

1 A bill to be entitled
2 An act relating to public construction works; amending s.
3 255.20, F.S.; revising requirements for a county,
4 municipality, special district, or other political
5 subdivision of the state to competitively award contracts
6 for certain construction projects; revising exceptions to
7 those requirements; providing procedures for an exception
8 to those requirements when all bids or proposals are
9 greater than a threshold amount; providing that certain
10 construction contract terms limiting the right of a
11 contractor to recover certain costs or damages are void;
12 providing that certain decisions by the local governmental
13 entity concerning additional compensation or time to which
14 a contractor is entitled are subject to de novo review in
15 state court; amending s. 336.41, F.S.; revising provisions
16 authorizing a county to employ labor and provide equipment
17 for road and bridge projects; removing authorization for a
18 county to use its own resources for constructing and
19 opening new roads and bridges; revising requirements for
20 certain county road and bridge projects to be let to
21 contract; authorizing the governing body of a municipality
22 to employ labor and provide equipment for repair and
23 maintenance of roads and bridges; requiring county and
24 municipal construction and reconstruction projects using
25 certain tax revenues to be let to contract; providing
26 exceptions; authorizing a municipality to require that
27 persons interested in performing work under the contract
28 first be certified or qualified to do the work when the

HB 683

2008

29 contract amount exceeds a certain threshold; providing for
30 qualification of a contractor by the Department of
31 Transportation; providing that a contractor may be
32 considered ineligible to bid by the municipality if the
33 contractor is behind an approved progress schedule by more
34 than a certain amount on another project for that
35 municipality at the time of the advertisement of the work
36 requiring prequalification; authorizing an appeal process;
37 requiring prequalification criteria and procedures to be
38 published prior to advertisement or notice of
39 solicitation; requiring notice of a public hearing for
40 comment on such criteria and procedures prior to adoption;
41 requiring the procedures to provide for an appeal process
42 for objections to the prequalification process; requiring
43 the municipality to publish for comment, prior to
44 adoption, the selection criteria and procedures to be used
45 if such procedures would allow selection of other than the
46 lowest responsible bidder; requiring the selection
47 criteria to include an appeal process; providing an
48 effective date.

49
50 Be It Enacted by the Legislature of the State of Florida:

51
52 Section 1. Subsection (1) of section 255.20, Florida
53 Statutes, is amended to read:

54 255.20 Local bids and contracts for public construction
55 works; specification of state-produced lumber.--

HB 683

2008

56 (1) A county, municipality, special district as defined in
57 chapter 189, or other political subdivision of the state seeking
58 to construct, ~~or improve~~, repair, or perform maintenance on a
59 public building, structure, facility, or other public
60 construction works must competitively award to an appropriately
61 licensed contractor each project that is estimated in accordance
62 with generally accepted cost-accounting principles to have total
63 construction project costs of more than \$200,000. For electrical
64 work, local government must competitively award to an
65 appropriately licensed contractor each project that is estimated
66 in accordance with generally accepted cost-accounting principles
67 to have a cost of more than \$50,000. As used in this section,
68 the term "competitively award" means to award contracts based on
69 the submission of sealed bids, proposals submitted in response
70 to a request for proposal, proposals submitted in response to a
71 request for qualifications, or proposals submitted for
72 competitive negotiation. This subsection expressly allows
73 contracts for construction management services, design/build
74 contracts, continuation contracts based on unit prices, and any
75 other contract arrangement with a private sector contractor
76 permitted by any applicable municipal or county ordinance, by
77 district resolution, or by state law. For purposes of this
78 section, construction costs include the cost of all labor,
79 except inmate labor, and include the cost of equipment and
80 materials to be used in the construction of the project. Subject
81 to the provisions of subsection (3), the county, municipality,
82 special district, or other political subdivision may establish,

83 | by municipal or county ordinance or special district resolution,
84 | procedures for conducting the bidding process.

85 | (a) Notwithstanding any other law to the contrary, a
86 | county, municipality, special district as defined in chapter
87 | 189, or other political subdivision of the state seeking to
88 | construct or improve bridges, roads, streets, highways, or
89 | railroads, and services incidental thereto, at costs in excess
90 | of \$250,000 may require that persons interested in performing
91 | work under contract first be certified or qualified to perform
92 | such work. Any contractor may be considered ineligible to bid by
93 | the governmental entity if the contractor is behind on
94 | completing an approved progress schedule for the governmental
95 | entity by 10 percent or more at the time of advertisement of the
96 | work. Any contractor prequalified and considered eligible by the
97 | Department of Transportation to bid to perform the type of work
98 | described under the contract shall be presumed to be qualified
99 | to perform the work described. The governmental entity may
100 | provide an appeal process to overcome that presumption with de
101 | novo review based on the record below to the circuit court.

102 | (b) With respect to contractors not prequalified with the
103 | Department of Transportation, the governmental entity shall
104 | publish prequalification criteria and procedures prior to
105 | advertisement or notice of solicitation. Such publications shall
106 | include notice of a public hearing for comment on such criteria
107 | and procedures prior to adoption. The procedures shall provide
108 | for an appeal process within the authority for objections to the
109 | prequalification process with de novo review based on the record
110 | below to the circuit court within 30 days.

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

112 1. When the project is undertaken to replace, reconstruct,

113 or repair an existing facility damaged or destroyed by a sudden

114 unexpected turn of events, such as an act of God, riot, fire,

115 flood, accident, or other urgent circumstances, and such damage

116 or destruction creates:

117 a. An immediate danger to the public health or safety;

118 b. Other loss to public or private property which requires

119 emergency government action; or

120 c. An interruption of an essential governmental service.

121 2. When, after notice by publication in accordance with

122 the applicable ordinance or resolution, the governmental entity

123 does not receive any responsive bids or proposals ~~responses~~.

124 3. To construction, remodeling, repair, or improvement to

125 a public electric or gas utility system when such work on the

126 public utility system is performed by personnel of the system.

127 4. To construction, remodeling, repair, or improvement by

128 a utility commission whose major contracts are to construct and

129 operate a public electric utility system.

130 ~~5. When the project is undertaken as repair or maintenance~~

131 ~~of an existing public facility.~~

132 ~~5.6.~~ When the project is undertaken exclusively as part of

133 a public educational program.

134 ~~6.7.~~ When the funding source of the project will be

135 diminished or lost because, through no fault of the governmental

136 entity, the time required to competitively award the project

137 after the funds become available exceeds the time within which

138 the funding source must be spent.

139 ~~7.8.~~ When the local government has competitively awarded a
140 project to a private sector contractor and the contractor has
141 abandoned the project before completion or the local government
142 has terminated the contract.

143 8.9. When, after receipt of bids or proposals, all
144 responsive bids or proposals are at least 10 percent greater
145 than the local government's estimated cost of the project. In
146 this case, the local government may request that a professional
147 engineer not affiliated with the local government prepare an
148 independent estimate of the fair market cost of the project. If
149 the professional engineer's cost estimate is within 10 percent
150 of at least one of the responsive bids or proposals, the project
151 must be competitively awarded. If the professional engineer's
152 cost estimate is not within 10 percent of at least one of the
153 responsive bids or proposals, the local government may request
154 that a certified public accountant not affiliated with the local
155 government prepare, in conjunction with the professional
156 engineer, an estimate of the cost of the project if performed by
157 the local government using its own services, employees, and
158 equipment and using generally accepted accounting principles
159 that fully account for all employee compensation and benefits,
160 equipment and material costs, and any other associated costs and
161 expenses. Only if the accountant's estimate is less than the
162 lowest-priced responsive bid or proposal and the governing board
163 of the local government, after public notice, conducts a public
164 meeting under s. 286.011 and finds by a majority vote of the
165 governing board that it is in the public's best interest to
166 perform the project using its own services, employees, and

167 | equipment may the local government perform the work using its
 168 | own services, employees, and equipment. The public notice must
 169 | be published at least 14 days prior to the date of the public
 170 | meeting at which the governing board takes final action to apply
 171 | this subparagraph. The notice must identify the project, the
 172 | estimated cost of the project, and specify that the purpose for
 173 | the public meeting is to consider whether it is in the public's
 174 | best interest to perform the project using the local
 175 | government's own services, employees, and equipment. In deciding
 176 | whether it is in the public's best interest for local government
 177 | to perform a project using its own services, employees, and
 178 | equipment, the governing board may consider the cost of the
 179 | project, whether the project requires an increase in the number
 180 | of government employees or, an increase in capital expenditures
 181 | for public facilities, equipment, or other capital assets, the
 182 | impact on local economic development, the impact on small and
 183 | minority business owners, the impact on state and local tax
 184 | revenues, whether the private sector contractors provide health
 185 | insurance and other benefits equivalent to those provided by the
 186 | local government, and any other factor relevant to what is in
 187 | the public's best interest.

188 | ~~9.10.~~ When the governing board of the local government
 189 | determines upon consideration of specific substantive criteria
 190 | and administrative procedures that it is in the best interest of
 191 | the local government to award the project to an appropriately
 192 | licensed private sector contractor according to procedures
 193 | established by and expressly set forth in a charter, ordinance,
 194 | or resolution of the local government adopted prior to July 1,

195 1994. The criteria and procedures must be set out in the
196 charter, ordinance, or resolution and must be applied uniformly
197 by the local government to avoid award of any project in an
198 arbitrary or capricious manner. This exception shall apply when
199 all of the following occur:

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

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

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

220 (II) The time to competitively award the project will
221 jeopardize the funding for the project, or will materially

HB 683

2008

222 increase the cost of the project or will create an undue
223 hardship on the public health, safety, or welfare.

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

229 d. In the event the project is to be awarded by a method
230 other than a competitive selection process, the architect or
231 engineer of record has provided a written recommendation that
232 the project be awarded to the private sector contractor without
233 competitive selection; and the consideration by, and the
234 justification of, the government body are documented, in
235 writing, in the project file and are presented to the governing
236 board prior to the approval required in this paragraph.

237 ~~10.11.~~ To projects subject to chapter 336.

238 (d)1. If the project is to be awarded based on price, the
239 contract must be awarded to the lowest qualified and responsive
240 bidder in accordance with the applicable county or municipal
241 ordinance or district resolution and in accordance with the
242 applicable contract documents. The county, municipality, or
243 special district may reserve the right to reject all bids and to
244 rebid the project or elect not to proceed with the project. This
245 subsection is not intended to restrict the rights of any local
246 government to reject the low bid of a nonqualified or
247 nonresponsive bidder and to award the contract to any other
248 qualified and responsive bidder in accordance with the standards

249 and procedures of any applicable county or municipal ordinance
 250 or any resolution of a special district.

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

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

257 (e) If a construction project greater than \$200,000, or
 258 \$50,000 for electrical work, is started after October 1, 1999,
 259 and is to be performed by a local government using its own
 260 employees in a county or municipality that issues registered
 261 contractor licenses and the project would require a licensed
 262 contractor under chapter 489 if performed by a private sector
 263 contractor, the local government must use a person appropriately
 264 registered or certified under chapter 489 to supervise the work.

265 (f) If a construction project greater than \$200,000, or
 266 \$50,000 for electrical work, is started after October 1, 1999,
 267 and is to be performed by a local government using its own
 268 employees in a county that does not issue registered contractor
 269 licenses and the project would require a licensed contractor
 270 under chapter 489 if performed by a private sector contractor,
 271 the local government must use a person appropriately registered
 272 or certified under chapter 489 or a person appropriately
 273 licensed under chapter 471 to supervise the work.

274 (g) Projects performed by a local government using its own
 275 services and employees must be inspected in the same manner as

276 inspections required for work performed by private sector
 277 contractors.

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

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

284 (j) Notwithstanding any other law to the contrary, any
 285 provision contained in any public construction contract for a
 286 county, municipality, special district as defined in chapter
 287 189, or other political subdivision of the state which purports
 288 to limit, waive, release, or extinguish the rights of a
 289 contractor to recover costs or damages for delay in performing
 290 such contract, either on its behalf or on behalf of its
 291 subcontractors, if and to the extent the delay is caused by acts
 292 or omissions of the county, municipality, special district, or
 293 political subdivision, its agents or employees, or other
 294 entities with which it is in privity and due to causes within
 295 its control, shall be void and unenforceable as against public
 296 policy. The decisions of a county, municipality, special
 297 district, or other political subdivision concerning additional
 298 compensation or time to which a contractor is entitled in
 299 connection with any public construction contract shall be
 300 subject to de novo review in a state court of appropriate
 301 jurisdiction.

302 Section 2. Section 336.41, Florida Statutes, is amended to
 303 read:

304 336.41 Counties and municipalities; employing labor and
 305 providing road equipment; accounting; when competitive bidding
 306 required.--

307 (1) The governing body of a county or municipality
 308 ~~commissioners~~ may employ labor and provide equipment as may be
 309 necessary, except as provided in subsection (3), for
 310 ~~constructing and opening of new roads or bridges and~~ repair and
 311 maintenance of any existing roads and bridges.

312 (2) It shall be the duty of all persons to whom the
 313 governing body of a county or municipality delivers
 314 ~~commissioners deliver~~ equipment and supplies for road and bridge
 315 purposes to make a strict accounting of the same to the
 316 governing body ~~commissioners~~.

317 (3) (a) All construction and reconstruction of roads and
 318 bridges, including resurfacing, full scale mineral seal coating,
 319 and major bridge and bridge system repairs, to be performed
 320 utilizing the proceeds ~~of the 80 percent portion of the surplus~~
 321 of the constitutional fuel gas tax under s. 206.41(1)(a), the
 322 county fuel tax under s. 206.41(1)(b) for county projects or the
 323 municipal fuel tax under s. 206.41(1)(c) for municipal projects,
 324 the ninth-cent fuel tax under s. 206.41(1)(d) when imposed by
 325 the county, or the local option fuel tax under s. 206.41(1)(e)
 326 when imposed by the county shall be let to contract to the
 327 lowest responsible bidder by competitive bid.

328 (b) Notwithstanding paragraph (a), the county or
 329 municipality may use its own forces, ~~except~~ for:

330 1.(a) Construction and maintenance in emergency
 331 situations, ~~and~~

332 ~~2.(b)~~ In addition to emergency work, construction and
 333 reconstruction, including resurfacing, mineral seal coating, and
 334 bridge repairs, having a total cumulative annual value not to
 335 exceed 5 percent of its proceeds listed in paragraph (a) ~~80-~~
 336 ~~percent portion of the constitutional gas tax~~ or \$400,000,
 337 whichever is greater. ~~and~~

338 ~~3.(e)~~ Construction of sidewalks, curbing, accessibility
 339 ramps, or appurtenances incidental to roads and bridges if each
 340 project is estimated in accordance with generally accepted cost-
 341 accounting principles to have total construction project costs
 342 of less than \$400,000 or as adjusted by the percentage change in
 343 the Construction Cost Index from January 1, 2008~~,~~

344
 345 ~~for which the county may utilize its own forces.~~

346 (c) However, if, after proper advertising, no bids are
 347 received by a county or municipality for a specific project, the
 348 county or municipality may use its own forces to construct the
 349 project, notwithstanding the limitation of this subsection.

350 (d) Nothing in this section shall prevent the county or
 351 municipality from performing routine maintenance as authorized
 352 by law.

353 (4) (a) For contracts in excess of \$250,000, any county or
 354 municipality may require that persons interested in performing
 355 work under the contract first be certified or qualified to do
 356 the work. Any contractor prequalified and considered eligible to
 357 bid by the department to perform the type of work described
 358 under the contract shall be presumed to be qualified to perform
 359 the work so described. Any contractor may be considered

HB 683

2008

360 ineligible to bid by the county or municipality if the
361 contractor is behind an approved progress schedule by 10 percent
362 or more on another project for that county or municipality at
363 the time of the advertisement of the work. The county or
364 municipality may provide an appeal process to overcome such
365 consideration with de novo review based on the record below to
366 the circuit court.

367 (b) The county or municipality, as appropriate, shall
368 publish prequalification criteria and procedures prior to
369 advertisement or notice of solicitation. Such publications shall
370 include notice of a public hearing for comment on such criteria
371 and procedures prior to adoption. The procedures shall provide
372 for an appeal process within the county or municipality for
373 objections to the prequalification process with de novo review
374 based on the record below to the circuit court.

375 (c) The county or municipality, as appropriate, shall also
376 publish for comment, prior to adoption, the selection criteria
377 and procedures to be used by the county or municipality if such
378 procedures would allow selection of other than the lowest
379 responsible bidder. The selection criteria shall include an
380 appeal process within the county or municipality with de novo
381 review based on the record below to the circuit court.

382 Section 3. This act shall take effect July 1, 2008.