

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 789 Procurement of Professional Services  
**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee; Stone  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	10 Y, 5 N, As CS	Moore	Harrington
2) Government Accountability Committee			

### SUMMARY ANALYSIS

In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA), which requires state and local government agencies to procure the "professional services" of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price.

The CCNA establishes a three-phase process for procuring professional services:

- Phase 1 – Public announcement and qualification.
- Phase 2 – Competitive selection.
- Phase 3 – Competitive negotiation.

During Phase 1, state and local agencies must publicly announce each occasion when professional services will be purchased for certain projects and activities. A consultant who wishes to provide professional services to an agency must first be certified by the agency as qualified to provide the needed services.

During Phase 2, an agency must evaluate the qualifications and past performance of interested consultants and conduct discussions with at least three consultants regarding their qualifications, approach to the project, and ability to furnish the required services. The agency must then select at least three consultants, ranked in order of preference, that it considers the most highly qualified to perform the required services.

During Phase 3, the competitive negotiation phase, an agency must negotiate compensation with each consultant in order of rank, beginning with the highest ranked, until an agreement is reached. If the agency is unable to negotiate a satisfactory contract with a consultant, negotiations with that consultant must be formally terminated. Once the agency terminates negotiations with a consultant at any point in the process, the agency may not resume negotiations with that consultant for that particular project.

The bill amends the current CCNA process to replace the competitive negotiation phase with a best value selection process. Under the new process, each firm selected as one of the most qualified during the competitive selection phase must submit a compensation proposal for the proposed work. The agency must evaluate the compensation proposal, the information provided during the competitive selection phase, and any other information the agency requests in order to make a best value selection. However, the bill provides that compensation may not exceed 50 percent of the total weight of the published evaluation criteria.

The bill also authorizes an agency to reject any or all submissions received in response to the public announcement for a proposed project.

The bill specifies that the CCNA does not apply to transportation projects for which federal aid funds are available and requires such projects to be procured in accordance with federal law.

The bill may have an indeterminate positive fiscal impact on the state and local governments.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0789a.OTA

**DATE:** 3/29/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act,<sup>1</sup> which requires federal agencies to use a qualifications-based selection process for architectural, engineering, and associated services, such as mapping and surveying. Qualifications-based selection is a process whereby service providers are retained on the basis of competency, qualifications, and experience, rather than price. According to the National Society of Professional Engineers, 47 states and numerous localities have implemented a qualifications-based selection process similar to the process outlined in the Brooks Act for procuring design services.<sup>2</sup>

In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA),<sup>3</sup> which is modeled after the Brooks Act. The CCNA requires state and local government agencies to procure the "professional services" of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process. However, the CCNA explicitly states that it does not prohibit a continuing contract<sup>4</sup> between a firm and an agency.<sup>5</sup> The CCNA prohibits excluding the public from CCNA proceedings.<sup>6</sup>

The CCNA establishes a three-phase process for procuring professional services:

- Phase 1 – Public announcement and qualification.
- Phase 2 – Competitive selection.
- Phase 3 – Competitive negotiation.

During Phase 1, the public announcement and qualification phase, state and local agencies must publicly announce each occasion when professional services will be purchased for one of the following:

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000; or
- A planning or study activity, when the fee for professional services exceeds \$35,000.<sup>7</sup>

The public notice must include a general description of the project and indicate how interested firms or individuals (consultants) may apply for consideration.<sup>8</sup>

A consultant who wishes to provide professional services to an agency must first be certified by the agency as qualified to provide the needed services pursuant to law and the agency's regulations.<sup>9</sup> In

---

<sup>1</sup> Public Law 92-582, 86 Stat. 1278 (1972).

<sup>2</sup> *Qualifications-Based Selection of Engineering Services*, NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS, <https://www.nspe.org/resources/issues-and-advocacy/action-issues/qualifications-based-selection-engineering-services> (last visited March 6, 2017).

<sup>3</sup> Codified as s. 287.055, F.S.

<sup>4</sup> The CCNA defines the term "continuing contract" to mean a contract for professional services entered into in accordance with all the procedures of the CCNA between an agency and a firm whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each project under the contract does not exceed \$2 million, for study activity if the fee for professional services for each study under the contract does not exceed \$200,000, or for work of a specified nature as outlined in the contract, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts may not be required to bid against one another. Section 287.055(2)(g), F.S.

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

<sup>6</sup> Section 287.055(3)(e), F.S.

<sup>7</sup> Section 287.055(3)(a)1., F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 287.055(3)(c), F.S.

determining whether a consultant is qualified, the agency must consider the capabilities, adequacy of personnel, past record, and experience of the consultant as well as whether the consultant is a certified minority business enterprise.<sup>10</sup> Each agency must encourage consultants desiring to provide professional services to the agency to annually submit statements of qualifications and performance data.<sup>11</sup>

During Phase 2, the competitive selection phase, an agency must evaluate the qualifications and past performance of interested consultants and conduct discussions with at least three consultants regarding their qualifications, approach to the project, and ability to furnish the required services.<sup>12</sup> The agency must then select at least three consultants, ranked in order of preference, that it considers the most highly qualified to perform the required services. In determining whether a consultant is qualified, the agency must consider such factors as the ability of professional personnel; whether a consultant is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the consultant; and the volume of work previously awarded to each consultant by the agency, with the object of effecting an equitable distribution of contracts among qualified consultants, provided such distribution does not violate the principle of selecting the most highly qualified consultants. During this phase, the CCNA prohibits the agency from requesting, accepting, or considering proposals for the compensation to be paid.<sup>13</sup>

During Phase 3, the competitive negotiation phase, an agency must first negotiate compensation with the highest ranked consultant. If the agency is unable to negotiate a satisfactory contract with that consultant at a price the agency determines to be fair, competitive, and reasonable, negotiations with the consultant must be formally terminated. The agency must then negotiate with the remaining ranked consultants, in order of rank, and follow the same process until an agreement is reached. If the agency is unable to negotiate a satisfactory contract with any of the ranked consultants, the agency must select additional consultants, ranked in the order of competence and qualification without regard to price, and continue negotiations until an agreement is reached.<sup>14</sup> Once the agency terminates negotiations with a consultant at any point in the process, the agency may not resume negotiations with that consultant for that particular project.

### **Effect of the Bill**

The bill amends the current CCNA process to replace the competitive negotiation phase with a best value selection process. Under the new process, each firm selected as one of the most qualified during the competitive selection phase must submit a compensation proposal for the proposed work. The agency must evaluate the compensation proposal, the information provided during the competitive selection phase, and any other information the agency requests in order to make a best value selection. However, the bill provides that compensation may not exceed 50 percent of the total weight of the published evaluation criteria.

The bill authorizes an agency to reject any or all submissions received in response to the public announcement for a proposed project.

The bill removes the requirement for each agency to encourage design consultants desiring to provide professional services to the agency to annually submit statements of qualifications and performance data. Instead, an agency must determine whether a candidate is qualified for each specific project.

The bill specifies that the CCNA does not apply to transportation projects for which federal aid funds are available and requires such projects to be procured in accordance with federal law.

---

<sup>10</sup> Section 287.055(3)(d), F.S.

<sup>11</sup> Section 287.055(3)(b), F.S.

<sup>12</sup> Section 287.055(4)(a), F.S.

<sup>13</sup> The CCNA did not prohibit discussion of compensation in the initial vendor selection phase until 1988, when the Legislature enacted a provision that allows consideration of compensation to occur only during the negotiation phase. Chapter 88-108, L.O.F.

<sup>14</sup> Section 287.055(5), F.S.

The bill authorizes the Department of Management Services to adopt rules.

Finally, the bill reorganizes the section.

**B. SECTION DIRECTORY:**

Section 1. amends s. 287.055, F.S., relating to acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services.

Section 2. provides an effective date of July 1, 2017.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill does not appear to impact state government revenues.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on state agencies if they are able to negotiate lower costs in contracts for design professional services.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on local government agencies if they are able to negotiate lower costs in contracts for design professional services.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill authorizes the Department of Management Services to adopt rules.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 28, 2017, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment specified that the CCNA does not apply to transportation projects for which federal aid funds are available and required such projects to be procured in accordance with federal law.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.