

By Senator Saunders

37-1372-04

See HB 513

1 A bill to be entitled
2 An act relating to professional geology;
3 amending s. 287.055, F.S.; including
4 professional geology in the services covered by
5 the Consultants' Competitive Negotiation Act;
6 amending s. 190.033, F.S., relating to services
7 contracted by community development districts,
8 to conform; amending s. 373.117, F.S.;
9 providing requirements for certification by a
10 professional geologist of water resource
11 activities for which a permit or license and
12 such certification are required; providing an
13 effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. Section 287.055, Florida Statutes, is
18 amended to read:

19 287.055 Acquisition of professional architectural,
20 engineering, geology, landscape architectural, or surveying
21 and mapping services; definitions; procedures; contingent fees
22 prohibited; penalties.--

23 (1) SHORT TITLE.--This section shall be known as the
24 "Consultants' Competitive Negotiation Act."

25 (2) DEFINITIONS.--For purposes of this section:

26 (a) "Professional services" means those services
27 within the scope of the practice of architecture, professional
28 engineering, professional geology, landscape architecture, or
29 registered surveying and mapping, as defined by the laws of
30 the state, or those performed by any architect, professional
31 engineer, professional geologist, landscape architect, or

1 registered surveyor and mapper in connection with his or her
2 professional employment or practice.

3 (b) "Agency" means the state, a state agency, a
4 municipality, a political subdivision, a school district, or a
5 school board. The term "agency" does not extend to a
6 nongovernmental developer that contributes public facilities
7 to a political subdivision under s. 380.06 or ss.
8 163.3220-163.3243.

9 (c) "Firm" means any individual, firm, partnership,
10 corporation, association, or other legal entity permitted by
11 law to practice architecture, engineering, geology, or
12 surveying and mapping in the state.

13 (d) "Compensation" means the total amount paid by the
14 agency for professional services.

15 (e) "Agency official" means any elected or appointed
16 officeholder, employee, consultant, person in the category of
17 other personal service or any other person receiving
18 compensation from the state, a state agency, municipality, or
19 political subdivision, a school district or a school board.

20 (f) "Project" means that fixed capital outlay study or
21 planning activity described in the public notice of the state
22 or a state agency under paragraph (3)(a). A project may
23 include:

24 1. A grouping of minor construction, rehabilitation,
25 or renovation activities.

26 2. A grouping of substantially similar construction,
27 rehabilitation, or renovation activities.

28 (g) A "continuing contract" is a contract for
29 professional services entered into in accordance with all the
30 procedures of this act between an agency and a firm whereby
31 the firm provides professional services to the agency for

1 projects in which construction costs do not exceed \$1 million,
2 for study activity when the fee for such professional service
3 does not exceed \$50,000, or for work of a specified nature as
4 outlined in the contract required by the agency, with no time
5 limitation except that the contract must provide a termination
6 clause.

7 (h) A "design-build firm" means a partnership,
8 corporation, or other legal entity that:

9 1. Is certified under s. 489.119 to engage in
10 contracting through a certified or registered general
11 contractor or a certified or registered building contractor as
12 the qualifying agent; or

13 2. Is certified under s. 471.023 to practice or to
14 offer to practice engineering; certified under s. 492.111 to
15 practice or to offer to practice professional geology;
16 certified under s. 481.219 to practice or to offer to practice
17 architecture; or certified under s. 481.319 to practice or to
18 offer to practice landscape architecture.

19 (i) A "design-build contract" means a single contract
20 with a design-build firm for the design and construction of a
21 public construction project.

22 (j) A "design criteria package" means concise,
23 performance-oriented drawings or specifications of the public
24 construction project. The purpose of the design criteria
25 package is to furnish sufficient information to permit
26 design-build firms to prepare a bid or a response to an
27 agency's request for proposal, or to permit an agency to enter
28 into a negotiated design-build contract. The design criteria
29 package must specify performance-based criteria for the public
30 construction project, including the legal description of the
31 site, survey information concerning the site, interior space

1 requirements, material quality standards, schematic layouts
2 and conceptual design criteria of the project, cost or budget
3 estimates, design and construction schedules, site development
4 requirements, provisions for utilities, stormwater retention
5 and disposal, and parking requirements applicable to the
6 project.

7 (k) A "design criteria professional" means a firm that
8 ~~who~~ holds a current certificate of registration under chapter
9 481 to practice architecture or landscape architecture, ~~or a~~
10 ~~firm who holds~~ a current certificate as a registered engineer
11 under chapter 471 to practice engineering, or a current
12 certificate of authorization under chapter 492 to practice
13 professional geology and that ~~who~~ is employed by or under
14 contract to the agency for the providing of professional
15 architect services, landscape architect services, ~~or~~
16 engineering services, or geological services in connection
17 with the preparation of the design criteria package.

18 (3) PUBLIC ANNOUNCEMENT AND QUALIFICATION
19 PROCEDURES.--

20 (a) Each agency shall publicly announce, in a uniform
21 and consistent manner, each occasion when professional
22 services must be purchased for a project the basic
23 construction cost of which is estimated by the agency to
24 exceed the threshold amount provided in s. 287.017 for
25 CATEGORY FIVE or for a planning or study activity when the fee
26 for professional services exceeds the threshold amount
27 provided in s. 287.017 for CATEGORY TWO, except in cases of
28 valid public emergencies certified by the agency head. The
29 public notice must include a general description of the
30 project and must indicate how interested consultants may apply
31 for consideration.

1 (b) Each agency shall encourage firms engaged in the
2 lawful practice of their professions that desire to provide
3 professional services to the agency to submit annually
4 statements of qualifications and performance data.

5 (c) Any firm or individual desiring to provide
6 professional services to the agency must first be certified by
7 the agency as qualified pursuant to law and the regulations of
8 the agency. The agency must find that the firm or individual
9 to be employed is fully qualified to render the required
10 service. Among the factors to be considered in making this
11 finding are the capabilities, adequacy of personnel, past
12 record, and experience of the firm or individual.

13 (d) Each agency shall evaluate professional services,
14 including capabilities, adequacy of personnel, past record,
15 experience, whether the firm is a certified minority business
16 enterprise as defined by the Florida Small and Minority
17 Business Assistance Act of 1985, and other factors determined
18 by the agency to be applicable to its particular requirements.
19 When securing professional services, an agency must endeavor
20 to meet the minority business enterprise procurement goals
21 under s. 287.09451.

22 (e) The public must not be excluded from the
23 proceedings under this section.

24 (4) COMPETITIVE SELECTION.--

25 (a) For each proposed project, the agency shall
26 evaluate current statements of qualifications and performance
27 data on file with the agency, together with those that may be
28 submitted by other firms regarding the proposed project, and
29 shall conduct discussions with, and may require public
30 presentations by, no fewer than three firms regarding their
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1 qualifications, approach to the project, and ability to
2 furnish the required services.

3 (b) The agency shall select in order of preference no
4 fewer than three firms deemed to be the most highly qualified
5 to perform the required services. In determining whether a
6 firm is qualified, the agency shall consider such factors as
7 the ability of professional personnel; whether a firm is a
8 certified minority business enterprise; past performance;
9 willingness to meet time and budget requirements; location;
10 recent, current, and projected workloads of the firms; and the
11 volume of work previously awarded to each firm by the agency,
12 with the object of effecting an equitable distribution of
13 contracts among qualified firms, provided such distribution
14 does not violate the principle of selection of the most highly
15 qualified firms. The agency may request, accept, and consider
16 proposals for the compensation to be paid under the contract
17 only during competitive negotiations under subsection (5).

18 (c) This subsection does not apply to a professional
19 service contract for a project the basic construction cost of
20 which is estimated by the agency to be not in excess of the
21 threshold amount provided in s. 287.017 for CATEGORY FIVE or
22 for a planning or study activity when the fee for professional
23 services is not in excess of the threshold amount provided in
24 s. 287.017 for CATEGORY TWO.

25 (d) Nothing in this act shall be construed to prohibit
26 a continuing contract between a firm and an agency.

27 (5) COMPETITIVE NEGOTIATION.--

28 (a) The agency shall negotiate a contract with the
29 most qualified firm for professional services at compensation
30 which the agency determines is fair, competitive, and
31 reasonable. In making such determination, the agency shall

1 | conduct a detailed analysis of the cost of the professional
2 | services required in addition to considering their scope and
3 | complexity. For any lump-sum or cost-plus-a-fixed-fee
4 | professional service contract over the threshold amount
5 | provided in s. 287.017 for CATEGORY FOUR, the agency shall
6 | require the firm receiving the award to execute a
7 | truth-in-negotiation certificate stating that wage rates and
8 | other factual unit costs supporting the compensation are
9 | accurate, complete, and current at the time of contracting.
10 | Any professional service contract under which such a
11 | certificate is required must contain a provision that the
12 | original contract price and any additions thereto will be
13 | adjusted to exclude any significant sums by which the agency
14 | determines the contract price was increased due to inaccurate,
15 | incomplete, or noncurrent wage rates and other factual unit
16 | costs. All such contract adjustments must be made within 1
17 | year following the end of the contract.

18 | (b) Should the agency be unable to negotiate a
19 | satisfactory contract with the firm considered to be the most
20 | qualified at a price the agency determines to be fair,
21 | competitive, and reasonable, negotiations with that firm must
22 | be formally terminated. The agency shall then undertake
23 | negotiations with the second most qualified firm. Failing
24 | accord with the second most qualified firm, the agency must
25 | terminate negotiations. The agency shall then undertake
26 | negotiations with the third most qualified firm.

27 | (c) Should the agency be unable to negotiate a
28 | satisfactory contract with any of the selected firms, the
29 | agency shall select additional firms in the order of their
30 | competence and qualification and continue negotiations in
31 | accordance with this subsection until an agreement is reached.

1 (6) PROHIBITION AGAINST CONTINGENT FEES.--
2 (a) Each contract entered into by the agency for
3 professional services must contain a prohibition against
4 contingent fees as follows: "The architect (or registered
5 surveyor and mapper, ~~or~~ professional engineer, or professional
6 geologist, as applicable) warrants that he or she has not
7 employed or retained any company or person, other than a bona
8 fide employee working solely for the architect (or registered
9 surveyor and mapper, ~~or~~ professional engineer, or professional
10 geologist, as applicable) to solicit or secure this agreement
11 and that he or she has not paid or agreed to pay any person,
12 company, corporation, individual, or firm, other than a bona
13 fide employee working solely for the architect (or registered
14 surveyor and mapper, ~~or~~ professional engineer, or professional
15 geologist, as applicable) any fee, commission, percentage,
16 gift, or other consideration contingent upon or resulting from
17 the award or making of this agreement." For the breach or
18 violation of this provision, the agency shall have the right
19 to terminate the agreement without liability and, at its
20 discretion, to deduct from the contract price, or otherwise
21 recover, the full amount of such fee, commission, percentage,
22 gift, or consideration.

23 (b) Any individual, corporation, partnership, firm, or
24 company, other than a bona fide employee working solely for an
25 architect, professional engineer, professional geologist, or
26 registered land surveyor and mapper, who offers, agrees, or
27 contracts to solicit or secure agency contracts for
28 professional services for any other individual, company,
29 corporation, partnership, or firm and to be paid, or is paid,
30 any fee, commission, percentage, gift, or other consideration
31 contingent upon, or resulting from, the award or the making of

1 a contract for professional services shall, upon conviction in
2 a competent court of this state, be found guilty of a first
3 degree misdemeanor, punishable as provided in s. 775.082 or s.
4 775.083.

5 (c) Any architect, professional engineer, professional
6 geologist, or registered surveyor and mapper, or any group,
7 association, company, corporation, firm, or partnership
8 thereof, who offers to pay, or pays, any fee, commission,
9 percentage, gift, or other consideration contingent upon, or
10 resulting from, the award or making of any agency contract for
11 professional services shall, upon conviction in a state court
12 of competent authority, be found guilty of a first degree
13 misdemeanor, punishable as provided in s. 775.082 or s.
14 775.083.

15 (d) Any agency official who offers to solicit or
16 secure, or solicits or secures, a contract for professional
17 services and to be paid, or is paid, any fee, commission,
18 percentage, gift, or other consideration contingent upon the
19 award or making of such a contract for professional services
20 between the agency and any individual person, company, firm,
21 partnership, or corporation shall, upon conviction by a court
22 of competent authority, be found guilty of a first degree
23 misdemeanor, punishable as provided in s. 775.082 or s.
24 775.083.

25 (7) AUTHORITY OF DEPARTMENT OF MANAGEMENT
26 SERVICES.--Notwithstanding any other provision of this
27 section, the Department of Management Services shall be the
28 agency of state government which is solely and exclusively
29 authorized and empowered to administer and perform the
30 functions described in subsections (3), (4), and (5)
31 respecting all projects for which the funds necessary to

1 complete same are appropriated to the Department of Management
2 Services, irrespective of whether such projects are intended
3 for the use and benefit of the Department of Management
4 Services or any other agency of government. However, nothing
5 herein shall be construed to be in derogation of any authority
6 conferred on the Department of Management Services by other
7 express provisions of law. Additionally, any agency of
8 government may, with the approval of the Department of
9 Management Services, delegate to the Department of Management
10 Services authority to administer and perform the functions
11 described in subsections (3), (4), and (5). Under the terms of
12 the delegation, the agency may reserve its right to accept or
13 reject a proposed contract.

14 (8) STATE ASSISTANCE TO LOCAL AGENCIES.--On any
15 professional service contract for which the fee is over
16 \$25,000, the Department of Transportation or the Department of
17 Management Services shall provide, upon request by a
18 municipality, political subdivision, school board, or school
19 district, and upon reimbursement of the costs involved,
20 assistance in selecting consultants and in negotiating
21 consultant contracts.

22 (9) APPLICABILITY TO DESIGN-BUILD CONTRACTS.--

23 (a) Except as provided in this subsection, this
24 section is not applicable to the procurement of design-build
25 contracts by any agency, and the agency must award
26 design-build contracts in accordance with the procurement
27 laws, rules, and ordinances applicable to the agency.

28 (b) The design criteria package must be prepared and
29 sealed by a design criteria professional employed by or
30 retained by the agency. If the agency elects to enter into a
31 professional services contract for the preparation of the

1 design criteria package, then the design criteria professional
2 must be selected and contracted with under the requirements of
3 subsections (4) and (5). A design criteria professional who
4 has been selected to prepare the design criteria package is
5 not eligible to render services under a design-build contract
6 executed pursuant to the design criteria package.

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

26 1. The preparation of a design criteria package for
27 the design and construction of the public construction
28 project.

29 2. The qualification and selection of no fewer than
30 three design-build firms as the most qualified, based on the
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1 qualifications, availability, and past work of the firms,
2 including the partners or members thereof.

3 3. The criteria, procedures, and standards for the
4 evaluation of design-build contract proposals or bids, based
5 on price, technical, and design aspects of the public
6 construction project, weighted for the project.

7 4. The solicitation of competitive proposals, pursuant
8 to a design criteria package, from those qualified
9 design-build firms and the evaluation of the responses or bids
10 submitted by those firms based on the evaluation criteria and
11 procedures established prior to the solicitation of
12 competitive proposals.

13 5. For consultation with the employed or retained
14 design criteria professional concerning the evaluation of the
15 responses or bids submitted by the design-build firms, the
16 supervision or approval by the agency of the detailed working
17 drawings of the project; and for evaluation of the compliance
18 of the project construction with the design criteria package
19 by the design criteria professional.

20 6. In the case of public emergencies, for the agency
21 head to declare an emergency and authorize negotiations with
22 the best qualified design-build firm available at that time.

23 (10) REUSE OF EXISTING PLANS.--Notwithstanding any
24 other provision of this section, there shall be no public
25 notice requirement or utilization of the selection process as
26 provided in this section for projects in which the agency is
27 able to reuse existing plans from a prior project of the
28 agency, or, in the case of a board as defined in s. 1013.01, a
29 prior project of that or any other board. Except for plans of
30 a board as defined in s. 1013.01, public notice for any plans
31 that are intended to be reused at some future time must

1 contain a statement that provides that the plans are subject
2 to reuse in accordance with the provisions of this subsection.

3 (11) CONSTRUCTION OF LAW.--Nothing in the amendment of
4 this section by chapter 75-281, Laws of Florida, is intended
5 to supersede the provisions of ss. 1013.45 and 1013.46.

6 Section 2. Subsection (2) of section 190.033, Florida
7 Statutes, is amended to read:

8 190.033 Bids required.--

9 (2) The provisions of the Consultants' Competitive
10 Negotiation Act, s. 287.055, apply to contracts for
11 engineering, geology, architecture, landscape architecture, or
12 registered surveying and mapping services let by the board.

13 Section 3. Section 373.117, Florida Statutes, is
14 amended to read:

15 373.117 Certification by professional engineer or
16 professional geologist.--

17 (1) If an application for a permit or license to
18 conduct an activity regulated under this chapter requires the
19 services of a professional engineer as regulated and defined
20 by chapter 471 or a professional geologist as regulated and
21 defined by chapter 492, the department or governing board of a
22 water management district may require, as a condition of
23 granting a permit or license, that a professional engineer
24 licensed under chapter 471 or a professional geologist
25 licensed under chapter 492 certify upon completion of the
26 permitted or licensed activity that such activity has been
27 completed in substantial conformance with the plans and
28 specifications approved by the department or board.

29 (2) The cost of such certification by a professional
30 engineer or professional geologist shall be borne by the
31 permittee.

1 (3) No permitted or licensed activity which is
2 required to be so certified shall be placed into use or
3 operation until the professional engineer's certificate or the
4 professional geologist's signature and seal are ~~is~~ filed with
5 the department or board.

6 Section 4. This act shall take effect upon becoming a
7 law.

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