

1                   A bill to be entitled  
 2           An act relating to public project construction bonds;  
 3           amending s. 255.05, F.S.; providing that the amount of a  
 4           bond shall equal the contract price except under certain  
 5           conditions; providing that a bond may not be conditioned  
 6           on the performance of design or nonconstruction services  
 7           if such services are not included in the bond amount;  
 8           creating s. 255.103, F.S.; providing a definition;  
 9           authorizing local governments to select construction-  
 10          management or program-management entities to be  
 11          responsible for certain construction project activities;  
 12          providing requirements and authority for such entities;  
 13          amending s. 287.055, F.S.; revising provisions relating to  
 14          the award of design-build contracts for surveying or  
 15          mapping services by certain governmental entities;  
 16          providing an effective date.

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

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

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

24           (1)

25           (c)1. The amount of the bond shall equal the contract  
 26           price, except that for a contract in excess of \$250 million, if  
 27           the state, county, municipality, political subdivision, or other  
 28           public entity finds that a bond in the amount of the contract

29 price is not reasonably available, the public owner shall set  
 30 the amount of the bond at the largest amount reasonably  
 31 available, but not less than \$250 million.

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

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

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

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

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

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

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

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

102 (4) This section does not prohibit a local government from  
103 procuring construction management services, including the  
104 services of a program management entity, pursuant to the  
105 requirements of s. 255.20.

106 Section 3. Paragraph (c) of subsection (9) of section  
107 287.055, Florida Statutes, is amended to read:

108 287.055 Acquisition of professional architectural,  
109 engineering, landscape architectural, or surveying and mapping  
110 services; definitions; procedures; contingent fees prohibited;  
111 penalties.--

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

113 (c) Except as otherwise provided in s. 337.11(7), the  
 114 Department of Management Services shall adopt rules for the  
 115 award of design-build contracts to be followed by state  
 116 agencies. Each other agency must adopt rules or ordinances for  
 117 the award of design-build contracts. Municipalities, political  
 118 subdivisions, school districts, and school boards shall award  
 119 design-build contracts by the use of a competitive proposal  
 120 selection process as described in this subsection, or by the use  
 121 of a qualifications-based selection process pursuant to  
 122 subsections (3), (4), and (5) for entering into a contract  
 123 whereby the selected firm will, subsequent to competitive  
 124 negotiations, ~~subsequently~~ establish a guaranteed maximum price  
 125 and guaranteed completion date. If the procuring agency elects  
 126 the option of qualifications-based selection, during the  
 127 selection of the design-build firm the procuring agency shall  
 128 employ or retain a licensed design professional appropriate to  
 129 the project to serve as the agency's representative. Procedures  
 130 for the use of a competitive proposal selection process must  
 131 include as a minimum the following:

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

141 project, weighted for the project.

142 4. The solicitation of competitive proposals, pursuant to  
143 a design criteria package, from those qualified design-build  
144 firms and the evaluation of the responses or bids submitted by  
145 those firms based on the evaluation criteria and procedures  
146 established prior to the solicitation of competitive proposals.

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

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

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