

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 481 w/CS Charitable Youth Organizations
SPONSOR(S): Waters, and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2248

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Administration	6 Y, 0 N w/CS	Bond	Everhart
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Current law requires state and local governments to utilize competitive bidding procedures when purchasing goods and services, with certain exceptions. This bill adds an additional exception to the competitive bidding requirements whereby certain not-for-profit charitable youth organizations may be granted no-bid public service contracts valued at up to \$250,000 per annum, upon compliance with certain conditions.

This bill does not appear to have a fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0481a.sa.doc
DATE: April 3, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain: Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

Chapter 255, F.S., relates to public property and publicly-owned buildings. This chapter includes competitive bidding requirements and procedures for construction, maintenance and repairs to public lands and public buildings. Contained within the chapter are certain bidding and contract requirements, including:

- Section 255.041, F.S., provides for certain contract specifications for construction if the contract amount is in excess of \$10,000.
- Section 255.0525, F.S., requires competitive bidding for state construction projects valued in excess of \$200,000. Section 255.20, F.S., similarly provides for competitive bidding for local government projects valued in excess of \$200,000.
- Section 255.102, F.S., requires agencies to consider participation by minority-owned businesses in the bidding process.
- Section 255.28, F.S., authorizes the Department of Management Services to promulgate administrative rules to further define competitive bidding and procurement in order to protect the state.

Chapter 287, F.S., relates to state government purchasing of personal property and services. It does not apply to local governments. Contained within ch. 287, F.S., is certain bidding and contract requirements, including:

- Section 287.012(9), F.S., defines the “contractual services” to which ch. 287, F.S., applies. It specifies that a contract for the “construction, renovation, repair, modification, or demolition of any facility, building, portion of building, utility, park, parking lot, or structure or other improvement to real property” entered into under ch. 255, F.S. is not governed by ch. 287, F.S.
- Sections 287.032 and 287.042, F.S., require the Department of Management Services to promulgate administrative rules, and monitor procurement by state agencies, in order to assist and protect such agencies.

- Section 287.057, F.S., requires competitive sealed bidding for any contract to which ch. 287, F.S., applies, which contract is in excess of \$25,000.¹ As the value of the contract increases beyond certain thresholds, the process, procedure, control, and review levels are increased. The threshold at which the highest level of review is instituted is \$250,000.²
- Sections 287.084 and 287.087, F.S., provide for purchasing preferences to Florida-based businesses and to drug-free workplaces, respectively.
- Sections 287.094-.0947, F.S., provide for preference in contracting with minority-owned businesses.
- Sections 287.132-.134, F.S., require integrity and honesty in the public contracting and purchasing process, and provide for civil and criminal sanctions for dishonesty in public contracting by private contractors.

In 1997, the Legislature created the youth work experience program to provide young men and women an opportunity to obtain public service work and training experience that protects the state's valuable resources and encourages participation in other community enhancement projects. Under this program, the Department of Transportation is authorized to contract with public agencies and nonprofit organizations for construction and maintenance work on transportation-related facilities by youths enrolled in a youth work experience program.³ That law does not, however, exempt such programs from general competitive bid requirements.

Effect of Bill

This bill provides an exemption to the competitive bid requirements for public works contracts pursuant to ch. 255, F.S. The state, or local governments, may enter into no-bid contracts under the following terms:

The contract must be with a not-for-profit charitable youth corporation that is organized exclusively to provide public service work such as highway and park maintenance by at-risk youths enrolled in a work-study program. Such a corporation must be a Florida-based non-profit corporation, and must be qualified as a s. 501(c)(3) corporation under the federal income tax laws. Administrative overhead for salaries and benefits of any such corporation may not exceed 15% of the gross income of the corporation. The corporation must implement a drug-free workplace. The corporation and its officers are specifically not exempted from ss. 287.132-.134, F.S., which require integrity and honesty in the public contracting and purchasing process, and provide for civil and criminal sanctions for dishonesty in public contracting by private contractors.

The contract must provide certain terms. Any such contract must be production-based, and may not exceed the annual sum of \$250,000. The contract for public works must be terminated if the corporation no longer qualifies. The work must be performed by at-risk youth and their immediate supervisors. The Auditor General may audit any such corporation accepting a no-bid contract under this section for compliance.

A person denied the right to bid on such a contract may perhaps have standing to file a lawsuit challenging the contract. Should a person prevail, the court could give reasonable notice of termination of the contract. In such a case, the corporation would have to be paid for work actually performed up to the point of termination of the contract by the court order.

¹ This is termed a CATEGORY TWO contract, which is any contract valued in excess of \$25,000, by s. 287.017(1)(b), F.S.

² This is termed a CATEGORY FIVE contract by s. 287.017(1)(e), F.S.

³ Section 334.351, F.S.

C. SECTION DIRECTORY:

Section 1 creates s. 255.60, providing a limited exception to state and local government competitive bid requirements for public works contracts.

Section 2 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures:
See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

This bill creates a relatively large exception (\$250,000) that could represent a substantial percentage of the highway and park maintenance budgets of some smaller local governments. The general policies behind competitive bidding requirements are to ensure that governments obtain the best possible price for goods and services in the open market, and to limit political pressure in the awarding of contracts. Certain exceptions have been carved out of the general competitive bid requirements, most notably for smaller purchases where the cost of the bidding process, and the risk of an adverse outcome as a percentage of total government expenditures, does not warrant the extra cost of complying with competitive bid requirements.

Allowing no-bid contracts to these certain types of entities may place such entities at a competitive advantage over private for-profit corporations who seek to provide such services to state or local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.
2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 31, 2003, the Committee on State Administration adopted one amendment to this bill. The amendment designated a statute number, specified requirements of corporations to receive such contracts, specified required contract terms, required implementation of a drug-free workplace, and specified that public ethics laws at ss. 287.132-.134, F.S., apply. The bill was then reported favorably with a committee substitute.