

Government Efficiency Task Force
401 Senate Office Building
November 2, 2011
6:15 p.m. – 8:15 p.m.

- 1) Call to Order
- 2) Roll Call
- 3) Approval of Minutes
- 4) Recommendations from Business Regulation and Licensing Work Group
- 5) Discussion of Design Procurement and the Consultants' Competitive Negotiation Act
- 6) Presentation on the Consultants' Competitive Negotiation Act
Carlos Beruff, President, Medallion Homes Gulf Coast
- 7) Presentation on the Consultants' Competitive Negotiation Act
Steve Carnell, Director of Purchasing, Collier County
- 8) Public Comment
- 9) Work Group Assignments
- 10) Adjourn

Government Efficiency Taskforce
401 Senate Office Building
Tallahassee, Florida
Wednesday, October 19, 2011
6:15 p.m. – 8:15 p.m.

MEETING MINUTES

Members Present:

Chair Abraham Uccello
Vice Chair Lizbeth Benacquisto
Representative Frank Attkisson
Speaker Larry Cretul
Ms. Ann Duncan
Mrs. Julie Fess
Mrs. Belinda Keiser
Lt. Col. Frances Rice (by phone)
Mr. Robert Rohrlack
Mr. Eric Silagy
Mr. Robert Stork
Representative Rob Wallace

Members Absent:

Mr. Matthew Falconer
Mr. Michael Heekin (excused)
Senator Patrick Neal (excused)

Chair Uccello called the meeting to order at 6:15 p.m.

Staff called the roll and announced the presence of a quorum.

Chair Uccello thanked Representative Gary Aubuchon and Speaker John Legg for their prior service to the Task Force and welcomed new members Julie Fess and Robert Rohrlack.

Belinda Keiser moved to approve the minutes for the October 5, 2011, meeting. The motion was adopted without objection.

Chair Uccello announced the members of the business regulation work group, Speaker Cretul, Representative Wallace, and Lt. Col. Rice.

Chair Uccello introduced Tarren Bragdon, President and Chief Executive Officer of the Foundation for Government Accountability. Mr. Bragdon presented on the effect of business

regulations on start-up companies and metric gathering through a business dashboard, then took questions from members.

Chair Uccello introduced Larry Novey, Chief Legislative Analyst with the Office of Program Policy Analysis and Government Accountability (OPPAGA). Mr. Novey presented on OPPAGA's research and report on the benefits of one-stop portals and took questions from members.

Chair Uccello introduced Lisa Vickers, Executive Director of the Florida Department of Revenue. Ms. Vickers presented on a proposed one stop registration system for Florida and took questions from members.

Chair Uccello discussed the business regulation work group and requested that it meet via teleconference on Friday, October 21 from 9:00 a.m. – 10:00 a.m.

Chair Uccello opened the floor for public comment. Chris Workman spoke on the effects of business regulation by multiple agencies. Leticia Adams, Director of Governance Policy with Florida Chamber of Commerce, spoke on the benefits of one stop portals. Patricia Nelson, Deputy Director with the Office of Fiscal Accountability and Regulatory Reform, spoke on administrative rules and regulations.

Ann Duncan proposed that the Task Force explore opportunities for efficiencies in design and procurement of state projects at its next meeting. Chair Uccello agreed.

Senator Benacquisto moved the Task Force rise. The meeting adjourned at 8:10 p.m.

Florida Government Efficiency Task Force Work Group Recommendations

Subject Matter: Business Regulation

Work Group Members: Speaker Larry Cretul; Representative Rob Wallace; and Lt. Col. Frances Rice

RECOMMENDATION SUMMARY

The Business Regulation work group met on Friday October 21st and makes the following recommendations to the Government Efficiency Task Force:

Provisional Business Permits:

- Implement a provisional business permit for select industries;
- Create an evaluation process for industries linked to health and human safety to qualify for a provisional business permit;
- Utilize information from the business dashboard to identify key industries that would qualify for the permit;
- Utilize the provisional permit process to identify and eliminate unnecessary regulations; and
- Conduct a pilot program in selected counties or cities to benchmark the effectiveness of the permit.

Business Dashboard:

- Implement a business permit dashboard that tracks the amount of time it takes for a company to get started in the State of Florida;
- Begin the dashboard at the state level, tracking the business as it goes through the state regulatory process;
- Begin with a pilot program with counties participating on a voluntary basis;
- Encourage county/city compliance by requiring participation as a condition for certain funding;
- Utilize current information already collected by state agencies, the Chamber of Commerce, and local governments;
- Designate one agency, preferably the Department of State, to receive all information related to the business dashboard;
- Utilize dashboard metrics to identify unnecessary regulations, industries that do not require regulation, and industries or businesses that would qualify for the provisional business permit; and
- Allow private businesses to submit additional information.

One-Stop Business Portal:

- Implement the One-Stop Portal in stages as recommended by Department of Revenue Executive Director Lisa Vickers;
- Identify redundancies and potential consolidations as the portal is phased in;
- Utilize the consolidation process to identify unnecessary agency regulation;
- Create a "Phase Ia" comprised of a "splash page" website with agency links to fast track businesses through the startup or renewal process;
- Utilize existing call center functions to include a live chat feature to provide real time assistance to users; and
- Include a mechanism that allows for feedback from businesses regarding regulation, which would be forwarded to the Office of Fiscal Accountability and Regulatory Reform and the Legislature.

FULL RECOMMENDATION(S) ANALYSIS

I. RECOMMENDATIONS(S) AND BACKGROUND

A. PROVISIONAL BUSINESS PERMITS:

Background:

A provisional business permit would allow industries that do not affect health and human safety to start their business more quickly and be managed to compliance after the business is in operation. This would allow for reduced startup and hiring times in applicable industries. The result would be higher employment and enhanced revenue to the state. The increased ease of doing business in Florida may also attract more business to the state and encourage more people to create startup businesses.

Change & Efficiency:

The new process would require a reorganization of the manner in which the State regulates businesses. This would result in a culture change as regulators look for creative ways to regulate to compliance after the business is open rather than requiring all regulation at the beginning of the process. Implementing new processes of provisional permitting may also identify and eliminate unnecessary regulations.

The efficiencies achieved would include reduced startup times for new businesses and more efficient hiring of new employees. More businesses leads to increased job creation in Florida, and would also generate increased revenue for the state.

Recommendations:

The work group recommends the following:

- Implement a provisional business permit for select industries;
- Create an evaluation process for industries linked to health and human safety to qualify for a provisional business permit;
- Utilize information from the business dashboard to indentify key industries that would qualify for the permit;
- Utilize the provisional permit process to identify and eliminate unnecessary regulations; and
- Conduct a pilot program in selected counties or cities to benchmark the effectiveness of the permit.

B. BUSINESS DASHBOARD:

Background

The purpose of the dashboard is to provide metrics for the time it takes for a business to be fully licensed and permitted. Currently, the state tracks the time it takes for a business to receive certain permits or licenses. For example, the Department of Business and Professional Regulation (DBPR) consistently tracks the amount of time it takes for a person or business to receive a professional license, which is often one of the many steps to open a business. The state does not currently measure the total time it takes for a business to open. Since the majority of business regulation and permitting takes place at the local level, local government participation would be needed in order for the program to achieve its goals. Once implemented, the dashboard could provide information on the startup phase of a business from all levels of regulation, state and local. Once collected, the data could be analyzed to see where the delays and challenges occur for businesses. The data could also be displayed online for the public to use in deciding where to locate their business and planning throughout the startup process.

Change & Efficiency

The most significant change implemented with the business dashboard is the data collected and its impact. Government, at all levels, currently tracks how long it takes to receive permits or licenses, but no state or local governmental entity tracks how long it takes an individual business to open. This data display could lead to a culture change that encourages local governments to become more efficient in order to compete for businesses and jobs in their area. The data collected may also help analyze current regulations at all levels and indicate what regulations are unnecessary burdens on business. The implementation of a dashboard system could provide crucial information to assist businesses starting in the state and deciding in which county or city to locate.

The cost savings is difficult to calculate. The data itself would not create cost savings or efficiencies, but the application of the data could speed up the business startup process. By identifying and eliminating potential impediments that the dashboard uncovers, businesses can get started more quickly. Each week a business is not operating translates to lost income to the business owner, the potential employee, and the state. Also, if some of the potential employees are unemployed, the state may be paying them unemployment benefits. Based on the statistics that Mr. Tarren Bragdon¹ presented, startups created 172,236 jobs in 2009. If we assume that 10% of those hired by the startup businesses were on unemployment and receiving benefits (\$200 a week for this calculation), the state would save \$3.44 million in unemployment benefit payments per each week less that those individuals are collecting benefits.

Recommendations:

The work group recommends the following:

- Implement a business permit dashboard that tracks the amount of time it takes for a company to get started in the State of Florida;
- Begin the dashboard at the state level, tracking the business as it goes through the entire state regulatory process;
- Begin with a pilot program with counties participating on a voluntary basis;
- Encourage county/city participation by requiring participation as a condition for certain funding;
- Utilize current information already collected by state agencies, the Chamber of Commerce, and local governments;
- Designate one agency, preferably the Department of State, to receive all information related to the business dashboard;
- Utilize dashboard metrics to indentify unnecessary regulations, industries that do not require regulation, and industries or businesses that would qualify for the provisional business permit; and
- Allow private businesses to submit additional information.

C. ONE STOP BUSINESS PORTAL:

Background

The One-Stop Business Portal is a method to “virtually consolidate” agency functions when it applies to the registration and regulation of businesses. The portal would consolidate all information collection for businesses into one website and would then send the data collected to the appropriate agency. The portal would include a wizard program to steer individuals through the registration process and to help

¹ Mr. Bragdon is the Chief Executive Officer of the Foundation for Government Accountability. The organization’s website is <http://www.floridafga.org/> (last visited 10/27/11). Mr. Bragdon presented to the Government Efficiency Task Force on October 19th, 2011.

guide the new business owner to the appropriate registrations.² The implementation, as described by Ms. Lisa Vickers, would allow the portal to be phased in. A phased approach would give agencies time to make necessary adjustments to the new process, lessen the initial cost of the portal, and possibly spread out the costs over several years.³

Change & Efficiency

The implementation of the portal would lead to greater government efficiency by eliminating duplicative business processes as the different phases are adopted, which could lead to lower costs in administering government regulation. The one-stop initiative could also lead to indentifying and eliminating unneeded agency regulation. The ability for local government to participate in the portal will deliver the best possible efficiencies for Florida businesses.

Recommendations:

The work group recommends the following:

- Implement the One-Stop Portal in stages as recommended by Department of Revenue Executive Director Lisa Vickers;
- Indentify redundancies and potential consolidations as the portal is phased in;
- Utilize the consolidation process to identify unnecessary agency regulation;
- Create a “Phase Ia” comprised of a “splash page” website with agency links to fast track businesses through the startup or renewal process;
- Utilize existing call center functions to include a live chat feature to provide real time assistance to users; and
- Include a mechanism that allows for feedback from businesses regarding regulation, which would be forwarded to the Office of Fiscal Accountability and Regulatory Reform and the Legislature.⁴

² An example given by Ms. Vickers would be a barber shop. The barber shop is required to register the business with Department of State and apply for a professional license with DBPR. The wizard program would ask a question like, “Will you be selling hair care products?” If the person answers yes, the program will know to collect sales tax registration information.

³ Ms. Vickers believes that phase I can be done within the current budget of the participating agencies.

⁴ The Florida Legislature is currently collecting data related to regulatory rules called “YourVoice.” See <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?DocumentType=Press Release&FileName=449> (last visited 10/27/11)

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

(1) **SHORT TITLE.**—This section shall be known as the “Consultants’ Competitive Negotiation Act.”

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

(a) “Professional services” means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

(b) “Agency” means the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term “agency” does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. [380.06](#) or ss. [163.3220-163.3243](#).

(c) “Firm” means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state.

(d) “Compensation” means the 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.

(e) “Agency official” means any elected or appointed officeholder, employee, consultant, person in the category of other personal service or any other person receiving compensation from the state, a state agency, municipality, or political subdivision, a school district or a school board.

(f) “Project” means that fixed capital outlay study or planning activity described in the public notice of the state or a state agency under paragraph (3)(a). A project may include:

1. A grouping of minor construction, rehabilitation, or renovation activities.
2. A grouping of substantially similar construction, rehabilitation, or renovation activities.

(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 the estimated construction cost of each individual project under the contract does not exceed \$2 million, for study activity if the fee for professional services for each individual study under the contract does not exceed \$200,000, or for work of a specified nature as outlined in the contract required by the agency, 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 shall not be required to bid against one another.

(h) A “design-build firm” means a partnership, corporation, or other legal entity that:

1. Is certified under s. [489.119](#) to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or

2. Is certified under s. [471.023](#) to practice or to offer to practice engineering; certified under s. [481.219](#) to practice or to offer to practice architecture; or certified under s. [481.319](#) to practice or to offer to practice landscape architecture.

(i) A “design-build contract” means a single contract with a design-build firm for the design and construction of a public construction project.

(j) A “design criteria package” means concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to an agency’s request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the project.

(k) A “design criteria professional” means a firm who holds a current certificate of registration under chapter 481 to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under chapter 471 to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.

(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.

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

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

(d) Each agency shall evaluate professional services, including capabilities, adequacy of personnel, past record, experience, whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act, and other factors determined

by the agency to be applicable to its particular requirements. When securing professional services, an agency must endeavor to meet the minority business enterprise procurement goals under s. [287.09451](#).

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

(4) COMPETITIVE SELECTION.—

(a) For each proposed project, the agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the project, and ability to furnish the required services.

(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.

(d) Nothing in this act shall be construed to prohibit a continuing contract between a firm and an agency.

(5) COMPETITIVE NEGOTIATION.—

(a) The agency shall negotiate a contract with the most qualified firm for professional services at compensation which the agency determines is fair, competitive, and reasonable. In making such determination, the agency shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For any lump-sum or cost-plus-a-fixed-fee professional service contract over the threshold amount provided in s. [287.017](#) for CATEGORY FOUR, the agency shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto will be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of the contract.

(b) Should the agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the agency determines to be fair, competitive, and reasonable, negotiations with that firm must be formally terminated. The agency shall then undertake

negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency must terminate negotiations. The agency shall then undertake negotiations with the third most qualified firm.

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

(6) PROHIBITION AGAINST CONTINGENT FEES.—

(a) Each contract entered into by the agency for professional services must contain a prohibition against contingent fees as follows: “The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.” For the breach or violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

(b) Any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for an architect, professional engineer, or registered land surveyor and mapper, who offers, agrees, or contracts to solicit or secure agency contracts for professional services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of a contract for professional services shall, upon conviction in a competent court of this state, be found guilty of a first degree misdemeanor, punishable as provided in s. [775.082](#) or s. [775.083](#).

(c) Any architect, professional engineer, or registered surveyor and mapper, or any group, association, company, corporation, firm, or partnership thereof, who offers to pay, or pays, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of any agency contract for professional services shall, upon conviction in a state court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in s. [775.082](#) or s. [775.083](#).

(d) Any agency official who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such a contract for professional services between the agency and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in s. [775.082](#) or s. [775.083](#).

(7) AUTHORITY OF DEPARTMENT OF MANAGEMENT SERVICES.—Notwithstanding any other provision of this section, the Department of Management Services shall be the agency of state government which is solely and exclusively authorized and empowered to administer and perform the functions described in subsections (3), (4), and (5) respecting all projects for which the funds necessary to complete same are appropriated to the Department of Management Services, irrespective of whether such projects are intended for the use and benefit of the Department of Management Services or any other agency of government. However, nothing

herein shall be construed to be in derogation of any authority conferred on the Department of Management Services by other express provisions of law. Additionally, any agency of government may, with the approval of the Department of Management Services, delegate to the Department of Management Services authority to administer and perform the functions described in subsections (3), (4), and (5). Under the terms of the delegation, the agency may reserve its right to accept or reject a proposed contract.

(8) STATE ASSISTANCE TO LOCAL AGENCIES.—On any professional service contract for which the fee is over \$25,000, the Department of Transportation or the Department of Management Services shall provide, upon request by a municipality, political subdivision, school board, or school district, and upon reimbursement of the costs involved, assistance in selecting consultants and in negotiating consultant contracts.

(9) APPLICABILITY TO DESIGN-BUILD CONTRACTS.—

(a) Except as provided in this subsection, this section is not applicable to the procurement of design-build contracts by any agency, and the agency must award design-build contracts in accordance with the procurement laws, rules, and ordinances applicable to the agency.

(b) The design criteria package must be prepared and sealed by a design criteria professional employed by or retained by the agency. If the agency elects to enter into a professional services contract for the preparation of the design criteria package, then the design criteria professional must be selected and contracted with under the requirements of subsections (4) and (5). A design criteria professional who has been selected to prepare the design criteria package is not eligible to render services under a design-build contract executed pursuant to the design criteria package.

(c) Except as otherwise provided in s. [337.11](#)(7), the Department of Management Services shall adopt rules for the award of design-build contracts to be followed by state agencies. Each other agency must adopt rules or ordinances for the award of design-build contracts.

Municipalities, political subdivisions, school districts, and school boards shall award design-build contracts by the use of a competitive proposal selection process as described in this subsection, or by the use of a qualifications-based selection process pursuant to subsections (3), (4), and (5) for entering into a contract whereby the selected firm will, subsequent to competitive negotiations, establish a guaranteed maximum price and guaranteed completion date. If the procuring agency elects the option of qualifications-based selection, during the selection of the design-build firm the procuring agency shall employ or retain a licensed design professional appropriate to the project to serve as the agency's representative. Procedures for the use of a competitive proposal selection process must include as a minimum the following:

1. The preparation of a design criteria package for the design and construction of the public construction project.
2. The qualification and selection of no fewer than three design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the partners or members thereof.
3. The criteria, procedures, and standards for the evaluation of design-build contract proposals or bids, based on price, technical, and design aspects of the public construction project, weighted for the project.
4. The solicitation of competitive proposals, pursuant to a design criteria package, from those qualified design-build firms and the evaluation of the responses or bids submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals.

5. For consultation with the employed or retained design criteria professional concerning the evaluation of the responses or bids submitted by the design-build firms, the supervision or approval by the agency of the detailed working drawings of the project; and for evaluation of the compliance of the project construction with the design criteria package by the design criteria professional.

6. In the case of public emergencies, for the agency head to declare an emergency and authorize negotiations with the best qualified design-build firm available at that time.

(10) REUSE OF EXISTING PLANS.—Notwithstanding any other provision of this section, there shall be no public notice requirement or utilization of the selection process as provided in this section for projects in which the agency is able to reuse existing plans from a prior project of the agency, or, in the case of a board as defined in s. [1013.01](#), a prior project of that or any other board. Except for plans of a board as defined in s. [1013.01](#), public notice for any plans that are intended to be reused at some future time must contain a statement that provides that the plans are subject to reuse in accordance with the provisions of this subsection.

(11) CONSTRUCTION OF LAW.—Nothing in the amendment of this section by chapter 75-281, Laws of Florida, is intended to supersede the provisions of ss. [1013.45](#) and [1013.46](#).

Government Efficiency Task Force

“Change that is vital to transparent, cost-effective state government and high-quality business”

CONSULTANTS’ COMPETITIVE NEGOTIATION ACT (CCNA) REFORM

NOVEMBER 2, 2011

HISTORY

- Consultants' Competitive Negotiation Act
 - 1972 – Federal “Brooks” Law signed
 - Codified into federal law the “qualifications-based” selection process for A/E services
 - 1973 – became Florida Law
 - 1984 – Competition in Contracting Act

TO WHOM DOES CCNA APPLY?

- Professional services supplied by:
 - Engineers
 - Surveyors
 - Architects
 - Mappers
 - Landscape Architects

Sec. 278.055(2)(a), Fla. Stat. (2011).

CURRENT LAW

- ◉ Mandates the use of a “qualifications-based” selection process when deciding to award contracts
- ◉ Prohibits the competitive consideration of price during the selection phase
- ◉ Heavily sanctions the use of price in Design/Build contracts

CCNA PROCEDURES

- Public given notice of projects above \$325,00 construction threshold or studies above \$35,000
- Choose the most qualified firm by considering relevant criteria OTHER than compensation
- Negotiate contract with chosen firm that is fair and reasonable to both firm & state
 - Agency may not request, accept, or consider fee proposals from submitting firms during selection process

STEP 1: COMPETITIVE SELECTION

Create "Selection Committee" - Schedule the selection date & location for first round of review

- Committee reviews each application in-depth & rates them per previously established qualifications. Qualification should follow requests indicated in Professional Qualification Supplement (PQS), which are statements of qualifications and performance data
- Committee determines preliminary rating of firms under consideration & selects three firms with highest scores to present oral interviews
 - Committee discusses & decides what topics should be covered in oral interviews. Date & time for interviews is established
- Selection Recommendation – Committee recommends three firms most qualified to accomplish work, in "priority order" according to their final totals

STEP 2: COMPETITIVE NEGOTIATION

- ⦿ Begin negotiating contracts with most qualified firm
 - Compensation is fair, competitive, & reasonable
 - Contract amounts over \$195,000, **(287.017) Category 4**, require truth in negotiation certificate from firm receiving award
- ⦿ If unable to negotiate contract with firm 1, move on to firm 2
- ⦿ If unable to negotiate contract with firm 2, go to firm 3. Select more firms, based on qualifications, until agreement is reached
- ⦿ If agency is unable to negotiate a satisfactory contract with any selected firms, agency shall **select additional firms** in the order of competence & qualification
 - Continue negotiations in accordance with this subsection until an agreement is reached

OPTIONS FOR PROPOSED REFORM

Afford public agencies two options when procuring CCNA prescribed services:

1. 50 Percent Solution

or

2. Best Value Process

LIMITATIONS WITH CURRENT LAW

- ◉ Price is not considered
- ◉ Excludes smaller firms and negates a healthy climate of competition
- ◉ Restricts power of negotiation, potentially leading to less discretionary selections
- ◉ Facilitates “blind” decision making
- ◉ Taxpayers are denied the ability to assess the value of prices and costs

50 Percent Solution

- For the first 200 years of U.S. history, professional fee proposals were considered throughout the bidding process.
- Price was NEVER the ONLY criterion in all those earlier projects, which together still make up most of America's infrastructure today.
- Agency managers should be expected to have the discipline today as well, to be able to include price only one criterion among many, in evaluations.
- THE 50% SOLUTION: During the initial RFP process, interested professionals are asked to provide their professional qualifications, along with appropriate professional fee or price considerations, in their proposals.
- The agency would then be allowed to use the mix of criteria it considers most appropriate in evaluating these proposals, but in no event would price or cost be more than 50% of the criteria.
- Some History of the Effects of the current CCNA prohibition

Best Value Process Agencies Would...

- ① Solicit proposals and include a written scope of work for the project to the competing firms
- ② Rank all firms based on qualifications and establish a “short list”
- ③ Next, rank “short listed” firms on *qualifications and price*
- ④ Select the firm that offers the best value
- ⑤ Negotiate a contract with the top ranked firm

Under The Best Value Process...

- ① Price would be solicited and evaluated from the most qualified firms only
- ① Price would never be more than 50% of the scoring criteria when selecting the best value offer
- ① Unqualified firms would not have the opportunity to tender a price offer

Benefits of the Best Value Process

The Performance Based Studies Research Group at Arizona State University reports:

- ◎ 900+ contracts procured
- ◎ \$4.6 Billion in total costs
- ◎ Projects on time and within budget
- ◎ High quality of work performance
- ◎ No contractor generated change orders
- ◎ Increased contractor profitability
- ◎ 98% customer satisfaction ratings from owners

Benefits of the Best Value Process

UNIVERSITY OF MINNESOTA:

- Total estimated savings of \$ 2.9 Million (24%)
- Contractor change order rate 1.2%
- No designer change orders
- 99% customer satisfaction
- In 53% of the projects, the best value winner had the lowest cost

WHAT THE REFORM IS...

- ⦿ Initiative to give public agencies more discretion in the procurement of professional services
- ⦿ Opportunity to align the procurement method for CCNA professional services with how other professional services are purchased.
- ⦿ A vehicle to increase transparency and public confidence in the procurement process as a whole

SUPPORTERS OF REFORM

- ◉ National Institute of Governmental Purchasing (NIGP)
- ◉ Florida Association of Counties (FAC)
- ◉ Florida League of Cities (FLC)
- ◉ Florida Association of Public Purchasing Officers (FAPPO)
- ◉ Florida Government Finance Officers Association (FGFOA)
- ◉ Southeast Florida Chapter of NIGP
- ◉ Treasure Coast Chapter of the Florida League of Cities
- ◉ Charlotte County Board of County Commissioners
- ◉ Collier County Board of County Commissioners
- ◉ Sarasota County Board of County Commissioners
- ◉ City of Punta Gorda City Commissioners
- ◉ City of Port St. Lucie City Commission
- ◉ Wakulla County Board of County Commissioners
- ◉ St. Lucie County Board of County Commissioners
- ◉ St. Johns County Board of County Commissioners
- ◉ City of Ocoee City Commission
- ◉ Town of Indian River Shores
- ◉ Various licensed engineers and other professionals

Your direction please:

- ⦿ 50% price consideration
- ⦿ Best Value
- ⦿ Other options