

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1906

SPONSOR: Comprehensive Planning, Local and Military Affairs, Senators Sebesta and Dyer

SUBJECT: Public Construction

DATE: April 1, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute revises the law governing local bids and contracts for public construction projects to lower to \$50,000 the threshold amount required for competitive awards of local bids and contracts for electrical projects.

This committee substitute amends section 255.20, Florida Statutes.

II. Present Situation:

Section 255.20, F.S., requires counties, municipalities, special districts, or other political subdivisions of the state (collectively referred to as local governments) to competitively award contracts to construct or improve a public building, or other public construction works that cost in excess of \$200,000.

There are various exceptions to the competitive award requirement. For example, some exceptions include:

- repairs caused by accident;
- reconstruction that needs to be completed immediately for public health or safety reasons;
- repairs to an existing public facility;
- improvements by a utility commission whose major contracts are to construct and operate a public electric utility system; and
- projects undertaken as part of a public education program.

Pursuant to a noticed public meeting under s. 268.001, F.S., a local governing board may, by majority vote, decide that it is in the public's best interest that local government employees perform the project. The public notice must be published at least 14 days prior to the date of the public meeting at which the governing board takes final action. In deciding whether it is in the

public's best interest for the local government to have its employees perform the job, the governing board may consider several factors, such as:

- the cost of the project;
- whether the project requires an increase in capital expenditures for public facilities;
- the impact on local economic development;
- the impact on small and minority business owners;
- the impact on state and local tax revenues;
- whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government; and
- any other relevant factor.

In addition, s. 255.20, F.S., establishes requirements for the use of appropriately registered or certified contractors on local government projects above \$200,000 where the project is to be performed by local government employees.

III. Effect of Proposed Changes:

Section 1

- Section 255.20(1), F.S., is amended to provide that a local government must competitively award each project that is estimated to have *total* construction project costs of more than \$200,000. For electrical work, the threshold level at which a project must be competitively bid is for projects costing more than \$50,000.
- Section 255.20(1)(a)10., F.S., is amended to require that when a local government governing board decides that it is in the best interest of the local government to award a contract to a private sector contractor, that the award must be made upon consideration of specific substantive criteria and administrative procedures that are expressly set forth in a charter, ordinance, or resolution adopted prior to July 1, 1994; to require that the criteria and procedure be applied uniformly by the local government to avoid award of any project in an arbitrary or capricious manner; to require that if the project is to be awarded by method other than a competitive selection process, the governing board must find evidence that the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without a competitive selection and the considerations and justifications for the decision by the local government are documented in writing.
- A new subsection (4) is created that provides that any qualified contractor or vendor who could have been awarded the project had the project been competitively bid has standing to challenge the propriety of the local government's actions when the local government seeks to invoke the provisions of the section. The prevailing party in such action is entitled to recover its reasonable attorney's fees.

Section 2 provides that the committee substitute will take effect October 1, 1999.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Article VII, s. 18, State Constitution, excuses local governments from complying with state mandates which impose negative fiscal consequences. Subsection (a) provides, “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds” unless the Legislature has determined that the law fulfills an important state interest *and* unless certain other requirements are met. Several exceptions exist, however.

Article VII, s. 18(d), State Constitution, exempts laws which have an insignificant fiscal impact from the requirements of the mandates provision. Whether a particular bill results in a significant impact must be determined on an aggregate, statewide basis. Any bill which requires an expenditure of greater than \$1.4 million is considered to produce a significant impact.

Local governments that do not currently competitively award electrical contracts over \$50,000 may incur some additional costs if they are required to competitively award these contracts. The collective financial impact, however, appears unlikely to exceed \$1.4 million per year in the aggregate, in light of the potential savings local governments may experience as a result of the influence of the competitive bidding process. Accordingly, it would appear as if the committee substitute is exempt from paragraph (a) because the net aggregate fiscal impact does not exceed \$1.4 million.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The overall impact on the private construction sector would be beneficial, although there are significant costs associated with preparing a bid which must be absorbed by the private sector bidder if that bidder is unsuccessful.

C. Government Sector Impact:

There is debate as to whether competitively awarding local government construction contracts will be a cost benefit or a cost burden to local governments. Many local governments bid out their contracts because they do not have the capacity or personnel to participate in that role. Others have threshold requirements and any contract in excess of that amount is competitively bid. Implementing the bidding process has inherent costs. For example, there are costs incurred for advertising, bid review and selection. If the local government is required to bid contracts, the costs associated with non-use of existing personnel and equipment will impact savings that result from competitive bidding. Further, given the differing staffing levels of the various local governments, cost savings comparisons may vary from one entity to another. Accordingly, the fiscal impact on local government is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.