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TIPS AND TRENDS #2021-0003
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**Supersedes Tips & Trends Local Construction Preference
Preemption #2015-0003**



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Local Preferences Prohibited in Solicitations for State-Funded Construction Services & Public Work Projects

On June 29, 2021, the Governor signed House Bill 53, “Public Works,” into law (2021-194, Laws of Florida). Effective July 1, 2021, Florida law was amended to:

- Revise the threshold for prohibiting local preferences in solicitations for construction services purchased with state-appropriated funds.
- Revise the definition of “public works project.”
- Prohibit state or political subdivisions that contract for public works projects from taking specified actions against certain persons that are engaged in, or have submitted bids for public works projects.



Background

In 2015, the Florida Legislature¹ created section 255.0991, Florida Statutes (F.S.), which prohibited a state college, county, municipality, school district, or other political subdivision of the state from using a local ordinance or regulation to provide a contractor preference in competitive solicitations for construction services funded by 50 percent or more in state-appropriated funds², based upon:

- a) The contractor’s maintaining an office or place of business within a particular local jurisdiction;
- b) The contractor’s hiring employees or subcontractors from within a particular local jurisdiction; or
- c) The contractor’s prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

The statute also required that the public entity discloses in the solicitation document that any applicable local ordinance or regulation does not include any preferences prohibited by section 255.0991(2), F.S.

¹ Chapter 2015-63, Laws of Florida.

² “State-appropriated funds” means all funds appropriated in the General Appropriations Act, excluding federal funds.

“Enhancing Public Trust in Government”

In 2017, the Florida Legislature created section 255.0992, F.S., which prohibited, except as required by federal or state law, the state or any political subdivision³ that contracts for a public works project from requiring a contractor, subcontractor, or material supplier or carrier engaged in the project to:



- a) Pay employees a predetermined amount of wages or prescribe any wage rate;
- b) Provide employees a specified type, amount, or rate of employee benefits;
- c) Control, limit, or expand staffing; or
- d) Recruit, train, or hire employees from a designated, restricted, or single source.

The legislature defined “public works project” to mean certain activity for which 50 percent or more of the cost would be paid from state-appropriated funds. The state or any political subdivision contracting for a public works project could not prohibit any qualified, licensed, or certified contractor, subcontractor, or material supplier or carrier able to perform such work from submitting a bid on the public works project.

What’s New Effective July 1, 2021?

Chapter 2021-194, Laws of Florida:

- Amended section 255.0991, F.S., to remove the 50 percent state-funding threshold for competitive solicitations for construction services, and added that for a solicitation for construction services paid with ***any*** state-appropriated funds, a local ordinance or regulation may not be used to prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based upon:
 - a) Maintaining an office or place of business within a particular local jurisdiction;
 - b) Hiring employees or subcontractors from within a particular local jurisdiction; or
 - c) Prior payment of local taxes, assessments, or duties within a particular local jurisdiction.
- Amended section 255.0992, F.S., to revise the definition of a “public works project” to remove the “50 percent or more, state-appropriated funding threshold for certain activities,” and replace it with, “an activity exceeding \$1,000,000 in value paid for with any state-appropriated funds.”

The legislature also added that, except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier,

³ “Political subdivision” as defined by 255.0992, F.S. means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works.

from participating in the bidding process based on the geographic location of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier submitting a bid on a public works project or the residences of employees of such contractor, subcontractor, or material supplier or carrier.

Suggestions

We recommend that local government entities consult with their legal counsel and compare the changes to sections 255.0991, F.S. and 255.0992, F.S., with current construction and public works procurement procedures, and make changes as needed.