

Council Substitute for House Bill No. 1489

An act relating to public project construction bonds; amending s. 255.05, F.S.; providing that the amount of a bond shall equal the contract price except under certain conditions; providing that a bond may not be conditioned on the performance of design or nonconstruction services if such services are not included in the bond amount; creating s. 255.103, F.S.; providing a definition; authorizing local governments to select construction-management or program-management entities to be responsible for certain construction project activities; providing requirements and authority for such entities; amending s. 287.055, F.S.; revising provisions relating to the award of design-build contracts for surveying or mapping services by certain governmental entities; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (1) of section 255.05, Florida Statutes, to read:

255.05 Bond of contractor constructing public buildings; form; action by materialmen.—

(1)

(c)1. The amount of the bond shall equal the contract price, except that for a contract in excess of \$250 million, if the state, county, municipality, political subdivision, or other public entity finds that a bond in the amount of the contract price is not reasonably available, the public owner shall set the amount of the bond at the largest amount reasonably available, but not less than \$250 million.

2. For a construction-management or design-build contracts, if the public owner does not include in the bond amount the cost of design or other nonconstruction services, the bond may not be conditioned on performance of such services or payment to persons furnishing such services. Notwithstanding paragraph (a), such a bond may exclude persons furnishing such services from the classes of persons protected by the bond.

Section 2. Section 255.103, Florida Statutes, is created to read:

255.103 Construction management or program management entities.—

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

(2) A local government may select a construction management entity, pursuant to the process provided by s. 287.055, which is to be responsible for construction project scheduling and coordination in both preconstruction and construction phases and generally responsible for the successful, timely,

and economical completion of the construction project. The construction management entity must consist of or contract with licensed or registered professionals for the specific fields or areas of construction to be performed, as required by law. The construction management entity may retain necessary design professionals selected under the process provided in s. 287.055. At the option of the local government, the construction management entity, after having been selected and after competitive negotiations, may be required to offer a guaranteed maximum price and a guaranteed completion date or a lump-sum price and a guaranteed completion date, in which case, the construction management entity must secure an appropriate surety bond pursuant to s. 255.05 and must hold construction subcontracts. If a project, as defined in s. 287.055(2)(f), solicited by a local government under the process provided in s. 287.055 includes a grouping of substantially similar construction, rehabilitation, or renovation activities as permitted under s. 287.055(2)(f), the local government, after competitive negotiations, may require the construction management entity to provide for a separate guaranteed maximum price or a separate lump-sum price and a separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities included within the project.

(3) A local government may select a program management entity, pursuant to the process provided by s. 287.055, which is to be responsible for schedule control, cost control, and coordination in providing or procuring planning, design, and construction services. The program management entity must consist of or contract with licensed or registered professionals for the specific areas of design or construction to be performed as required by law. The program management entity may retain necessary design professionals selected under the process provided in s. 287.055. At the option of the local government, the program management entity, after having been selected and after competitive negotiations, may be required to offer a guaranteed maximum price and a guaranteed completion date or a lump-sum price and guaranteed completion date, in which case the program management entity must secure an appropriate surety bond pursuant to s. 255.05 and must hold design and construction subcontracts. If a project, as defined in s. 287.055(2)(f), solicited by a local government under the process provided in s. 287.055 includes a grouping of substantially similar construction, rehabilitation, or renovation activities as permitted under s. 287.055(2)(f), the local government, after competitive negotiations, may require the program management entity to provide for a separate guaranteed maximum price or a lump-sum price and a separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities included within the project.

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

Section 3. Paragraph (c) of subsection (9) of section 287.055, Florida Statutes, is amended to read:

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

(9) APPLICABILITY TO DESIGN-BUILD CONTRACTS.—

(c) Except as otherwise provided in s. 337.11(7), the Department of Management Services shall adopt rules for the award of design-build contracts to be followed by state agencies. Each other agency must adopt rules or ordinances for the award of design-build contracts. Municipalities, political subdivisions, school districts, and school boards shall award design-build contracts by the use of a competitive proposal selection process as described in this subsection, or by the use of a qualifications-based selection process pursuant to subsections (3), (4), and (5) for entering into a contract whereby the selected firm will, subsequent to competitive negotiations, ~~subsequently~~ establish a guaranteed maximum price and guaranteed completion date. If the procuring agency elects the option of qualifications-based selection, during the selection of the design-build firm the procuring agency shall employ or retain a licensed design professional appropriate to the project to serve as the agency's representative. Procedures for the use of a competitive proposal selection process must include as a minimum the following:

1. The preparation of a design criteria package for the design and construction of the public construction project.
2. The qualification and selection of no fewer than three design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the partners or members thereof.
3. The criteria, procedures, and standards for the evaluation of design-build contract proposals or bids, based on price, technical, and design aspects of the public construction project, weighted for the project.
4. The solicitation of competitive proposals, pursuant to a design criteria package, from those qualified design-build firms and the evaluation of the responses or bids submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals.
5. For consultation with the employed or retained design criteria professional concerning the evaluation of the responses or bids submitted by the design-build firms, the supervision or approval by the agency of the detailed working drawings of the project; and for evaluation of the compliance of the project construction with the design criteria package by the design criteria professional.
6. In the case of public emergencies, for the agency head to declare an emergency and authorize negotiations with the best qualified design-build firm available at that time.

Section 4. This act shall take effect July 1, 2007.

Approved by the Governor June 15, 2007.

Filed in Office Secretary of State June 15, 2007.