

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1420

SPONSOR: Governmental Oversight and Productivity Committee and Senator Brown-Waite

SUBJECT: Computer Technology

DATE: April 5, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute permits state agencies to solicit and receive bids for commodities and contractual services via electronic means, i.e., the Internet. The bill requires the State Technology Office within the Department of Management Services (DMS) to develop an on-line procurement program for commodities and contractual services. Furthermore, the bill allows the State Technology Office to purchase, or to authorize an agency to purchase, information technology by negotiation, rather than the competitive bidding process, when this is in the state's best interest.

This bill amends the following sections of the Florida Statutes: 287.012, 287.042, and 287.057.

II. Present Situation:

State Procurement of Commodities and Contractual Services

Chapter 287, F.S., sets forth the procedures by which state agencies may procure commodities¹ and contractual services.² Currently, the majority of state contracts for the purchase of commodities or contractual services in excess of \$25,000 must be competitively bid.³ The

¹“Commodity” means supplies, materials, goods, merchandise, food, equipment and other personal property. Section 287.001(4), F.S.

²“Contractual service” means, “the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. Section 287.001(7), F.S.

³Section 287.057(1), F.S.

competitive bidding process consists of an agency issuing either an invitation to bid or a request for proposals, and selecting the lowest bid from the responses to the invitation or request.^{4 5}

In certain circumstances, an agency may purchase commodities or contractual services without using the competitive bidding process.⁶ Some of these circumstances are when:

- ▶ the agency head determines in writing that an immediate danger to the public health, safety, or welfare requires emergency action;
- ▶ the DMS excepts the purchase from bidding requirements;
- ▶ the commodity or contractual service is only available from a single source; and
- ▶ the Secretary of DMS authorizes the Support Program to purchase insurance by negotiation because it is in the best interest of the state.

State Information Technology Resources

In an effort to coordinate the state's acquisition and management of information technology resources,⁷ the statutes:

- ▶ Require each agency to have a Chief Information Officer who is responsible for:
(a) coordinating agency information resources management projects;⁸ (b) preparing an annual report on information resources management; (c) developing policies and procedures for the management and purchase of information technology resources; and (d) assisting in the development of the information resources management section of the legislative budget request.⁹
- ▶ Require each agency to annually submit an "Agency Annual Information Resources Management Report."¹⁰ The report must include a forecast of the agency's information resources management priorities and initiatives for the upcoming two years, a description of the agency's current information resources management infrastructure, including an inventory

⁴Section 287.057(1)-(2), F.S.

⁵An "invitation to bid" means a written solicitation for competitive sealed bids which specifies the time and date of the public bid opening, the commodity/service sought, and all contractual terms. It is used when the agency is able to specifically define the scope of the contractual service sought, or the specifications of the commodity. Section 287.012, F.S. When the agency is unable to specifically define the service or commodity, it issues a "request for proposals" which means a written solicitation for competitive sealed proposals which requests that an offeror propose a commodity or service which meets the specifications of the solicitation document. Section 287.012(15), F.S.

⁶Section 287.057(3), F.S.

⁷For purposes of ss. 282.303-282.322, F.S., the term "information technology resources" means, "data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training." Section 282.303(13), F.S.

⁸For purposes of ss. 282.303-282.322, F.S., the term "information resources management" means the planning, budgeting, acquiring, developing, organizing, and control associated with government information resources. Section 282.303(12), F.S.

⁹Section 282.3055, F.S.

¹⁰Section 282.3063, F.S.

list, an assessment of the progress made toward the prior fiscal year legislative appropriation for information resources management.

- ▶ Create a Chief Information Officers Council, which is responsible for: (a) sharing information resources management experiences; (b) identifying efficiency opportunities among the state agencies; (c) assisting the State Technology Council in identifying critical state issues; and (d) making recommendations to the State Technology Council for solving information resources management deficiencies.¹¹
- ▶ Create the State Technology Council within the DMS, which is responsible for: (a) developing a statewide vision for information resources management; (b) recommending statewide policies and innovation in the state's use of technology to the Governor and Legislature; (c) creating ad-hoc workgroups, which may include private and public-sector representatives, to make recommendations to the council; and (d) approving the State Annual Report on Information Resources Management.¹² The council is composed of the Comptroller, Commissioner of Education, Secretary of State, Secretary of DMS, three state agency heads appointed by the Governor, and two private sector representatives, one who is appointed by the Speaker of the House and the other who is appointed by the Senate President.
- ▶ Create the State Technology Office within the DMS, which is responsible for: (a) providing administrative support and advice to the State Technological Council; (b) providing administrative support to the Chief Information Officers Council; (c) providing assistance to the Technology Review Workgroup; (d) facilitating state educational and training opportunities for agency management and technical staff; (e) preparing memoranda, when requested, for the Governor on recommended guidelines for information resources management; and (f) publishing and disseminating the State Annual Report on Information Resources Management.¹³
- ▶ Provide for a Technology Review Workgroup which may be created by contract between the Executive Office of the Governor and the Legislature.¹⁴ The primary responsibilities of the workgroup are to: (a) review the portions of agency strategic plans and legislative budget requests which concern information resources management; (b) determine whether in the agency identified information resources management needs are consistent with statewide policies on technology; and (c) make recommendations to the Executive Office of the Governor and legislative fiscal committees about proposed information resources management budget items if these involve more than one agency, have an outcome that impacts another agency, or exceed \$500,000 in total cost over a one-year period.¹⁵

¹¹Section 282.315, F.S.

¹²Section 282.3091, F.S.

¹³Section 282.3093, F.S.

¹⁴Section 282.3093, F.S.

¹⁵Section 216.0446, F.S.

III. Effect of Proposed Changes:

Section 1. The bill amends the definitions of “competitive sealed bids,” “invitation to bid,” and “request for proposals” contained in s. 287.012, F.S., so that these definitions provide that bids and solicitations may be published and transmitted by electronic means. As a result, state agencies will be permitted to publish or transmit invitations for bids and requests for proposals by electronic means, and to receive bids and proposals by electronic means in lieu of, or in addition to traditional, written bids or proposals.

Due to the “in lieu of” language used by the bill, the agency will be permitted to require that bids may be submitted to the agency *only* via electronic means.

Section 2. The bill amends s. 287.042(16)(a), F.S., which provides in relevant part that the DMS may enter into joint agreements with governmental agencies for the purpose of pooling funds to purchase information technology resources that can be used by multiple agencies. Pursuant to the bill, the DMS “shall,” rather than “may” as is provided by current law, consult with the State Technology Office prior to entering a joint agreement for the purchase of information technology resources.

Section 3. The bill amends s. 287.057(3), F.S., which sets forth the exceptions that permit an agency to purchase commodities or contractual services in excess of \$25,000 without using the competitive bidding process. The bill creates a new exception which provides that the State Technology Office may purchase, or authorize an agency to purchase, information technology or information technology resources by negotiation if the purchase is in the state’s best interest and made under conditions most favorable to the public interest.

The term “information technology” is not defined in the bill, nor in current statute. The term “information technology resources” is defined in the bill by cross-reference to mean, “data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training.”¹⁶

Furthermore, the bill provides that the State Technology Office must develop a program for on-line procurement of commodities and contractual services. Prior to participating, bidders are required to pre-qualify. The bill specifies that the office may contract for the equipment and services necessary to develop and implement the on-line procurement program, and may adopt rules to implement the on-line procurement program. These rules may include, but are not limited to: (a) determining the requirements and qualification criteria for prequalifying bidders; (b) establishing the procedures for conducting on-line procurements; (c) establishing the criteria for eligible commodities and contractual services; and (d) establishing the procedures for providing access to on-line procurements.

Section 4. This section provides that the act takes effect upon becoming a law.

¹⁶Section 282.303(13), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill's creation of on-line procurements would provide a new avenue of bid submission for vendors, and for vendors with computer access, the bill should accelerate and ease the bid submission process. However, for vendors who do not have computer access, the bill could result in excluding the vendor from the bidding process or requiring the vendor to purchase computer equipment to participate in the process in the event the department only permits bids for certain competitively bid projects to be submitted via electronic means.

C. Government Sector Impact:

The bill would require the State Technology Office within the DMS to develop an on-line procurement program. The department has not yet projected the costs it will incur in complying with this requirement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In Section 3., the bill permits the State Technology Office to purchase, or to authorize an agency to purchase, information technology or information technology resources by negotiation if such purchase is in the state's best interest and is made under conditions most favorable to the public interest. The bill does not explain what could be in the state's best interest, and as a result, this determination would be subject to the discretion of the office.

Furthermore, in Section 3., the bill provides that the State Technology Office may purchase or authorize an agency to purchase “information technology” or “information technology resources, as defined in s. 282.303,” by negotiation under certain circumstances. Unlike the latter term, the former term “information technology” is not currently defined in statute, and thus, its meaning within this bill is unclear.

SB 2474, a related bill which is currently pending, amends s. 282.101, F.S., to define the term “information technology” to mean “any transmission, emission, reception of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems and includes all facilities and equipment owned, leased, or used by all agencies and political subdivisions of state government, and a full-service, information-processing facility offering hardware, software, operations, integration, networking, and consulting services.” If this is the meaning of “information technology” intended by the bill, it may be appropriate to include this definition in the bill’s text.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
