

**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.)

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: SB 276

INTRODUCER: Senator Bennett

SUBJECT: The Consultants' Competitive Negotiation Act

DATE: January 31, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	<b>Pre-meeting</b>
2.	_____	_____	ED	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill amends the Consultants' Competitive Negotiation Act (CCNA), which specifies how state agencies and political subdivisions procure the services of design professionals, to allow cost to be considered in the initial selection of firms, and 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.

**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,<sup>1</sup> 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

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<sup>1</sup> Chapter 73-19, L.O.F.

phase until 1988, when the Legislature enacted a provision requiring that consideration of compensation occur only during the selection phase.<sup>2</sup>

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.<sup>3</sup> 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 three 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 three 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.<sup>4</sup>

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 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.

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<sup>2</sup> Chapter 88-108, L.O.F.

<sup>3</sup> Section 287.055(4) and (5), F.S.

<sup>4</sup> The following is a full listing of the factors that s. 287.055(4)(b), F.S., requires that the agency 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.

**III. Effect of Proposed Changes:**

The bill removes a provision in s. 287.055(4)(b), F.S., specifying that proposals for compensation may only be considered during the competitive negotiation phase of a procurement for design professional services. The effect would be to permit consideration of compensation during the selection process.

The bill also 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 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. For example, agencies could reopen negotiations with the first most qualified firm after terminating negotiations with the second most qualified firm.

The bill takes effect July 1, 2011.

**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:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

**B. Amendments:**

None.

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

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