

Bill No. CS/HB 1489, 1st Eng.

Barcode 535004

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Saunders moved the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Paragraph (c) is added to subsection (1) of section 255.05, Florida Statutes, to read:

255.05 Bond of contractor constructing public buildings; form; action by materialmen.--

(1)

(c)1. The amount of the bond shall equal the contract price, except that for a contract in excess of \$250 million, if the state, county, municipality, political subdivision, or other public entity finds that a bond in the amount of the contract price is not reasonably available, the public owner shall set the amount of the bond at the largest amount reasonably available, but not less than \$250 million.

2. For a construction-management or design-build contracts, if the public owner does not include in the bond amount the cost of design or other nonconstruction services,

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1 the bond may not be conditioned on performance of such  
 2 services or payment to persons furnishing such services.  
 3 Notwithstanding paragraph (a), such a bond may exclude persons  
 4 furnishing such services from the classes of persons protected  
 5 by the bond.

6 Section 2. Section 255.103, Florida Statutes, is  
 7 created to read:

8 255.103 Construction management or program management  
 9 entities.--

10 (1) "As used in this section, the term "local  
 11 government" means a county, municipality, special district as  
 12 defined in chapter 189, or other political subdivision of the  
 13 state.

14 (2) A local government may select a construction  
 15 management entity, pursuant to the process provided by s.  
 16 287.055, which is to be responsible for construction project  
 17 scheduling and coordination in both preconstruction and  
 18 construction phases and generally responsible for the  
 19 successful, timely, and economical completion of the  
 20 construction project. The construction management entity must  
 21 consist of or contract with licensed or registered  
 22 professionals for the specific fields or areas of construction  
 23 to be performed, as required by law. The construction  
 24 management entity may retain necessary design professionals  
 25 selected under the process provided in s. 287.055. At the  
 26 option of the local government, the construction management  
 27 entity, after having been selected and after competitive  
 28 negotiations, may be required to offer a guaranteed maximum  
 29 price and a guaranteed completion date or a lump-sum price and  
 30 a guaranteed completion date, in which case, the construction  
 31 management entity must secure an appropriate surety bond

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1 pursuant to s. 255.05 and must hold construction subcontracts.  
2 If a project, as defined in s. 287.055(2)(f), solicited by a  
3 local government under the process provided in s. 287.055  
4 includes a grouping of substantially similar construction,  
5 rehabilitation, or renovation activities as permitted under s.  
6 287.055(2)(f), the local government, after competitive  
7 negotiations, may require the construction management entity  
8 to provide for a separate guaranteed maximum price or a  
9 separate lump-sum price and a separate guaranteed completion  
10 date for each grouping of substantially similar construction,  
11 rehabilitation, or renovation activities included within the  
12 project.

13 (3) A local government may select a program management  
14 entity, pursuant to the process provided by s. 287.055, which  
15 is to be responsible for schedule control, cost control, and  
16 coordination in providing or procuring planning, design, and  
17 construction services. The program management entity must  
18 consist of or contract with licensed or registered  
19 professionals for the specific areas of design or construction  
20 to be performed as required by law. The program management  
21 entity may retain necessary design professionals selected  
22 under the process provided in s. 287.055. At the option of the  
23 local government, the program management entity, after having  
24 been selected and after competitive negotiations, may be  
25 required to offer a guaranteed maximum price and a guaranteed  
26 completion date or a lump-sum price and guaranteed completion  
27 date, in which case the program management entity must secure  
28 an appropriate surety bond pursuant to s. 255.05 and must hold  
29 design and construction subcontracts. If a project, as defined  
30 in s. 287.055(2)(f), solicited by a local government under the  
31 process provided in s. 287.055 includes a grouping of

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1 substantially similar construction, rehabilitation, or  
 2 renovation activities as permitted under s. 287.055(2)(f), the  
 3 local government, after competitive negotiations, may require  
 4 the program management entity to provide for a separate  
 5 guaranteed maximum price or a lump-sum price and a separate  
 6 guaranteed completion date for each grouping of substantially  
 7 similar construction, rehabilitation, or renovation activities  
 8 included within the project.

9       (4) This section does not prohibit a local government  
 10 from procuring construction management services, including the  
 11 services of a program management entity, pursuant to the  
 12 requirements of s. 255.20.

13       Section 3. Paragraph (c) of subsection (9) of section  
 14 287.055, Florida Statutes, is amended to read:

15       287.055 Acquisition of professional architectural,  
 16 engineering, landscape architectural, or surveying and mapping  
 17 services; definitions; procedures; contingent fees prohibited;  
 18 penalties.--

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

20       (c) Except as otherwise provided in s. 337.11(7), the  
 21 Department of Management Services shall adopt rules for the  
 22 award of design-build contracts to be followed by state  
 23 agencies. Each other agency must adopt rules or ordinances  
 24 for the award of design-build contracts. Municipalities,  
 25 political subdivisions, school districts, and school boards  
 26 shall award design-build contracts by the use of a competitive  
 27 proposal selection process as described in this subsection, or  
 28 by the use of a qualifications-based selection process  
 29 pursuant to subsections (3), (4), and (5) for entering into a  
 30 contract whereby the selected firm will, subsequent to  
 31 competitive negotiations, subsequently establish a guaranteed

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1 maximum price and guaranteed completion date. If the procuring  
2 agency elects the option of qualifications-based selection,  
3 during the selection of the design-build firm the procuring  
4 agency shall employ or retain a licensed design professional  
5 appropriate to the project to serve as the agency's  
6 representative. Procedures for the use of a competitive  
7 proposal selection process must include as a minimum the  
8 following:

9           1. The preparation of a design criteria package for  
10 the design and construction of the public construction  
11 project.

12           2. The qualification and selection of no fewer than  
13 three design-build firms as the most qualified, based on the  
14 qualifications, availability, and past work of the firms,  
15 including the partners or members thereof.

16           3. The criteria, procedures, and standards for the  
17 evaluation of design-build contract proposals or bids, based  
18 on price, technical, and design aspects of the public  
19 construction project, weighted for the project.

20           4. The solicitation of competitive proposals, pursuant  
21 to a design criteria package, from those qualified  
22 design-build firms and the evaluation of the responses or bids  
23 submitted by those firms based on the evaluation criteria and  
24 procedures established prior to the solicitation of  
25 competitive proposals.

26           5. For consultation with the employed or retained  
27 design criteria professional concerning the evaluation of the  
28 responses or bids submitted by the design-build firms, the  
29 supervision or approval by the agency of the detailed working  
30 drawings of the project; and for evaluation of the compliance  
31 of the project construction with the design criteria package

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1 | by the design criteria professional.

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

5 |           Section 4. This act shall take effect July 1, 2007.

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8 | ===== T I T L E   A M E N D M E N T =====

9 | And the title is amended as follows:

10 |           Delete everything before the enacting clause

11 |

12 | and insert:

13 |

                          A bill to be entitled

14 |

          An act relating to public project construction  
15 | bonds; amending s. 255.05, F.S.; providing that  
16 | the amount of a bond shall equal the contract  
17 | price except under certain conditions;  
18 | providing that a bond may not be conditioned on  
19 | the performance of design or nonconstruction  
20 | services if such services are not included in  
21 | the bond amount; creating s. 255.103, F.S.;  
22 | providing a definition; authorizing local  
23 | governments to select construction-management  
24 | or program-management entities to be  
25 | responsible for certain construction project  
26 | activities; providing requirements and  
27 | authority for such entities; amending s.  
28 | 287.055, F.S.; revising provisions relating to  
29 | the award of design-build contracts for  
30 | surveying or mapping services by certain  
31 | governmental entities; providing an effective

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