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S 1124 GENERAL BILL/CS/1ST ENG by Transportation; Jennings and others (Compare CS/H 978, H 1820, CS/CS/2ND ENG/S 1474) Contracts/D.O.T.; revises language re combined design & construction contracts to provide additional criteria for administration of such contracts; provides procedures for letters of interest; provides procedures for requests for proposals; provides for negotiation of minor changes after contract is awarded; provides conditions for commitment of state funds for reimbursement. etc. Amends 337.11, 339.12. Effective Date: 06/27/89.
04/06/89 SENATE Filed
04/14/89 SENATE Introduced, referred to Transportation; Governmental Operations; Appropriations -SJ 153
04/27/89 SENATE On Committee agenda—Transportation, 05/01/89, 12:45 pm, Room-C-(LL-32)
04/28/89 SENATE Extension of time granted Committee Transportation
05/01/89 SENATE Comm. Report: CS by Transportation -SJ 257
05/03/89 SENATE CS read first time -SJ 264; Now in Governmental Operations -SJ 257
05/04/89 SENATE On Committee agenda—Governmental Operations, 05/08/89, 10:00 am, Room-H-(428)—Not considered
05/11/89 SENATE On Committee agenda—Governmental Operations, 05/17/89, 9:00 am, Room-H-(428)
05/12/89 SENATE Extension of time granted Committee Governmental Operations
05/17/89 SENATE Comm. Report: Favorable with 1 amendment(s) by Governmental Operations -SJ 380
05/18/89 SENATE Now in Appropriations -SJ 380
05/31/89 SENATE Withdrawn from Appropriations -SJ 684; Placed on Calendar
06/01/89 SENATE Placed on Consent Calendar -SJ 686 & -SJ 687; CS passed as amended; YEAS 35 NAYS 0 -SJ 762
06/01/89 HOUSE In Messages
06/03/89 HOUSE Received, placed on Calendar; Read second time; Read third time; CS passed; YEAS 106 NAYS 1 -HJ 1464
06/03/89 Ordered enrolled -SJ 1406
06/12/89 Signed by Officers and presented to Governor
06/27/89 Approved by Governor; Chapter No. 89-160; See also: CS/CS/SB 1474 (Ch. 89-301)

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

REVISED: May 17, 1989BILL NO. CS/SB 1124DATE: May 8, 1989Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Meredith</u>	<u>Garqiulo</u>	1. <u>TR</u>	<u>Fav/CS</u>
2. <u>Stengle</u>	<u>Stengle</u>	2. <u>GO</u>	<u>Fav/1 amend.</u>
3. _____	_____	3. <u>AP</u>	_____
4. _____	_____	4. _____	_____

SUBJECT:	BILL NO. AND SPONSOR:
Transportation Design and Construction Contracts	CS/SB 1124 by Transportation and Senator Jennings

I. SUMMARY:

A. Present Situation:

Section 337.11(5)(a), F.S., 1988 Supp., provides that the Department of Transportation may combine the design and construction phases of a road or structure into a single contract (design/build). The department may request proposals for such projects when the head of the department determines that combining these phases is in the best interest of the public. Factors to be considered when making this determination include time savings, cost reduction, experience to be gained, and use of state of the art methods.

Paragraph (b) of subsection (5) requires the department to adopt rules setting out the procedures for administering design/build contracts. These procedures must include: 1) prequalification of applicants; 2) desired announcement of occasions when a design/build contract is desired; 3) criteria to be used in developing the request for proposals; and 4) criteria and personnel to be used for evaluating proposals and awarding contracts.

The department is authorized by section 337.11(5)(c), F.S., 1988 Supp., to proceed with evaluation of proposals, in accordance with adopted procedures, provided that at least three responsible proposals are received in response to a request. The following criteria must be considered:

- cost, safety, and durability of the project;
- feasibility of implementing the project as proposed;
- ability of the design and construction team to complete the work in a timely and satisfactory manner; and
- other factors that the department deems appropriate.

Paragraph (d) of subsection (5) allows the department to award design/build contracts to those applicants with the lowest cost and best technical proposal. This provision also permits the department to conduct a design/build demonstration program in the areas of resurfacing, bridge replacement and construction, multilane construction or reconstruction, and fixed capital outlay and parking garages. These projects must also be in the current 5-year transportation plan. The program cannot exceed a total contract amount of \$50 million.

The department is required to make an annual report to the transportation committees of the Legislature on the results obtained from completed design/build projects, as provided in s. 337.11(5)(d), F.S., 1988 Supp.

Section 339.12, F.S., provides that any governmental entity may aid the department in the acquisition of rights-of-way, in construction, or in maintenance of state roads. The aid may take the form of contributions of cash, bond proceeds, time

warrants, or other goods and services of value. All such contributions must be used by the department only for the acquisition of rights-of-way, construction, or maintenance as designated, and as agreed upon by the department and officials of such county, municipality, or special road and bridge district.

Upon accepting the contribution, the department must enter into an agreement with the governing body of the county, municipality, or special road and bridge district. By specific provision in the written agreement, the department may agree to reimburse the county or municipality for the full amount of the bond proceeds, time warrants, or cash used for a project or project phase in the State Highway System that is not revenue-producing and is in the adopted 5-year transportation plan. The department may not commit funds for reimbursement without legislative approval. Reimbursement must be made from funds appropriated for that purpose, and reimbursement for the entire cost of the project or project phase is to begin in the year the project or project phase was originally scheduled.

B. Effect of Proposed Changes:

Section 337.11(5)(b), F.S., would be amended to require that the department's rules include the criteria to be used in determining which applicants may submit technical and price proposals in response to an announced design/build project. The criteria, which would be expanded and refined by the bill from currently required criteria, would be required to include such factors as the following:

- Utilization of socially and economically disadvantaged enterprises;
- The abilities of the professional personnel;
- Past performance, capacity to meet time and budget requirements, and location;
- Recent, current, and projected workload of the firms; and
- The ability of the design and construction teams to complete the work in a timely and satisfactory manner.

The department would be authorized to proceed with a request for proposals if at least three letters of interest are received from prequalified applicants. The letter of interest would provide information in a format prescribed by department rules. The department would be required to request proposals from at least three of the design and construction teams submitting letters of interest.

The requirement that at least three responsible proposals be submitted before evaluation by the department proceeds would be deleted. Thus, the department could proceed with a design/build contract if three proposals were requested by the department, but less than that number were submitted. In addition to the current criteria to be considered in evaluating proposals, the department would be required to consider the length of time proposed to complete the project.

Once a contract is awarded, the department would be authorized to negotiate minor changes clarifying the design criteria and work to be done, provided that the total project cost does not exceed the cost of the next lowest responsible proposal. The effect of the monetary limitation on negotiation would be to nullify the negotiation itself as a ground to challenge the award by an applicant whose proposal was not selected.

The provision limiting the design/build program to projects in the categories of resurfacing, bridge replacement or construction, multilane construction or reconstruction, and fixed capital outlay and parking garages, would be deleted.

Section 339.12, F.S., would be amended to provide that any governmental entity may contribute not only to rights-of-way acquisition, construction, or maintenance, but could contribute to any project or project phase contained in the 5-year transportation plan of the department.

The department would be authorized to use such contributions for any project or project phase agreed to with the governing body of such county, municipality, or special road and bridge district.

The provision that specifies that the department may not commit funds for the reimbursement of contributions without legislative approval would be deleted. Instead, the bill would provide that commitment of funds for reimbursement would be subject to the appropriation of funds by the Legislature.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

The department estimates that deleting the requirement for the department to proceed only upon receipt of three proposals would result in saving \$30,000 in readvertising costs.

The estimate is based in part on the assumption that 30 percent of the projects, as history has shown, would otherwise be readvertised, at a cost of \$15,000 per project. Assuming seven projects undertaken, two projects would have to otherwise be readvertised. Thus, deletion of the current three-proposal requirement would generate the \$30,000 savings.

A balance of \$12.5 million remains of the original \$50 million committed to the program.

III. COMMENTS:

To date, no projects have been completed using a design/build contract; therefore, no annual report outlining the results obtained from completed design/build projects has been made to the transportation committees of the Legislature pursuant to s. 337.11(5)(d), F.S., 1988 Supp.

IV. AMENDMENTS:

#1 by Governmental Operations:

Authorizes the Executive Office of the Governor to amend the budget of the Department of Transportation to authorize the department to expend contributions received from governmental entities for projects in the 5-year transportation plan.

SENATE COMMITTEE AMENDMENT

CS/SB 1124

No. 1
(reported favorably)

HB _____

The Committee on...Gov. Operations....recommended the following
amendment which was moved by Senator.....and adopted:
and failed:

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9	If amendment is text from another bill insert:																														
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CODING: Words stricken are deletions; words underlined are additions.

 * Amendment No. 1, taken up by committee: 05/17/89 Adopted x *
 * Offered by Senator Langley Failed _ *

 (Amendment No. ____ Adopted ____ Failed ____ Date __/__/__)

STORAGE NAME: S1124-F.HSC

DATE: August 10, 1989

**HOUSE OF REPRESENTATIVES
Committee on Highway Safety & Construction
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/SB 1124

**RELATING TO: Transportation/Design & Construction Contracts/Local
Governmental Aid**

**SPONSOR(S): Senate Transportation Committee, and Senator Jennings and
others.**

EFFECTIVE DATE: Upon becoming a law

DATE BECAME LAW: June 27, 1989

CHAPTER #: 89-160, Laws of Florida

COMPANION BILL(S): CS/HB 978, HB 1820

**OTHER COMMITTEES OF REFERENCE: (1) Governmental Operations
(2) Appropriations**

I. SUMMARY:

This bill modifies the procedures for administering contracts which combine design and construction phases of projects. Currently the Department of Transportation requests proposals for such projects from prequalified applicants. The department may only proceed with evaluation of proposals if at least three responsible proposals are submitted. This bill would require prequalified applicants to submit letters of interest to the department's announcement of such a project. If at least three letters of interest are submitted, the department may shortlist the applicants and request proposals from no less than three of those submitting letters of interest. The department would be able to proceed with proposal evaluation so long as at least one proposal was submitted by the shortlisted applicants.

The bill authorizes the department to negotiate minor changes to the project once a contract has been awarded. The limitation on categories of projects which may be the subject of a design and construction contract is also removed.

The bill also expands a provision that allows a governmental entity to contribute funds to certain phases of state road projects to allow such contributions to any project or project phase. The Department of Transportation is authorized to commit funds for the purpose of reimbursing contributions made by governmental entities subject to legislative appropriation of funds.

Design & Construction Contracts

A. PRESENT SITUATION:

Section 337.11 (5)(a), F.S., provides that the Department of Transportation may combine the design and construction phases of a road or structure into a single contract (design/build). The department may request proposals for such projects when the head of the department determines that combining these phases is in the best interest of the public. Factors to be considered when making this determination include time savings, cost reduction, experience to be gained, and use of state of the art methods.

Paragraph (b) of section 337.11 (5), F.S., requires the department to adopt rules setting out the procedures for administering design/build contracts. These procedures must include: 1) prequalification of applicants; 2) announcement of occasions when a design/build contract is declared; 3) criteria to be used in developing request for proposals; and 4) criteria and personnel to be used for evaluating proposals and awarding contracts.

The department is authorized by section 337.11 (5)(c), F.S., to proceed with evaluation of proposals, in accordance with adopted procedures, provided that at least three responsible proposals are received in response to a request. The following criteria must be considered:

- cost, safety and durability of the project;
- feasibility of implementing the project as proposed;
- ability of the design and construction teams to complete the work in a timely and satisfactory manner, and;
- other factors that the department deems appropriate.

Section 337.11 (5)(d), F.S., allows the department to award design/build contracts to those applicants with the lowest cost and best technical proposal. This provision also permits the department to conduct a design-build demonstration program in the areas of resurfacing; bridge construction; multilane construction and reconstruction; and fixed capital outlay and parking garages. These projects must also be in the current 5 year transportation plan. The program cannot exceed a total contract amount of \$50 million. The department is required to report to the legislature on the results obtained from completed design-build projects.

B. EFFECT OF PROPOSED CHANGES:

Section 337.11 (5)(a), F.S., is amended by the bill to require that the availability of qualified contractors is a factor to be considered by the department in making the determination of whether combining the design and construction phases of a project into a single contract is in the best interest of the public.

The bill provides that the department may choose, from those applicants submitting letters of interest, which applicants may submit detailed proposals to contract for a design/build project.

The bill amends section 337.11 (5)(b), F.S., to provide that the department's rules include criteria to be used in determining which applicants may submit technical and price proposals in response to an announced design/build project. The criteria would include such factors as the following:

- the abilities of the professional personnel;
- utilization of socially and economically disadvantaged business enterprises;
- past performance;
- capacity to meet time and budget requirements;
- location;
- recent, current, and projected workload of the firms, and;
- the ability of the design and construction teams to complete the work in a timely and satisfactory manner.

The bill creates a new paragraph (c) to authorize the department to proceed with a request for proposals if it receives at least three letters of interest from qualified applicants. The department is required to request proposals from at least three of the applicants.

The bill deletes the requirement that at least three responsible proposals be submitted before evaluation by the department proceeds. In addition to current criteria to be considered in evaluating proposals, the department must consider the length of time proposed to complete the project.

The bill also creates a new paragraph (e) which provides that once a contract is awarded, the department may negotiate minor changes clarifying the design criteria and work to be done. The total cost of a project resulting from negotiated changes could not exceed the cost of the next lowest responsible proposal.

Section 337.11 (5)(d), F.S., is amended by the bill to require that the award of a design build contract be made in accordance with section 337.11, F.S. The limitation of the design/build program to projects only in the categories of resurfacing; bridge construction; multilane construction or reconstruction; and fixed capital outlay and parking garages is deleted.

State Highway System/Local Governmental Aid

A. PRESENT SITUATION:

Section 339.12, F.S., provides that any governmental entity may make contributions to the department for the acquisition of right-of-way, construction, or maintenance of roads on the State Highway System. All local contributions must be used by the department only for the acquisition of right-of-way, construction, or maintenance as agreed to by the department and the local governmental entity.

Upon acceptance of local contributions, the department must enter into an agreement with the local government specifying the right-of-way acquisition, and construction plans. By specific provision in the agreement, the department may agree to reimburse the local

government for contributions used for state projects that are not revenue producing and are in the adopted 5 year transportation plan. The department may not commit funds for reimbursement without legislative approval. Reimbursement is to begin in the year the project or project phase was originally scheduled in the 5 year plan.

B. EFFECT OF PROPOSED CHANGES:

Section 339.12, F.S., is amended to provide that any governmental entity may contribute not only for right-of-way, construction, or maintenance, but to any project or project phase contained in the 5-year transportation plan. The bill conforms other language in this section by striking references to right-of-way acquisition, and construction, and inserting "project or project phase." The bill authorizes the Executive Office of the Governor to amend DOT's budget in the appropriate categories in order to utilize local contributions received.

Language requiring "legislative approval" is clarified to provide that subject to appropriation of funds by the Legislature, the department may commit state funds for reimbursement to local governmental entities.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

See Fiscal Comments (II. D.)

3. Long Run Effects Other Than Normal Growth:

None .

4. Appropriations Consequences:

See Fiscal Comments (II. D.)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

The Department of Transportation estimates that savings of costs associated with readvertising, shortlisting, and inflation due to delays amount to \$15,000 for a \$1 million project which must be readvertised because less than three responsible proposals were submitted. The department also estimates that based on first year history under the design/build program 30 percent of the projects must be readvertised.

III. LONG RANGE CONSEQUENCES:

By reducing the occasions when design/build projects would have to be readvertised because less than three proposals are received, this bill is consistent with the governmental efficiency policy contained in s. 187.201 (21)(b) 5., F.S. This policy directs the elimination of unnecessary duplication of governmental activities within state governmental units.

IV. COMMENTS:

A. LEGISLATIVE HISTORY:

1. Enacted Bill:

Senate Transportation Committee: Amended SB 1124 to include the provision relating to local governmental aid for the State Highway System, and reported the bill favorably as a committee substitute.

Senate Governmental Operations Committee: Reported CS/SB 1124 favorably with one amendment.

Senate Appropriations Committee: The bill was withdrawn from this committee.

Senate Chamber: One amendment adopted, and CS/SB 1124 passed as amended.

House Chamber: CS/SB 1124 passed.

STORAGE NAME: S1124-F.HSC
DATE: August 10, 1989
PAGE: 6

2. Companion Bills:

a. HB 978, relating to design and construction contracts:

Highway Safety and Construction Committee: Adopted a committee substitute for HB 978.

House Appropriations Committee: The bill was withdrawn.

House Chamber: CS/HB 978 died on the House Calendar.

b. HB 1820, relating to local governments advancing state road projects by providing funding for such projects:

Highway Safety and Construction Committee: This bill was filed as a committee bill.

House Chamber: HB 1820 died on the House Calendar.

B. OTHER COMMENTS

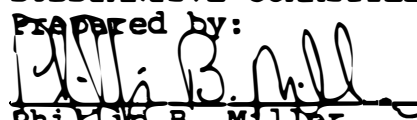
To date, no projects have been completed using a design-build contract, therefore no report outlining the results obtained from completed design/build projects has been made to the Legislature pursuant to section 337.11 (5)(d), F.S.

The section of the bill related to local governmental aid to the State Highway System was passed in identical form in Senate Bill 1474.


V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:


Phillip B. Miller

Staff Director:


Bill Ham