

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 778

INTRODUCER: Community Affairs Committee and Senator Hays

SUBJECT: Local Government Construction Preferences

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	Fav/CS
2.			GO	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 778 prohibits any local laws that give preference to a local contractor in circumstances involving a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds. The bill requires a state agency or subdivision subject to this law to disclose whether payment will be made from state-appropriated funds and the percentage of such funds compared to the total cost, if known. The bill does not prohibit the application of a local preference in a competitive solicitation for construction services in which less than 50 percent of the cost will be paid from state-appropriated funds. The bill provides that state-appropriated funds do not include any federal aid funds.

II. Present Situation:

Procurement of Construction Services

Chapter 255, F.S., specifies procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The department is responsible for establishing in rule:¹

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids on building construction contracts;

¹ Section 255.29, F.S.

- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications if negotiations are determined to be in the best interest of the state; and
- Procedures for entering into performance-based contracts for the development of public facilities if the contracts are determined to be in the best interest of the state.

State contracts for construction projects estimated to cost in excess of \$200,000 must be competitively bid.² Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must competitively award the project if the projected cost exceeds \$300,000.³ To “competitively award” a project means to award the contract 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.⁴ Counties, municipalities, special districts, and other political subdivisions may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.⁵

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days before the established bid opening. If the construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days before the bid opening and also in a newspaper of general circulation in the county where the project is located at least 30 days before the bid opening.⁶

Florida Preference to State Residents

Florida law provides a preference for the employment of state residents in construction contracts funded by money appropriated with state funds. Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal qualifications⁷ to those of non-residents.⁸ If a construction contract is funded by local funds, the contract may contain such a provision.⁹ In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor’s employment needs in the state’s job bank system.¹⁰

² See ch. 60D-5.002(2)(d) and 60D-5.0073(4), F.A.C.; see also s. 255.0525(1), F.S.

³ See s. 255.20(1), F.S.

⁴ *Id.*

⁵ *Id.*

⁶ For counties, municipalities, and political subdivisions, similar publishing provisions apply. Section 255.0525(2), F.S.

⁷ Section 255.099(1)(a), F.S., defines substantially equal qualifications as the “qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.”

⁸ Section 255.099(1), F.S.

⁹ *Id.*

¹⁰ Section 255.099(1)(b), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 287.084, F.S., to prohibit local ordinances or regulations that give preference to a local contractor in circumstances involving a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds. Specifically, the bill prohibits local ordinances or regulations from restricting a certified contractor (as defined in s. 489.105(8), F.S.) from competing for an award based upon the contractor's:

- Maintaining an office or place of business within a particular local jurisdiction;
- Hiring employees or subcontractors from within a particular local jurisdiction; or
- Making prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

The bill provides that state-appropriated funds do not include any federal aid funds.

When 50 percent or more of the costs will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision must disclose in the solicitation document the amount of such funds or the percentage of such funds as compared to the anticipated total cost of the construction services.

The bill also provides that except for when 50 percent or more of the costs for construction services will be funded from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision is not prevented from awarding a contract to a contractor in accordance with applicable state laws or local ordinances or regulations.

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may result in more business being awarded to state certified contractors as a result of prohibiting certain local ordinances and regulations that may otherwise restrict a non-local contractor from competing.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.084 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 4, 2015:

Provides that state-appropriated funds do not include any federal aid funds for purposes of this section.

Raises the percentage of funding that must be derived from state-appropriated funds in order to prohibit application of a local preference from 20 percent to 50 percent.

Changes the word “vendor” to “contractor” throughout the bill.

B. Amendments:

None.