. 867

An act relating to public construction; amending s. 255.20, F.S.; lowering the threshold amount required for competitive awards of local bids and contracts for public electrical work; providing the certain qualified contractors or vendors shall have standing to challenge the propriety of a local government's action under certain circumstances; providing for the award of reasonable attorney's fees under certain circumstances; providing an effective date.

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

Section 1. Section 255.20, Florida Statutes, is amended to read:

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

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of more than \$200,000. For electrical work, local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to have a cost of more than \$50,000. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, construction costs include the cost of all labor, except inmate labor, and include the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3), the county, municipality, special district, or other political subdivision may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.

(a) The provisions of this subsection do not apply:

1. When the project is undertaken to replace, reconstruct, or repair an existing facility damaged or destroyed by a sudden unexpected turn of events, such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:

- a. An immediate danger to the public health or safety;
  - b. Other loss to public or private property which requires emergency government action; or
  - c. An interruption of an essential governmental service.
2. When, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or responses.
  3. To construction, remodeling, repair, or improvement to a public electric or gas utility system when such work on the public utility system is performed by personnel of the system.
  4. To construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.
  5. When the project is undertaken as repair or maintenance of an existing public facility.
  6. When the project is undertaken exclusively as part of a public educational program.
  7. When the funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent.
  8. When the local government has competitively awarded a project to a private sector contractor and the contractor has abandoned the project before completion or the local government has terminated the contract.
  9. When the governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 14 days prior to the date of the public meeting at which the governing board takes final action to apply this subparagraph. The notice must identify the project, the estimated cost of the project and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to perform the project using the local government's own services, employees, and equipment. In deciding whether it is in the public's best interest for local government to perform a project using its own services, employees, and equipment, the governing board may consider the cost of the project, whether the project requires an increase in the number of government employees, an increase in capital expenditures for public facilities, equipment or other capital assets, the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.

10. When the governing board of the local government determines upon consideration of specific substantive criteria and administrative procedures that it is in the best interest of the local government to award the project to an appropriately licensed private sector contractor according to procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted prior to July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied uniformly by the local government to avoid award of any project in an arbitrary or capricious manner. This exception shall apply when all of the following occur:

a. When the governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a two-thirds vote of the governing board that it is in the public's best interest to award the project according to the criteria and procedures established by charter, ordinance, or resolution. The public notice must be published at least 14 days prior to the date of the public meeting at which the governing board takes final action to apply this subparagraph. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to award the project using the criteria and procedures method permitted by the preexisting ordinance.

b. In the event the project is to be awarded by any method other than a competitive selection process, the governing board must find evidence that:

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

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

c. In the event the project is to be awarded by any method other than a competitive selection process, the published notice must clearly specify the ordinance or resolution method by which the private sector contractor will be selected and the criteria to be considered.

d. In the event the project is to be awarded by a method other than a competitive selection process, the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection; and the consideration by, and the justification of, the government body are documented, in writing, in the project file and the findings and documentation required by s. 255.04(2) and (3) are presented to the governing board prior to the approval required in this paragraph.

(b)1. If the project is to be awarded based on price, the contract must be awarded to the lowest qualified and responsive bidder in accordance with the applicable county or municipal ordinance or district resolution and in accordance with the applicable contract documents. The county, municipal, or special district may reserve the right to reject all bids and to rebid the

project or elect not to proceed with the project. This subsection is not intended to restrict the rights of any local government to reject the low bid of a nonqualified or nonresponsive bidder and to award the contract to any other qualified and responsive bidder in accordance with the standards and procedures of any applicable county or municipal ordinance or any resolution of a special district.

2. If the project uses a request for proposal or a request for qualifications, the request must be publicly advertised and the contract must be awarded in accordance with the applicable local ordinances.

3. If the project is subject to competitive negotiations, the contract must be awarded in accordance with s. 287.055.

(c) If a construction project greater than \$200,000, or \$50,000 for electrical work, is started after October 1, 1999 ~~July 1, 1996~~, and is to be performed by a local government using its own employees in a county or municipality that issues registered contractor licenses and the project would require a licensed contractor under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 to supervise the work.

(d) If a construction project greater than \$200,000, or \$50,000 for electrical work, is started after October 1, 1999 ~~July 1, 1996~~, and is to be performed by a local government using its own employees in a county that does not issue registered contractor licenses and the project would require a licensed contractor under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 or a person appropriately licensed under chapter 471 to supervise the work.

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

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

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

(2) The threshold amount of \$200,000 for construction or \$50,000 for electrical work must be adjusted by the percentage change in the Consumer Price Index from January 1, 1994, to January 1 of the year in which the project is scheduled to begin.

(3) All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must always specify lumber, timber, and other forest products produced and manufactured in this state whenever such products are available and their

price, fitness, and quality are equal. This subsection does not apply when plywood specified for monolithic concrete forms, when the structural or service requirements for timber for a particular job cannot be supplied by native species, or when the construction is financed in whole or in part from federal funds with the requirements that there be no restrictions as to species or place of manufacture.

(4) Any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall have standing to challenge the propriety of the local government's actions when the local government seeks to invoke the provisions of this section. The prevailing party in such action shall be entitled to recover its reasonable attorney's fees.

Section 2. This act shall take effect October 1, 1999.

Approved by the Governor May 14, 1999.

Filed in Office Secretary of State May 14, 1999.