

By the Committee on General Government Appropriations; and  
Senators Haridopolos and Baker

601-05241-09

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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  
6           entities to assist in the management of state  
7           construction projects; providing criteria; authorizing  
8           the department to enter into continuing contracts  
9           under certain circumstances; providing that a  
10          construction management entity may be required to  
11          offer a guaranteed maximum price and a guaranteed  
12          completion date under specified circumstances and  
13          secure a surety bond; requiring the department to  
14          adopt rules; amending s. 255.103, F.S.; replacing the  
15          term "local government" with "governmental entity";  
16          defining the term "governmental entity"; authorizing  
17          governmental entities to enter into continuing  
18          contracts under certain circumstances; defining the  
19          term "continuing contract"; amending s. 287.055, F.S.;  
20          clarifying the definition of "continuing contract";  
21          amending s. 287.057, F.S.; providing that for the  
22          purpose of exempting certain specified contractual  
23          services and commodities from competitive-solicitation  
24          requirements, the listed exemption for artistic  
25          services does not include advertising; defining the  
26          term "advertising"; amending s. 1013.45, F.S.;  
27          revising provisions relating to contracting and  
28          construction for educational facilities; providing an  
29          effective date.

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

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

255.32 State construction management contracting.—

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

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

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

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

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

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

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

(2) To assist in the management of state construction projects, the department may select and contract with

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59 construction management entities that:

60 (a) Are competitively selected by the department pursuant  
61 to s. 287.055;

62 (b) Agree to follow the advertising and competitive bidding  
63 procedures that the department is required to follow if the  
64 department is managing the construction project directly; and

65 (c) Are under a contract that is separate from the design  
66 criteria professional contract, if any, assigned to the  
67 construction project.

68 (3) The department's authority under subsection (2)  
69 includes entering into a continuing contract for construction  
70 projects for which the total estimated construction cost for  
71 each project under the contract does not exceed \$1 million.

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

86 (5) The department shall adopt rules for state agencies  
87 using the services of construction management entities under

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88 contract with the department.

89 Section 2. Section 255.103, Florida Statutes, is amended to  
90 read:

91 255.103 Construction management or program management  
92 entities.—

93 (1) As used in this section, the term “governmental entity”  
94 ~~“local government”~~ means a county, municipality, school  
95 district, special district as defined in chapter 189, or ~~other~~  
96 political subdivision of the state.

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

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

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

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

156 (4) A governmental entity's authority under subsections (2)  
157 and (3) includes entering into a continuing contract for  
158 construction projects, pursuant to the process provided in s.  
159 287.055, for which the total estimated construction cost for  
160 each project under the contract does not exceed \$1 million. For  
161 purposes of this subsection, the term "continuing contract"  
162 means a contract with a construction management or program  
163 management entity for work during a defined period on  
164 construction projects described by type which may or may not be  
165 identified at the time of entering into the contract.

166 (5)~~(4)~~ This section does not prohibit a local government  
167 from procuring construction management services, including the  
168 services of a program management entity, pursuant to the  
169 requirements of s. 255.20.

170 Section 3. Paragraph (g) of subsection (2) of section  
171 287.055, Florida Statutes, is amended to read:

172 287.055 Acquisition of professional architectural,  
173 engineering, landscape architectural, or surveying and mapping  
174 services; definitions; procedures; contingent fees prohibited;

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175 penalties.—

176 (2) DEFINITIONS.—For purposes of this section:

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

191 Section 4. Paragraph (f) of subsection (5) of section  
192 287.057, Florida Statutes, is amended to read:

193 287.057 Procurement of commodities or contractual  
194 services.—

195 (5) When the purchase price of commodities or contractual  
196 services exceeds the threshold amount provided in s. 287.017 for  
197 CATEGORY TWO, no purchase of commodities or contractual services  
198 may be made without receiving competitive sealed bids,  
199 competitive sealed proposals, or competitive sealed replies  
200 unless:

201 (f) The following contractual services and commodities are  
202 not subject to the competitive-solicitation requirements of this  
203 section:

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204           1. Artistic services. For the purposes of this subsection,  
205 the term "artistic services" does not include advertising. As  
206 used in this subparagraph, the term "advertising" means the  
207 making of a representation in any form in connection with a  
208 trade, business, craft or profession in order to promote the  
209 supply of commodities or services by the person promoting the  
210 commodities or contractual services.

211           2. Academic program reviews.

212           3. Lectures by individuals.

213           4. Auditing services.

214           5. Legal services, including attorney, paralegal, expert  
215 witness, appraisal, or mediator services.

216           6. Health services involving examination, diagnosis,  
217 treatment, prevention, medical consultation, or administration.

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

226           8. Medicaid services delivered to an eligible Medicaid  
227 recipient by a health care provider who has not previously  
228 applied for and received a Medicaid provider number from the  
229 Agency for Health Care Administration. However, this exception  
230 shall be valid for a period not to exceed 90 days after the date  
231 of delivery to the Medicaid recipient and shall not be renewed  
232 by the agency.



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233 9. Family placement services.

234 10. Prevention services related to mental health, including  
235 drug abuse prevention programs, child abuse prevention programs,  
236 and shelters for runaways, operated by not-for-profit  
237 corporations. However, in acquiring such services, the agency  
238 shall consider the ability of the vendor, past performance,  
239 willingness to meet time requirements, and price.

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

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

243 13. Services or commodities provided by governmental  
244 agencies.

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

247 1013.45 Educational facilities contracting and construction  
248 techniques.—

249 (1) Boards may employ procedures to contract for  
250 construction of new facilities, or for major additions,  
251 remodeling, renovation, maintenance, or repairs to existing  
252 facilities, that will include, but not be limited to:

253 (a) Competitive bids.

254 (b) Procuring professional services or design-build  
255 contracts ~~Design-build~~ pursuant to s. 287.055, including  
256 continuing contracts for professional services.

257 (c) Selecting a construction management entity, pursuant to  
258 s. 255.103 ~~the process provided by s. 287.055~~, that would be  
259 responsible for all scheduling and coordination in both design  
260 and construction phases and is generally responsible for the  
261 successful, timely, and economical completion of the

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262 construction project. The construction management entity must  
263 consist of or contract with licensed or registered professionals  
264 for the specific fields or areas of construction to be  
265 performed, as required by law. At the option of the board, the  
266 construction management entity, after having been selected, may  
267 be required to offer a guaranteed maximum price or a guaranteed  
268 completion date; in which case, the construction management  
269 entity must secure an appropriate surety bond pursuant to s.  
270 255.05 and must hold construction subcontracts. The criteria for  
271 selecting a construction management entity shall not unfairly  
272 penalize an entity that has relevant experience in the delivery  
273 of construction projects of similar size and complexity by  
274 methods of delivery other than construction management.

275 (d) Selecting a program management entity, pursuant to s.  
276 255.103 ~~the process provided by s. 287.055~~, that would act as  
277 the agent of the board and would be responsible for schedule  
278 control, cost control, and coordination in providing or  
279 procuring planning, design, and construction services. The  
280 program management entity must consist of or contract with  
281 licensed or registered professionals for the specific areas of  
282 design or construction to be performed as required by law. The  
283 program management entity may retain necessary design  
284 professionals selected under the process provided in s. 287.055.  
285 At the option of the board, the program management entity, after  
286 having been selected, may be required to offer a guaranteed  
287 maximum price or a guaranteed completion date, in which case the  
288 program management entity must secure an appropriate surety bond  
289 pursuant to s. 255.05 and must hold design and construction  
290 subcontracts. The criteria for selecting a program management

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291 entity shall not unfairly penalize an entity that has relevant  
292 experience in the delivery of construction programs of similar  
293 size and complexity by methods of delivery other than program  
294 management.

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