

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 246

INTRODUCER: Senator Bennett

SUBJECT: Procurement of Professional Services

DATE: January 26, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Unfavorable
2.			GO	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill amends the Consultants’ Competitive Negotiation Act (CCNA), which specifies how state agencies and political subdivisions procure the services of design professionals, to allow agencies to use, at its discretion, a best value selection process, which creates a two-stage procurement process. Under stage-one, agencies evaluate firms using the same criteria as established in current law. In stage-two, agencies may consider costs; however, compensation may not exceed 50 percent of the total weight of any agencies evaluation criteria.

The bill becomes effective on July 1, 2012.

This bill substantially amends section 287.055, Florida Statutes.

II. Present Situation:

The Consultants’ Competitive Negotiation Act

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for design professional services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of design professionals.

Florida's Consultants' Competitive Negotiation Act (CCNA), was enacted by the Legislature in 1973,¹ to specify the procedures to be followed when procuring professional services² by an agency.³ The CCNA did not prohibit discussion of compensation in the initial vendor selection phase until 1988, when the Legislature enacted a provision requiring that consideration of compensation occur only during the selection phase.⁴

Currently, the CCNA, codified in s. 287.055, F.S., specifies the process to be followed when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper. The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:⁵

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The public notice must provide a general description of the project and describe how the interested consultants may apply for consideration.

The CCNA provides a two-phase selection process.⁶ In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the bidders, ranked in order of preference, it considers the most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the most highly qualified bidders, including willingness to meet time and budget requirements, past performance, location, recent, current, and projected firm workloads, volume of work previously awarded to the firm, and whether the firm is certified as a minority business.⁷

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid.⁸ Section 287.055(2)(d), F.S., defines the term "compensation" to mean "the amount paid by the agency for professional services," regardless of whether stated as compensation or as other types of rates.

¹ Chapter 73-19, L.O.F.

² Professional services are the services of architects, engineers, landscape architects, and surveyors and mappers.

³ "Agency" is defined as the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. 380.06, F.S., or ss. 163.3220-163.3243, F.S.

⁴ Chapter 88-108, L.O.F.

⁵ See, s. 287.055(3)(a)1., F.S.

⁶ Sections 287.055(4) and (5), F.S.

⁷ The following is a full listing of the factors that s. 287.055(4)(b), F.S., requires agencies to consider: the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and, the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

⁸ Section 287.055(4)(b), F.S.

In the second phase, the “competitive negotiation,” the agency then negotiates compensation with the most qualified of the three selected firms for professional services at compensation which the agency determines is “fair, competitive, and reasonable.”⁹ If a satisfactory contract cannot be negotiated, the agency must formally terminate negotiations with that firm and must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract.¹⁰ If a satisfactory contract cannot be negotiated with any of the three selected, the agency must select additional firms in order of their competence and qualifications and continue negotiations until a contract is reached.¹¹ Once negotiations with a firm are terminated, the agency cannot resume negotiations with that firm for the project.

In October 2011, Attorney General Bondi opined that local governments could not create a hybrid procurement process for awarding projects but instead is limited to utilizing the statutorily defined procedures.¹²

Government Efficiency Task Force Findings

The Government Efficiency Task Force and the design procurement work group heard testimony from parties interested in the CCNA process. During the testimony from local governments, government officials raised the following inefficiencies with the CCNA process:

- The agency may not consider price until the second phase of negotiations;
- Once terminated, negotiations with a firm may not resume; the inability to reopen negotiations limits the agency to the remaining firms, even if those firms negotiate a higher fee;
- Smaller firms have a more difficult time procuring contracts for public works since larger firms are more qualified based on the set parameters; and
- There is a lack of transparency as the procurement process is not as open and competitive as other procurement methods and as a result, taxpayers lack the ability to access prices and costs.

On the other hand, the findings indicate that representatives from the industry cited the following benefits of the CCNA process:

- The two part system focuses the negotiations on qualifications rather than price, which protects the health and safety of the public;
- Quality based selection facilitates negotiations that focus on the scope of the project, rather than costs, which results in both parties better understanding the project at the outset. This results in fewer change orders and cost overruns; and
- Provides a process to facilitate planning while negotiating the scope of the project, which helps provide an accurate bid, which may result in lower costs.

⁹ Section 287.055(5)(a), F.S.

¹⁰ Section 287.055(5)(b), F.S.

¹¹ Section 287.055(5)(c), F.S.

¹² Fla. AGO 2011-21 (October 4, 2011).

The Florida Government Efficiency Task Force met on November 16, 2011, and approved the following recommendations concerning the CCNA process:

- All agencies to utilize the “Best Value” process for procurement of design professionals, which would allow price to be a factor of up to 50 percent when ranking the top three most qualified firms. The process would work best for a project with a well-defined scope;
- All agencies to use a “Modified Best Value” process for procurement of design professionals, which would allow agencies to see the price of the top three firms, but would not allow the agencies to re-rank the firms. This process would work best for projects that do not have a specific scope and for agencies that would otherwise use the current CCNA process; and
- Maintain the current CCNA process as an option for agencies to utilize when “Best Value” or “Modified Best Value” would not be appropriate. This process would work best for a project that does not have a well-defined scope.

III. Effect of Proposed Changes:

This bill includes the “Best Value” option and also maintains the current CCNA option for agencies to utilize at their own discretion.

The bill provides a definition for “best value selection” to mean the selection of a firm or firms whose proposal provides the greatest overall benefit to an agency in accordance with the requirements of a formal solicitation.

The bill provides that in a competitive selection, an agency must select at least three firms to be deemed the most highly qualified to perform the required services, except where fewer than three firms respond to the public announcement. Agencies have the right to reject any and all submissions received in response to the public announcement.

The bill provides that agencies may award contracts to multiple firms during a competitive negotiation.

The bill provides that an agency may purchase professional services using a best value selection process. Each agency must adopt rules governing the use of the best value selection process in choosing a firm or firms. Procedures for the use of the best value selection process must include:

- The preparation and distribution of a public solicitation, which must include the criteria, procedures, and standards for the evaluation of proposals;
- The initial evaluation of proposals received in accordance with the requirements of s. 287.055(4)(a), F.S.;
- A two-stage selection process, that must adhere to the following procedures and requirements:
 - Under the initial stage of the selection process, competing firms shall be evaluated using the criteria in s. 284.055(4)(b), F.S., and the agency must select a firm or firms based on the evaluations. Proposals for compensation under the contract may not be solicited or accepted during this stage of the process.

- Under the second stage of the process, the firms selected will be asked to submit a compensation proposal for the proposed work. The proposal for compensation will be evaluated along with the information obtained in the initial stage as well as any other information the agency chooses to request with the compensation proposal to make the best value selection.
- A requirement that the criteria pertaining to compensation may not exceed 50 percent of the total weight of the published evaluation criteria; and
- Authority of an agency head to negotiate with the best firm available in the event of a declared state of emergency.

The bill becomes effective on July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Agencies may be able to negotiate lower costs in contracts for design professional services. However, some agencies may continue to conduct the current CCNA process or may hire in-house design professionals to assist in determining the scope of projects.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
