

CS/CS/HB 1459

2009

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. 255.103, F.S.;
14 revising terminology; providing a definition; authorizing
15 governmental entities to enter into continuing contracts
16 under certain circumstances; amending s. 287.055, F.S.;
17 revising a definition; amending s. 287.057, F.S.;
18 excluding advertising from artistic services exempt from
19 competitive-solicitation requirements for contractual
20 services and commodities; providing a definition; amending
21 s. 1013.45, F.S.; revising contracting procedures for
22 educational facilities contracting and construction;
23 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 255.32, Florida Statutes, is created to
28 read:

29 | 255.32 State construction management contracting.--

30 | (1) As used in this section, the term:

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

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

41 | 1. A grouping of minor construction, rehabilitation, or
 42 | renovation activities.

43 | 2. A grouping of substantially similar construction,
 44 | rehabilitation, or renovation activities.

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

49 | (d) "Department" means the Department of Management
 50 | Services.

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

54 | (a) Are competitively selected by the department pursuant
 55 | to s. 287.055;

56 | (b) Agree to follow the advertising and competitive

57 bidding procedures that the department is required to follow if
58 the department was managing the construction project directly;
59 and

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

63 (3) The department's authority under subsection (2)
64 includes entering into continuing contracts for construction
65 projects for which the total estimated construction cost for
66 each project under the contract does not exceed \$2 million.

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

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

84 Section 2. Section 255.103, Florida Statutes, is amended

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85 | to read:

86 | 255.103 Construction management or program management
87 | entities.--

88 | (1) As used in this section, the term "governmental entity
89 | ~~local government~~" means a county, municipality, school district,
90 | special district as defined in chapter 189, or ~~other~~ political
91 | subdivision of the state.

92 | (2) A governmental entity ~~local government~~ may select a
93 | construction management entity, pursuant to the process provided
94 | by s. 287.055, which is to be responsible for construction
95 | project scheduling and coordination in both preconstruction and
96 | construction phases and generally responsible for the
97 | successful, timely, and economical completion of the
98 | construction project. The construction management entity must
99 | consist of or contract with licensed or registered professionals
100 | for the specific fields or areas of construction to be
101 | performed, as required by law. The construction management
102 | entity may retain necessary design professionals selected under
103 | the process provided in s. 287.055. At the option of the
104 | governmental entity ~~local government~~, the construction
105 | management entity, after having been selected and after
106 | competitive negotiations, may be required to offer a guaranteed
107 | maximum price and a guaranteed completion date or a lump-sum
108 | price and a guaranteed completion date, in which case, the
109 | construction management entity must secure an appropriate surety
110 | bond pursuant to s. 255.05 and must hold construction
111 | subcontracts. If a project, as defined in s. 287.055(2)(f),
112 | solicited by a governmental entity ~~local government~~ under the

113 process provided in s. 287.055 includes a grouping of
114 substantially similar construction, rehabilitation, or
115 renovation activities as permitted under s. 287.055(2)(f), the
116 governmental entity ~~local government~~, after competitive
117 negotiations, may require the construction management entity to
118 provide for a separate guaranteed maximum price or a separate
119 lump-sum price and a separate guaranteed completion date for
120 each grouping of substantially similar construction,
121 rehabilitation, or renovation activities included within the
122 project.

123 (3) A governmental entity ~~local government~~ may select a
124 program management entity, pursuant to the process provided by
125 s. 287.055, which is to be responsible for schedule control,
126 cost control, and coordination in providing or procuring
127 planning, design, and construction services. The program
128 management entity must consist of or contract with licensed or
129 registered professionals for the specific areas of design or
130 construction to be performed as required by law. The program
131 management entity may retain necessary design professionals
132 selected under the process provided in s. 287.055. At the option
133 of the governmental entity ~~local government~~, the program
134 management entity, after having been selected and after
135 competitive negotiations, may be required to offer a guaranteed
136 maximum price and a guaranteed completion date or a lump-sum
137 price and guaranteed completion date, in which case the program
138 management entity must secure an appropriate surety bond
139 pursuant to s. 255.05 and must hold design and construction
140 subcontracts. If a project, as defined in s. 287.055(2)(f),

141 solicited by a governmental entity ~~local government~~ under the
 142 process provided in s. 287.055 includes a grouping of
 143 substantially similar construction, rehabilitation, or
 144 renovation activities as permitted under s. 287.055(2)(f), the
 145 governmental entity ~~local government~~, after competitive
 146 negotiations, may require the program management entity to
 147 provide for a separate guaranteed maximum price or a lump-sum
 148 price and a separate guaranteed completion date for each
 149 grouping of substantially similar construction, rehabilitation,
 150 or renovation activities included within the project.

151 (4) A governmental entity's authority under subsections
 152 (2) and (3) includes entering into a continuing contract for
 153 construction projects, pursuant to the process provided in s.
 154 287.055, for which the total estimated construction cost for
 155 each project under the contract does not exceed \$2 million. For
 156 purposes of this subsection, the term "continuing contract"
 157 means a contract with a construction management or program
 158 management entity for work during a defined period on
 159 construction projects described by type which may or may not be
 160 identified at the time of entering into the contract.

161 (5) ~~(4)~~ This section does not prohibit a governmental
 162 entity ~~local government~~ from procuring construction management
 163 services, including the services of a program management entity,
 164 pursuant to the requirements of s. 255.20.

165 Section 3. Paragraph (g) of subsection (2) of section
 166 287.055, Florida Statutes, is amended to read:

167 287.055 Acquisition of professional architectural,
 168 engineering, landscape architectural, or surveying and mapping

169 services; definitions; procedures; contingent fees prohibited;
 170 penalties.--

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

172 (g) A "continuing contract" is a contract for professional
 173 services entered into in accordance with all the procedures of
 174 this act between an agency and a firm whereby the firm provides
 175 professional services to the agency for projects in which
 176 construction costs for each project under the contract do not
 177 exceed \$2 ~~\$1~~ million, for study activity if ~~when~~ the fee for
 178 ~~such~~ professional services for each study under the contract
 179 ~~service~~ does not exceed \$200,000 ~~\$50,000~~, or for work of a
 180 specified nature as outlined in the contract required by the
 181 agency, with the contract being for a fixed term or with no time
 182 limitation except that the contract must provide a termination
 183 clause. Firms providing professional services under continuing
 184 contracts shall not be required to bid against one another.

185 Section 4. Paragraph (f) of subsection (5) of section
 186 287.057, Florida Statutes, is amended to read:

187 287.057 Procurement of commodities or contractual
 188 services.--

189 (5) When the purchase price of commodities or contractual
 190 services exceeds the threshold amount provided in s. 287.017 for
 191 CATEGORY TWO, no purchase of commodities or contractual services
 192 may be made without receiving competitive sealed bids,
 193 competitive sealed proposals, or competitive sealed replies
 194 unless:

195 (f) The following contractual services and commodities are
 196 not subject to the competitive-solicitation requirements of this

197 section:

198 1. Artistic services. For the purposes of this subsection,
 199 the term "artistic services" does not include advertising. As
 200 used in this subparagraph, the term "advertising" means the
 201 making of a representation in any form in connection with a
 202 trade, business, craft, or profession in order to promote the
 203 supply of commodities or contractual services by the person
 204 promoting the commodities or contractual services.

205 2. Academic program reviews.

206 3. Lectures by individuals.

207 4. Auditing services.

208 5. Legal services, including attorney, paralegal, expert
 209 witness, appraisal, or mediator services.

210 6. Health services involving examination, diagnosis,
 211 treatment, prevention, medical consultation, or administration.

212 7. Services provided to persons with mental or physical
 213 disabilities by not-for-profit corporations which have obtained
 214 exemptions under the provisions of s. 501(c)(3) of the United
 215 States Internal Revenue Code or when such services are governed
 216 by the provisions of Office of Management and Budget Circular A-
 217 122. However, in acquiring such services, the agency shall
 218 consider the ability of the vendor, past performance,
 219 willingness to meet time requirements, and price.

220 8. Medicaid services delivered to an eligible Medicaid
 221 recipient by a health care provider who has not previously
 222 applied for and received a Medicaid provider number from the
 223 Agency for Health Care Administration. However, this exception
 224 shall be valid for a period not to exceed 90 days after the date

225 of delivery to the Medicaid recipient and shall not be renewed
 226 by the agency.

227 9. Family placement services.

228 10. Prevention services related to mental health,
 229 including drug abuse prevention programs, child abuse prevention
 230 programs, and shelters for runaways, operated by not-for-profit
 231 corporations. However, in acquiring such services, the agency
 232 shall consider the ability of the vendor, past performance,
 233 willingness to meet time requirements, and price.

234 11. Training and education services provided to injured
 235 employees pursuant to s. 440.491(6).

236 12. Contracts entered into pursuant to s. 337.11.

237 13. Services or commodities provided by governmental
 238 agencies.

239 Section 5. Subsection (1) of section 1013.45, Florida
 240 Statutes, is amended to read:

241 1013.45 Educational facilities contracting and
 242 construction techniques.--

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

247 (a) Competitive bids.

248 (b) Procuring professional services or design-build
 249 contracts pursuant to s. 287.055, including continuing contracts
 250 for professional services.

251 (c) Selecting a construction management entity, pursuant
 252 to s. 255.103 or the process provided by s. 287.055, that would

253 be responsible for all scheduling and coordination in both
254 design and construction phases and is generally responsible for
255 the successful, timely, and economical completion of the
256 construction project. The construction management entity must
257 consist of or contract with licensed or registered professionals
258 for the specific fields or areas of construction to be
259 performed, as required by law. At the option of the board, the
260 construction management entity, after having been selected, may
261 be required to offer a guaranteed maximum price or a guaranteed
262 completion date; in which case, the construction management
263 entity must secure an appropriate surety bond pursuant to s.
264 255.05 and must hold construction subcontracts. The criteria for
265 selecting a construction management entity shall not unfairly
266 penalize an entity that has relevant experience in the delivery
267 of construction projects of similar size and complexity by
268 methods of delivery other than construction management.

269 (d) Selecting a program management entity, pursuant to s.
270 255.103 or the process provided by s. 287.055, that would act as
271 the agent of the board and would be responsible for schedule
272 control, cost control, and coordination in providing or
273 procuring planning, design, and construction services. The
274 program management entity must consist of or contract with
275 licensed or registered professionals for the specific areas of
276 design or construction to be performed as required by law. The
277 program management entity may retain necessary design
278 professionals selected under the process provided in s. 287.055.
279 At the option of the board, the program management entity, after
280 having been selected, may be required to offer a guaranteed

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281 maximum price or a guaranteed completion date, in which case the
282 program management entity must secure an appropriate surety bond
283 pursuant to s. 255.05 and must hold design and construction
284 subcontracts. The criteria for selecting a program management
285 entity shall not unfairly penalize an entity that has relevant
286 experience in the delivery of construction programs of similar
287 size and complexity by methods of delivery other than program
288 management.

289 (e) Day-labor contracts not exceeding \$280,000 for
290 construction, renovation, remodeling, or maintenance of existing
291 facilities. Beginning January 2009, this amount shall be
292 adjusted annually based upon changes in the Consumer Price
293 Index.

294 Section 6. This act shall take effect July 1, 2009.