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

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 287.055, Florida Statutes, is amended
 15 to read:

16 287.055 Acquisition of professional architectural,
 17 engineering, geology, landscape architectural, or surveying and
 18 mapping services; definitions; procedures; contingent fees
 19 prohibited; penalties.--

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

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

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

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29 registered surveyor and mapper in connection with his or her
 30 professional employment or practice.

31 (b) "Agency" means the state, a state agency, a
 32 municipality, a political subdivision, a school district, or a
 33 school board. The term "agency" does not extend to a
 34 nongovernmental developer that contributes public facilities to
 35 a political subdivision under s. 380.06 or ss. 163.3220-
 36 163.3243.

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

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

43 (e) "Agency official" means any elected or appointed
 44 officeholder, employee, consultant, person in the category of
 45 other personal service or any other person receiving
 46 compensation from the state, a state agency, municipality, or
 47 political subdivision, a school district or a school board.

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

51 1. A grouping of minor construction, rehabilitation, or
 52 renovation activities.

53 2. A grouping of substantially similar construction,
 54 rehabilitation, or renovation activities.

55 (g) A "continuing contract" is a contract for professional
 56 services entered into in accordance with all the procedures of
 57 this act between an agency and a firm whereby the firm provides

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58 professional services to the agency for projects in which
59 construction costs do not exceed \$1 million, for study activity
60 when the fee for such professional service does not exceed
61 \$50,000, or for work of a specified nature as outlined in the
62 contract required by the agency, with no time limitation except
63 that the contract must provide a termination clause.

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

66 1. Is certified under s. 489.119 to engage in contracting
67 through a certified or registered general contractor or a
68 certified or registered building contractor as the qualifying
69 agent; or

70 2. Is certified under s. 471.023 to practice or to offer
71 to practice engineering; certified under s. 492.111 to practice
72 or to offer to practice professional geology; certified under s.
73 481.219 to practice or to offer to practice architecture; or
74 certified under s. 481.319 to practice or to offer to practice
75 landscape architecture.

76 (i) A "design-build contract" means a single contract with
77 a design-build firm for the design and construction of a public
78 construction project.

79 (j) A "design criteria package" means concise,
80 performance-oriented drawings or specifications of the public
81 construction project. The purpose of the design criteria package
82 is to furnish sufficient information to permit design-build
83 firms to prepare a bid or a response to an agency's request for
84 proposal, or to permit an agency to enter into a negotiated
85 design-build contract. The design criteria package must specify
86 performance-based criteria for the public construction project,

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87 including the legal description of the site, survey information
 88 concerning the site, interior space requirements, material
 89 quality standards, schematic layouts and conceptual design
 90 criteria of the project, cost or budget estimates, design and
 91 construction schedules, site development requirements,
 92 provisions for utilities, stormwater retention and disposal, and
 93 parking requirements applicable to the project.

94 (k) A "design criteria professional" means a firm that ~~who~~
 95 holds a current certificate of registration under chapter 481 to
 96 practice architecture or landscape architecture, ~~or a firm who~~
 97 ~~holds~~ a current certificate as a registered engineer under
 98 chapter 471 to practice engineering, or a current certificate of
 99 authorization under chapter 492 to practice professional geology
 100 and that ~~who~~ is employed by or under contract to the agency for
 101 the providing of professional architect services, landscape
 102 architect services, ~~or~~ engineering services, or geological
 103 services in connection with the preparation of the design
 104 criteria package.

105 (3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.--

106 (a) Each agency shall publicly announce, in a uniform and
 107 consistent manner, each occasion when professional services must
 108 be purchased for a project the basic construction cost of which
 109 is estimated by the agency to exceed the threshold amount
 110 provided in s. 287.017 for CATEGORY FIVE or for a planning or
 111 study activity when the fee for professional services exceeds
 112 the threshold amount provided in s. 287.017 for CATEGORY TWO,
 113 except in cases of valid public emergencies certified by the
 114 agency head. The public notice must include a general

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115 description of the project and must indicate how interested
 116 consultants may apply for consideration.

117 (b) Each agency shall encourage firms engaged in the
 118 lawful practice of their professions that desire to provide
 119 professional services to the agency to submit annually
 120 statements of qualifications and performance data.

121 (c) Any firm or individual desiring to provide
 122 professional services to the agency must first be certified by
 123 the agency as qualified pursuant to law and the regulations of
 124 the agency. The agency must find that the firm or individual to
 125 be employed is fully qualified to render the required service.
 126 Among the factors to be considered in making this finding are
 127 the capabilities, adequacy of personnel, past record, and
 128 experience of the firm or individual.

129 (d) Each agency shall evaluate professional services,
 130 including capabilities, adequacy of personnel, past record,
 131 experience, whether the firm is a certified minority business
 132 enterprise as defined by the Florida Small and Minority Business
 133 Assistance Act of 1985, and other factors determined by the
 134 agency to be applicable to its particular requirements. When
 135 securing professional services, an agency must endeavor to meet
 136 the minority business enterprise procurement goals under s.
 137 287.09451.

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

140 (4) COMPETITIVE SELECTION.--

141 (a) For each proposed project, the agency shall evaluate
 142 current statements of qualifications and performance data on
 143 file with the agency, together with those that may be submitted

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144 by other firms regarding the proposed project, and shall conduct
 145 discussions with, and may require public presentations by, no
 146 fewer than three firms regarding their qualifications, approach
 147 to the project, and ability to furnish the required services.

148 (b) The agency shall select in order of preference no
 149 fewer than three firms deemed to be the most highly qualified to
 150 perform the required services. In determining whether a firm is
 151 qualified, the agency shall consider such factors as the ability
 152 of professional personnel; whether a firm is a certified
 153 minority business enterprise; past performance; willingness to
 154 meet time and budget requirements; location; recent, current,
 155 and projected workloads of the firms; and the volume of work
 156 previously awarded to each firm by the agency, with the object
 157 of effecting an equitable distribution of contracts among
 158 qualified firms, provided such distribution does not violate the
 159 principle of selection of the most highly qualified firms. The
 160 agency may request, accept, and consider proposals for the
 161 compensation to be paid under the contract only during
 162 competitive negotiations under subsection (5).

163 (c) This subsection does not apply to a professional
 164 service contract for a project the basic construction cost of
 165 which is estimated by the agency to be not in excess of the
 166 threshold amount provided in s. 287.017 for CATEGORY FIVE or for
 167 a planning or study activity when the fee for professional
 168 services is not in excess of the threshold amount provided in s.
 169 287.017 for CATEGORY TWO.

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

172 (5) COMPETITIVE NEGOTIATION.--

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173 (a) The agency shall negotiate a contract with the most
174 qualified firm for professional services at compensation which
175 the agency determines is fair, competitive, and reasonable. In
176 making such determination, the agency shall conduct a detailed
177 analysis of the cost of the professional services required in
178 addition to considering their scope and complexity. For any
179 lump-sum or cost-plus-a-fixed-fee professional service contract
180 over the threshold amount provided in s. 287.017 for CATEGORY
181 FOUR, the agency shall require the firm receiving the award to
182 execute a truth-in-negotiation certificate stating that wage
183 rates and other factual unit costs supporting the compensation
184 are accurate, complete, and current at the time of contracting.
185 Any professional service contract under which such a certificate
186 is required must contain a provision that the original contract
187 price and any additions thereto will be adjusted to exclude any
188 significant sums by which the agency determines the contract
189 price was increased due to inaccurate, incomplete, or noncurrent
190 wage rates and other factual unit costs. All such contract
191 adjustments must be made within 1 year following the end of the
192 contract.

193 (b) Should the agency be unable to negotiate a
194 satisfactory contract with the firm considered to be the most
195 qualified at a price the agency determines to be fair,
196 competitive, and reasonable, negotiations with that firm must be
197 formally terminated. The agency shall then undertake
198 negotiations with the second most qualified firm. Failing accord
199 with the second most qualified firm, the agency must terminate
200 negotiations. The agency shall then undertake negotiations with
201 the third most qualified firm.

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202 (c) Should the agency be unable to negotiate a
 203 satisfactory contract with any of the selected firms, the agency
 204 shall select additional firms in the order of their competence
 205 and qualification and continue negotiations in accordance with
 206 this subsection until an agreement is reached.

207 (6) PROHIBITION AGAINST CONTINGENT FEES.--

208 (a) Each contract entered into by the agency for
 209 professional services must contain a prohibition against
 210 contingent fees as follows: "The architect (or registered
 211 surveyor and mapper, ~~or~~ professional engineer, or professional
 212 geologist, as applicable) warrants that he or she has not
 213 employed or retained any company or person, other than a bona
 214 fide employee working solely for the architect (or registered
 215 surveyor and mapper, ~~or~~ professional engineer, or professional
 216 geologist, as applicable) to solicit or secure this agreement
 217 and that he or she has not paid or agreed to pay any person,
 218 company, corporation, individual, or firm, other than a bona
 219 fide employee working solely for the architect (or registered
 220 surveyor and mapper, ~~or~~ professional engineer, or professional
 221 geologist, as applicable) any fee, commission, percentage, gift,
 222 or other consideration contingent upon or resulting from the
 223 award or making of this agreement." For the breach or violation
 224 of this provision, the agency shall have the right to terminate
 225 the agreement without liability and, at its discretion, to
 226 deduct from the contract price, or otherwise recover, the full
 227 amount of such fee, commission, percentage, gift, or
 228 consideration.

229 (b) Any individual, corporation, partnership, firm, or
 230 company, other than a bona fide employee working solely for an

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231 architect, professional engineer, professional geologist, or
 232 registered land surveyor and mapper, who offers, agrees, or
 233 contracts to solicit or secure agency contracts for professional
 234 services for any other individual, company, corporation,
 235 partnership, or firm and to be paid, or is paid, any fee,
 236 commission, percentage, gift, or other consideration contingent
 237 upon, or resulting from, the award or the making of a contract
 238 for professional services shall, upon conviction in a competent
 239 court of this state, be found guilty of a first degree
 240 misdemeanor, punishable as provided in s. 775.082 or s. 775.083.

241 (c) Any architect, professional engineer, professional
 242 geologist, or registered surveyor and mapper, or any group,
 243 association, company, corporation, firm, or partnership thereof,
 244 who offers to pay, or pays, any fee, commission, percentage,
 245 gift, or other consideration contingent upon, or resulting from,
 246 the award or making of any agency contract for professional
 247 services shall, upon conviction in a state court of competent
 248 authority, be found guilty of a first degree misdemeanor,
 249 punishable as provided in s. 775.082 or s. 775.083.

250 (d) Any agency official who offers to solicit or secure,
 251 or solicits or secures, a contract for professional services and
 252 to be paid, or is paid, any fee, commission, percentage, gift,
 253 or other consideration contingent upon the award or making of
 254 such a contract for professional services between the agency and
 255 any individual person, company, firm, partnership, or
 256 corporation shall, upon conviction by a court of competent
 257 authority, be found guilty of a first degree misdemeanor,
 258 punishable as provided in s. 775.082 or s. 775.083.

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259 (7) AUTHORITY OF DEPARTMENT OF MANAGEMENT
 260 SERVICES.--Notwithstanding any other provision of this section,
 261 the Department of Management Services shall be the agency of
 262 state government which is solely and exclusively authorized and
 263 empowered to administer and perform the functions described in
 264 subsections (3), (4), and (5) respecting all projects for which
 265 the funds necessary to complete same are appropriated to the
 266 Department of Management Services, irrespective of whether such
 267 projects are intended for the use and benefit of the Department
 268 of Management Services or any other agency of government.
 269 However, nothing herein shall be construed to be in derogation
 270 of any authority conferred on the Department of Management
 271 Services by other express provisions of law. Additionally, any
 272 agency of government may, with the approval of the Department of
 273 Management Services, delegate to the Department of Management
 274 Services authority to administer and perform the functions
 275 described in subsections (3), (4), and (5). Under the terms of
 276 the delegation, the agency may reserve its right to accept or
 277 reject a proposed contract.

278 (8) STATE ASSISTANCE TO LOCAL AGENCIES.--On any
 279 professional service contract for which the fee is over \$25,000,
 280 the Department of Transportation or the Department of Management
 281 Services shall provide, upon request by a municipality,
 282 political subdivision, school board, or school district, and
 283 upon reimbursement of the costs involved, assistance in
 284 selecting consultants and in negotiating consultant contracts.

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

286 (a) Except as provided in this subsection, this section is
 287 not applicable to the procurement of design-build contracts by

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288 any agency, and the agency must award design-build contracts in
 289 accordance with the procurement laws, rules, and ordinances
 290 applicable to the agency.

291 (b) The design criteria package must be prepared and
 292 sealed by a design criteria professional employed by or retained
 293 by the agency. If the agency elects to enter into a professional
 294 services contract for the preparation of the design criteria
 295 package, then the design criteria professional must be selected
 296 and contracted with under the requirements of subsections (4)
 297 and (5). A design criteria professional who has been selected to
 298 prepare the design criteria package is not eligible to render
 299 services under a design-build contract executed pursuant to the
 300 design criteria package.

301 (c) Except as otherwise provided in s. 337.11(7), the
 302 Department of Management Services shall adopt rules for the
 303 award of design-build contracts to be followed by state
 304 agencies. Each other agency must adopt rules or ordinances for
 305 the award of design-build contracts. Municipalities, political
 306 subdivisions, school districts, and school boards shall award
 307 design-build contracts by the use of a competitive proposal
 308 selection process as described in this subsection, or by the use
 309 of a qualifications-based selection process pursuant to
 310 subsections (3), (4), and (5) for entering into a contract
 311 whereby the selected firm will subsequently establish a
 312 guaranteed maximum price and guaranteed completion date. If the
 313 procuring agency elects the option of qualifications-based
 314 selection, during the selection of the design-build firm the
 315 procuring agency shall employ or retain a licensed design
 316 professional appropriate to the project to serve as the agency's

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317 representative. Procedures for the use of a competitive proposal
 318 selection process must include as a minimum the following:

319 1. The preparation of a design criteria package for the
 320 design and construction of the public construction project.

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

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

329 4. The solicitation of competitive proposals, pursuant to
 330 a design criteria package, from those qualified design-build
 331 firms and the evaluation of the responses or bids submitted by
 332 those firms based on the evaluation criteria and procedures
 333 established prior to the solicitation of competitive proposals.

334 5. For consultation with the employed or retained design
 335 criteria professional concerning the evaluation of the responses
 336 or bids submitted by the design-build firms, the supervision or
 337 approval by the agency of the detailed working drawings of the
 338 project; and for evaluation of the compliance of the project
 339 construction with the design criteria package by the design
 340 criteria professional.

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

344 (10) REUSE OF EXISTING PLANS.--Notwithstanding any other
 345 provision of this section, there shall be no public notice

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346 requirement or utilization of the selection process as provided
 347 in this section for projects in which the agency is able to
 348 reuse existing plans from a prior project of the agency, or, in
 349 the case of a board as defined in s. 1013.01, a prior project of
 350 that or any other board. Except for plans of a board as defined
 351 in s. 1013.01, public notice for any plans that are intended to
 352 be reused at some future time must contain a statement that
 353 provides that the plans are subject to reuse in accordance with
 354 the provisions of this subsection.

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

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

360 190.033 Bids required.--

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

365 Section 3. Section 373.117, Florida Statutes, is amended
 366 to read:

367 373.117 Certification by professional engineer or
 368 professional geologist.--

369 (1) If an application for a permit or license to conduct
 370 an activity regulated under this chapter requires the services
 371 of a professional engineer as regulated and defined by chapter
 372 471 or a professional geologist as regulated and defined by
 373 chapter 492, the department or governing board of a water
 374 management district may require, as a condition of granting a

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375 permit or license, that a professional engineer licensed under
376 chapter 471 or a professional geologist licensed under chapter
377 492 certify upon completion of the permitted or licensed
378 activity that such activity has been completed in substantial
379 conformance with the plans and specifications approved by the
380 department or board.

381 (2) The cost of such certification by a professional
382 engineer or professional geologist shall be borne by the
383 permittee.

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

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