

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1459

State Construction Management Contracting

**SPONSOR(S):** Full Appropriations Council on General Government & Health Care; Government Operations Appropriations and Crisafulli

**TIED BILLS:**

**IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee	12 Y, 0 N	McDonald	Williamson
2)	Economic Development & Community Affairs Policy Council	14 Y, 0 N	McDonald	Tinker
3)	Government Operations Appropriations Committee	5 Y, 0 N, As CS	Dykes	Topp
4)	Full Appropriations Council on General Government & Health Care	33 Y, 0 N, As CS	Dykes	Leznoff
5)				

### SUMMARY ANALYSIS

This bill creates a new section in Chapter 255, Florida Statutes. It provides that the Department of Management Services (DMS) may procure the services of a construction management entity pursuant to the process provided in s. 287.055, F.S. This bill amends definitions in sections 255.103, F.S. 287.055, F.S. and 287.057, F.S., and revises s. 1013.45, F.S., to provide contracting procedures for educational facilities contracting and construction.

Specifically, the bill:

- Provides definitions applicable to the newly created section.
- Authorizes DMS to select and contract with construction management entities, to include continuing contracts, when the total cost of the project does not exceed \$2 million.
- Provides that DMS may require a guaranteed maximum price and a guaranteed completion date.
- Provides that DMS may require a separate maximum price and guaranteed completion date for each grouping of substantially similar activities included within a project without repeating the competitive selection process throughout the project.
- Requires DMS to promulgate rules applicable to state agencies utilizing construction management contracts established by DMS.
- Replaces the term "local government" with the term "governmental entity" and defines the term "continuing contract" in s. 255.103, F.S.
- Authorizes government entities to enter into continuing contracts for construction projects when the estimated construction cost for each project does not exceed \$2 million.
- Revises the definition of "continuing contract" in s. 287.055, F.S., to raise the threshold for construction costs for each project to \$2 million, for study activity if the fee for professional services for each study under the contract does not exceed \$200,000 or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause.
- Provides that the term "artistic services" defined in s. 287.057, F.S., does not include advertising, and defines the term "advertising."
- Revises provisions in s. 1013.45, F.S., relating to contracting and construction for educational facilities.

This bill is effective July 1, 2009.

This bill appears to have no fiscal impact on state or local governments. See "Fiscal Comments."

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 4/21/2009

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

The Department of Management Services (DMS) is the state agency responsible for managing construction projects in accordance with s. 255.31, F.S. As provided in s. 255.29, F.S., DMS competitively contracts for construction management services. In addition, pursuant to ss. 287.055(2)(g) and 287.055(4)(d), F.S., DMS already enters into continuing contracts<sup>1</sup> for professional services.<sup>2</sup>

Section 255.103, F.S., provides that local governments may engage construction management and program management entities in accordance with the process specified in s. 287.055, F.S. After having been selected and after competitive negotiations, the construction management entity may be required to offer a guaranteed maximum price and a guaranteed completion date. The local government may require the construction management entity to provide for a separate guaranteed maximum price and a separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities included within the project without requiring a new competitive procurement for each activity within the project.<sup>3</sup>

Prior to 2007, the Florida Statutes had been interpreted as providing similar authority to DMS. Upon closer analysis in 2007, it was determined that the Florida Statutes did not clearly provide DMS the same flexibility now afforded local governments through s. 255.103, F.S. Thus, the process was discontinued and DMS reported a 40 percent workload increase for its building construction workgroup, and delays of 4-6 months in the completion of new construction projects.<sup>4</sup>

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<sup>1</sup> A "continuing contract" is a contract for professional services entered into by an agency and a firm whereby the firm provides professional services to the agency for projects in which construction costs do not exceed \$1 million, for study activity when the fee for such professional service does not exceed \$50,000, or for work of a specified nature as outlined in the contract required by the agency, with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another.

<sup>2</sup> "Professional services" means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

<sup>3</sup> A project may include a grouping of minor construction, rehabilitation, or renovation activities, or a grouping of substantially similar construction, rehabilitation, or renovation activities.

<sup>4</sup> House Bill 7035 analysis, March 18, 2008, p. 1.

## Effect of Proposed Changes by Section

Section 1. This bill creates s. 255.32, F.S., authorizing DMS to select and contract with a construction management entity pursuant to the process provided in s. 287.055, F.S. This new section applies to projects in which construction costs do not exceed \$2 million. Under the bill, DMS is authorized to engage construction management entities previously selected through competitive solicitation, without the requirement to repeat the competitive selection process throughout the project. DMS may require the construction management entity, after having been selected for a construction project and after competitive negotiations, to offer a guaranteed maximum price and a guaranteed completion date. If a project solicited by DMS includes a grouping of construction, rehabilitation, or renovation activities or substantially similar construction, rehabilitation, or renovation activities costing up to \$1 million, DMS may require the construction management entity to provide for a separate guaranteed maximum price and separate guaranteed completion date for each grouping included in the project.

Section 2. Amends definitions in s. 255.103, F.S., replacing the term "local government" with "governmental entity" and defines "governmental entity". The definition of governmental entity includes school districts. Defines the term "continuing contract" to mean a contract with a construction management or program management entity for work during a defined period on construction projects described by type which may or may not be identified at the time of entering into the contract. Authorizes governmental entities to enter into continuing contracts for construction projects, pursuant to the process provided in s. 287.055, for which the total estimated construction cost for each project under the contract does not exceed \$2 million.

Section 3. Amends s. 287.055, F.S., revising the definition of "continuing contract" to stipulate the threshold for construction costs for each project under the contract cannot exceed \$2 million, for study activity if the fee for professional services for each study under the contract does not exceed \$200,000 or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause.

Section 4. Amends s. 287.057, F.S., providing the term "artistic services" does not include advertising, and defines the term "advertising" to mean the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of commodities or services by the person promoting the commodities or contractual services.

Section 5. Amends s. 1013.45, F.S., revising provisions relating to contracting and construction for educational facilities.

### B. SECTION DIRECTORY:

**Section 1.** Creates s. 255.32, F.S., authorizing DMS to select and contract with construction management entities, to include continuing contracts under certain circumstances, and providing that a construction management entity may be required to offer a guaranteed maximum price and a guaranteed completion date under specified circumstances and secure a surety bond.

**Section 2.** Amends s. 255.103, F.S., revising terminology, revising the definition of "continuing contract", and authorizing governmental entities to enter into continuing contracts under certain circumstances.

**Section 3.** Amends s. 287.055, F.S., revising the definition of "continuing contract."

**Section 4.** Amends s. 287.057, F.S., excluding advertising from artistic services exempt from competitive solicitation requirements for contractual services and commodities, and defines the term "advertising."

**Section 5.** Amends s. 1013.45, F.S., revising provisions relating to contracting and construction for educational facilities.

**Section 6.** Provides an effective date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The construction industry would experience state agencies aligning with their current business trends and conditions. This alignment will result in a less repetitive and complex process for private contractors to compete for state projects. Through the rule promulgation process, private construction management providers will not have to go through a repetitive qualifications process with each individual state agency that is appropriate fixed capital outlay funds. Private contractors will not have to go through a pre-qualification process for each individual project.<sup>5</sup>

### D. FISCAL COMMENTS:

According to DMS, costs would be reduced due to the efficient delivery of building-related services; outcome of state construction projects would improve through the selection of the best qualified providers to perform construction management services; and more projects could be handled at one time. Additionally, DMS stated the "speed to market impact allows for improved economic buying power and investment into local economies."<sup>6</sup>

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

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<sup>5</sup> Department of Management Services Analysis of House Bill 1459, March 10, 2009, p.4.

<sup>6</sup> *Ibid.*, p. 3.

None.

**B. RULE-MAKING AUTHORITY:**

This bill requires DMS to promulgate rules applicable to state agencies for utilizing construction management contracts established by DMS.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

**Government Operations Appropriations Committee**

The Government Operations Appropriations Committee met on March 31, 2009, and adopted an amendment. The amendment changes s. 287.055, F.S., known as the Consultants' Competitive Negotiation Act (Act), to include construction and program management services in the provisions of the Act. The amendment raises the bid threshold for projects from \$1 million to \$2 million, and from \$50,000 to \$200,000 for study activities. The definition of continuing contract is amended to include projects for which there is no limit on the aggregate values under the contract. The amendment includes construction and program managers under the prohibition against contingent fees.

The amendment also raises the bid thresholds in the construction management statute for state universities in s. 1001.74, F.S., and changes the definition of continuing contract to include projects for which there is no limit on the aggregate values under the contract.

The amendment does not appear to have a fiscal impact.

The bill was reported favorably as a Committee Substitute.

**Full Appropriations Council on General Government and Health Care**

The Full Appropriations Council on General Government and Health Care met on April 20, 2009, and adopted an amendment. The amendment revises definitions in sections 255.103 and 287.055, F.S., and authorizes governmental entities to enter into continuing contracts. The amendment defines the term "advertising" and excludes advertising from artistic services that are exempt from competitive solicitation requirements.

The amendment removes construction and program managers from the definition of "Professional Services" and "Firm" in s. 287.055, F.S., and removes construction and program managers from the provision that requires professional services contracts to contain a prohibition against contingent fees. The amendment removes the raised bid thresholds in the construction management statute for state universities.

The amendment does not appear to have a fiscal impact.

The bill was reported favorably as a Council Substitute.