

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 Governmental Oversight and Accountability

BILL: SB 656

INTRODUCER: Senator DiCeglie

SUBJECT: Continuing Contracts

DATE: January 26, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McVaney	GO	Pre-meeting
2.			AEG	
3.			FP	

I. Summary:

SB 656 amends the definition of “continuing contract” under the Consultants’ Competitive Negotiation Act (CCNA) to increase the maximum dollar amount for each individual project and each individual study under the contract for construction projects. The maximum dollar amount for each individual project is increased from \$4 million to \$10 million, plus an annual percentage increase based on the Annual Consumer Price Index.

The bill makes conforming revisions to s. 255.103(4), F.S., (authorizing local governmental entities to use the CCNA selection process), increasing the maximum dollar amount for continuing contracts of local governments from \$4 million to \$10 million.

Additionally, the bill provides that the Florida Department of Transportation (FDOT) must select at least three, but no more than five, qualified firms for a geotechnical and materials testing continuing contract. The FDOT must assign testing to those selected firms on a rotating and equitable basis.

There is an indeterminate fiscal impact on state and local government expenditures relating to the administrative costs of competitive procurement and contract costs paid under a continuing contract.

The bill takes effect July 1, 2024.

II. Present Situation:

Competitive Procurement, Generally

The Department of Management Services (DMS) manages projects throughout the state, including new construction, renovations, and consulting services for various public works

projects. The Bureau of Building Construction (Bureau), within the DMS, oversees public building construction statewide. The Bureau is also responsible for managing fixed capital outlay funds appropriated by the Legislature and for overseeing the repair and renovation of DMS-managed facilities.¹

Generally, state projects must be competitively procured. Part I of ch. 287, F.S., provides “a system of uniform procedures to be utilized by state agencies in managing and procuring commodities and contractual services” to protect the public by promoting “fair and open competition,” thereby reducing the appearance and opportunity for favoritism and misconduct.² These competitive procurement provisions apply to an agency, defined as “any of the various state officers, departments, board commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive boards of state government.”³ This definition does not include municipalities and local governments. Additionally, university and college boards of trustees, and the state universities and colleges are specifically excluded from this definition.⁴

State agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These methods include the following:

- Single source contracts,⁵ used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid,⁶ used when an agency determines that standard services or goods will meet needs, wide competition is available and the vendor’s experience will not greatly influence the agency’s results;
- Requests for proposals,⁷ used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate,⁸ used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors.

For procurement of commodities or contractual services in excess of \$35,000, agencies must use a competitive solicitation process.⁹ However, specified contractual services and commodities are not subject to competitive solicitation requirements.¹⁰

¹ DMS, *Building Construction*, https://www.dms.myflorida.com/business_operations/real_estate_development_and_management/building_construction (last visited Jan. 26, 2024).

² Section 287.001, F.S.

³ Section 287.012(1), F.S.

⁴ *Id.*

⁵ Section 287.057(3)(c), F.S.

⁶ Section 287.057(1)(a), F.S.

⁷ Section 287.057(1)(b), F.S.

⁸ Section 287.057(1)(c), F.S.

⁹ Section 287.057(1), F.S.

¹⁰ Section 287.057(3)(e), F.S.

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.¹¹ A county, municipality, special district, or other political subdivision that seeks to construct or improve a public building must competitively award each project estimated to cost more than \$300,000.¹²

The Consultants' Competitive Negotiation Act

In 1973, the Florida Legislature enacted the Consultant's Competitive Negotiation Act (CCNA),¹³ s. 287.055, F.S., which requires state and local government agencies to procure the professional services of an architect, engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process. The qualifications-based selection requires the selection of providers on the basis of their competency, qualifications, and experience, rather than lowest-price.¹⁴

The qualifications based selection process of the CCNA contemplates a three-step process:

- Public announcement of the project;
- Competitive selection of the professional firm based on its qualifications; and
- Arms-length competitive negotiations with the most qualified firm or firms.¹⁵

During the first phase, the public announcement, state and local agencies¹⁶ publicly announce and describe their need for professional services for one of the following:¹⁷

- A project when the basic construction cost of which is estimated by the agency to exceed \$325,000;¹⁸ or
- A planning or study activity for professional services that exceeds \$35,000.¹⁹

The public announcement must provide a general description of the project and describe how the interested consultant firms may apply for consideration.²⁰

A firm that wishes to provide professional services to an agency must first be certified by the agency as qualified to provide the needed services pursuant to law and the agency's regulations.²¹ In determining a firm or individual to be qualified, the agency must consider its capabilities, adequacy of personnel, past record, experience, as well as whether the firm or individual is a certified minority business enterprise.²²

¹¹ Section 255.0525, F.S.

¹² Section 255.20, F.S.

¹³ Ch. 73-19, Laws of Fla., codified as s. 287.055, F.S.

¹⁴ Section 287.055(3)-(5), F.S.

¹⁵ *Id.*

¹⁶ An "agency" under the CCNA is defined as "the state, a state agency, a municipality, a political subdivision, a school district or a school board." Section 287.055(2)(b), F.S. *See* Section 1.01(8), F.S., defining "political subdivision" to include "counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state."

¹⁷ Section 287.055(3), F.S.

¹⁸ The amount provided in Category Five from the purchasing categories in s. 287.017, F.S.

¹⁹ The amount provide in Category Two from the purchasing categories in s. 287.017, F.S.

²⁰ Section 287.055(3)(a)1., F.S.

²¹ Section 287.055(3)(c) F.S.

²² Section 287.055(3)(c)-(d), F.S.

During the second phase, competitive selection, the agency must evaluate the bidders' current statements of qualifications and performance data.²³ The agency must select and rank at least three firms it deems to be the most highly qualified to perform the required services, based on the following:²⁴

- The ability of professional personnel;
- Whether a firm is a certified minority business enterprise;
- Past performance;
- Willingness to meet time and budget requirements;
- Location;
- Recent, current, and projected workloads of the firms; and
- The volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.²⁵

During this qualifications phase, the agency cannot request, accept, or consider proposals for the firm's compensation.²⁶ Compensation is "the amount paid by the agency for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated."²⁷

During the third phase, competitive negotiation, the agency negotiates compensation to be paid under the contract with the highest qualified of at least three selected firms.²⁸ Should the agency be unable to negotiate a satisfactory contract with the top firm at a price the agency determines to be fair, competitive, and reasonable, the agency may progress to negotiations with the second most qualified firm, and if this fails,²⁹ with the third.³⁰ If the agency cannot negotiate a satisfactory contract with any of the ranked firms, it must begin the qualifications-based selection process again and continue negotiations until an agreement is reached.³¹

Continuing Contracts Under the CCNA

The CCNA expressly allows agencies to use continuing contracts for professional services.³² A continuing contract is one for professional services entered into in accordance with the CCNA between an agency and a firm whereby the firm provides professional services to the agency for projects that do not exceed specific costs.³³

²³ Section 287.055(4)(a), F.S.

²⁴ Section 287.055(4)(b), F.S.

²⁵ *Id.*

²⁶ *Id.* The CCNS did not prohibit discussion of compensation in the competitive selection phase until 1988, when the Legislature enacted a provision that allows consideration of compensation only during the competitive negotiation phase. Ch. 88-108, Laws of Fla.

²⁷ Section 287.055(2) (d), F.S.

²⁸ Section 287.055(5)(a), F.S.

²⁹ Section 287.055(5)(b), F.S.

³⁰ *Id.*

³¹ Section 287.055(5)(c), F.S.

³² Section 287.055(4)(d), F.S.

³³ Section 287.055(2)(g), F.S.

Current law allows an agency to use a continuing contract for: construction projects in which the estimated construction cost of each individual project under the contract does not exceed \$4 million; for study activity, if the fee for professional services for each individual study under the contract does not exceed \$500,000; or for work of a specified nature as outlined in the agency contract, if the contract is for a fixed term or with a termination clause.³⁴

The maximum per-project and per-study limits were implemented in 1988³⁵ at \$500,000 and \$25,000, respectively, and subsequently increased three times. In 2002, the limits were increased to \$1 million and \$50,000.³⁶ In 2009, the limits were increased to \$2 million and \$200,000;³⁷ and in 2020, the limits were increased to \$4 million and \$500,000.³⁸

Construction and Program Management Entities

A governmental entity³⁹ may choose to use a construction management entity or program management entity, which it must select using the CCNA's competitive solicitation process.⁴⁰ A construction management entity is responsible for construction project scheduling and coordination in both the preconstruction and construction phases, and is generally responsible for the successful, timely, and economical completion of a construction project.⁴¹ A program management entity is responsible for schedule and cost control, and coordination in the procurement of planning, design, and construction services.⁴²

The governmental entity may use a continuing contract⁴³ to procure the services of a construction management or program management entity for work on construction projects.⁴⁴ However, a "continuing contract" entered into subject to ch. 255, F.S., is distinct from that in ch. 287. Specifically, the governmental entity may only use a continuing contract under ch. 255, F.S., to procure construction management or program management entity services. A continuing contract under ch. 255, F.S., must also be for a defined period of time (whereas ch. 287, F.S., allows continuing contracts without a time limitation in certain circumstances).

The governmental entity may also choose to require that the construction management or program management entity offer a guaranteed maximum price or a guaranteed completion date.⁴⁵ If a project includes a grouping of substantially similar construction, rehabilitation, or renovation activities, the governmental entity may require a separate guaranteed maximum price

³⁴ *Id.* An entity may not use a continuing contract for work of a specified nature to exceed the monetary limits placed on construction projects and study activities. Op. Fla. Att'y. Gen. 2013-28 (2013).

³⁵ Ch. 88-108, Laws of Fla.

³⁶ Ch. 2002-20, Laws of Fla.

³⁷ Ch. 2009-227, Laws of Fla.

³⁸ Ch. 2020-127, Laws of Fla.

³⁹ Section 255.103(1), F.S. defines the term "governmental entity" to mean "a county, municipality, school district, special district, special district as defined in chapter 189, or political subdivision of the state."

⁴⁰ Section 255.103, F.S.

⁴¹ Section 255.103(2), F.S.

⁴² Section 255.103(3), F.S.

⁴³ Section 255.103(4), F.S., defines a continuing contract as "a contract with a construction management or program management entity for work during a defined period on construction projects described by type which may or may not be identified at the time of entering into the contract."

⁴⁴ Section 255.103(4), F.S.

⁴⁵ Section 255.103(2), F.S.

and a separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities.⁴⁶

Department of Transportation

Chapter 337, F.S., governs contracts entered into by the Florida Department of Transportation (FDOT). The FDOT has authority to enter into contracts for the construction and maintenance of all State Highway or State Park systems' roads, rest areas, weigh stations, parking areas, supporting facilities, and any associated building.⁴⁷ The FDOT must certify as qualified any bidders for a construction contract, road, bridge, or public construction project that exceeds \$250,000 in cost.⁴⁸ The certification process ensures that the bidders have professional and financial competence by evaluating them "with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification."⁴⁹

The FDOT rules establish minimum qualification standards by type of work for consultants who seek to provide professional services to FDOT, including the following:

- Geotechnical Classification Lab Testing, which includes conducting tests on soil and rock according to FDOT specifications for classification purposes. This work requires one professional engineer with at least 5 years of experience in activities that are normally associated with geotechnical testing. In addition, the consultant must have at least one technician with a limerock bearing ration technician qualification with at least 2 years of experience in geotechnical testing, and certain specialized equipment.⁵⁰
- Geotechnical Specialty Lab Testing, which includes conducting tests on soil and rock according to FDOT specifications for the purpose of identifying their physical properties. The FDOT requires the consultant to have at least one staff member with 4 years of experience performing such tests, or an equivalent bachelor's degree, and certain specialized equipment.⁵¹
- Highway Materials Testing, which includes sampling and testing various materials and reporting results and recommendations. This type of work requires one professional engineer with a minimum of 5 years of experience in activities normally associated with highway materials testing. The consultant's personnel must also include an individual with a limerock bearing ration technician qualification, an asphalt plant level I qualification, a concrete field-testing technician level I qualification, and a nuclear gauge operator certification as provided by a gauge manufacturer, and specialized equipment.⁵²
- Construction Materials Testing, which includes conducting inspections and investigations of various highway materials or products and reporting results and recommendations. This type of work requires one professional engineer with at least 3 years of experience in bridge or roadway construction inspection.⁵³

⁴⁶ *Id.*

⁴⁷ Section 337.11, F.S. *See also*, s. 334.044, F.S.

⁴⁸ Section 337.14(1), F.S.

⁴⁹ *Id.*

⁵⁰ Rule 14-75.003(5)(h)1.b. and (5)(h)2.b., F.A.C.

⁵¹ Rule 14-75.003(5)(h)1.e. and (5)(h)2.d.(III), F.A.C.

⁵² Rule 14-75.003(5)(h)1.c. and (5)(h)2.c., F.A.C.

⁵³ Rule 14-75.003(5)(i)1.c. and (5)(i)2.c., F.A.C.

As of January 10, 2024, there were approximately 185 entities qualified to do types of geotechnical and materials testing for FDOT, with many qualified to perform multiple types of work, including:⁵⁴

- Geotechnical Classification Lab Testing: approximately 59 companies.
- Geotechnical Specialty Lab Testing: approximately 30 companies.
- Highway Materials Testing: approximately 43 companies.
- Construction Materials Testing: approximately 156 companies.

Consumer Price Index and Producer Price Index

The Consumer Price Index for all Urban Consumers (CPI-U) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services, as measured by the U.S. Bureau of Labor Statistics.⁵⁵ The U.S. Bureau of Labor Statistics issues the CPI monthly, and develops the metric from surveys of businesses’ and households’ reporting of their costs for food, housing, clothing, medical care, and transportation.⁵⁶ While the CPI-U is the most often-cited index, the BLS also publishes several other consumer price indexes, e.g., those based on geographic area, CPI for Urban Wage Earners and Clerical Workers (CPI-W), Chained CPI for all Urban Consumers (C-CPI-U), and an average prices index.⁵⁷ The CPI is used as a measure of U.S. consumer inflation, and to escalate Social Security payments, adjust tax brackets, convert nominal dollars to real dollars, and to adjust wages or escalate rents and other payments.⁵⁸

The last 5 years of the CPI have varied, as reflect in the table below:⁵⁹

Year	Annual Average CPI(-U)	Annual Percent Change (Rate of Inflation)
2019	255.7	1.8%
2020	258.8	1.2%
2021	271.0	4.7%
2022	292.7	8.0%
2023	302.9	3.5%

The Producer Price Index (PPI) is a measurement of the average change in selling prices that are received by domestic producers of goods and services. PPI measures the price change from the seller’s perspective, and can be used as a tool for the adjustment of purchase and sales contract prices, an indicator of overall price movement at the producer’s level, or a comparison of

⁵⁴ See, Florida Department of Transportation Consultant Information (Jan. 26, 2024), <https://ssrs.fdot.gov/Reports/report/PDA%20Reports/Public%20Reports/InternetGroupX> (last visited Jan. 26, 2024).

⁵⁵ U.S. Bureau of Labor Statistics, *Consumer Price Index: Overview* (Sep. 6, 2023), <https://www.bls.gov/opub/hom/cpi/home.htm> (last visited Jan. 26, 2024).

⁵⁶ *Id.*

⁵⁷ U.S. Bureau of Labor Statistics, *Consumer Price Index: Presentation* (Sep. 6, 2023), <https://www.bls.gov/opub/hom/cpi/presentation.htm> (last visited Jan. 26, 2024).

⁵⁸ U.S. Bureau of Labor Statistics, *Consumer Price Index: Concepts* (Sep. 6, 2023), <https://www.bls.gov/opub/hom/cpi/concepts.htm> (last visited Jan. 26, 2024).

⁵⁹ Federal Reserve Bank of Minneapolis, *Consumer Price Index, 1913-; Historical Data from the era of the Modern U.S. Consumer Price Index (CPI)* <https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator/consumer-price-index-1913-> (last visited Jan. 26, 2024).

industry-based price data.⁶⁰ The PPI includes indexes based on commodities, including consumer goods, energy, services, transportation and warehousing services, and construction.⁶¹

The following chart shows the percent change to certain construction input and commodity prices as of October 2023:⁶²

	1-month	12-month	Since Feb. 2020
Inputs to Industries			
Inputs to construction	-1.2%	-1.1%	33.1%
Inputs to multifamily construction	-0.9%	0.8%	32.4%
Inputs to nonresidential construction	-1.1%	-0.7%	33.6%
Inputs to commercial construction	-0.7%	-0.3%	33.6%
Inputs to healthcare construction	-0.7%	-0.2%	33.4%
Inputs to industrial construction	-0.9%	1.1%	30.7%
Inputs to other nonresidential construction	-1.2%	-0.9%	33.7%
Inputs to maintenance and repair construction	-1.3%	-2.0%	31.8%
Inputs to highway and street construction	-1.2%	0.0%	31.4%
Commodities			
Adhesives and sealants	0.1%	1.8%	28.9%
Concrete products	0.7%	9.7%	30.5%
Construction machinery and equipment	0.0%	6.0%	23.6%
Copper wire and cable	-1.3%	2.7%	24.2%
Crude petroleum	-2.9%	-3.0%	56.9%
Fabricated structural metal products	0.8%	-0.7%	42.3%
Insulation materials	-0.3%	1.6%	31.0%
Iron and Steel	-2.3%	-6.1%	40.79%
Lumber and wood products	-0.3%	-6.5%	22.3%
Natural gas	10.9%	-54.9%	40.8%
Plumbing fixtures and brass fittings	0.5%	1.4%	16.1%
Prepared asphalt, tar roofing, and siding products	0.7%	3.9%	34.4%
Steel mill products	-2.5%	-9.9%	47.0%
Switchgear, switchboard, industrial controls equipment	0.2%	6.3%	32.0%
Unprocessed energy materials	-0.3%	-16.2%	60.2%

III. Effect of Proposed Changes:

The bill revises the maximum dollar amount for continuing contracts for construction projects.

Section 1 amends s. 255.103, F.S., to increase the maximum dollar amount for a continuing contract for construction projects from \$4 million to \$10 million.

⁶⁰ U.S. Bureau of Labor Statistics, *Producer Price Index* (Mar. 16, 2023), <https://www.bls.gov/ppi/overview.htm> (last visited Jan. 26, 2024).

⁶¹ See, e.g., U.S. Bureau of Labor Statistics, *PPI Detailed Report*, 11 (Nov. 2023), https://www.bls.gov/web/ppi/ppi_dr.pdf (last visited Jan. 26, 2024).

⁶² See U.S. Bureau of Labor Statistics, *Producer Price Index Detailed Reports for February 2020 and October 2023*, <https://www.bls.gov/ppi/detailed-report/#2023> (last visited Jan. 26, 2023).

Section 2 amends s. 287.055, F.S., to increase the maximum dollar amount for a continuing contract for professional services from \$4 million to \$10 million, plus an annual percentage increase based on the Annual Consumer Price Index (CPI) compiled by the United States Department of Labor. The CPI increase will start at the time of the announcement of the CPI for the year 2026.

Additionally, the bill provides that the FDOT must select at least three, but no more than five, qualified firms for a geotechnical and materials testing continuing contract. The FDOT must assign testing to those selected firms on a rotating and equitable basis.

Section 3 provides that the bill takes effect on July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce the counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate, positive fiscal impact on the private sector, especially contractors with capacity for larger (up to \$10 million projects). The increased maximum dollar amount for continuing contracts for construction projects could allow

more projects to be covered under a continuing contract, and would reduce the competitive solicitations a firm would undergo to become qualified under the CCNA.

C. Government Sector Impact:

Governmental entities that use continuing contracts incur costs related to the competitive selection and negotiation process. The bill, by increasing the maximum dollar amount for continuing contracts, captures more related services and construction projects, and may reduce the need for solicitations and their related administrative costs. Thus, the bill may have an indeterminate positive fiscal impact on the government sector. However, the increase of the cap for projects grouped under a continuing contract may provide less oversight on the total project cost, which may result in higher-than-necessary costs to the government.

VI. Technical Deficiencies:

The Consumer Price Index is released on a monthly-basis; there is not an “Annual Consumer Price Index” as cited on line 103 of the bill. An alternative index inflation measurement is the materials and components for construction series of the producer price index, which is also calculated by the U.S. Department of Bureau and Labor Statistics. This PPI series, or the PPI for All Commodities, could better track the cost of construction materials than the CPI.

The sponsor may wish to clarify that the provisions apply to continuing contracts entered into on or after the effective date of the bill.

VII. Related Issues:

The chart below illustrates the impact of a CPI growth factor on the maximum cost per project. Column 1 is the current consumer price index percentage change December over December.⁶³ Column 3 illustrates the maximum thresholds if the current law maximum (\$4 million) per project is grown annually by the CPI percentage increase. Column 4 illustrates the maximum thresholds if the maximum is set at \$7.5 million beginning July 1, 2024. Likewise, Column 5 illustrates the same assuming the \$10 million threshold set in this bill.

Column 1 CPI	Column 2 Year Beginning July 1	Column 3 Current Law adjusted annually by CPI	Column 4 \$7.5 million adjusted annually by CPI	Column 5 \$10 million adjusted annually by CPI
	2020	4,000,000		
1.3%	2021	4,052,000		
4.7%	2022	4,242,444		
8.0%	2023	4,581,840		
4.1%	2024	4,769,695	7,500,000	10,000,000
2.7%	2025	4,898,477	7,702,500	10,270,000
2.6%	2026	5,025,837	7,902,765	10,537,020

⁶³ Florida EDR, *National Economic Estimating Conference Long Run Tables—FINAL*, at 11 (Dec. 18, 2023) <http://edr.state.fl.us/Content/conferences/useconomic/index.cfm> (last visited Jan. 26, 2024).

Column 1	Column 2	Column 3	Column 4	Column 5
CPI	Year Beginning July 1	Current Law adjusted annually by CPI	\$7.5 million adjusted annually by CPI	\$10 million adjusted annually by CPI
2.3%	2027	5,141,431	8,084,529	10,779,371
2.3%	2028	5,259,684	8,270,473	11,027,297
2.2%	2029	5,375,397	8,452,423	11,269,898
2.1%	2030	5,488,281	8,629,924	11,506,565

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 255.103 and 287.055.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**
 (Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
