

1 A bill to be entitled
 2 An act relating to procurement of personal property and
 3 services; creating s. 287.046, F.S.; authorizing local
 4 governments to select construction management entities and
 5 program management entities; specifying the
 6 responsibilities of such entities; providing procedures
 7 and requirements with respect to such entities; providing
 8 construction of the section; amending s. 287.055, F.S.;
 9 revising the definition of "continuing contract"; revising
 10 provisions relating to the award of design-build contracts
 11 for professional architectural, engineering, landscape
 12 architectural, or surveying and mapping services by
 13 municipalities, political subdivisions, school districts,
 14 and school boards; amending s. 287.057, F.S.; requiring
 15 that additional types of contracts by state agencies be
 16 procured by competitive solicitation; providing
 17 severability; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Section 287.046, Florida Statutes, is created
 22 to read:

23 287.046 Construction management entities; program
 24 management entities.--

25 (1) "Local government" as used in this section means a
 26 county, municipality, or special district as defined in chapter
 27 189, or other political subdivision of the state.

28 (2) A local government may select a construction

29 management entity, pursuant to the process provided by s.
30 287.055, that would be responsible for construction project
31 scheduling and coordination in both preconstruction and
32 construction phases and is generally responsible for the
33 successful, timely, and economical completion of the
34 construction project. The construction management entity must
35 consist of or contract with licensed or registered professionals
36 for the specific fields or areas of construction to be
37 performed, as required by law. The construction management
38 entity may retain necessary design professionals selected under
39 the process provided in s. 287.055. At the option of the local
40 government, the construction management entity, after having
41 been selected and after competitive negotiations, may be
42 required to offer either a guaranteed maximum price and a
43 guaranteed completion date or a lump-sum price and a guaranteed
44 completion date, in which case the construction management
45 entity must secure an appropriate surety bond pursuant to s.
46 255.05 and must hold construction subcontracts. If a project, as
47 defined in s. 287.055(2)(f), solicited by a local government
48 under the process provided in s. 287.055 includes a grouping of
49 substantially similar construction, rehabilitation, or
50 renovation activities as permitted under s. 287.055(2)(f), the
51 local government, after competitive negotiations, may require
52 the construction management entity to provide for a separate
53 guaranteed maximum price or a separate lump-sum price and a
54 separate guaranteed completion date for each grouping of
55 substantially similar construction, rehabilitation, or
56 renovation activities included within the project.

57 (3) A local government may select a program management
58 entity, pursuant to the process provided by s. 287.055, that
59 would be responsible for schedule control, cost control, and
60 coordination in providing or procuring planning, design, and
61 construction services. The program management entity must
62 consist of or contract with licensed or registered professionals
63 for the specific areas of design or construction to be performed
64 as required by law. The program management entity may retain
65 necessary design professionals selected under the process
66 provided in s. 287.055. At the option of the local government,
67 the program management entity, after having been selected and
68 after competitive negotiations, may be required to offer either
69 a guaranteed maximum price and a guaranteed completion date or a
70 lump-sum price and a guaranteed completion date, in which case
71 the program management entity must secure an appropriate surety
72 bond pursuant to s. 255.05 and must hold design and construction
73 subcontracts. If a project, as defined in s. 287.055(2)(f),
74 solicited by a local government under the process provided in s.
75 287.055 includes a grouping of substantially similar
76 construction, rehabilitation, or renovation activities as
77 permitted under s. 287.055(2)(f), the local government, after
78 competitive negotiations, may require the program management
79 entity to provide for a separate guaranteed maximum price or a
80 lump sum price and a separate guaranteed completion date for
81 each grouping of substantially similar construction,
82 rehabilitation, or renovation activities included within the
83 project.

84 (4) Nothing in this section shall be construed to prohibit

85 a local government from procuring construction management
 86 services, including the services of a program management entity,
 87 pursuant to the requirements of s. 255.20.

88 Section 2. Paragraph (g) of subsection (2) and paragraph
 89 (c) of subsection (9) of section 287.055, Florida Statutes, are
 90 amended to read:

91 287.055 Acquisition of professional architectural,
 92 engineering, landscape architectural, or surveying and mapping
 93 services; definitions; procedures; contingent fees prohibited;
 94 penalties.--

95 (2) DEFINITIONS.--For purposes of this section:

96 (g) A "continuing contract" is a contract for professional
 97 services entered into in accordance with all the procedures of
 98 this act between an agency and a firm whereby the firm provides
 99 professional services to the agency for projects in which
 100 construction costs do not exceed \$1.5 million ~~\$1 million~~, for
 101 study activity when the fee for such professional service does
 102 not exceed \$150,000 ~~\$50,000~~, or for work of a specified nature
 103 as outlined in the contract required by the agency, with no time
 104 limitation except that the contract must provide a termination
 105 clause. ~~Firms providing professional services under continuing~~
 106 ~~contracts shall not be required to bid against one another.~~

107 (9) APPLICABILITY TO DESIGN-BUILD CONTRACTS.--

108 (c) Except as otherwise provided in s. 337.11(7), the
 109 Department of Management Services shall adopt rules for the
 110 award of design-build contracts to be followed by state
 111 agencies. Each other agency must adopt rules or ordinances for
 112 the award of design-build contracts. Municipalities, political

113 subdivisions, school districts, and school boards shall award
114 design-build contracts by the use of a competitive proposal
115 selection process as described in this subsection, or by the use
116 of a qualifications-based selection process pursuant to
117 subsections (3), (4), and (5) for entering into a contract
118 whereby the selected firm will, subsequent to competitive
119 negotiations, ~~subsequently~~ establish either a guaranteed maximum
120 price and guaranteed completion date or a lump-sum price and
121 guaranteed completion date. If the procuring agency elects the
122 option of qualifications-based selection, during the selection
123 of the design-build firm the procuring agency shall employ or
124 retain a licensed design professional appropriate to the project
125 to serve as the agency's representative. Procedures for the use
126 of a competitive proposal selection process must include as a
127 minimum the following:

- 128 1. The preparation of a design criteria package for the
129 design and construction of the public construction project.
- 130 2. The qualification and selection of no fewer than three
131 design-build firms as the most qualified, based on the
132 qualifications, availability, and past work of the firms,
133 including the partners or members thereof.
- 134 3. The criteria, procedures, and standards for the
135 evaluation of design-build contract proposals or bids, based on
136 price, technical, and design aspects of the public construction
137 project, weighted for the project.
- 138 4. The solicitation of competitive proposals, pursuant to
139 a design criteria package, from those qualified design-build
140 firms and the evaluation of the responses or bids submitted by

141 those firms based on the evaluation criteria and procedures
 142 established prior to the solicitation of competitive proposals.

143 5. For consultation with the employed or retained design
 144 criteria professional concerning the evaluation of the responses
 145 or bids submitted by the design-build firms, the supervision or
 146 approval by the agency of the detailed working drawings of the
 147 project; and for evaluation of the compliance of the project
 148 construction with the design criteria package by the design
 149 criteria professional.

150 6. In the case of public emergencies, for the agency head
 151 to declare an emergency and authorize negotiations with the best
 152 qualified design-build firm available at that time.

153 Section 3. Subsection (27) is added to section 287.057,
 154 Florida Statutes, to read:

155 287.057 Procurement of commodities or contractual
 156 services.--

157 (27) An agency must procure a contract by competitive
 158 solicitation if the contract authorizes a contractor to use
 159 governmental authority to provide a service to public or private
 160 entities or authorizes a contractor to use government property
 161 for the purpose of selling goods or services and if, over the
 162 contract term, the sum of estimated gross revenues to be
 163 generated under the contract for the state, the contractor, or
 164 both exceeds the threshold amount for CATEGORY TWO in s.
 165 287.017.

166 Section 4. If any provision of this act or the application
 167 thereof to any person or circumstance is held invalid, the
 168 invalidity shall not affect other provisions or applications of

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169 | the act which can be given effect without the invalid provision
170 | or application, and to this end the provisions of this act are
171 | declared severable.

172 | Section 5. This act shall take effect July 1, 2007.