

House Bill No. 349

An act relating to auditor selection procedures; amending s. 218.391, F.S.; revising the auditor selection procedures that local governmental entities, district school boards, charter schools, and charter technical career centers must use in selecting auditors to conduct certain required financial audits; revising provisions relating to membership, purposes, and duties of audit committees required to be established to aid in such selection; providing for requests for proposals; providing review and ranking requirements; requiring written contracts and providing requirements therefor, including renewal requirements; providing an effective date.

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

Section 1. Section 218.391, Florida Statutes, is amended to read:

218.391 Auditor selection procedures.—

(1) Each local governmental entity, district school board, charter school, or charter technical career center, prior to entering into a written contract pursuant to subsection (7), except as provided in subsection (8), shall use auditor selection procedures when selecting an auditor to conduct the annual financial audit required in s. 218.39.

(2) The governing body of a charter county, municipality, special district, ~~district school board, charter school, or charter technical career center shall establish an audit auditor selection committee and auditor selection procedures or use the procedures outlined in subsection (3).~~ Each noncharter county shall establish an audit committee that, at a minimum, shall consist of each of the county officers elected pursuant to s. 1(d), Art. VIII of the State Constitution, or a designee, and one member of the board of county commissioners or its designee. The primary purpose of the audit committee and the procedures is to assist the governing body in selecting contract with an auditor to conduct the annual financial audit required in s. 218.39; however, the audit committee may serve other audit oversight purposes as determined by the entity's governing body. The public shall not be excluded from the proceedings under this section.

(3) ~~The audit governing body of a noncharter county or district school board that retains a certified public accountant shall establish an auditor selection committee shall and select an auditor according to the following procedure:~~

(a) Establish factors to use for the evaluation of audit services to be provided by a certified public accounting firm duly licensed under chapter 473 and qualified to conduct audits in accordance with government auditing standards as adopted by the Florida Board of Accountancy. Such factors shall include, but are not limited to, ability of personnel, experience, ability to furnish the required services, and such other factors as may be determined by the committee to be applicable to its particular requirements ~~For~~

each noncharter county, the auditor selection committee shall consist of the county officers elected pursuant to s. 1(d), Art. VIII of the State Constitution, and one member of the board of county commissioners or its designee.

~~(b) The committee shall Publicly announce requests for proposals, in a uniform and consistent manner, each occasion when auditing services are required to be purchased. Public announcements notice must include, at a minimum, a brief general description of the audit and must indicate how interested firms certified public accountants can apply for consideration.~~

~~(c) Provide interested The committee shall encourage firms with a request for proposal. The request for proposal shall include information on how proposals are to be evaluated and such other information the committee determines is necessary for the firm to prepare a proposal engaged in the lawful practice of public accounting who desire to provide professional services to submit annually a statement of qualifications and performance data.~~

~~(d) Any certified public accountant desiring to provide auditing services shall first be qualified pursuant to law. The committee shall make a finding that the firm or individual to be employed is fully qualified to render the required services. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual.~~

~~(e) The committee shall adopt procedures for the evaluation of professional services, including, but not limited to, capabilities, adequacy of personnel, past record, experience, results of recent external quality control reviews, and such other factors as may be determined by the committee to be applicable to its particular requirements.~~

~~(f) The public shall not be excluded from the proceedings under this subsection.~~

~~(d)(g) The committee shall Evaluate proposals provided current statements of qualifications and performance data on file with the committee, together with those that may be submitted by qualified other firms regarding the proposed audit, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the audit, and ability to furnish the required services. If compensation is one of the factors established pursuant to paragraph (a), it shall not be the sole or predominant factor used to evaluate proposals.~~

~~(e)(h) The committee shall select Rank and recommend in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services after considering the following factors established pursuant to paragraph (a): the ability of professional personnel; past performance; willingness to meet time requirements; location; and recent, current, and projected workloads of the firms. However, such distribution shall not violate the principle of selection of the most highly qualified firms. If fewer than three firms respond to the request for proposal desire to perform the services, the committee shall recommend such firms as it deems determines to be the most highly qualified.~~

(4)(i) The governing body shall inquire of qualified firms as to the basis of compensation, select one of the firms recommended by the audit committee, and negotiate a contract, using one of the following methods:

(a) If compensation is not one of the factors established pursuant to paragraph (3)(a) and not used to evaluate firms pursuant to paragraph (3)(e), the governing body shall negotiate a contract with ~~The committee may request, accept, and consider proposals for the compensation to be paid only during competitive negotiations under paragraph (h).~~ the firm ranked first may then negotiate a contract with the board giving, among other things, a basis of its fee for that engagement. If the governing body board is unable to negotiate a satisfactory contract with that firm, negotiations with that firm shall be formally terminated, and the governing body board shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, negotiations shall then be terminated with that firm and undertaken with the third-ranked firm. Negotiations with the other ranked firms shall be undertaken in the same manner. The governing body board, in negotiating with firms, may reopen formal negotiations with any one of the three top-ranked firms, but it may not negotiate with more than one firm at a time. The board shall also negotiate on the scope and quality of services. In making such determination, the board shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For contracts over \$50,000, the board shall require the firm receiving the award to execute a truth-in-negotiations certificate stating that the rates of compensation and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Such certificate shall also contain a description and disclosure of any understanding that places a limit on current or future years' audit contract fees, including any arrangements under which fixed limits on fees will not be subject to reconsideration if unexpected accounting or auditing issues are encountered. Such certificate shall also contain a description of any services rendered by the certified public accountant or firm of certified public accountants at rates or terms that are not customary. Any auditing service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the board determines the contract price was increased due to inaccurate or incomplete factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.

(b) If compensation is one of the factors established pursuant to paragraph (3)(a) and used in the evaluation of proposals pursuant to paragraph (3)(d), the governing body shall select the highest-ranked qualified firm or must document in its public records the reason for not selecting the highest-ranked qualified firm.

(c) The governing body may select a firm recommended by the audit committee and negotiate a contract with one of the recommended firms using an appropriate alternative negotiation method for which compensation is not the sole or predominant factor used to select the firm.

(d) In negotiations with firms under this section, the governing body may allow a designee to conduct negotiations on its behalf.

(5) The method used by the governing body to select a firm recommended by the audit committee and negotiate a contract with such firm must ensure that the agreed-upon compensation is reasonable to satisfy the requirements of s. 218.39 and the needs of the governing body.

(6)(j) If the governing body board is unable to negotiate a satisfactory contract with any of the recommended selected firms, the committee shall recommend select additional firms, and negotiations the board shall continue negotiations in accordance with this section subsection until an agreement is reached.

(7) Every procurement of audit services shall be evidenced by a written contract embodying all provisions and conditions of the procurement of such services. For purposes of this section, an engagement letter signed and executed by both parties shall constitute a written contract. The written contract shall, at a minimum, include the following:

(a) A provision specifying the services to be provided and fees or other compensation for such services.

(b) A provision requiring that invoices for fees or other compensation be submitted in sufficient detail to demonstrate compliance with the terms of the contract.

(c) A provision specifying the contract period, including renewals, and conditions under which the contract may be terminated or renewed.

(8) Written contracts entered into pursuant to subsection (7) may be renewed. Such renewals may be done without the use of the auditor selection procedures provided in this section. Renewal of a contract shall be in writing.

Section 2. This act shall take effect July 1, 2005.

Approved by the Governor May 10, 2005.

Filed in Office Secretary of State May 10, 2005.