

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Education Pre-K - 12 Committee

BILL: CS/SB 276

INTRODUCER: Committee on Governmental Oversight and Accountability and Senator Bennett

SUBJECT: Procurement

DATE: April 6, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Fav/CS
2.	Brown	Matthews	ED	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Legislative intent provides that in response to the significant cost and space overruns involved in the building of the First District Court of Appeals Courthouse in Tallahassee, Florida, this bill would require oversight by the Chief Financial Officer (CFO) in reviewing the process by which agencies procure building services. The CFO would report recommendations to the Legislature for amending law or rules to increase transparency and accountability in the state's design-build process.

This bill amends the Consultants' Competitive Negotiation Act (CCNA), which specifies how state agencies and political subdivisions procure services of design professionals, to allow agencies to reopen negotiations with any selected firm after terminating negotiations with another selected firm.

This bill substantially amends section 287.055 of the Florida Statutes, and creates an undesignated section of law.

II. Present Situation:

The Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for design professional services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of design professionals.

Florida's Consultants' Competitive Negotiation Act (CCNA), was enacted by the Legislature in 1973,¹ to specify the procedures to be followed when procuring the services of architects and engineers. The CCNA did not prohibit discussion of compensation in the initial vendor selection phase until 1988, when the Legislature enacted a provision requiring that consideration of compensation occur only during the selection phase.²

Currently, the CCNA in s. 287.055, F.S., specifies the process to be followed when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper. The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The public notice must provide a general description of the project and describe how the interested consultants may apply for consideration.

The CCNA provides a two-phase selection process.³ In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the bidders, ranked in order of preference, it considers most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the most highly qualified bidders, including willingness to meet time and budget requirements, past performance, location, recent, current, and projected firm workloads, volume of work previously awarded to the firm, and whether the firm is certified as a minority business.⁴

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid. Section 287.055(2)(d), F.S., defines

¹ Chapter 73-19, L.O.F.

² Chapter 88-108, L.O.F.

³ Section 287.055(4) and (5), F.S.

⁴ The following is a full listing of the factors that s. 287.055(4)(b), F.S., requires agencies to consider: the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and, the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

the term “compensation” to mean “the amount paid by the agency for professional services,” regardless of whether stated as compensation or as other types of rates.

In the second phase, the “competitive negotiation,” the agency then negotiates compensation with the most qualified of the three selected firms. If a satisfactory contract cannot be negotiated, the agency must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract. If a satisfactory contract cannot be negotiated with any of the three selected, the agency must begin the selection process again.

Financial and Operational Management of the Construction of State Buildings

Various provisions in ch. 216, F.S., specify budget provisions related to state construction of buildings. Section 215.0158, F.S., requires a yearly assessment of facility needs, s. 216.043, F.S., provides the requirements for budgets for fixed capital outlay projects, and s. 216.182, F.S., specifies that the Executive Office of the Governor has the authority to approve the program plans of fixed capital outlay projects.

The duties of the Department of Management Services (DMS) related to the management of state construction projects are specified in ch. 255, F.S. Section 255.29, F.S., specifies the procedures for determining the qualifications of bidders for construction contracts, and awarding the bids. Section 255.30, F.S., allows for the delegation of supervisory authority of construction projects, and s. 255.31, F.S., provides the authority to DMS to manage construction projects for state and local governments. Section 255.32, F.S., specifies the procedures for state construction management contracting.

III. Effect of Proposed Changes:

Legislative findings are provided that detail the significant cost and space overruns involved in the recent building of the First District Court of Appeals in Tallahassee, Florida, commonly referred to by critics as the “Taj Mahal”.

The bill requires the Chief Financial Officer to review the process by which agencies procure services for building and maintaining state buildings, and report to the Legislature by October 1, 2011, recommendations for increasing transparency and accountability in the state’s design-build process through statutory and rule changes.

The bill changes a provision in s. 287.055(5)(b), F.S., specifying the order in which agencies must negotiate with selected vendors. Agencies would no longer be required to undertake negotiations with, for example, the third most qualified firm, if negotiations with the second most qualified firm were terminated. Agencies could reopen negotiations with any selected firm upon terminating negotiations with another selected firm.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Agencies may be able to negotiate lower costs in contracts for design professional services.

VI. Technical Deficiencies:

On line 31, the bill references two posh “robbing” rooms. This should read “robing” rooms.

VII. Related Issues:

The preamble was drafted for an amendment that has become section 1 of the bill. As the result of adopting amendments and the subsequent committee substitute, the preamble applies to section 2 of the bill. To the extent that a preamble may be used to provide legislative intent in interpreting a statute, the Legislature may wish to consider whether the preamble should be applicable to section 2 of the bill.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on February 8, 2011:

Removed from the bill a provision that would have allowed for the consideration of cost in the competitive selection process. The result is that consideration of cost is prohibited in the selection process, which is how the law currently stands.

Added a requirement that the Chief Financial Officer review the process by which agencies procure services for building and maintaining state buildings, and report to the

Legislature on any recommendations for increasing transparency and accountability in the state's design-build process.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
