

1 A bill to be entitled
 2 An act relating to auditor selection procedures; amending
 3 s. 218.391, F.S.; revising the auditor selection
 4 procedures that local governmental entities, district
 5 school boards, charter schools, and charter technical
 6 career centers must use in selecting auditors to conduct
 7 certain required financial audits; revising provisions
 8 relating to membership, purposes, and duties of audit
 9 committees required to be established to aid in such
 10 selection; providing for requests for proposals; providing
 11 review and ranking requirements; requiring written
 12 contracts and providing requirements therefor, including
 13 renewal requirements; providing an effective date.

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

16
 17 Section 1. Section 218.391, Florida Statutes, is amended
 18 to read:

19 218.391 Auditor selection procedures.--

20 (1) Each local governmental entity, district school board,
 21 charter school, or charter technical career center, prior to
 22 entering into a written contract pursuant to subsection (7),
 23 except as provided in subsection (8), shall use auditor
 24 selection procedures when selecting an auditor to conduct the
 25 annual financial audit required in s. 218.39.

26 (2) The governing body of a charter county, municipality,
 27 special district, district school board, charter school, or
 28 charter technical career center shall establish an audit ~~auditor~~

29 ~~selection committee and auditor selection procedures or use the~~
 30 ~~procedures outlined in subsection (3).~~ Each noncharter county
 31 shall establish an audit committee that, at a minimum, shall
 32 consist of each of the county officers elected pursuant to s.
 33 1(d), Art. VIII of the State Constitution, or a designee, and
 34 one member of the board of county commissioners or its designee.
 35 The primary purpose of the audit committee and the procedures is
 36 to assist the governing body in selecting ~~contract with~~ an
 37 auditor to conduct the annual financial audit required in s.
 38 218.39; however, the audit committee may serve other audit
 39 oversight purposes as determined by the entity's governing body.
 40 The public shall not be excluded from the proceedings under this
 41 section.

42 (3) ~~The audit governing body of a noncharter county or~~
 43 ~~district school board that retains a certified public accountant~~
 44 ~~shall establish an auditor selection committee shall and select~~
 45 ~~an auditor according to the following procedure:~~

46 (a) Establish factors to use for the evaluation of audit
 47 services to be provided by a certified public accounting firm
 48 duly licensed under chapter 473 and qualified to conduct audits
 49 in accordance with government auditing standards as adopted by
 50 the Florida Board of Accountancy. Such factors shall include,
 51 but are not limited to, ability of personnel, experience,
 52 ability to furnish the required services, and such other factors
 53 as may be determined by the committee to be applicable to its
 54 particular requirements ~~For each noncharter county, the auditor~~
 55 ~~selection committee shall consist of the county officers elected~~

56 ~~pursuant to s. 1(d), Art. VIII of the State Constitution, and~~
 57 ~~one member of the board of county commissioners or its designee.~~

58 (b) ~~The committee shall~~ Publicly announce requests for
 59 proposals, ~~in a uniform and consistent manner, each occasion~~
 60 ~~when auditing services are required to be purchased. Public~~
 61 announcements notice ~~must include,~~ at a minimum, a brief general
 62 description of the audit and must indicate how interested firms
 63 ~~certified public accountants~~ can apply for consideration.

64 (c) Provide interested ~~The committee shall encourage~~ firms
 65 with a request for proposal. The request for proposal shall
 66 include information on how proposals are to be evaluated and
 67 such other information the committee determines is necessary for
 68 the firm to prepare a proposal engaged in the lawful practice of
 69 ~~public accounting who desire to provide professional services to~~
 70 ~~submit annually a statement of qualifications and performance~~
 71 ~~data.~~

72 (d) ~~Any certified public accountant desiring to provide~~
 73 ~~auditing services shall first be qualified pursuant to law. The~~
 74 ~~committee shall make a finding that the firm or individual to be~~
 75 ~~employed is fully qualified to render the required services.~~
 76 ~~Among the factors to be considered in making this finding are~~
 77 ~~the capabilities, adequacy of personnel, past record, and~~
 78 ~~experience of the firm or individual.~~

79 (e) ~~The committee shall adopt procedures for the~~
 80 ~~evaluation of professional services, including, but not limited~~
 81 ~~to, capabilities, adequacy of personnel, past record,~~
 82 ~~experience, results of recent external quality control reviews,~~

83 ~~and such other factors as may be determined by the committee to~~
 84 ~~be applicable to its particular requirements.~~

85 ~~(f) The public shall not be excluded from the proceedings~~
 86 ~~under this subsection.~~

87 ~~(d)(g) The committee shall~~ Evaluate proposals provided
 88 ~~current statements of qualifications and performance data on~~
 89 ~~file with the committee, together with those that may be~~
 90 ~~submitted by~~ qualified other firms regarding the proposed audit,
 91 ~~and shall conduct discussions with, and may require public~~
 92 ~~presentations by, no fewer than three firms regarding their~~
 93 ~~qualifications, approach to the audit, and ability to furnish~~
 94 ~~the required services. If compensation is one of the factors~~
 95 ~~established pursuant to paragraph (a), it shall not be the sole~~
 96 ~~or predominant factor used to evaluate proposals.~~

97 ~~(e)(h) The committee shall select~~ Rank and recommend in
 98 order of preference no fewer than three firms deemed to be the
 99 most highly qualified to perform the required services after
 100 considering the ~~following~~ factors established pursuant to
 101 paragraph (a): the ability of professional personnel; past
 102 performance; willingness to meet time requirements; location;
 103 and recent, current, and projected workloads of the firms.

104 ~~However, such distribution shall not violate the principle of~~
 105 ~~selection of the most highly qualified firms. If fewer than~~
 106 ~~three firms~~ respond to the request for proposal desire to
 107 ~~perform the services,~~ the committee shall recommend such firms
 108 as it deems ~~determines~~ to be the most highly qualified.

109 ~~(4)(i) The governing body shall inquire of qualified firms~~
 110 as to the basis of compensation, select one of the firms

111 recommended by the audit committee, and negotiate a contract,
112 using one of the following methods:

113 (a) If compensation is not one of the factors established
114 pursuant to paragraph (3)(a) and not used to evaluate firms
115 pursuant to paragraph (3)(e), the governing body shall negotiate
116 a contract with ~~The committee may request, accept, and consider~~
117 ~~proposals for the compensation to be paid only during~~
118 ~~competitive negotiations under paragraph (h).~~ the firm ranked
119 first may then negotiate a contract with the board giving, among
120 other things, a basis of its fee for that engagement. If the
121 governing body ~~board~~ is unable to negotiate a satisfactory
122 contract with that firm, negotiations with that firm shall be
123 formally terminated, and the governing body ~~board~~ shall then
124 undertake negotiations with the second-ranked firm. Failing
125 accord with the second-ranked firm, negotiations shall then be
126 terminated with that firm and undertaken with the third-ranked
127 firm. Negotiations with the other ranked firms shall be
128 undertaken in the same manner. The governing body ~~board~~, in
129 negotiating with firms, may reopen formal negotiations with any
130 one of the three top-ranked firms, but it may not negotiate with
131 more than one firm at a time. ~~The board shall also negotiate on~~
132 ~~the scope and quality of services. In making such determination,~~
133 ~~the board shall conduct a detailed analysis of the cost of the~~
134 ~~professional services required in addition to considering their~~
135 ~~scope and complexity. For contracts over \$50,000, the board~~
136 ~~shall require the firm receiving the award to execute a truth-~~
137 ~~in-negotiations certificate stating that the rates of~~
138 ~~compensation and other factual unit costs supporting the~~

139 ~~compensation are accurate, complete, and current at the time of~~
140 ~~contracting. Such certificate shall also contain a description~~
141 ~~and disclosure of any understanding that places a limit on~~
142 ~~current or future years' audit contract fees, including any~~
143 ~~arrangements under which fixed limits on fees will not be~~
144 ~~subject to reconsideration if unexpected accounting or auditing~~
145 ~~issues are encountered. Such certificate shall also contain a~~
146 ~~description of any services rendered by the certified public~~
147 ~~accountant or firm of certified public accountants at rates or~~
148 ~~terms that are not customary. Any auditing service contract~~
149 ~~under which such a certificate is required must contain a~~
150 ~~provision that the original contract price and any additions~~
151 ~~thereto shall be adjusted to exclude any significant sums by~~
152 ~~which the board determines the contract price was increased due~~
153 ~~to inaccurate or incomplete factual unit costs. All such~~
154 ~~contract adjustments shall be made within 1 year following the~~
155 ~~end of the contract.~~

156 (b) If compensation is one of the factors established
157 pursuant to paragraph (3)(a) and used in the evaluation of
158 proposals pursuant to paragraph (3)(d), the governing body shall
159 select the highest-ranked qualified firm or must document in its
160 public records the reason for not selecting the highest-ranked
161 qualified firm.

162 (c) The governing body may select a firm recommended by
163 the audit committee and negotiate a contract with such firm
164 using an appropriate alternative procurement method for which
165 compensation is not the sole or predominant factor used to
166 select the firm.

167 (d) In negotiations with firms under this section, the
 168 governing body may allow a designee to conduct negotiations on
 169 its behalf.

170 (5) The method used by the governing body to select a firm
 171 recommended by the audit committee and negotiate a contract with
 172 such firm must ensure that the agreed-upon compensation is
 173 reasonable to satisfy the requirements of s. 218.39 and the
 174 needs of the governing body.

175 (6)(j) If the governing body ~~board~~ is unable to negotiate
 176 a satisfactory contract with any of the recommended ~~selected~~
 177 firms, the committee shall recommend ~~select~~ additional firms,
 178 and negotiations ~~the board~~ shall continue ~~negotiations~~ in
 179 accordance with this section ~~subsection~~ until an agreement is
 180 reached.

181 (7) Every procurement of audit services shall be evidenced
 182 by a written contract embodying all provisions and conditions of
 183 the procurement of such services. For purposes of this section,
 184 an engagement letter signed and executed by both parties shall
 185 constitute a written contract. The written contract shall, at a
 186 minimum, include the following:

187 (a) A provision specifying the services to be provided and
 188 fees or other compensation for such services.

189 (b) A provision requiring that invoices for fees or other
 190 compensation be submitted in sufficient detail to demonstrate
 191 compliance with the terms of the contract.

192 (c) A provision specifying the contract period, including
 193 renewals, and conditions under which the contract may be
 194 terminated or renewed.

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195 (8) Written contracts entered into pursuant to subsection
196 (7) may be renewed. Such renewals may be done without the use of
197 the auditor selection procedures provided in this section.
198 Renewal of a contract shall be in writing.
199 Section 2. This act shall take effect July 1, 2005.