

CHAPTER 2019-153

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 905

An act relating to the Department of Transportation; creating s. 334.179, F.S.; prohibiting local governments from adopting standards or specifications that are contrary to the department standards or specifications for permissible use of aggregates that have been certified for use; defining the term “certified for use”; providing an exception; amending s. 336.044, F.S.; prohibiting local governmental entities from adopting standards or specifications that are contrary to the department standards or specifications for permissible use of reclaimed asphalt pavement material in construction; prohibiting such material from being considered solid waste for specified purposes; amending s. 337.025, F.S.; authorizing the department to establish a program for transportation projects that demonstrate certain innovative techniques for measuring resiliency and structural integrity and controlling time and cost increases; amending s. 337.14, F.S.; requiring any contractor, instead of any person, desiring to bid for the performance of certain construction contracts to first be certified by the department as qualified; conforming provisions to changes made by the act; requiring certain contractors desiring to bid on certain contracts to have satisfactorily completed certain projects; prohibiting a local governmental entity from contracting with a single entity for the performance of certain services for certain projects funded by the department; providing an exception; amending s. 337.185, F.S.; revising the maximum amounts per contract of certain contractual claims that must be arbitrated by the State Arbitration Board under certain circumstances; amending s. 338.26, F.S.; revising provisions of an interlocal agreement for use of specified fees to reimburse a local governmental entity for the direct actual costs of operating a specified fire station; requiring a contribution by the local governmental entity; providing for the transfer of specified equipment; amending s. 339.2818, F.S.; revising the definition of the term “small county”; providing an effective date.

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

Section 1. Section 334.179, Florida Statutes, is created to read:

334.179 Department standards or specifications for permissible use of aggregates.—Notwithstanding any law, rule, or ordinance to the contrary, a local government may not adopt standards or specifications that are contrary to the department standards or specifications for permissible use of aggregates that have been certified for use. For purposes of this section, the term “certified for use” means that the aggregates have been certified by the producer in accordance with department rules. This section does not

apply to a multicounty independent special district created by a special act of the Legislature.

Section 2. Subsection (5) of section 336.044, Florida Statutes, is renumbered as subsection (6), and a new subsection (5) is added to that section to read:

336.044 Use of recyclable materials in construction.—

(5) Notwithstanding any law, rule, or ordinance to the contrary, a local governmental entity may not adopt standards or specifications that are contrary to the department standards or specifications for permissible use of reclaimed asphalt pavement material in construction. For purposes of this section, such material may not be considered solid waste.

Section 3. Subsection (1) of section 337.025, Florida Statutes, is amended to read:

337.025 Innovative transportation highway projects; department to establish program.—

(1) The department may ~~is authorized to~~ establish a program for transportation highway projects demonstrating innovative techniques of highway and bridge design, construction, maintenance, and finance which have the intended effect of measuring resiliency and structural integrity and controlling time and cost increases on construction projects. Such techniques may include, but are not limited to, state-of-the-art technology for pavement, safety, and other aspects of highway and bridge design, construction, and maintenance; innovative bidding and financing techniques; accelerated construction procedures; and those techniques that have the potential to reduce project life cycle costs. To the maximum extent practical, the department must use the existing process to award and administer construction and maintenance contracts. When specific innovative techniques are to be used, the department is not required to adhere to those provisions of law that would prevent, preclude, or in any way prohibit the department from using the innovative technique. However, ~~before~~ prior to using an innovative technique that is inconsistent with another provision of law, the department must document in writing the need for the exception and identify what benefits the traveling public and the affected community are anticipated to receive. The department may enter into no more than \$120 million in contracts annually for the purposes authorized by this section.

Section 4. Subsections (1) and (7) of section 337.14, Florida Statutes, are amended to read:

337.14 Application for qualification; certificate of qualification; restrictions; request for hearing.—

(1) Any contractor ~~person~~ desiring to bid for the performance of any construction contract in excess of \$250,000 which the department proposes

to let must first be certified by the department as qualified pursuant to this section and rules of the department. The rules of the department must shall address the qualification of contractors ~~persons~~ to bid on construction contracts in excess of \$250,000 and must shall include requirements with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applying contractor which are applicant necessary to perform the specific class of work for which the contractor person seeks certification. Any contractor who is not qualified and in good standing with the department as of January 1, 2019, and desires to bid on contracts in excess of \$50 million must have satisfactorily completed two projects, each in excess of \$15 million, for the department or for any other state department of transportation. The department may limit the dollar amount of any contract upon which a contractor person is qualified to bid or the aggregate total dollar volume of contracts such contractor person is allowed to have under contract at any one time. Each applying contractor applicant seeking qualification to bid on construction contracts in excess of \$250,000 shall furnish the department a statement under oath, on such forms as the department may prescribe, setting forth detailed information as required on the application. Each application for certification must shall be accompanied by the latest annual financial statement of the applying contractor applicant completed within the last 12 months. If the application or the annual financial statement shows the financial condition of the applying contractor applicant more than 4 months prior to the date on which the application is received by the department, ~~then~~ an interim financial statement and an updated application must be submitted ~~and be accompanied by an updated application.~~ The interim financial statement must cover the period from the end date of the annual statement and must show the financial condition of the applying contractor applicant no more than 4 months prior to the date that the interim financial statement is received by the department. However, upon the request of ~~by~~ the applying contractor applicant, an application and accompanying annual or interim financial statement received by the department within 15 days after either 4-month period under this subsection shall be considered timely. Each required annual or interim financial statement must be audited and accompanied by the opinion of a certified public accountant. An applying contractor applicant desiring to bid exclusively for the performance of construction contracts with proposed budget estimates of less than \$1 million may submit reviewed annual or reviewed interim financial statements prepared by a certified public accountant. The information required by this subsection is confidential and exempt from ~~the provisions of~~ s. 119.07(1). The department shall act upon the application for qualification within 30 days after the department determines that the application is complete. The department may waive the requirements of this subsection for projects having a contract price of \$500,000 or less if the department determines that the project is of a noncritical nature and the waiver will not endanger public health, safety, or property.

(7) A “contractor” as defined in s. 337.165(1)(d) or his or her “affiliate” as defined in s. 337.165(1)(a) qualified with the department under this section

may not also qualify under s. 287.055 or s. 337.105 to provide testing services, construction, engineering, and inspection services to the department. This limitation does not apply to any design-build prequalification under s. 337.11(7) and does not apply when the department otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the best interests of the public with respect to a particular contract for testing services, construction, engineering, and inspection services. This subsection does not authorize a contractor to provide testing services, or provide construction, engineering, and inspection services, to the department in connection with a construction contract under which the contractor is performing any work. Notwithstanding any other provision of law to the contrary, for a project that is wholly or partially funded by the department and administered by a local governmental entity, except for a seaport listed in s. 311.09, the entity performing design and construction engineering and inspection services may not be the same entity.

Section 5. Subsection (1) of section 337.185, Florida Statutes, is amended to read:

337.185 State Arbitration Board.—

(1) To facilitate the prompt settlement of claims for additional compensation arising out of construction and maintenance contracts between the department and the various contractors with whom it transacts business, the Legislature does hereby establish the State Arbitration Board, referred to in this section as the “board.” For the purpose of this section, the term “claim” means the aggregate of all outstanding claims by a party arising out of a construction or maintenance contract. Every contractual claim in an amount up to \$250,000 per contract or, at the claimant’s option, up to \$1 million ~~\$500,000~~ per contract or, upon agreement of the parties, up to \$2 million ~~\$1 million~~ per contract which ~~that~~ cannot be resolved by negotiation between the department and the contractor must shall be arbitrated by the board after acceptance of the project by the department. As an exception, either party to the dispute may request that the claim be submitted to binding private arbitration. A court of law may not consider the settlement of such a claim until the process established by this section has been exhausted.

Section 6. Paragraph (a) of subsection (3) of section 338.26, Florida Statutes, is amended to read:

338.26 Alligator Alley toll road.—

(3)(a) Fees generated from tolls shall be deposited in the State Transportation Trust Fund and shall be used:

1. To reimburse outstanding contractual obligations;
2. To operate and maintain the highway and toll facilities, including reconstruction and restoration;

3. To pay for those projects that are funded with Alligator Alley toll revenues and that are contained in the 1993-1994 adopted work program or the 1994-1995 tentative work program submitted to the Legislature on February 22, 1994; and

4. By interlocal agreement effective July 1, ~~2019~~ ~~2014~~, through no later than June 30, ~~2027~~ ~~2019~~, to reimburse a ~~county or another~~ local governmental entity for the direct actual costs of operating the fire station at mile marker 63 on Alligator Alley, which ~~shall~~ may be used by ~~the a county or another~~ local governmental entity to provide fire, rescue, and emergency management services exclusively to the public on Alligator Alley. The local governmental entity must contribute 10 percent of the direct actual operating costs. The amount of reimbursement to the local governmental entity may not exceed \$1.4 million in any state fiscal year. At the end of the term of the interlocal agreement, the ownership and title of all fire, rescue, and emergency equipment used at the fire station during the term of the interlocal agreement transfers to the state.

Section 7. Subsection (2) of section 339.2818, Florida Statutes, is amended to read:

339.2818 Small County Outreach Program.—

(2) For the purposes of this section, the term “small county” means any county that has a population of 200,000 ~~170,000~~ or less as determined by the most recent official estimate pursuant to s. 186.901.

Section 8. This act shall take effect July 1, 2019.

Approved by the Governor June 26, 2019.

Filed in Office Secretary of State June 26, 2019.