



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

### B. EFFECT OF PROPOSED CHANGES:

#### Current situation

Department of Management Services (DMS) is the state agency responsible for managing construction projects in accordance with s. 255.31, F.S. As provided in s. 255.29, F.S., DMS competitively contracts for construction management services. In addition, pursuant to s. 287.055(2)(g), F.S. and s. 287.055(4)(d), F.S., DMS already enters into continuing contracts<sup>1</sup> for professional services.<sup>2</sup>

Section 255.103, F.S. provides that local governments may engage construction management and program management entities in accordance with the process specified in s. 287.055, F.S. After having been selected and after competitive negotiations, the construction management entity may be required to offer a guaranteed maximum price and a guaranteed completion date. The local government may require the construction management entity to provide for a separate guaranteed maximum price and a separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities included within the project without requiring a new competitive procurement for each activity within the project.<sup>3</sup>

Prior to 2007, Florida Statutes had been interpreted as providing similar authority to DMS. Upon closer analysis in 2007, it was determined that Florida Statutes did not clearly provide DMS the same flexibility now afforded local governments through s. 255.103, F.S. Thus, the process was discontinued and DMS reported a 40% workload increase for its building construction workgroup, and delays of 4-6 months in the completion of new construction projects.

#### Proposed Change

This bill creates s. 255.32, F.S., which provides that DMS may select and contract with a construction management entity pursuant to the process provided in s. 287.055, F.S. This new section would apply for projects in which construction costs do not exceed \$1 million. Under the bill, DMS would be authorized to engage construction management entities previously selected through competitive solicitation, without the requirement to repeat the competitive selection process throughout the project.

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<sup>1</sup> A "continuing contract" is a contract for professional services entered into by an agency and a firm whereby the firm provides professional services to the agency for projects in which construction costs do not exceed \$1 million, for study activity when the fee for such professional service does not exceed \$50,000, or for work of a specified nature as outlined in the contract required by the agency, 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.

<sup>2</sup> "Professional services" means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

<sup>3</sup> A project may include a grouping of minor construction, rehabilitation, or renovation activities, or a grouping of substantially similar construction, rehabilitation, or renovation activities.

At the option of DMS, a guaranteed maximum price and a guaranteed completion date may be required. For each grouping of substantially similar construction, rehabilitation, or renovation activities included within a project, a separate guaranteed maximum price and separate guaranteed completion date may be required.

C. SECTION DIRECTORY:

Section 1. Creates s. 255.32, F.S., thereby providing that DMS may procure the services of a construction management entity, to include continuing contracts, under certain circumstances.

Section 2. Provides an effective date upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

This bill provides that DMS shall promulgate rules applicable to state agencies for utilizing construction management contracts established by DMS.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

None.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 12, 2008, the Government Efficiency & Accountability Council adopted a strike all amendment to PCB GEAC 08-19 which replaces "Construction management" with "Construction management entity" and provides a definition. It revises the definitions for "Construction project" and "Continuing contract". It deletes the definition for "Geographic area" and the reference to geographic areas.

In providing rule-making authority for DMS, it deletes the reference to continuing contracts.

The Council reported this bill favorably, as amended.