

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 601 CS Professional Services Acquisition
SPONSOR(S): Kottkamp & others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1784

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Brazzell</u>	<u>Everhart</u>
2) <u>State Administration Appropriations Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Dobbs</u>	<u>Belcher</u>
3) <u>State Administration Council</u>	<u></u>	<u>Brazzell</u>	<u>Bussey</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 601 w/CS amends the Consultants' Competitive Negotiation Act (CCNA). The CCNA requires state agencies and certain local government entities to use a specific competitive negotiation process to procure certain architectural, professional engineering, landscape architecture, and registered surveying and mapping services. This process currently provides for the qualification and ranking of firms followed by negotiations with the top-ranked firms.

The bill eliminates certain opportunities for the entities governed by the CCNA to consider compensation prior to commencing such negotiations or to force competition based on price. The bill also modifies the selection criteria for determining the top-ranked firms.

The fiscal impact of HB 601 w/CS on state and local governments is indeterminate because of the variability of types and sizes of procurements over time and across governments, and of the varied degree of use by affected governments of the methods prohibited by this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present situation

The Legislature enacted the Consultants' Competitive Negotiation Act (CCNA) in 1973 to govern the acquisition of architectural, professional engineering, and registered land surveying services by the state and certain local government entities. In the 1973 law, the Legislature declared that it was in the best interest of such entities, for purposes of public health, safety, and welfare and good fiscal management, ". . . to seek the most qualified and competent firms at fair, competitive, and reasonable compensation to provide professional services . . ." The Legislature revised the CCNA over the years and expanded it to include mapping and landscape architecture services.

Chapter 287.057, F.S., provides the competitive solicitation processes by which state agencies shall acquire certain commodities and contractual services; these processes include the invitation to bid, request for proposal, and invitation to negotiate. Each of these processes either requires or allows for the initial consideration of price. However, the CCNA requires state agencies, as well as certain local government entities, to use a different, specific competitive negotiation process to procure architectural, professional engineering, landscape architecture, and registered surveying and mapping services. In this process, when seeking such services with costs projected to exceed certain thresholds¹, the government entity must make a public announcement, then evaluate firms' current statements of qualifications and performance data. The government entity is required to select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services and then commence sequential negotiations on terms and compensation, beginning with the most highly-ranked firm.

The *2000 Model Procurement Code for State and Local Governments* published by the American Bar Association contains a similar process for procuring architectural, engineering, and land surveying services; it explains that

The principal reasons supporting this selection procedure . . . are the lack of a definitive scope of work for such services at the time the selection is made and the importance of selecting the best-qualified firm. In general, the architect-engineer or land surveyor is engaged to represent the [government entity]'s interests and, is, therefore, in a different relationship with the [government entity] from that normally existing in a buyer-seller situation. For these reasons, the qualifications, competence, and availability of the three most qualified architect-engineers or land surveying firms are considered initially, and price negotiated later. It is considered more desirable to make the qualification selection first and then to discuss the price because both parties need to review in detail what is involved in the work (for example, estimates of man-hours, personnel costs, and alternatives that the architect-engineer or land-surveyor should consider in depth). Once parameters have been fully discussed and understood and the architect-engineer or land surveyor proposes a fee for the work, the recommended procedure

¹ The CCNA does not provide a specific process for use when the cost of the desired services is below the threshold amounts cited in the CCNA.

requires the [government entity] to make its own evaluation and judgment as to the reasonableness of the fee.²

Effect of Bill

HB 601 w/CS amends the Consultants' Competitive Negotiation Act (CCNA) to eliminate certain opportunities for the government entities governed by the CCNA, when procuring certain professional services, to consider compensation prior to commencing negotiations or to force greater competition on price by:

- Specifying that figures or formulas from which compensation can be calculated is considered compensation,
- Prohibiting requiring contractors under continuing contract to bid against each other,
- Defining the term "negotiation" to exclude presentation of flat-fee schedules with no alternatives or discussion, and
- Requiring adherence to the CCNA's requirements if the majority of bids received exceed the thresholds.

The bill modifies the factors to be considered in determining the qualifications of a firm to include:

- Proven capability to meet time and budget requirements, and
- Location only if the agency has adopted a local-preference program.

C. SECTION DIRECTORY:

Section 1 revises s. 287.055, F.S., to amend the definitions of "compensation" and "continuing contract", add a definition for "negotiate", and amend procedures for public announcements and qualifications.

Section 2 provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate (See D. Fiscal Comments)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate (See D. Fiscal Comments)

² 2000 Model Procurement Code for State and Local Governments, American Bar Association Section of Public Contract Law, 2000, pp. 49-50.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown (See D. Fiscal Comments)

D. FISCAL COMMENTS:

The fiscal impact of HB 601 w/CS on state and local governments is indeterminate because of the variability of types and sizes of procurements over time and across governments, and of the varied degree of use by affected governments of the methods prohibited by this bill.

Some professional services firms whose services are governed by the CCNA may experience higher revenues due to governments' reduced ability to consider compensation prior to commencing negotiations or to force greater competition on price in procuring such services; other firms may experience lower revenues due to failure to win contracts in the future.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At the March 9, 2005, meeting of the Governmental Operations Committee, the committee adopted an amendment and reported the bill favorably with a committee substitute.

The amendment clarified the bill's provisions about situations when an agency uses a method other than the Consultants' Competitive Negotiation Act (CCNA) to procure professional services, specifying that the agency must reject all responses and use the CCNA to procure the services when the average of firms' responses under the alternative method exceeds the thresholds which trigger the use of the CCNA.

At the March 23, 2005, meeting of the State Administration Appropriations Committee, the committee adopted an amendment and reported the bill favorably with a committee substitute.

The amendment changed the term "average" to "majority" of the compensation proposed by firms in determining whether to reject all proposals; changed the term "professionals" to "firms providing professional services" under continuing contracts; changed the term "willingness" to "proven capability" to meet time and budget requirements; and clarified that location could be used as a rating criteria only if the agency had adopted a local-preference program.