

1 A bill to be entitled
 2 An act relating to public project construction; amending
 3 s. 255.05, F.S.; providing additional requirements for
 4 payment and performance bonds; prohibiting conditioning
 5 certain bonds on performance of or payment for certain
 6 services; creating s. 255.103, F.S.; providing a
 7 definition; authorizing local governments to select
 8 construction-management or program-management entities to
 9 be responsible for certain construction project
 10 activities; providing requirements and authority for such
 11 entities; providing construction; amending s. 287.055,
 12 F.S.; requiring firms awarded certain design-build
 13 contracts to, subsequent to competitive negotiations,
 14 establish a guaranteed maximum price and guaranteed
 15 completion date; providing an effective date.

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 17 Be It Enacted by the Legislature of the State of Florida:

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

21 255.05 Bond of contractor constructing public buildings;
 22 form; action by materialmen.--

23 (1)

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

29 the amount of the bond at the largest amount reasonably
 30 available, but not at less than \$250 million.

31 2. For a construction-management or design-build contract,
 32 if the public owner does not include in the bond amount the cost
 33 of design or other nonconstruction services, the bond may not be
 34 conditioned on performance of such services or payment to
 35 persons furnishing such services. Notwithstanding paragraph (a),
 36 such a bond may exclude persons furnishing such services from
 37 the classes of persons protected by the bond.

38 Section 2. Section 255.103, Florida Statutes, is created
 39 to read:

40 255.103 Construction-management or program-management
 41 entities.--

42 (1) The term "local government" as used in this section
 43 means a county, municipality, special district as defined in
 44 chapter 189, or other political subdivision of the state.

45 (2) A local government may select a construction-
 46 management entity, pursuant to the process provided by s.
 47 287.055, that would be responsible for construction project
 48 scheduling and coordination in both preconstruction and
 49 construction phases and is generally responsible for the
 50 successful, timely, and economical completion of the
 51 construction project. The construction-management entity shall
 52 consist of or contract with licensed or registered professionals
 53 for the specific fields or areas of construction to be
 54 performed, as required by law. The construction-management
 55 entity may retain necessary design professionals selected under
 56 the process provided in s. 287.055. At the option of the local

57 government, the construction-management entity, after being
58 selected and after competitive negotiations, may be required to
59 offer a guaranteed maximum price or a guaranteed completion
60 date, in which case, the construction-management entity shall
61 secure an appropriate surety bond pursuant to s. 255.05 and
62 shall hold construction subcontracts. If a project, as defined
63 in s. 287.055(2)(f), solicited by a local government under the
64 process provided in s. 287.055 includes a grouping of
65 substantially similar construction, rehabilitation, or
66 renovation activities as permitted under s. 287.055(2)(f), the
67 local government, after competitive negotiations, may require
68 the construction-management entity to provide for a separate
69 guaranteed maximum price or a separate lump-sum price and a
70 separate guaranteed completion date for each grouping of
71 substantially similar construction, rehabilitation, or
72 renovation activities included under the project.

73 (3) A local government may select a program-management
74 entity, pursuant to the process provided by s. 287.055, that
75 would be responsible for schedule control, cost control, and
76 coordination in providing or procuring planning, design, and
77 construction services. The program-management entity shall
78 consist of or contract with licensed or registered professionals
79 for the specific areas of design or construction to be
80 performed, as required by law. The program-management entity may
81 retain necessary design professionals selected under the process
82 provided in s. 287.055. At the option of the local government,
83 the program-management entity, after being selected and after
84 competitive negotiations, may be required to offer a guaranteed

85 maximum price or a lump-sum price and a guaranteed completion
 86 date, in which case the program-management entity shall secure
 87 an appropriate surety bond pursuant to s. 255.05 and shall hold
 88 design and construction subcontracts. If a project, as defined
 89 in s. 287.055(2)(f), solicited by a local government under the
 90 process provided in s. 287.055, includes a grouping of
 91 substantially similar construction, rehabilitation, or
 92 renovation activities as permitted under s. 287.055(2)(f), the
 93 local government, after competitive negotiations, may require
 94 the program-management entity to provide for a separate
 95 guaranteed maximum price or a lump-sum price and a separate
 96 guaranteed completion date for each grouping of substantially
 97 similar construction, rehabilitation, or renovation activities
 98 included under the project.

99 (4) Nothing in this section shall be construed to prohibit
 100 a local government from procuring construction-management
 101 services, including the services of a program-management entity,
 102 pursuant to the requirements of s. 255.20.

103 Section 3. Paragraph (c) of subsection (9) of section
 104 287.055, Florida Statutes, is amended to read:

105 287.055 Acquisition of professional architectural,
 106 engineering, landscape architectural, or surveying and mapping
 107 services; definitions; procedures; contingent fees prohibited;
 108 penalties.--

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

110 (c) Except as otherwise provided in s. 337.11(7), the
 111 Department of Management Services shall adopt rules for the
 112 award of design-build contracts to be followed by state

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

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

141 firms and the evaluation of the responses or bids submitted by
142 those firms based on the evaluation criteria and procedures
143 established prior to the solicitation of competitive proposals.

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

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

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