

Council Substitute for  
Committee Substitute for House Bill No. 611

An act relating to public construction projects; amending s. 255.20, F.S.; increasing the threshold amount for which certain public projects must be competitively awarded; revising exceptions to the requirement that certain public projects be competitively awarded; defining the terms “repair” and “maintenance”; requiring local governments to provide notice for certain public projects; providing notice requirements; extending the notice period for specified public meetings; requiring a local government to support a decision to perform a project with its own employees and to make a factual finding that the project cost will be the same or less than the lowest bid; providing additional exceptions for projects related to public-use airports, certain ports, and certain public transit or transportation systems; authorizing governmental entities to consider certain contractors ineligible to bid; revising the index and year on which the required adjustment of the threshold amounts is based; revising provisions for certain contractors and vendors to challenge a local government’s actions; 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 ~~cost have total construction project costs of more than \$300,000~~ \$200,000. For electrical work, the 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 \$75,000~~ \$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, ~~cost includes 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) ~~Notwithstanding any other law to the contrary, a governmental entity a county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve bridges, roads, streets, highways, or railroads, and services incidental thereto, at a cost costs in excess of \$250,000 may require that persons interested in performing work under contract first be certified or qualified to perform such work. A Any contractor may be considered ineligible to bid by the governmental entity if the contractor is behind by 10 percent or more on completing an approved progress schedule for the governmental entity by 10 percent or more at the time of advertising advertisement of the work. A prequalified Any contractor prequalified and considered eligible by the Department of Transportation to bid to perform the type of work described under the contract is shall be presumed to be qualified to perform the work described. The governmental entity may provide an appeal process to overcome that presumption with de novo review based on the record below to the circuit court.~~

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

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

1. ~~If When~~ the project is undertaken to replace, reconstruct, or repair an existing public building, structure, or other public construction works 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. ~~If When~~, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or proposals ~~responses~~.

3. To construction, remodeling, repair, or improvement to a public electric or gas utility system ~~if 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. ~~If When~~ the project is undertaken as repair or maintenance of an existing public facility. For the purposes of this paragraph, the term "repair" means a corrective action to restore an existing public facility to a safe and functional condition and the term "maintenance" means a preventive or corrective action to maintain an existing public facility in an operational state or to preserve the facility from failure or decline. Repair or maintenance includes activities that are necessarily incidental to repairing or maintaining the facility. Repair or maintenance does not include the construction of any new building, structure, or other public construction works or any substantial addition, extension, or upgrade to an existing public facility. Such additions, extensions, or upgrades shall be considered substantial if the estimated cost of the additions, extensions, or upgrades included as part of the repair or maintenance project exceeds the threshold amount in subsection (1) and exceeds 20 percent of the estimated total cost of the repair or maintenance project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. An addition, extension, or upgrade shall not be considered substantial if it is undertaken pursuant to the conditions specified in subparagraph 1. Repair and maintenance projects and any related additions, extensions, or upgrades may not be divided into multiple projects for the purpose of evading the requirements of this subparagraph.

6. ~~If When~~ the project is undertaken exclusively as part of a public educational program.

7. ~~If 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. ~~If 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. ~~If When~~ the governing board of the local government complies with all of the requirements of this subparagraph, after public notice, conducts a public meeting under s. 286.011 after public notice, 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 21 ~~14~~ days before ~~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 components and scope of the work, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and

materials. The notice must 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. Upon publication of the public notice and for 21 days thereafter, the local government shall make available for public inspection, during normal business hours and at a location specified in the public notice, a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimated cost. At the public meeting, any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall be provided with a reasonable opportunity to present evidence to the governing board regarding the project and the accuracy of the local government's estimated cost of the project. In deciding whether it is in the public's best interest for the local government to perform a project using its own services, employees, and equipment, the governing board ~~must~~ may consider the estimated cost of the project, and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting and whether the project requires an increase in the number of government employees, or an increase in capital expenditures for public facilities, equipment, or other capital assets. The local government may further consider, 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. ~~If~~ 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 ~~pursuant according to~~ administrative procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted before ~~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 awarding a award of any project in an arbitrary or capricious manner. This exception applies only if ~~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 before ~~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 permitted by the preexisting charter, ordinance, or resolution.

b. ~~In the event~~ The project is to be awarded by any method other than a competitive selection process, and the governing board finds ~~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, and the published notice ~~must~~ clearly specifies ~~specify~~ the ordinance or resolution 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, and the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection,<sup>3</sup> and the consideration by, and the justification of, the government body are documented, in writing, in the project file and are presented to the governing board prior to the approval required in this paragraph.

11. To projects subject to chapter 336.

(d)~~1~~. If the project:

1. 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, municipality, 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.

(e) If a construction project greater than ~~\$300,000~~ ~~\$200,000~~, or ~~\$75,000~~ ~~\$50,000~~ for electrical work, is started after October 1, 1999, ~~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 licensed 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.

(f) If a construction project greater than ~~\$300,000~~ \$200,000, or ~~\$75,000~~ \$50,000 for electrical work, is started after October 1, 1999, 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~~ licensed contractor licensed 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.

(g) 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.

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

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

(j) A county, municipality, special district as defined in s. 189.403, or any other political subdivision of the state that owns or operates a public-use airport as defined in s. 332.004 is exempt from this section when performing repairs or maintenance on the airport's buildings, structures, or public construction works using the local government's own services, employees, and equipment.

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

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

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

(2) The threshold amount of ~~\$300,000~~ \$200,000 for construction or ~~\$75,000~~ \$50,000 for electrical work, as specified in subsection (1), must be adjusted by the percentage change in the Engineering News-Record's Building Cost Consumer Price Index from January 1, ~~2009~~ 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 ~~if whenever~~ such products are available and their price, fitness, and quality are equal. This subsection does not apply ~~to when~~ plywood specified for monolithic concrete forms, ~~if when~~ the structural or service requirements for timber for a particular job cannot be supplied by native species, or ~~if when~~ the construction is financed in whole or in part from federal funds with the requirement ~~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 has ~~shall have~~ standing to challenge ~~a the propriety of the~~ local government's actions to determine if the local government has complied with ~~when the local government seeks to invoke the provisions of this section~~. The prevailing party in such action ~~is shall be~~ entitled to recover its reasonable attorney's fees.

Section 2. This act shall take effect October 1, 2009.

Approved by the Governor June 18, 2009.

Filed in Office Secretary of State June 18, 2009.