

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 effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Subsections (6) through (11) of section
23 287.055, Florida Statutes, are renumbered as subsections (7)
24 through (12), respectively, present subsections, (3), (4), (5),
25 and (7) are amended, and new subsections (6), (13), and (14) are

26 | added to that section to read:

27 | 287.055 Acquisition of professional architectural,
28 | engineering, landscape architectural, or surveying and mapping
29 | services; definitions; procedures; contingent fees prohibited;
30 | penalties.—

31 | (3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.—

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

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

46 | (b) ~~Each agency shall encourage firms engaged in the~~
47 | ~~lawful practice of their professions that desire to provide~~
48 | ~~professional services to the agency to submit annually~~
49 | ~~statements of qualifications and performance data.~~

50 | (e) Any firm or individual desiring to provide

51 professional services to the agency must ~~first~~ be certified by
52 the agency as qualified pursuant to law and the regulations of
53 the agency. The agency must find that the firm or individual to
54 be employed is fully qualified to render the required service.

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

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

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

71 (4) COMPETITIVE SELECTION.—

72 (a) For each proposed project, the agency shall evaluate
73 ~~current~~ statements of qualifications and performance data ~~on~~
74 ~~file with the agency, together with those that may be submitted~~
75 ~~by other firms~~ desiring to provide professional services to the

76 | agency for ~~regarding~~ the proposed project, and shall conduct
77 | discussions with, and may require public presentations by, at
78 | least ~~no fewer than~~ three firms regarding their qualifications,
79 | approach to the project, and ability to furnish the required
80 | services.

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

97 | (c) This subsection does not apply to a professional
98 | service contract for a project the basic construction cost of
99 | which is estimated by the agency to be not in excess of the
100 | threshold amount provided in s. 287.017 for CATEGORY FIVE or for

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

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

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

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

120 (b) The agency shall negotiate a contract with the most
121 qualified firm for professional services at compensation which
122 the agency determines is fair, competitive, and reasonable. In
123 making such determination, the agency shall conduct a detailed
124 analysis of the cost of the professional services required in
125 addition to considering their scope and complexity. ~~For any~~

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

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

149 ~~(c) If Should the agency is be unable to negotiate a~~
150 ~~satisfactory contract with any of the selected firms, the agency~~

151 shall select additional firms in the order of their competence
 152 and qualification and continue negotiations in accordance with
 153 this subsection until an agreement is reached.

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

168 (8)-(7) AUTHORITY OF DEPARTMENT OF MANAGEMENT SERVICES.—
 169 (a) Notwithstanding any other provision of this section,
 170 the Department of Management Services shall be the agency of
 171 state government which is solely and exclusively authorized and
 172 empowered to administer and perform the functions described in
 173 subsections (3), (4), and (5) respecting all projects for which
 174 the funds necessary to complete same are appropriated to the
 175 Department of Management Services, irrespective of whether such

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

187 (b) The department may adopt rules necessary to carry out
188 this section.

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

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

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