

By the Committees on Governmental Oversight and Productivity;
Regulated Industries; and Senators Clary and Crist

585-1906A-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; amending s. 287.17, F.S.; revising
 11 the limitation on the use of state aircraft;
 12 providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Paragraphs (d) and (g) of subsection (2),
 17 paragraph (a) of subsection (3), and paragraphs (b) and (c) of
 18 subsection (4) of section 287.055, Florida Statutes, are
 19 amended, and paragraph (1) is added to subsection (2) of that
 20 section, to read:

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

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

26 (d) "Compensation" means the ~~total~~ amount paid by the
 27 agency for professional services regardless of whether stated
 28 as compensation or stated as hourly rates, overhead rates, or
 29 other figures or formulas from which compensation can be
 30 calculated.

31

1 (g) A "continuing contract" is a contract for
2 professional services entered into in accordance with all the
3 procedures of this act between an agency and a firm whereby
4 the firm provides professional services to the agency for
5 projects in which construction costs do not exceed \$1 million,
6 for study activity when the fee for such professional service
7 does not exceed \$50,000, or for work of a specified nature as
8 outlined in the contract required by the agency, with no time
9 limitation except that the contract must provide a termination
10 clause. Firms providing professional services under continuing
11 contracts shall not be required to bid against one another.

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

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

19 (a)1. Each agency shall publicly announce, in a
20 uniform and consistent manner, each occasion when professional
21 services must be purchased for a project the basic
22 construction cost of which is estimated by the agency to
23 exceed the threshold amount provided in s. 287.017 for
24 CATEGORY FIVE or for a planning or study activity when the fee
25 for professional services exceeds the threshold amount
26 provided in s. 287.017 for CATEGORY TWO, except in cases of
27 valid public emergencies certified by the agency head. The
28 public notice must include a general description of the
29 project and must indicate how interested consultants may apply
30 for consideration.
31

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

4 (4) COMPETITIVE SELECTION.--

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

22 (c) This subsection does not apply to a professional
23 service contract for a project the basic construction cost of
24 which is estimated by the agency to be not in excess of the
25 threshold amount provided in s. 287.017 for CATEGORY FIVE or
26 for a planning or study activity when the fee for professional
27 services is not in excess of the threshold amount provided in
28 s. 287.017 for CATEGORY TWO. However, if, in using another
29 procurement process, the majority of the compensation proposed
30 by firms is in excess of the appropriate threshold amount, the
31

1 agency shall reject all proposals and reinitiate the
2 procurement pursuant to this subsection.

3 Section 2. Section 287.17, Florida Statutes, is
4 amended to read:

5 (Substantial rewording of section. See
6 section 287.17, F.S., for present text.)
7 287.17 Limitation on use of motor vehicles and
8 aircraft.--

9 (1) The aircraft and motor vehicles owned, leased, or
10 operated by any state agency, as defined in s. 287.012, shall
11 be available for official state business only as authorized by
12 agency heads, as defined in s. 287.012.

13 (2) The following criteria shall be considered in
14 determining appropriate uses of motor vehicles and aircraft:

15 (a) Whether the use of a motor vehicle or aircraft is
16 necessary to carry out state official or employee job
17 assignments.

18 (b) Whether the use of a motor vehicle or aircraft is
19 for transporting an employee, state official, or other person
20 authorized by the agency head for purposes of conducting
21 official state business or for purposes of performing services
22 for the state.

23 (c) Whether the Department of Law Enforcement has been
24 directed by the agency head to provide security or
25 transportation pursuant to s. 943.68.

26 (d) Whether an emergency exists requiring the use of a
27 motor vehicle or aircraft for the protection of life or
28 property.

29 (3)(a) The term "official state business" may not be
30 construed to permit the use of a motor vehicle or aircraft for
31 commuting purposes, unless special assignment of a motor

1 vehicle is authorized as a perquisite by the Department of
2 Management Services, required by an employee after normal duty
3 hours to perform duties of the position to which assigned, or
4 authorized for an employee whose home is the official base of
5 operation.

6 (b) For motor vehicles used by a state employee whose
7 duties are those of a law enforcement officer, as defined in
8 s. 943.10, the term "official state business" shall be
9 construed to permit the use of the vehicle during normal duty
10 hours to and from lunch or meal breaks and incidental stops
11 for personal errands, but not substantial deviations from
12 official state business, if such use is at the direction of or
13 with the permission of the agency head.

14 (4) An agency head, as defined in s. 287.012, shall
15 comply with the following criteria for the special assignment
16 of motor vehicles:

17 (a) An agency head may assign a motor vehicle to a
18 state officer or employee only if the officer or employee is
19 projected to drive the motor vehicle a minimum of 10,000 miles
20 annually on official state business, unless an agency head
21 annually provides written justification for the need of the
22 assignment of a motor vehicle. Commuting mileage incidental to
23 use of the motor vehicle on official state business shall be
24 excluded from calculating the projected mileage. Priority in
25 assigning motor vehicles shall be given to those employees who
26 drive over 15,000 miles annually on state business.

27 (b) An agency head may assign motor vehicles to state
28 officers and employees who perform duties related to law
29 enforcement. However, the agency head shall not assign a
30 pursuit motor vehicle to an officer or employee whose job
31

1 duties do not routinely require performance of a patrol or law
2 enforcement function requiring a pursuit vehicle.

3 (5) Each state agency's head shall, by December 31,
4 2000, conduct a review of motor vehicle utilization with
5 oversight from the agency's inspector general. This review
6 shall consist of two parts. The first part of the review shall
7 determine the number of miles that each assigned motor vehicle
8 has been driven on official state business in the past fiscal
9 year. Commuting mileage shall be excluded from calculating
10 vehicle use. The purpose of this review is to determine
11 whether employees with assigned motor vehicles are driving the
12 vehicles a sufficient number of miles to warrant continued
13 vehicle assignment. The second part of the review shall
14 identify employees who have driven personal vehicles
15 extensively on state business in the past fiscal year. The
16 purpose of this review is to determine whether it would be
17 cost-effective to provide state motor vehicles to such
18 employees. In making this determination, the inspector general
19 shall use the break-even mileage criteria developed by the
20 Department of Management Services. A copy of the review shall
21 be presented to the Office of Program Policy Analysis and
22 Government Accountability.

23 (6) A person who is not otherwise authorized in this
24 section may accompany the Governor, the Lieutenant Governor, a
25 member of the Cabinet, the President of the Senate, the
26 Speaker of the House of Representatives, or the Chief Justice
27 of the Supreme Court when such official is traveling on state
28 aircraft for official state business and the aircraft is
29 traveling with seats available. Transportation of a person
30 accompanying any official specified in this subsection shall
31 be approved by the official, who shall also guarantee payment

1 of the transportation charges. When the person accompanying
2 such official is not traveling on official state business as
3 provided in this section, the transportation charge shall be a
4 prorated share of all fixed and variable expenses related to
5 the ownership, operation, and use of such state aircraft. The
6 spouse or immediate family members of any official specified
7 in this subsection may, without payment of transportation
8 charges, accompany the official when such official is
9 traveling for official state business and the aircraft has
10 seats available.

11 (7) It is the intention of the Legislature that
12 persons traveling on state aircraft for purposes consistent
13 with, but not necessarily constituting, official state
14 business may travel only when accompanying persons who are
15 traveling on official state business and that such persons
16 shall pay the state for all costs associated with such travel.
17 A person traveling on state aircraft for purposes other than
18 official state business shall pay for any trip not exclusively
19 for state business by paying a prorated share of all fixed and
20 variable expenses related to the ownership, operation, and use
21 of such aircraft.

22 Section 3. This act shall take effect July 1, 2005.
23

24 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
25 COMMITTEE SUBSTITUTE FOR
26 CS for Senate Bill 1784

27 Changes a threshold figure for reinitiating a procurement in
28 s. 287.055(4), F.S., from the "average" of the compensation
29 proposed by firms to the "majority" of the compensation
30 proposed by firms.

31 Amends s. 287.17(6), F.S., by revising the limitation on the
use of state aircraft.