By the Committees on Governmental Operations; Regulated
Industries; and Senator Saunders

585-2673-07

1   A bill to be entitled

2   An act relating to public project construction

3   bonds; amending s. 255.05, F.S.; providing that

4   the amount of a bond shall equal the contract

5   price except under certain conditions;

6   providing that a bond may not be conditioned on

7   the performance of design or nonconstruction

8   services if such services are not included in

9   the bond amount; creating s. 255.103, F.S.;

10   providing a definition; authorizing local

11   governments to select construction-management

12   or program-management entities to be

13   responsible for certain construction project

14   activities; providing requirements and

15   authority for such entities; amending s.

16   287.055, F.S.; revising provisions relating to

17   the award of design-build contracts for

18   surveying or mapping services by certain

19   governmental entities; providing an effective

20   date.

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

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24   Section 1. Paragraph (c) is added to subsection (1) of

25   section 255.05, Florida Statutes, to read:

26   255.05 Bond of contractor constructing public

27   buildings; form; action by materialmen.--

28   (1)

29   (c)1. The amount of the bond shall equal the contract

30   price, except that for a contract in excess of $250 million,

31   if the state, county, municipality, political subdivision, or

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 1 other public entity finds that a bond in the amount of the

 2 contract price is not reasonably available, the public owner

 3 shall set the amount of the bond at the largest amount

 4 reasonably available, but not less than $250 million.

 5   2. For a construction-management or design-build

 6 contracts, if the public owner does not include in the bond

 7 amount the cost of design or other nonconstruction services,

 8 the bond may not be conditioned on performance of such

 9 services or payment to persons furnishing such services.

10 Notwithstanding paragraph (a), such a bond may exclude persons

11 furnishing such services from the classes of persons protected

12 by the bond.

13   Section 2. Section 255.103, Florida Statutes, is

14 created to read:

15   255.103 Construction management or program management

16 entities.--

17   (1) "As used in this section, the term "local

18 government" means a county, municipality, special district as

19 defined in chapter 189, or other political subdivision of the

20 state.

21   (2) A local government may select a construction

22 management entity, pursuant to the process provided by s.

23 287.055, which is to be responsible for construction project

24 scheduling and coordination in both preconstruction and

25 construction phases and generally responsible for the

26 successful, timely, and economical completion of the

27 construction project. The construction management entity must

28 consist of or contract with licensed or registered

29 professionals for the specific fields or areas of construction

30 to be performed, as required by law. The construction

31 management entity may retain necessary design professionals

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

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 1 required to offer a guaranteed maximum price and a guaranteed

 2 completion date or a lump-sum price and guaranteed completion

 3 date, in which case the program management entity must secure

 4 an appropriate surety bond pursuant to s. 255.05 and must hold

 5 design and construction subcontracts. If a project, as defined

 6 in s. 287.055(2)(f), solicited by a local government under the

 7 process provided in s. 287.055 includes a grouping of

 8 substantially similar construction, rehabilitation, or

 9 renovation activities as permitted under s. 287.055(2)(f), the

10 local government, after competitive negotiations, may require

11 the program management entity to provide for a separate

12 guaranteed maximum price or a lump-sum price and a separate

13 guaranteed completion date for each grouping of substantially

14 similar construction, rehabilitation, or renovation activities

15 included within the project.

16   (4) This section does not prohibit a local government

17 from procuring construction management services, including the

18 services of a program management entity, pursuant to the

19 requirements of s. 255.20.

20   Section 3. Paragraph (c) of subsection (9) of section

21 287.055, Florida Statutes, is amended to read:

22   287.055 Acquisition of professional architectural,

23 engineering, landscape architectural, or surveying and mapping

24 services; definitions; procedures; contingent fees prohibited;

25 penalties.--

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

27   (c) Except as otherwise provided in s. 337.11(7), the

28 Department of Management Services shall adopt rules for the

29 award of design-build contracts to be followed by state

30 agencies. Each other agency must adopt rules or ordinances

31 for the award of design-build contracts. Municipalities,

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 1 political subdivisions, school districts, and school boards

 2 shall award design-build contracts by the use of a competitive

 3 proposal selection process as described in this subsection, or

 4 by the use of a qualifications-based selection process

 5 pursuant to subsections (3), (4), and (5) for entering into a

 6 contract whereby the selected firm will, subsequent to

 7 competitive negotiations, ~~subsequently~~ establish a guaranteed

 8 maximum price and guaranteed completion date. If the procuring

 9 agency elects the option of qualifications-based selection,

10 during the selection of the design-build firm the procuring

11 agency shall employ or retain a licensed design professional

12 appropriate to the project to serve as the agency's

13 representative. Procedures for the use of a competitive

14 proposal selection process must include as a minimum the

15 following:

16   1. The preparation of a design criteria package for

17 the design and construction of the public construction

18 project.

19   2. The qualification and selection of no fewer than

20 three design-build firms as the most qualified, based on the

21 qualifications, availability, and past work of the firms,

22 including the partners or members thereof.

23   3. The criteria, procedures, and standards for the

24 evaluation of design-build contract proposals or bids, based

25 on price, technical, and design aspects of the public

26 construction project, weighted for the project.

27   4. The solicitation of competitive proposals, pursuant

28 to a design criteria package, from those qualified

29 design-build firms and the evaluation of the responses or bids

30 submitted by those firms based on the evaluation criteria and

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 1 procedures established prior to the solicitation of

 2 competitive proposals.

 3   5.   For consultation with the employed or retained

 4 design criteria professional concerning the evaluation of the

 5 responses or bids submitted by the design-build firms, the

 6 supervision or approval by the agency of the detailed working

 7 drawings of the project; and for evaluation of the compliance

 8 of the project construction with the design criteria package

 9 by the design criteria professional.

10   6.   In the case of public emergencies, for the agency

11 head to declare an emergency and authorize negotiations with

12 the best qualified design-build firm available at that time.

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

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15   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
                       COMMITTEE SUBSTITUTE FOR
16   CS for SB 2376

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18 Allows a local government to use a construction management or
    program management entity for construction projects, and
19 requires that they be procured pursuant to the Consultants'
    Competitive Negotiation Act (CCNA).
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    Modifies the CCNA to clarify that contracts for award of
21 design-build contracts must, subsequent to competitive
    negotiations, establish a guaranteed maximum price and
22 guaranteed completion date.

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