

Committee Substitute for Senate Bill No. 2666

An act relating to the public procurement of services; creating s. 255.32, F.S.; defining terms; authorizing the Department of Management Services to select and contract with construction management entities to assist in the management of state construction projects; providing criteria; authorizing the department to enter into continuing contracts under certain circumstances; providing that a construction management entity may be required to offer a guaranteed maximum price and a guaranteed completion date under specified circumstances and secure a surety bond; requiring the department to adopt rules; amending s. 255.103, F.S.; replacing the term “local government” with “governmental entity”; defining the term “governmental entity”; authorizing governmental entities to enter into continuing contracts under certain circumstances; defining the term “continuing contract”; amending s. 287.055, F.S.; clarifying the definition of “continuing contract”; amending s. 287.057, F.S.; providing that for the purpose of exempting certain specified contractual services and commodities from competitive-solicitation requirements, the listed exemption for artistic services does not include advertising; defining the term “advertising”; amending s. 1013.45, F.S.; revising provisions relating to contracting and construction for educational facilities; providing an effective date.

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 construction management entities that:

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

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

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

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

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

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

255.103 Construction management or program management entities.—

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

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

(5)(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 (g) of subsection (2) 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.—

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

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

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

287.057 Procurement of commodities or contractual services.—

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

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

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

2. Academic program reviews.
3. Lectures by individuals.
4. Auditing services.

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

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

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

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

9. Family placement services.

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

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

12. Contracts entered into pursuant to s. 337.11.

13. Services or commodities provided by governmental agencies.

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

1013.45 Educational facilities contracting and construction techniques.—

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

(a) Competitive bids.

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

(c) Selecting a construction management entity, pursuant to s. 255.103 or the process provided by s. 287.055, that would be responsible for all scheduling and coordination in both design and construction phases and is 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. At the option of the board, the construction management entity, after having been selected, may be required to offer a guaranteed maximum price or 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. The criteria for selecting a construction management entity shall not unfairly penalize an entity that has relevant experience in the delivery of construction projects of similar size and complexity by methods of delivery other than construction management.

(d) Selecting a program management entity, pursuant to s. 255.103 or the process provided by s. 287.055, that would act as the agent of the board and would 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 board, the program management entity, after having been selected, may be required to offer a guaranteed maximum price or a 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. The criteria for selecting a program management entity shall not unfairly penalize an entity that has relevant experience in the delivery of construction programs of similar size and complexity by methods of delivery other than program management.

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

Approved by the Governor June 24, 2009.

Filed in Office Secretary of State June 24, 2009.