

STORAGE NAME: h3063s1.go

DATE: March 20, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3063

RELATING TO: Educational Facilities/Contractors

SPONSOR(S): Committee on Governmental Operations and Representative Lacasa

COMPANION BILL(S): CS/SB 482(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) EDUCATION INNOVATION 8 YEAS 0 NAYS
- (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 3063 requires, rather than permits, the prequalification for bidders for construction of educational facilities if the bidder process is used. Prequalification will no longer be an option in the bidder process. Bids on all construction and capital improvement will be required to include evidence that either the bidder holds an appropriate certificate or license, or, the prime contractor has a current valid license.

The bill repeals provisions that precluded district school boards and community college boards from prequalifying state certified electrical contractors, alarm system contractors, and fire protection system contractors.

The bill does not set a cost threshold for the required prequalification of bidders. Practically speaking, prequalification will be required for projects that exceed \$200,000 since existing law (s. 235.211, F.S.) permits day-labor contracts rather than competitive bids for projects below that threshold. The bill will not change current law as to when and under what circumstances the bidding process is used; however, if the bidding process is used, prequalification of bidders is required.

Prequalifying bidders should eliminate unqualified or irresponsible bidders and, therefore, reduce construction costs and improve the quality of educational facilities. School districts and community colleges will incur the costs of prequalifying bidders and associated record keeping. Individuals and businesses who bid on school district and community college construction projects may incur costs related to prequalifying. Prequalification could eliminate some potential bidders from competing for educational facility construction and capital improvement projects.

Potential savings in construction and capital improvement projects nor costs to bidders, schools districts, or community colleges can be quantified.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 235.31(2), F.S., allows district school boards and community college boards of trustees to exercise the option of prequalifying bidders for construction of educational facilities. If a board chooses to prequalify bidders, subsection (2) allows the board to elect to come under the prequalification criteria and procedures set by rule of the Commissioner of Education. The rule [s. 4.1(8), State Requirements for Educational Facilities, incorporated by reference in 6A-2, F.A.C.] allows a board to prequalify contractors on an annual basis or for a specific project. The board must hold a public hearing on its intent to prequalify contractors and must adopt procedures that allow the prequalification of any responsible contractor who:

- Holds a contractor's license which authorizes supervision of work within the scope of the construction project.
- Provides written evidence of sufficient financial resources to start and follow through on projects and respond to damages in case of default.
- Demonstrates experience with construction techniques, trade standards, quality workmanship, project scheduling, cost control, project management, and building codes by successfully completing at least two similarly-sized projects within the past five years.
- Evidences satisfactory resolution of any claims by or against the contractor on projects of the same or similar size within the five preceding years.

State agencies, local governments, district school boards, community college boards of trustees, and the Board of Regents may require potential bidders to be prequalified prior to advertising or receiving bids for construction projects. State agencies must, by rule of the Department of Management Services, prequalify bidders for contracts that exceed \$200,000. Prequalification allows agencies to reject potential bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract. Prequalification can also assure that actual bidders are licensed, certified, or registered as required by Florida Statutes; have performed similar work of similar size and complexity; are financially responsible; and have or can access facilities or equipment to complete the project.

Part I of chapter 489, F.S., contains the statutory law for construction contracting. Any construction contractor certified under part I of chapter 489, F.S., is deemed qualified to bid on any project contemplated under s. 235.31, F.S., unless a district school board elects to prequalify contractors according to criteria set by rule of the State Board of Education (s. 489.125, F.S.). Chapter 97-384, Laws of Florida, transferred the referenced rulemaking authority from the State Board to the Commissioner of Education.

School boards and community college boards cannot prequalify certain types of contractors. Section 489.527, F.S., provides that certified electrical contractors and alarm system contractors (i.e., those certified under part II of chapter 489, F.S.) are qualified to participate in any contract under s. 235.31, F.S., notwithstanding the boards' authority to prequalify bidders. Section 633.551(5), F.S., declares certified fire protection system contractors to be qualified for any project contemplated under chapter 633, F.S., notwithstanding s. 235.31, F.S.

Contractors must be appropriately certified or registered under chapter 489 before engaging in contracting or offering services as a contractor through advertising or bids.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 3063 requires the prequalification for bidders for construction of educational facilities; prequalification will no longer be an option in the bidding process. District school boards and community college boards of trustees are required to prequalify bidders for construction of educational facilities. A uniform prequalification process would continue to be set by rule of the Commissioner of Education.

The bill does not set a cost threshold for the required prequalification of bidders. Practically speaking, prequalification will be required for projects that exceed \$200,000 since existing law (s. 235.211, F.S.) permits day-labor contracts rather than competitive bids for projects below that threshold. The bill will not change current law as to when and under what circumstances the bidding process is used; however, if the bidding process is used, prequalification of bidders is required.

Boards must also require bids on all construction and capital improvement to include evidence that either the bidder holds an appropriate certificate or license, or, the prime contractor has a current valid license "prior to the bid award for each contract".

The bill repeals provisions that precluded district school boards and community college boards from prequalifying state certified electrical contractors, alarm system contractors, and fire protection system contractors. All contractors must be prequalified by the district school board or community college board to bid on educational facility construction projects.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Rules are already in existence for prequalifications of contractors for educational facilities construction. There is no need for, nor does the bill require, any new rules; it simply makes existing rules applicable to boards, rather than optional.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

District boards will be required to prequalify bidders for construction contracts and bidders will be required to go through prequalification when the bidding process is used.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

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- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends ss. 235.31 and 489.125; repeals s. 489.527 and subsection (5) of 633.551.

E. SECTION-BY-SECTION RESEARCH:

Section 1 Amends s. 235.31, F.S., requiring boards to prequalify bidders for construction contracts rather than allowing boards to elect to prequalify bidders. Requires that all bidders be licensed or certified or that contractor has a current valid license.

Section 2 Amends s. 489.125, F.S., requiring a certificate holder to be prequalified to bid by a district school board under criteria in rules of the Commissioner of Education rather than allowing prequalification as an option. Removes language which makes prequalification optional.

Section 3 Repeals section 489.527, F.S., and subsection (5) of section 633.551, F.S. which allows any certificate holder to participate in projects without prequalification requirements.

Section 4 Provides an effective date of July 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Prequalifying bidders should eliminate unqualified or irresponsible bidders and, therefore, reduce construction costs and improve the quality of educational facilities. Potential savings and costs cannot be quantified.

3. Long Run Effects Other Than Normal Growth:

See note above.

4. Total Revenues and Expenditures:

See above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Individuals and businesses who bid on school district and community college construction projects may incur some additional costs related to prequalifying.

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

Prequalification could eliminate some potential bidders from competing for these projects.

D. FISCAL COMMENTS:

School districts and community colleges will incur the costs of prequalifying bidders and associated record keeping. However, prequalifying bidders should eliminate unqualified or irresponsible bidders and, therefore, reduce construction costs and improve the quality of educational facilities. Potential savings and costs cannot be quantified.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenue.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

The Senate companion to CS/HB 3063, SB 482, passed the Senate Education Committee on February 4, 1998, with one amendment, which is the same amendment described in the next section of this analysis.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 11, 1998, HB 3063 passed the Committee on Education Innovation with one amendment which deleted language that would have allowed bidders to submit evidence that the prime contractor is appropriately certified or licensed at any time prior to the bid award. Instead, the prime contractor will be required to be certified or registered at bid submission. The change is consistent with chapter 489, F.S., which requires contractors to be certified or registered before bids are submitted.

On March 19, 1998, the Committee on Governmental Operations adopted one amendment to HB 3063. That amendment is identical to the one traveling with the bill, described above. The bill, as amended, was made a committee substitute.

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VII. SIGNATURES:

COMMITTEE ON EDUCATION INNOVATION:

Prepared by:

Legislative Research Director:

Ouida J. Ashworth

Peter C. Doherty

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

J. Marleen Ahearn, Ph.D., J.D.

Jimmy O. Helms