

Committee Substitute for Committee Substitute for
Committee Substitute for Senate Bill No. 1784

An act relating to professional services acquisition; amending s. 287.055, F.S.; revising certain definitions; defining the term “negotiate”; providing additional criteria for processing bids to purchase professional services which exceed certain threshold amounts; amending s. 287.17, F.S.; revising the limitation on the use of state aircraft; providing an effective date.

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

Section 1. Paragraphs (d) and (g) of subsection (2), paragraph (a) of subsection (3), and paragraphs (b) and (c) of subsection (4) of section 287.055, Florida Statutes, are amended, and paragraph (l) is added to subsection (2) of that section, to read:

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

(2) DEFINITIONS.—For purposes of this section:

(d) “Compensation” means the ~~total~~ amount paid by the agency for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated.

(g) A “continuing contract” is a contract for professional services entered into in accordance with all the procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for projects in which construction costs do not exceed \$1 million, for study activity when the fee for such professional service does not exceed \$50,000, or for work of a specified nature as outlined in the contract required by the agency, with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another.

(l) “Negotiate” or any form of that word means to conduct legitimate, arms length discussions and conferences to reach an agreement on a term or price. For purposes of this section, the term does not include presentation of flat-fee schedules with no alternatives or discussion.

(3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.—

(a)1. Each agency shall publicly announce, in a uniform and consistent manner, each occasion when professional services must be purchased for a project the basic construction cost of which is estimated by the agency to exceed the threshold amount provided in s. 287.017 for CATEGORY FIVE or for a planning or study activity when the fee for professional services

exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, except in cases of valid public emergencies certified by the agency head. The public notice must include a general description of the project and must indicate how interested consultants may apply for consideration.

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

(4) COMPETITIVE SELECTION.—

(b) The agency shall select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the agency shall consider such factors as 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. The agency may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations under subsection (5).

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

Section 2. Section 287.17, Florida Statutes, is amended to read:

(Substantial rewording of section. See section 287.17, F.S., for present text.)

287.17 Limitation on use of motor vehicles and aircraft.—

(1) The aircraft and motor vehicles owned, leased, or operated by any state agency, as defined in s. 287.012, shall be available for official state business only as authorized by agency heads, as defined in s. 287.012.

(2) The following criteria shall be considered in determining appropriate uses of motor vehicles and aircraft:

(a) Whether the use of a motor vehicle or aircraft is necessary to carry out state official or employee job assignments.

(b) Whether the use of a motor vehicle or aircraft is for transporting an employee, state official, or other person authorized by the agency head for

purposes of conducting official state business or for purposes of performing services for the state.

(c) Whether the Department of Law Enforcement has been directed by the agency head to provide security or transportation pursuant to s. 943.68.

(d) Whether an emergency exists requiring the use of a motor vehicle or aircraft for the protection of life or property.

(3)(a) The term “official state business” may not be construed to permit the use of a motor vehicle or aircraft for commuting purposes, unless special assignment of a motor vehicle is authorized as a perquisite by the Department of Management Services, required by an employee after normal duty hours to perform duties of the position to which assigned, or authorized for an employee whose home is the official base of operation.

(b) For motor vehicles used by a state employee whose duties are those of a law enforcement officer, as defined in s. 943.10, the term “official state business” shall be construed to permit the use of the vehicle during normal duty hours to and from lunch or meal breaks and incidental stops for personal errands, but not substantial deviations from official state business, if such use is at the direction of or with the permission of the agency head.

(4) An agency head, as defined in s. 287.012, shall comply with the following criteria for the special assignment of motor vehicles:

(a) An agency head may assign a motor vehicle to a state officer or employee only if the officer or employee is projected to drive the motor vehicle a minimum of 10,000 miles annually on official state business, unless an agency head annually provides written justification for the need of the assignment of a motor vehicle. Commuting mileage incidental to use of the motor vehicle on official state business shall be excluded from calculating the projected mileage. Priority in assigning motor vehicles shall be given to those employees who drive over 15,000 miles annually on state business.

(b) An agency head may assign motor vehicles to state officers and employees who perform duties related to law enforcement. However, the agency head shall not assign a pursuit motor vehicle to an officer or employee whose job duties do not routinely require performance of a patrol or law enforcement function requiring a pursuit vehicle.

(5) Each state agency’s head shall, by December 31, 2000, conduct a review of motor vehicle utilization with oversight from the agency’s inspector general. This review shall consist of two parts. The first part of the review shall determine the number of miles that each assigned motor vehicle has been driven on official state business in the past fiscal year. Commuting mileage shall be excluded from calculating vehicle use. The purpose of this review is to determine whether employees with assigned motor vehicles are driving the vehicles a sufficient number of miles to warrant continued vehicle assignment. The second part of the review shall identify employees who have driven personal vehicles extensively on state business in the past fiscal year. The purpose of this review is to determine whether it would be cost-effective to provide state motor vehicles to such employees. In making this

determination, the inspector general shall use the break-even mileage criteria developed by the Department of Management Services. A copy of the review shall be presented to the Office of Program Policy Analysis and Government Accountability.

(6) A person who is not otherwise authorized in this section may accompany the Governor, the Lieutenant Governor, a member of the Cabinet, the President of the Senate, the Speaker of the House of Representatives, or the Chief Justice of the Supreme Court when such official is traveling on state aircraft for official state business and the aircraft is traveling with seats available. Transportation of a person accompanying any official specified in this subsection shall be approved by the official, who shall also guarantee payment of the transportation charges. When the person accompanying such official is not traveling on official state business as provided in this section, the transportation charge shall be a prorated share of all fixed and variable expenses related to the ownership, operation, and use of such state aircraft. The spouse or immediate family members of any official specified in this subsection may, with payment of transportation charges, accompany the official when such official is traveling for official state business and the aircraft has seats available.

(7) It is the intention of the Legislature that persons traveling on state aircraft for purposes consistent with, but not necessarily constituting, official state business may travel only when accompanying persons who are traveling on official state business and that such persons shall pay the state for all costs associated with such travel. A person traveling on state aircraft for purposes other than official state business shall pay for any trip not exclusively for state business by paying a prorated share of all fixed and variable expenses related to the ownership, operation, and use of such aircraft.

Section 3. This act shall take effect July 1, 2005.

Approved by the Governor June 14, 2005.

Filed in Office Secretary of State June 14, 2005.