

1 A bill to be entitled
 2 An act relating to state construction management
 3 contracting; creating s. 255.32, F.S.; defining terms;
 4 authorizing the Department of Management Services to
 5 select and contract with construction management entities
 6 to assist in the management of state construction
 7 projects; providing criteria; authorizing the department
 8 to enter into continuing contracts under certain
 9 circumstances; providing that a construction management
 10 entity may be required to offer a guaranteed maximum price
 11 and a guaranteed completion date under specified
 12 circumstances and secure a surety bond; authorizing the
 13 department to adopt rules; amending s. 287.055, F.S.;
 14 revising definitions; including construction or program
 15 managers under a prohibition against contingency fees for
 16 certain professional services contracts; amending s.
 17 1001.74, F.S.; revising criteria for continuing contracts
 18 for professional services by university boards of
 19 trustees; amending s. 1013.45, F.S.; revising contracting
 20 procedures for educational facilities contracting and
 21 construction; providing an effective date.

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

24
 25 Section 1. Section 255.32, Florida Statutes, is created to
 26 read:

27 255.32 State construction management contracting.--
 28 (1) As used in this section, the term:

29 (a) "Construction management entity" means a licensed
30 general contractor or a licensed building contractor, as defined
31 in s. 489.105(3), who coordinates and supervises a construction
32 project from the conceptual development stage through final
33 construction, including the scheduling, selection, contracting
34 with, and directing of specialty trade contractors and the value
35 engineering of a project.

36 (b) "Construction project" means any planned or unforeseen
37 fixed capital outlay activity authorized under s. 255.31. A
38 construction project may include:

39 1. A grouping of minor construction, rehabilitation, or
40 renovation activities.

41 2. A grouping of substantially similar construction,
42 rehabilitation, or renovation activities.

43 (c) "Continuing contract" means a contract with a
44 construction management entity for work during a defined time
45 period on construction projects, described by type, which may or
46 may not be identified at the time the contract is entered into.

47 (d) "Department" means the Department of Management
48 Services.

49 (2) To assist in the management of state construction
50 projects, the department may select and contract with
51 construction management entities that:

52 (a) Are competitively selected by the department pursuant
53 to s. 287.055;

54 (b) Agree to follow the advertising and competitive
55 bidding procedures that the department would be required to
56 follow if the department was managing the construction project

57 directly; and

58 (c) Are under a contract that is separate from the design
 59 criteria professional contract, if any, assigned to the
 60 construction project.

61 (3) The department's authority under subsection (2)
 62 includes entering into continuing contracts for construction
 63 projects the total estimated cost of which does not exceed \$1
 64 million.

65 (4) The department may require the construction management
 66 entity, after having been selected for a construction project
 67 and after competitive negotiations, to offer a guaranteed
 68 maximum price and a guaranteed completion date. If so required,
 69 the construction management entity must secure an appropriate
 70 surety bond pursuant to s. 255.05 and must hold construction
 71 subcontracts. If a project solicited by the department pursuant
 72 to s. 287.055 includes a grouping of construction,
 73 rehabilitation, or renovation activities or substantially
 74 similar construction, rehabilitation, or renovation activities
 75 costing up to \$1 million, the department may require the
 76 construction management entity to provide for a separate
 77 guaranteed maximum price and a separate guaranteed completion
 78 date for each grouping included in the project.

79 (5) The department shall adopt rules for state agencies
 80 using the services of construction management entities under
 81 contract with the department.

82 Section 2. Paragraphs (a), (c), and (g) of subsection (2)
 83 and paragraphs (a), (b), and (c) of subsection (6) of section
 84 287.055, Florida Statutes, are amended to read:

85 287.055 Acquisition of professional architectural,
 86 engineering, landscape architectural, or surveying and mapping
 87 services; definitions; procedures; contingent fees prohibited;
 88 penalties.--

89 (2) DEFINITIONS.--For purposes of this section:

90 (a) "Professional services" means those services within
 91 the scope of the practice of architecture, professional
 92 engineering, landscape architecture, or registered surveying and
 93 mapping, as defined by the laws of the state, or those performed
 94 by any architect, professional engineer, landscape architect, or
 95 registered surveyor and mapper in connection with his or her
 96 professional employment or practice or construction or program
 97 management services, as described in s. 255.103, performed by a
 98 design-build, construction management, or program management
 99 firm.

100 (c) "Firm" means any individual, firm, partnership,
 101 corporation, association, or other legal entity permitted by law
 102 to practice architecture, engineering, or surveying and mapping
 103 in the state or any design-build, construction management, or
 104 program management firm performing construction or program
 105 management services as described in s. 255.103.

106 (g) A "continuing contract" is a contract for professional
 107 services entered into in accordance with all the procedures of
 108 this act between an agency and a firm whereby the firm provides
 109 professional services to the agency for projects in which
 110 construction costs for each individual project under the
 111 contract do not exceed \$2 ~~\$1~~ million, for study activity when
 112 the fee for such professional service does not exceed \$200,000

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113 for each individual study under the contract \$50,000, or for
114 work of a specified nature as outlined in the contract required
115 by the agency, with no time limitation or limit on the aggregate
116 values under the contract except that the contract must provide
117 a termination clause. Firms providing professional services
118 under continuing contracts shall not be required to bid against
119 one another.

120 (6) PROHIBITION AGAINST CONTINGENT FEES.--

121 (a) Each contract entered into by the agency for
122 professional services must contain a prohibition against
123 contingent fees as follows: "The architect (or registered
124 surveyor and mapper, ~~or~~ professional engineer, or construction
125 or program manager, as applicable) warrants that he or she has
126 not employed or retained any company or person, other than a
127 bona fide employee working solely for the architect (or
128 registered surveyor and mapper, ~~or~~ professional engineer, or
129 construction or program manager, as applicable) to solicit or
130 secure this agreement and that he or she has not paid or agreed
131 to pay any person, company, corporation, individual, or firm,
132 other than a bona fide employee working solely for the architect
133 (or registered surveyor and mapper, ~~or~~ professional engineer, or
134 construction or program manager, as applicable) any fee,
135 commission, percentage, gift, or other consideration contingent
136 upon or resulting from the award or making of this agreement."
137 For the breach or violation of this provision, the agency shall
138 have the right to terminate the agreement without liability and,
139 at its discretion, to deduct from the contract price, or
140 otherwise recover, the full amount of such fee, commission,

141 percentage, gift, or consideration.

142 (b) Any individual, corporation, partnership, firm, or
 143 company, other than a bona fide employee working solely for an
 144 architect, professional engineer, ~~or~~ registered land surveyor
 145 and mapper, or construction or program manager, who offers,
 146 agrees, or contracts to solicit or secure agency contracts for
 147 professional services for any other individual, company,
 148 corporation, partnership, or firm and to be paid, or is paid,
 149 any fee, commission, percentage, gift, or other consideration
 150 contingent upon, or resulting from, the award or the making of a
 151 contract for professional services shall, upon conviction in a
 152 competent court of this state, be found guilty of a first degree
 153 misdemeanor, punishable as provided in s. 775.082 or s. 775.083.

154 (c) Any architect, professional engineer, ~~or~~ registered
 155 surveyor and mapper, or construction or program manager, or any
 156 group, association, company, corporation, firm, or partnership
 157 thereof, who offers to pay, or pays, any fee, commission,
 158 percentage, gift, or other consideration contingent upon, or
 159 resulting from, the award or making of any agency contract for
 160 professional services shall, upon conviction in a state court of
 161 competent authority, be found guilty of a first degree
 162 misdemeanor, punishable as provided in s. 775.082 or s. 775.083.

163 Section 3. Paragraph (a) of subsection (2) of section
 164 1001.74, Florida Statutes, is amended to read:

165 1001.74 Powers and duties of university boards of
 166 trustees.--

167 (2) POWERS AND DUTIES RELATING TO ORGANIZATION AND
 168 OPERATION OF STATE UNIVERSITIES.--

169 (a) Each board of trustees constitutes the contracting
 170 agent of the university. Each university shall comply with the
 171 provisions of s. 287.055 for the procurement of professional
 172 services and may approve and execute all contracts for planning,
 173 construction, and equipment. For the purpose of a university's
 174 contracting authority, a "continuing contract" for professional
 175 services under the provisions of s. 287.055 is one in which
 176 construction costs for each individual project under the
 177 contract do not exceed \$2 ~~\$1~~ million or in which the fee for
 178 study activity does not exceed \$200,000 for each individual
 179 study under the contract, with no limit on the aggregate values
 180 under the contract ~~\$100,000~~. Contracts executed pursuant to this
 181 paragraph are subject to the requirements of s. 1010.62.

182 Section 4. Subsection (1) of section 1013.45, Florida
 183 Statutes, is amended to read:

184 1013.45 Educational facilities contracting and
 185 construction techniques.--

186 (1) Boards may employ procedures to contract for
 187 construction of new facilities, or for ~~major~~ additions,
 188 remodeling, renovation, maintenance, or repairs to existing
 189 facilities, that will include, but not be limited to:

190 (a) Competitive bids.

191 (b) Procuring professional services or design-build
 192 contracts pursuant to s. 287.055, including continuing contracts
 193 for professional services.

194 (c) Selecting a construction management entity, pursuant
 195 to the process provided by s. 287.055, that would be responsible
 196 for all scheduling and coordination in both design and

197 construction phases and is generally responsible for the
198 successful, timely, and economical completion of the
199 construction project. The construction management entity must
200 consist of or contract with licensed or registered professionals
201 for the specific fields or areas of construction to be
202 performed, as required by law. At the option of the board, the
203 construction management entity, after having been selected, may
204 be required to offer a guaranteed maximum price or a guaranteed
205 completion date; in which case, the construction management
206 entity must secure an appropriate surety bond pursuant to s.
207 255.05 and must hold construction subcontracts. The criteria for
208 selecting a construction management entity shall not unfairly
209 penalize an entity that has relevant experience in the delivery
210 of construction projects of similar size and complexity by
211 methods of delivery other than construction management.

212 (d) Selecting a program management entity, pursuant to the
213 process provided by s. 287.055, that would act as the agent of
214 the board and would be responsible for schedule control, cost
215 control, and coordination in providing or procuring planning,
216 design, and construction services. The program management entity
217 must consist of or contract with licensed or registered
218 professionals for the specific areas of design or construction
219 to be performed as required by law. The program management
220 entity may retain necessary design professionals selected under
221 the process provided in s. 287.055. At the option of the board,
222 the program management entity, after having been selected, may
223 be required to offer a guaranteed maximum price or a guaranteed
224 completion date, in which case the program management entity

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225 | must secure an appropriate surety bond pursuant to s. 255.05 and
226 | must hold design and construction subcontracts. The criteria for
227 | selecting a program management entity shall not unfairly
228 | penalize an entity that has relevant experience in the delivery
229 | of construction programs of similar size and complexity by
230 | methods of delivery other than program management.

231 | (e) Day-labor contracts not exceeding \$280,000 for
232 | construction, renovation, remodeling, or maintenance of existing
233 | facilities. Beginning January 2009, this amount shall be
234 | adjusted annually based upon changes in the Consumer Price
235 | Index.

236 | Section 5. This act shall take effect July 1, 2009.