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1 A bill to be entitled
2 An act relating to the public procurement of services;
3 creating s. 255.32, F.S.; defining terms; authorizing
4 the Department of Management Services to select and
5 contract with construction management entities to
6 assist in the management of state construction
7 projects; providing criteria; authorizing the
8 department to enter into continuing contracts under
9 certain circumstances; providing that a construction
10 management entity may be required to offer a
11 guaranteed maximum price and a guaranteed completion
12 date under specified circumstances and secure a surety
13 bond; requiring the department to adopt rules;
14 amending s. 255.103, F.S.; replacing the term "local
15 government" with "governmental entity"; defining the
16 term "governmental entity"; authorizing governmental
17 entities to enter into continuing contracts under
18 certain circumstances; defining the term "continuing
19 contract"; amending s. 287.055, F.S.; clarifying the
20 definition of "continuing contract"; amending s.
21 287.057, F.S.; providing that for the purpose of
22 exempting certain specified contractual services and
23 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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31 Be It Enacted by the Legislature of the State of Florida:
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33 Section 1. Section 255.32, Florida Statutes, is created to
34 read:

35 255.32 State construction management contracting.—

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

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

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

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

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

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

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

57 (2) To assist in the management of state construction
58 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; and

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.

65 (3) The department's authority under subsection (2)
66 includes entering into a continuing contract for construction
67 projects in which the estimated construction cost of each
68 individual project under the contract does not exceed \$2
69 million.

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

84 (5) The department shall adopt rules for state agencies
85 using the services of construction management entities under
86 contract with the department.

87 Section 2. Section 255.103, Florida Statutes, is amended to

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88 read:

89 255.103 Construction management or program management
90 entities.—

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

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

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

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

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

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

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

168 Section 3. Paragraph (g) of subsection (2) of section
169 287.055, Florida Statutes, is amended to read:

170 287.055 Acquisition of professional architectural,
171 engineering, landscape architectural, or surveying and mapping
172 services; definitions; procedures; contingent fees prohibited;
173 penalties.—

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

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

189 Section 4. Paragraph (f) of subsection (5) of section
190 287.057, Florida Statutes, is amended to read:

191 287.057 Procurement of commodities or contractual
192 services.—

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

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

202 1. Artistic services. For the purposes of this subsection,
203 the term "artistic services" does not include advertising. As

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204 used in this subparagraph, the term "advertising" means the
205 making of a representation in any form in connection with a
206 trade, business, craft or profession in order to promote the
207 supply of commodities or services by the person promoting the
208 commodities or contractual services.

209 2. Academic program reviews.

210 3. Lectures by individuals.

211 4. Auditing services.

212 5. Legal services, including attorney, paralegal, expert
213 witness, appraisal, or mediator services.

214 6. Health services involving examination, diagnosis,
215 treatment, prevention, medical consultation, or administration.

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

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

231 9. Family placement services.

232 10. Prevention services related to mental health, including

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

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

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

241 13. Services or commodities provided by governmental
242 agencies.

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

245 1013.45 Educational facilities contracting and construction
246 techniques.—

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

251 (a) Competitive bids.

252 (b) Design-build pursuant to s. 287.055.

253 (c) Selecting a construction management entity, pursuant to
254 s. 255.103 or the process provided by s. 287.055, that would be
255 responsible for all scheduling and coordination in both design
256 and construction phases and is generally responsible for the
257 successful, timely, and economical completion of the
258 construction project. The construction management entity must
259 consist of or contract with licensed or registered professionals
260 for the specific fields or areas of construction to be
261 performed, as required by law. At the option of the board, the

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262 construction management entity, after having been selected, may
263 be required to offer a guaranteed maximum price or a guaranteed
264 completion date; in which case, the construction management
265 entity must secure an appropriate surety bond pursuant to s.
266 255.05 and must hold construction subcontracts. The criteria for
267 selecting a construction management entity shall not unfairly
268 penalize an entity that has relevant experience in the delivery
269 of construction projects of similar size and complexity by
270 methods of delivery other than construction management.

271 (d) Selecting a program management entity, pursuant to s.
272 255.103 or the process provided by s. 287.055, that would act as
273 the agent of the board and would be responsible for schedule
274 control, cost control, and coordination in providing or
275 procuring planning, design, and construction services. The
276 program management entity must consist of or contract with
277 licensed or registered professionals for the specific areas of
278 design or construction to be performed as required by law. The
279 program management entity may retain necessary design
280 professionals selected under the process provided in s. 287.055.
281 At the option of the board, the program management entity, after
282 having been selected, may be required to offer a guaranteed
283 maximum price or a guaranteed completion date, in which case the
284 program management entity must secure an appropriate surety bond
285 pursuant to s. 255.05 and must hold design and construction
286 subcontracts. The criteria for selecting a program management
287 entity shall not unfairly penalize an entity that has relevant
288 experience in the delivery of construction programs of similar
289 size and complexity by methods of delivery other than program
290 management.

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