

ENROLLED

CS/HB 1489, Engrossed 2

2007 Legislature

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.

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

19
 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

ENROLLED

CS/HB 1489, Engrossed 2

2007 Legislature

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

ENROLLED

CS/HB 1489, Engrossed 2

2007 Legislature

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,

ENROLLED

CS/HB 1489, Engrossed 2

2007 Legislature

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.--

ENROLLED

CS/HB 1489, Engrossed 2

2007 Legislature

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

ENROLLED

CS/HB 1489, Engrossed 2

2007 Legislature

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.