

By the Committee on Regulated Industries; and Senator Clary

580-1783-05

1 A bill to be entitled
 2 An act relating to professional services
 3 acquisition; amending s. 287.055, F.S. ;
 4 revising certain definitions; defining the term
 5 "negotiate"; providing additional criteria for
 6 processing bids to purchase professional
 7 services which exceed certain threshold
 8 amounts; revising criteria for the competitive
 9 selection of bids to purchase professional
 10 services; providing an effective date.
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 12 Be It Enacted by the Legislature of the State of Florida:
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 14 Section 1. Paragraphs (d) and (g) of subsection (2),
 15 paragraph (a) of subsection (3), and paragraphs (b) and (c) of
 16 subsection (4) of section 287.055, Florida Statutes, are
 17 amended, and paragraph (1) is added to subsection (2) of that
 18 section, to read:
 19 287.055 Acquisition of professional architectural,
 20 engineering, landscape architectural, or surveying and mapping
 21 services; definitions; procedures; contingent fees prohibited;
 22 penalties.--
 23 (2) DEFINITIONS.--For purposes of this section:
 24 (d) "Compensation" means the ~~total~~ amount paid by the
 25 agency for professional services regardless of whether stated
 26 as compensation or stated as hourly rates, overhead rates, or
 27 other figures or formulas from which compensation can be
 28 calculated.
 29 (g) A "continuing contract" is a contract for
 30 professional services entered into in accordance with all the
 31 procedures of this act between an agency and a firm whereby

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 the firm provides professional services to the agency for
2 projects in which construction costs do not exceed \$1 million,
3 for study activity when the fee for such professional service
4 does not exceed \$50,000, or for work of a specified nature as
5 outlined in the contract required by the agency, with no time
6 limitation except that the contract must provide a termination
7 clause. Firms providing professional services under continuing
8 contracts shall not be required to bid against one another.

9 (1) "Negotiate" or any form of that word means to
10 conduct legitimate, arms length discussions and conferences to
11 reach an agreement on a term or price. For purposes of this
12 section, the term does not include presentation of flat-fee
13 schedules with no alternatives or discussion.

14 (3) PUBLIC ANNOUNCEMENT AND QUALIFICATION
15 PROCEDURES.--

16 (a)1. Each agency shall publicly announce, in a
17 uniform and consistent manner, each occasion when professional
18 services must be purchased for a project the basic
19 construction cost of which is estimated by the agency to
20 exceed the threshold amount provided in s. 287.017 for
21 CATEGORY FIVE or for a planning or study activity when the fee
22 for professional services exceeds the threshold amount
23 provided in s. 287.017 for CATEGORY TWO, except in cases of
24 valid public emergencies certified by the agency head. The
25 public notice must include a general description of the
26 project and must indicate how interested consultants may apply
27 for consideration.

28 2. Each agency shall provide a good faith estimate in
29 determining whether the proposed activity meets the threshold
30 amounts referred to in this paragraph.

31 (4) COMPETITIVE SELECTION.--

1 (b) The agency shall select in order of preference no
2 fewer than three firms deemed to be the most highly qualified
3 to perform the required services. In determining whether a
4 firm is qualified, the agency shall consider such factors as
5 the ability of professional personnel; whether a firm is a
6 certified minority business enterprise; past performance;
7 proven capability ~~willingness~~ to meet time and budget
8 requirements; location, if the agency has adopted a
9 local-preference program; ~~recent, current, and projected~~
10 ~~workloads of the firms~~; and the volume of work previously
11 awarded to each firm by the agency, with the object of
12 effecting an equitable distribution of contracts among
13 qualified firms, provided such distribution does not violate
14 the principle of selection of the most highly qualified firms.
15 The agency may request, accept, and consider proposals for the
16 compensation to be paid under the contract only during
17 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. However, if, in using another
25 procurement process, the average of the compensation proposed
26 by firms is in excess of the appropriate threshold amount, the
27 agency shall reject all proposals and reinitiate the
28 procurement pursuant to this subsection.

29 Section 2. This act shall take effect July 1, 2005.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1784

The committee Substitute (CS) deletes the provision that an agency must reject all bids and proceed with competitive negotiations if the average of all responsive bids was above the threshold amount established in the bill.

The CS provides for consideration of proven capability and of location, if the agency has adopted a local-preference program, in determining a firm's qualifications. It deletes willingness and the recent, current, and projected firm workloads from consideration