

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/CS/CS/HB 113	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	State Affairs Committee; Local Government Affairs Subcommittee; Government Operations Subcommittee; Perry and others	95 Y's	22 N's
COMPANION BILLS:	CS/CS/SB 778	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 113 passed the House on April 24, 2015, as CS/CS/SB 778.

Contracts for construction services over a specified, projected threshold cost must be competitively awarded. 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 qualifications to those of non-residents. If a construction contract is funded by local funds, the contract may contain such a provision.

The bill provides that for a competitive solicitation for construction services in which 50 percent or more of the cost is to be paid from state-appropriated funds that have been appropriated at the time of the competitive solicitation, then a state college, county, municipality, school district, or other political subdivision may not use a local ordinance or regulation that provides a preference 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
- Prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

The bill defines the term "state-appropriated funds" to mean all funds appropriated in the General Appropriations Act, excluding federal funds. It also provides a definition for the term "competitive solicitation."

The bill requires a state college, county, municipality, school district, or other political subdivision to disclose certain information regarding the use of state-appropriated funds in its competitive solicitation document. The bill also provides that except for when 50 percent or more of the costs for construction services will be paid 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.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on May 21, 2015, ch. 2015-63, L.O.F., and will become effective on July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Procurement of Construction Services

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

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such 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 when those contracts are determined to be in the best interest of the state.

State contracts for construction projects that are projected 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 bid the project if the projected cost is in excess of \$300,000.³ “Competitively award” means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response 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 that is projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening. If the construction project is projected to exceed \$500,000, the advertisement must be published at least 30 days prior to the bid opening in the FAR, and at least once 30 days prior to the bid opening in a newspaper of general circulation in the county where the project is located.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

¹ Section 255.29, F.S.

² See chapter 60D-5.002 and 60D-5.0073, F.A.C.; see also s. 255.0525, F.S.

³ See s. 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

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 the term “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.

Effect of the Bill

The bill prohibits the use of certain local ordinances or regulations when construction services are procured by a state college, county, municipality, school district, or other political subdivision if 50 percent or more of the costs will be paid from state-appropriated funds, which have been appropriated at the time of the solicitation. Specifically, the local ordinance or regulation may not provide a preference 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
- Prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

The bill defines the term "state-appropriated funds" to mean all funds appropriated in the General Appropriations Act, excluding federal funds. It also provides that the term "competitive solicitation" has the same meaning as in s. 255.248, F.S.¹¹

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 that any applicable local ordinance or regulation does not include any prohibited local preference.

The bill also provides that except for when 50 percent or more of the costs for construction services will be paid 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.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

¹¹ Section 255.248(2), F.S., defines the term "competitive solicitation" to mean an invitation to bid, a request for proposals, or an invitation to negotiate.

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.

D. FISCAL COMMENTS:

None.