

1 A bill to be entitled

2 An act relating to the procurement of professional
3 services; amending s. 287.055, F.S.; removing the
4 requirement for agencies to encourage certain firms to
5 submit annual statements of qualifications and
6 performance data; clarifying provisions relating to
7 selection of firms by an agency under the competitive
8 selection process; authorizing an agency to reject any
9 or all submissions received in response to a public
10 announcement under the competitive selection process;
11 creating a best value selection process; removing a
12 requirement that an agency formally terminate
13 negotiations with the most qualified firm when the
14 agency is unable to negotiate a satisfactory contract
15 and undertake negotiations with the second most
16 qualified firm; authorizing the Department of
17 Management Services to adopt rules; providing an
18 exemption for certain projects and requiring
19 compliance with federal law; providing an effective
20 date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsections (6) through (11) of section
25 287.055, Florida Statutes, are renumbered as subsections (7)

26 through (12), respectively, present subsections, (3), (4), (5),
 27 and (7) are amended, and new subsections (6), (13), and (14) are
 28 added to that section to read:

29 287.055 Acquisition of professional architectural,
 30 engineering, landscape architectural, or surveying and mapping
 31 services; definitions; procedures; contingent fees prohibited;
 32 penalties.—

33 (3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.—

34 (a)1. Each agency shall publicly announce, in a uniform
 35 and consistent manner, each occasion when professional services
 36 must be purchased for a project the basic construction cost of
 37 which is estimated by the agency to exceed the threshold amount
 38 provided in s. 287.017 for CATEGORY FIVE or for a planning or
 39 study activity when the fee for professional services exceeds
 40 the threshold amount provided in s. 287.017 for CATEGORY TWO,
 41 except in cases of valid public emergencies certified by the
 42 agency head. The public notice must include a general
 43 description of the project and must indicate how interested
 44 consultants may apply for consideration.

45 2. Each agency shall provide a good faith estimate in
 46 determining whether the proposed activity meets the threshold
 47 amounts referred to in this paragraph.

48 (b) ~~Each agency shall encourage firms engaged in the~~
 49 ~~lawful practice of their professions that desire to provide~~
 50 ~~professional services to the agency to submit annually~~

51 ~~statements of qualifications and performance data.~~

52 ~~(e)~~ Any firm or individual desiring to provide
53 professional services to the agency must ~~first~~ be certified by
54 the agency as qualified pursuant to law and the regulations of
55 the agency. The agency must find that the firm or individual to
56 be employed is fully qualified to render the required service.

57 (c) Among the factors to be considered in evaluating the
58 firm or individual ~~making this finding~~ are the capabilities,
59 adequacy of personnel, past record, ~~and~~ experience of the firm
60 or individual, and any other factors determined by the agency to
61 be applicable to its particular requirements.

62 ~~(d)~~ Each agency shall also evaluate ~~professional services,~~
63 ~~including capabilities, adequacy of personnel, past record,~~
64 ~~experience,~~ whether the firm is a certified minority business
65 enterprise as defined by the Florida Small and Minority Business
66 Assistance Act, ~~and other factors determined by the agency to be~~
67 ~~applicable to its particular requirements.~~ When securing
68 professional services, an agency must endeavor to meet the
69 minority business enterprise procurement goals under s.
70 287.09451.

71 ~~(e)~~ ~~The public must not be excluded from the proceedings~~
72 ~~under this section.~~

73 (4) COMPETITIVE SELECTION.—

74 (a) For each proposed project, the agency shall evaluate
75 ~~current~~ statements of qualifications and performance data ~~on~~

76 ~~file with the agency, together with those that may be submitted~~
77 ~~by other firms~~ desiring to provide professional services to the
78 agency for ~~regarding~~ the proposed project, and shall conduct
79 discussions with, and may require public presentations by, at
80 least ~~no fewer than~~ three firms regarding their qualifications,
81 approach to the project, and ability to furnish the required
82 services.

83 (b) The agency shall select in order of preference at
84 least ~~no fewer than~~ three firms deemed to be the most highly
85 qualified to perform the required services. In determining
86 whether a firm is qualified, the agency shall consider such
87 factors provided in subsection (3) as well as the firm's ~~as the~~
88 ~~ability of professional personnel; whether a firm is a certified~~
89 ~~minority business enterprise; past performance;~~ willingness to
90 meet time and budget requirements; location; recent, current,
91 and projected workloads of the firm ~~firms~~; and the volume of
92 work previously awarded to the ~~each~~ firm by the agency, with the
93 object of effecting an equitable distribution of contracts among
94 qualified firms, provided such distribution does not violate the
95 principle of selection of the most highly qualified firms. The
96 agency may request, accept, and consider proposals for the
97 compensation to be paid under the contract only during
98 competitive negotiations under subsection (5).

99 (c) This subsection does not apply to a professional
100 service contract for a project the basic construction cost of

101 which is estimated by the agency to be not in excess of the
102 threshold amount provided in s. 287.017 for CATEGORY FIVE or for
103 a planning or study activity when the fee for professional
104 services is not in excess of the threshold amount provided in s.
105 287.017 for CATEGORY TWO. However, if, in using another
106 procurement process, the majority of the compensation proposed
107 by firms is in excess of the appropriate threshold amount, the
108 agency shall reject all proposals and reinitiate the procurement
109 pursuant to this subsection.

110 (d) The agency may reject any or all submissions received
111 in response to the public announcement ~~Nothing in this act shall~~
112 ~~be construed to prohibit a continuing contract between a firm~~
113 ~~and an agency.~~

114 (5) BEST VALUE SELECTION PROCESS ~~COMPETITIVE NEGOTIATION.~~—

115 (a) Each firm selected as one of the most qualified shall
116 submit a compensation proposal for the proposed work. The
117 proposal shall be evaluated along with the information obtained
118 pursuant to subsection (4) and any other information the agency
119 chooses to request with the compensation proposal to make a best
120 value selection. Compensation may not exceed 50 percent of the
121 total weight of the published evaluation criteria.

122 (b) The agency shall negotiate a contract with the most
123 qualified firm for professional services at compensation which
124 the agency determines is fair, competitive, and reasonable. In
125 making such determination, the agency shall conduct a detailed

126 analysis of the cost of the professional services required in
127 addition to considering their scope and complexity. ~~For any~~
128 ~~lump-sum or cost-plus-a-fixed-fee professional service contract~~
129 ~~over the threshold amount provided in s. 287.017 for CATEGORY~~
130 ~~FOUR, the agency shall require the firm receiving the award to~~
131 ~~execute a truth-in-negotiation certificate stating that wage~~
132 ~~rates and other factual unit costs supporting the compensation~~
133 ~~are accurate, complete, and current at the time of contracting.~~
134 ~~Any professional service contract under which such a certificate~~
135 ~~is required must contain a provision that the original contract~~
136 ~~price and any additions thereto will be adjusted to exclude any~~
137 ~~significant sums by which the agency determines the contract~~
138 ~~price was increased due to inaccurate, incomplete, or noncurrent~~
139 ~~wage rates and other factual unit costs. All such contract~~
140 ~~adjustments must be made within 1 year following the end of the~~
141 ~~contract.~~

142 ~~(b) Should the agency be unable to negotiate a~~
143 ~~satisfactory contract with the firm considered to be the most~~
144 ~~qualified at a price the agency determines to be fair,~~
145 ~~competitive, and reasonable, negotiations with that firm must be~~
146 ~~formally terminated. The agency shall then undertake~~
147 ~~negotiations with the second most qualified firm. Failing accord~~
148 ~~with the second most qualified firm, the agency must terminate~~
149 ~~negotiations. The agency shall then undertake negotiations with~~
150 ~~the third most qualified firm.~~

151 (c) ~~If should~~ the agency ~~is be~~ unable to negotiate a
152 satisfactory contract with any of the selected firms, the agency
153 shall select additional firms in the order of their competence
154 and qualification and continue negotiations in accordance with
155 this subsection until an agreement is reached.

156 (6) TRUTH-IN-NEGOTIATION CERTIFICATE.—For any lump-sum or
157 cost-plus-a-fixed-fee professional service contract over the
158 threshold amount provided in s. 287.017 for CATEGORY FOUR, the
159 agency shall require the firm receiving the award to execute a
160 truth-in-negotiation certificate stating that wage rates and
161 other factual unit costs supporting the compensation are
162 accurate, complete, and current at the time of contracting. Any
163 professional service contract under which such a certificate is
164 required must contain a provision that the original contract
165 price and any additions thereto will be adjusted to exclude any
166 significant sums by which the agency determines the contract
167 price was increased due to inaccurate, incomplete, or noncurrent
168 wage rates and other factual unit costs. All such contract
169 adjustments must be made within 1 year after the contract ends.

170 (8) ~~(7)~~ AUTHORITY OF DEPARTMENT OF MANAGEMENT SERVICES.—

171 (a) Notwithstanding ~~any other provision of~~ this section,
172 the Department of Management Services shall be the agency of
173 state government which is solely and exclusively authorized and
174 empowered to administer and perform the functions described in
175 subsections (3), (4), and (5) respecting all projects for which

176 the funds necessary to complete same are appropriated to the
177 Department of Management Services, irrespective of whether such
178 projects are intended for the use and benefit of the Department
179 of Management Services or any other agency of government.
180 However, nothing herein shall be construed to be in derogation
181 of any authority conferred on the Department of Management
182 Services by other express provisions of law. Additionally, any
183 agency of government may, with the approval of the Department of
184 Management Services, delegate to the Department of Management
185 Services authority to administer and perform the functions
186 described in subsections (3), (4), and (5). Under the terms of
187 the delegation, the agency may reserve its right to accept or
188 reject a proposed contract.

189 (b) The department may adopt rules necessary to carry out
190 this section.

191 (13) PUBLIC ACCESS.—The public must not be excluded from
192 the proceedings under this section.

193 (14) CONTINUING CONTRACT.—Nothing in this act shall be
194 construed to prohibit a continuing contract between a firm and
195 an agency.

196 (15) EXEMPTION.—This act does not apply to transportation
197 projects for which federal aid funds are available. Such
198 transportation projects must be procured in accordance with
199 federal law.

200 Section 2. This act shall take effect July 1, 2017.