

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

1
2 An act relating to local government public
3 construction works; amending s. 218.80, F.S.; revising
4 disclosure requirements for bidding documents and
5 other requests for proposals issued for bids by a
6 local governmental entity and public contracts entered
7 into between local governmental entities and
8 contractors; amending s. 255.20, F.S.; revising the
9 term cost to include specified information; requiring
10 the governing board of a local government to consider
11 estimated costs of certain projects that account for
12 specified costs when the board is making a specified
13 determination; requiring that a local government that
14 performs projects using its own services, employees,
15 and equipment provide a report to the local governing
16 board with certain information; requiring that the
17 Auditor General review the report as part of his or
18 her audits of local governments; amending s. 336.41,
19 F.S.; requiring estimated total construction project
20 costs for certain projects to include specified costs;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (3) of section 218.80, Florida

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

26 Statutes, is amended to read:

27 218.80 Public Bid Disclosure Act.—

28 (3) Bidding documents or other request for proposal issued
29 for bids by a local governmental entity, or any public contract
30 entered into between a local governmental entity and a
31 contractor shall disclose each permit or fee which the
32 contractor will have to pay before or during construction, and
33 ~~shall include~~ the dollar amount or the percentage method or the
34 unit method of all permits or fees which may be required by the
35 local government as a part of the contract and a listing of all
36 other governmental entities that may have additional permits or
37 fees generated by the project. If the request for proposal does
38 not require the response to include a final fixed price, the
39 local governmental entity is not required to disclose any fees
40 or assessments in the request for proposal. However, at least 10
41 days prior to requiring the contractor to submit a final fixed
42 price for the project, the local governmental entity shall make
43 the disclosures required in this section. Any of the local
44 governmental entity's permits or fees that ~~which~~ are not
45 disclosed in the bidding documents, other request for proposal,
46 or a contract between a local government and a contractor shall
47 not be assessed or collected after the contract is let. No local
48 government shall halt construction under any public contract or
49 delay completion of the contract in order to collect any permits
50 or fees which were not provided for or specified in the bidding

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

51 documents, other request for proposal, or the contract.

52 Section 2. 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.—

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 a public building, structure, or other
59 public construction works must competitively award to an
60 appropriately licensed contractor each project that is estimated
61 ~~in accordance with generally accepted cost-accounting principles~~
62 to cost more than \$300,000. For electrical work, the local
63 government must competitively award to an appropriately licensed
64 contractor each project that is estimated ~~in accordance with~~
65 ~~generally accepted cost-accounting principles~~ to cost more than
66 \$75,000. As used in this section, the term "competitively award"
67 means to award contracts based on the submission of sealed bids,
68 proposals submitted in response to a request for proposal,
69 proposals submitted in response to a request for qualifications,
70 or proposals submitted for competitive negotiation. This
71 subsection expressly allows contracts for construction
72 management services, design/build contracts, continuation
73 contracts based on unit prices, and any other contract
74 arrangement with a private sector contractor permitted by any
75 applicable municipal or county ordinance, by district

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

76 resolution, or by state law. For purposes of this section, cost
77 includes employee compensation and benefits ~~the cost of all~~
78 ~~labor~~, except inmate labor, ~~and~~ the cost of equipment and
79 maintenance, insurance costs, and the cost of direct materials
80 to be used in the construction of the project, including
81 materials purchased by the local government, and other direct
82 costs, plus a factor of 20 percent for management, overhead, and
83 other indirect costs. Subject to the provisions of subsection
84 (3), the county, municipality, special district, or other
85 political subdivision may establish, by municipal or county
86 ordinance or special district resolution, procedures for
87 conducting the bidding process.

88 (a) Notwithstanding any other law, a governmental entity
89 seeking to construct or improve bridges, roads, streets,
90 highways, or railroads, and services incidental thereto, at a
91 cost in excess of \$250,000 may require that persons interested
92 in performing work under contract first be certified or
93 qualified to perform such work. A contractor may be considered
94 ineligible to bid if the contractor is behind by 10 percent or
95 more on completing an approved progress schedule for the
96 governmental entity at the time of advertising the work. A
97 prequalified contractor considered eligible by the Department of
98 Transportation to bid to perform the type of work described
99 under the contract is presumed to be qualified to perform the
100 work described. The governmental entity may provide an appeal

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

101 process to overcome that presumption with de novo review based
102 on the record below to the circuit court.

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

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

113 1. If the project is undertaken to replace, reconstruct,
114 or repair an existing public building, structure, or other
115 public construction works damaged or destroyed by a sudden
116 unexpected turn of events such as an act of God, riot, fire,
117 flood, accident, or other urgent circumstances, and such damage
118 or destruction creates:

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

120 b. Other loss to public or private property which requires
121 emergency government action; or

122 c. An interruption of an essential governmental service.

123 2. If, after notice by publication in accordance with the
124 applicable ordinance or resolution, the governmental entity does
125 not receive any responsive bids or proposals.

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

126 3. To construction, remodeling, repair, or improvement to
 127 a public electric or gas utility system if such work on the
 128 public utility system is performed by personnel of the system.

129 4. To construction, remodeling, repair, or improvement by
 130 a utility commission whose major contracts are to construct and
 131 operate a public electric utility system.

132 5. If the project is undertaken as repair or maintenance
 133 of an existing public facility. For the purposes of this
 134 paragraph, the term "repair" means a corrective action to
 135 restore an existing public facility to a safe and functional
 136 condition and the term "maintenance" means a preventive or
 137 corrective action to maintain an existing public facility in an
 138 operational state or to preserve the facility from failure or
 139 decline. Repair or maintenance includes activities that are
 140 necessarily incidental to repairing or maintaining the facility.
 141 Repair or maintenance does not include the construction of any
 142 new building, structure, or other public construction works or
 143 any substantial addition, extension, or upgrade to an existing
 144 public facility. Such additions, extensions, or upgrades shall
 145 be considered substantial if the estimated cost of the
 146 additions, extensions, or upgrades included as part of the
 147 repair or maintenance project exceeds the threshold amount in
 148 subsection (1) and exceeds 20 percent of the estimated total
 149 cost of the repair or maintenance project ~~using generally~~
 150 ~~accepted cost-accounting principles that fully~~ accounting

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

151 ~~account~~ for all costs associated with performing and completing
152 the work, including employee compensation and benefits,
153 equipment cost and maintenance, insurance costs, and the cost of
154 direct materials to be used in the construction of the project,
155 including materials purchased by the local government, and other
156 direct costs, plus a factor of 20 percent for management,
157 overhead, and other indirect costs. An addition, extension, or
158 upgrade shall not be considered substantial if it is undertaken
159 pursuant to the conditions specified in subparagraph 1. Repair
160 and maintenance projects and any related additions, extensions,
161 or upgrades may not be divided into multiple projects for the
162 purpose of evading the requirements of this subparagraph.

163 6. If the project is undertaken exclusively as part of a
164 public educational program.

165 7. If the funding source of the project will be diminished
166 or lost because the time required to competitively award the
167 project after the funds become available exceeds the time within
168 which the funding source must be spent.

169 8. If the local government competitively awarded a project
170 to a private sector contractor and the contractor abandoned the
171 project before completion or the local government terminated the
172 contract.

173 9. If the governing board of the local government complies
174 with all of the requirements of this subparagraph, conducts a
175 public meeting under s. 286.011 after public notice, and finds

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

176 | by majority vote of the governing board that it is in the
177 | public's best interest to perform the project using its own
178 | services, employees, and equipment. The public notice must be
179 | published at least 21 days before the date of the public meeting
180 | at which the governing board takes final action. The notice must
181 | identify the project, the components and scope of the work, and
182 | the estimated cost of the project ~~using generally accepted cost-~~
183 | ~~accounting principles that~~ fully accounting ~~account~~ for all
184 | costs associated with performing and completing the work,
185 | including employee compensation and benefits, equipment cost and
186 | maintenance, insurance costs, and the cost of direct materials
187 | to be used in the construction of the project, including
188 | materials purchased by the local government, and other direct
189 | costs, plus a factor of 20 percent for management, overhead, and
190 | other indirect costs. The notice must specify that the purpose
191 | for the public meeting is to consider whether it is in the
192 | public's best interest to perform the project using the local
193 | government's own services, employees, and equipment. Upon
194 | publication of the public notice and for 21 days thereafter, the
195 | local government shall make available for public inspection,
196 | during normal business hours and at a location specified in the
197 | public notice, a detailed itemization of each component of the
198 | estimated cost of the project and documentation explaining the
199 | methodology used to arrive at the estimated cost. At the public
200 | meeting, any qualified contractor or vendor who could have been

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

201 awarded the project had the project been competitively bid shall
 202 be provided with a reasonable opportunity to present evidence to
 203 the governing board regarding the project and the accuracy of
 204 the local government's estimated cost of the project. In
 205 deciding whether it is in the public's best interest for the
 206 local government to perform a project using its own services,
 207 employees, and equipment, the governing board must consider the
 208 estimated cost of the project fully accounting for all costs
 209 associated with performing and completing the work, including
 210 employee compensation and benefits, equipment cost and
 211 maintenance, insurance costs, and the cost of direct materials
 212 to be used in the construction of the project, including
 213 materials purchased by the local government, and other direct
 214 costs, plus a factor of 20 percent for management, overhead, and
 215 other indirect costs, and the accuracy of the estimated cost in
 216 light of any other information that may be presented at the
 217 public meeting and whether the project requires an increase in
 218 the number of government employees or an increase in capital
 219 expenditures for public facilities, equipment, or other capital
 220 assets. The local government may further consider the impact on
 221 local economic development, the impact on small and minority
 222 business owners, the impact on state and local tax revenues,
 223 whether the private sector contractors provide health insurance
 224 and other benefits equivalent to those provided by the local
 225 government, and any other factor relevant to what is in the

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

226 | public's best interest. A report summarizing completed projects
 227 | constructed by the local government pursuant to this subsection
 228 | shall be publicly reviewed each year by the governing body of
 229 | the local government. The report shall detail the estimated
 230 | costs and the actual costs of the projects constructed by the
 231 | local government pursuant to this subsection. The report shall
 232 | be made available for review by the public. The Auditor General
 233 | shall review the report as part of his or her audits of local
 234 | governments.

235 | 10. If the governing board of the local government
 236 | determines upon consideration of specific substantive criteria
 237 | that it is in the best interest of the local government to award
 238 | the project to an appropriately licensed private sector
 239 | contractor pursuant to administrative procedures established by
 240 | and expressly set forth in a charter, ordinance, or resolution
 241 | of the local government adopted before July 1, 1994. The
 242 | criteria and procedures must be set out in the charter,
 243 | ordinance, or resolution and must be applied uniformly by the
 244 | local government to avoid awarding a project in an arbitrary or
 245 | capricious manner. This exception applies only if all of the
 246 | following occur:

247 | a. The governing board of the local government, after
 248 | public notice, conducts a public meeting under s. 286.011 and
 249 | finds by a two-thirds vote of the governing board that it is in
 250 | the public's best interest to award the project according to the

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

251 criteria and procedures established by charter, ordinance, or
252 resolution. The public notice must be published at least 14 days
253 before the date of the public meeting at which the governing
254 board takes final action. The notice must identify the project,
255 the estimated cost of the project, and specify that the purpose
256 for the public meeting is to consider whether it is in the
257 public's best interest to award the project using the criteria
258 and procedures permitted by the preexisting charter, ordinance,
259 or resolution.

260 b. The project is to be awarded by any method other than a
261 competitive selection process, and the governing board finds
262 evidence that:

263 (I) There is one appropriately licensed contractor who is
264 uniquely qualified to undertake the project because that
265 contractor is currently under contract to perform work that is
266 affiliated with the project; or

267 (II) The time to competitively award the project will
268 jeopardize the funding for the project, materially increase the
269 cost of the project, or create an undue hardship on the public
270 health, safety, or welfare.

271 c. The project is to be awarded by any method other than a
272 competitive selection process, and the published notice clearly
273 specifies the ordinance or resolution by which the private
274 sector contractor will be selected and the criteria to be
275 considered.

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

276 d. The project is to be awarded by a method other than a
277 competitive selection process, and the architect or engineer of
278 record has provided a written recommendation that the project be
279 awarded to the private sector contractor without competitive
280 selection, and the consideration by, and the justification of,
281 the government body are documented, in writing, in the project
282 file and are presented to the governing board prior to the
283 approval required in this paragraph.

284 11. To projects subject to chapter 336.

285 (d) If the project:

286 1. Is to be awarded based on price, the contract must be
287 awarded to the lowest qualified and responsive bidder in
288 accordance with the applicable county or municipal ordinance or
289 district resolution and in accordance with the applicable
290 contract documents. The county, municipality, or special
291 district may reserve the right to reject all bids and to rebid
292 the project, or elect not to proceed with the project. This
293 subsection is not intended to restrict the rights of any local
294 government to reject the low bid of a nonqualified or
295 nonresponsive bidder and to award the contract to any other
296 qualified and responsive bidder in accordance with the standards
297 and procedures of any applicable county or municipal ordinance
298 or any resolution of a special district.

299 2. Uses a request for proposal or a request for
300 qualifications, the request must be publicly advertised and the

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

301 contract must be awarded in accordance with the applicable local
302 ordinances.

303 3. Is subject to competitive negotiations, the contract
304 must be awarded in accordance with s. 287.055.

305 (e) If a construction project greater than \$300,000, or
306 \$75,000 for electrical work, is started after October 1, 1999,
307 is to be performed by a local government using its own employees
308 in a county or municipality that issues registered contractor
309 licenses, and the project would require a contractor licensed
310 under chapter 489 if performed by a private sector contractor,
311 the local government must use a person appropriately registered
312 or certified under chapter 489 to supervise the work.

313 (f) If a construction project greater than \$300,000, or
314 \$75,000 for electrical work, is started after October 1, 1999,
315 is to be performed by a local government using its own employees
316 in a county that does not issue registered contractor licenses,
317 and the project would require a contractor licensed under
318 chapter 489 if performed by a private sector contractor, the
319 local government must use a person appropriately registered or
320 certified under chapter 489 or a person appropriately licensed
321 under chapter 471 to supervise the work.

322 (g) Projects performed by a local government using its own
323 services and employees must be inspected in the same manner
324 required for work performed by private sector contractors.

325 (h) A construction project provided for in this subsection

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

326 | may not be divided into more than one project for the purpose of
327 | evading this subsection.

328 | (i) This subsection does not preempt the requirements of
329 | any small-business or disadvantaged-business enterprise program
330 | or any local-preference ordinance.

331 | (j) A county, municipality, special district as defined in
332 | s. 189.012, or any other political subdivision of the state that
333 | owns or operates a public-use airport as defined in s. 332.004
334 | is exempt from this section when performing repairs or
335 | maintenance on the airport's buildings, structures, or public
336 | construction works using the local government's own services,
337 | employees, and equipment.

338 | (k) A local government that owns or operates a port
339 | identified in s. 403.021(9)(b) is exempt from this section when
340 | performing repairs or maintenance on the port's buildings,
341 | structures, or public construction works using the local
342 | government's own services, employees, and equipment.

343 | (l) A local government that owns or operates a public
344 | transit system as defined in s. 343.52, a public transportation
345 | system as defined in s. 343.62, or a mass transit system
346 | described in s. 349.04(1)(b) is exempt from this section when
347 | performing repairs or maintenance on the buildings, structures,
348 | or public construction works of the public transit system,
349 | public transportation system, or mass transit system using the
350 | local government's own services, employees, and equipment.

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

351 (m) Any contractor may be considered ineligible to bid by
 352 the governmental entity if the contractor has been found guilty
 353 by a court of any violation of federal labor or employment tax
 354 laws regarding subjects such as safety, tax withholding,
 355 workers' compensation, reemployment assistance or unemployment
 356 tax, social security and Medicare tax, wage or hour, or
 357 prevailing rate laws within the past 5 years.

358 Section 3. Subsection (4) of section 336.41, Florida
 359 Statutes, is amended to read:

360 336.41 Counties; employing labor and providing road
 361 equipment; accounting; when competitive bidding required.-

362 (4) All construction and reconstruction of roads and
 363 bridges, including resurfacing, full scale mineral seal coating,
 364 and major bridge and bridge system repairs, to be performed
 365 utilizing the proceeds of the 80-percent portion of the surplus
 366 of the constitutional gas tax shall be let to contract to the
 367 lowest responsible bidder by competitive bid, except for:

368 (a) Construction and maintenance in emergency situations,
 369 and

370 (b) In addition to emergency work, construction and
 371 reconstruction, including resurfacing, mineral seal coating, and
 372 bridge repairs, having a total cumulative annual value not to
 373 exceed 5 percent of its 80-percent portion of the constitutional
 374 gas tax or \$400,000, whichever is greater, and

375 (c) Construction of sidewalks, curbing, accessibility

ENROLLED

CS/CS/HB 279, Engrossed 1

2020 Legislature

376 ramps, or appurtenances incidental to roads and bridges if each
377 project is estimated ~~in accordance with generally accepted cost-~~
378 ~~accounting principles~~ to have total construction project costs
379 of less than \$400,000 or as adjusted by the percentage change in
380 the Construction Cost Index from January 1, 2008, for which the
381 county may utilize its own forces. Estimated total construction
382 project costs must include all costs associated with performing
383 and completing the work, including employee compensation and
384 benefits, equipment cost and maintenance, insurance costs, and
385 the cost of direct materials to be used in the construction of
386 the project, including materials purchased by the local
387 government, and other direct costs, plus a factor of 20 percent
388 for management, overhead, and other indirect costs. However, if,
389 after proper advertising, no bids are received by a county for a
390 specific project, the county may use its own forces to construct
391 the project, notwithstanding the limitation of this subsection.
392 Nothing in this section shall prevent the county from performing
393 routine maintenance as authorized by law.

394 Section 4. This act shall take effect July 1, 2020.