

By Senator Bennett

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1 A bill to be entitled

2 An act relating to the procurement of architectural,
3 engineering, and other professional services by a
4 governmental agency or school board; amending s.
5 287.055, F.S.; allowing compensation to be a
6 considering factor during the competitive selection
7 process for professional services; authorizing the
8 agency or board to reopen negotiations with a selected
9 firm following termination of negotiations with other
10 firms; providing an effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

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14 Section 1. Subsections (4) and (5) of section 287.055,
15 Florida Statutes, are amended to read:

16 287.055 Acquisition of professional architectural,
17 engineering, landscape architectural, or surveying and mapping
18 services; definitions; procedures; contingent fees prohibited;
19 penalties.—

20 (4) COMPETITIVE SELECTION.—

21 (a) For each proposed project, the agency shall evaluate
22 current statements of qualifications and performance data on
23 file with the agency, together with those that may be submitted
24 by other firms regarding the proposed project, and shall conduct
25 discussions with, and may require public presentations by, no
26 fewer than three firms regarding their qualifications, approach
27 to the project, and ability to furnish the required services.

28 (b) The agency shall select in order of preference no fewer
29 than three firms deemed to be the most highly qualified to

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30 perform the required services. In determining whether a firm is
31 qualified, the agency shall consider such factors as the ability
32 of professional personnel; whether a firm is a certified
33 minority business enterprise; past performance; willingness to
34 meet time and budget requirements; location; recent, current,
35 and projected workloads of the firms; and the volume of work
36 previously awarded to each firm by the agency, with the object
37 of effecting an equitable distribution of contracts among
38 qualified firms, provided such distribution does not violate the
39 principle of selection of the most highly qualified firms. The
40 agency may request, accept, and consider proposals for the
41 compensation to be paid under the contract ~~only during~~
42 ~~competitive negotiations under subsection (5).~~

43 (c) This subsection does not apply to a professional
44 service contract for a project the basic construction cost of
45 which is estimated by the agency to be not in excess of the
46 threshold amount provided in s. 287.017 for CATEGORY FIVE or for
47 a planning or study activity when the fee for professional
48 services is not in excess of the threshold amount provided in s.
49 287.017 for CATEGORY TWO. However, if, in using another
50 procurement process, the majority of the compensation proposed
51 by firms is in excess of the appropriate threshold amount, the
52 agency shall reject all proposals and reinitiate the procurement
53 pursuant to this subsection.

54 (d) ~~Nothing in~~ This section does not act shall be construed
55 ~~to~~ prohibit a continuing contract between a firm and an agency.

56 (5) COMPETITIVE NEGOTIATION.—

57 (a) The agency shall negotiate a contract with the most
58 qualified firm for professional services at compensation which

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59 the agency determines is fair, competitive, and reasonable. In
60 making such determination, the agency shall conduct a detailed
61 analysis of the cost of the professional services required in
62 addition to considering their scope and complexity. For any
63 lump-sum or cost-plus-a-fixed-fee professional service contract
64 over the threshold amount provided in s. 287.017 for CATEGORY
65 FOUR, the agency shall require the firm receiving the award to
66 execute a truth-in-negotiation certificate stating that wage
67 rates and other factual unit costs supporting the compensation
68 are accurate, complete, and current at the time of contracting.
69 Any professional service contract under which such a certificate
70 is required must contain a provision that the original contract
71 price and any additions thereto will be adjusted to exclude any
72 significant sums by which the agency determines the contract
73 price was increased due to inaccurate, incomplete, or noncurrent
74 wage rates and other factual unit costs. All such contract
75 adjustments must be made within 1 year following the end of the
76 contract.

77 (b) Should the agency be unable to negotiate a satisfactory
78 contract with the firm considered to be the most qualified at a
79 price the agency determines to be fair, competitive, and
80 reasonable, negotiations with that firm must be formally
81 terminated. The agency shall then undertake negotiations with
82 the second most qualified firm. Failing accord with the second
83 most qualified firm, the agency must terminate negotiations. The
84 agency may ~~shall~~ then undertake negotiations with the third most
85 qualified firm. The agency may reopen negotiations with any
86 selected firm upon terminating negotiations with another
87 selected firm.

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88 (c) Should the agency be unable to negotiate a satisfactory
89 contract with any of the selected firms, the agency shall select
90 additional firms in the order of their competence and
91 qualification and continue negotiations in accordance with this
92 subsection until an agreement is reached.

93 Section 2. This act shall take effect July 1, 2011.