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DATE: April 16, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 1945 (PCB SA 01-16)

RELATING TO: Procurement of Commodities and Contractual Services

SPONSOR(S): Committee on State Administration and Representative(s) Brummer

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 4 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Chapter 287, F.S., deals with public procurement of personal property and services. The chapter specifies that unless otherwise authorized by law, all contracts for the purchase of commodities or contractual services must be awarded by competitive sealed bidding. Chapter 287, F.S., specifies two particular forms of written solicitation to be used in the procurement process: an "invitation to bid" and a "request for proposal."

Chapter 287, F.S., specifies the role of the Department of Management Services (DMS) in the procurement process and accordingly provides DMS with certain powers, duties, and functions. Among other responsibilities, DMS must establish a system of coordinated and uniform procurement policies to be used by agencies; prescribe the methods of securing competitive sealed bids and proposals or negotiating and awarding commodity and contractual services contract; and adopt rules necessary to carry out the purposes of the public procurement process.

Currently, DMS's rules regarding the public procurement of personal property and services can be found in the Florida Administrative Code (FAC). The FAC provides for the additional written solicitation of an "invitation to negotiate" to be used in the procurement process. In addition, the FAC requires any form of written solicitation used in the procurement process to be published in the Florida Administrative Weekly or the Florida Communities Network. The FAC also allows a 72-hour period of protest against any agency action or intended action. Chapter 120, F.S., additionally specifies a 72-hour period of protest against any such action.

HB 1945 amends Chapter 287, F.S., to include two additional forms of solicitation to be used in the public procurement process: an "invitation to negotiate" and a "request for a quote." HB 1945 provides additional duties for DMS in the competitive bidding process regarding the agency's authority to establish uniform procedures and secure competitive sealed bids.

HB 1945 additionally amends Chapter 287, F.S., by specifying a 72-hour protest period against any agency action or intended action in the procurement process. Additionally, HB 1945 substitutes the term "proposer" for the term "offeror" throughout Chapter 287, F.S.

There does not appear to be a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

Chapter 287, F.S.

Chapter 287, F.S., deals with public procurement of personal property and services. This chapter requires the ethical procurement of commodities and contractual services and the adherence to uniform procedures in carrying out such procurement. “The Legislature recognizes that fair and open competition is a basic tenet of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically.”¹

Section 287.012, F.S., provides certain relevant definitions:

- Agency – Any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization of the executive branch of state government.
- Department – Department of Management Services.
- Invitation to Bid – A written solicitation for competitive sealed bids with the title, date, and hour of the public bid opening designated and specifically defining the commodity, group of commodities, or services for which bids are sought. The invitation to bid is used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.
- Request for Proposal (RFP) – A written solicitation for competitive sealed proposals with the title, date, and hour of the public opening designated. The RFP is used when the agency is incapable of specifically defining the scope of work for which the commodity, group of commodities, or contractual service is required and when the agency is requesting that a qualified offeror propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document. A request for proposal includes

¹ Section 287.001, F.S.

general information, applicable laws and rules, functional or general specifications, statement of work, proposal instructions, and evaluation criteria.

Section 287.032, F.S., specifies the role of the Department of Management Services (DMS) in the public procurement process:

- To promote efficiency, economy, and the conservation of energy and to effect coordination in the purchase of commodities for the state;
- To provide uniform contractual service procurement policies, rules, procedures, and forms for use by the various agencies in procuring contractual services; and
- To procure and distribute state-owned surplus tangible personal property and federal surplus tangible personal property allocated to the state by the Federal Government.²

Section 287.042, F.S., provides DMS with certain powers, duties, and functions in the procurement process. The DMS may

- Canvass all sources of supply, establish and maintain a vendor list, and contract for the purchase, lease, or acquisition in any manner;
- Plan and coordinate purchases in volume and to negotiate and execute purchasing agreements and contracts for commodities and contractual services under which agencies must make purchases;
- Have general supervision, through the state agencies, of all storerooms and stores operated by the agencies;
- Establish a system of coordinated, uniform, procurement policies, procedures, and practices to be used by agencies;
- Prescribe the methods of securing competitive sealed bids and proposals, or negotiating and awarding commodity and contractual services contract; and
- Adopt rules necessary to carry out the purposes of this section, including the authority to delegate to any state agency any or all of the responsibility. Such purchasing of commodities and procurement of contractual services by state agencies must be in strict accordance with the rules and procedures prescribed by the DMS.³

Section 287.057, F.S., outlines the conditions of public procurement of commodities or contractual services.

- Unless otherwise authorized by law, all contracts for the purchase of commodities or contractual services for the purchase of commodities must be awarded by competitive sealed bidding.

² Section 287.032(1)(2)(3), F.S.

³ Section 287.042(4), F.S.

- When an agency determines in writing that the use of competitive sealed bidding (invitation to bid), is not practicable, commodities or contractual services must be procured by competitive sealed *proposals* (request for proposals).
- Particular situations are exempt from the competitive bid process, including when the agency head determines emergency state action is required, the commodities or contractual services are available only from a single source, it is in the best interest of the State, or it is involving prescriptive assistive devices for rehabilitative purposes.

The Florida Administrative Code

DMS's rules regarding the public procurement of personal property and services can be found in the Florida Administrative Code (FAC). The FAC duplicates the definitions of an "invitation to bid" and a "RFP" as found in s. 287.012, F.S. The FAC also defines an "invitation to negotiate":

An invitation extended to prospective contracts by an Institution, whether by advertisement, written solicitation, electronic media or any other form of communication, to define the specifications, terms and conditions of a contract for commodities or contractual services. Cost may or may not be a consideration in the initial stages of negotiating.⁴

The FAC also defines a "notice of decision" to mean an "[a]gency notice of its decision or intended decision for a bid solicitation [invitation to bid], invitation to negotiate or request for proposal shall be sent to vendors and other interested persons by United States mail or by hand delivery."⁵

The rule regarding the notice of decision requires an agency to send a notice of decision or intended decision to "vendors." The FAC addresses the registration of all vendors.

Registration of All Vendors Doing Repetitive Business with the State – all vendors doing business with the State on a repetitive basis for the sale of commodities or contractual services defined in s. 287.012, Florida Statutes, and desiring to register with State Purchasing are required to submit to State Purchasing a properly completed "Vendor Registration Application," Form PUR 7054 . . . When a firm is registered, a Vendor Registration Number will be issued to the applicant . . . The Vendor Number shall thereafter appear on all bid or negotiation or proposal documents submitted to any State agency for identification purposes.⁶

The FAC states that all purchases of commodities of contractual services in excess of the threshold amount for Category Two⁷ must be advertised in the Florida Administrative Weekly or the Florida Communities Network no less than ten calendar days prior to the bid opening for an invitation to bid, a RFP, or an invitation to negotiate.⁸ After an agency has selected a vendor for the particular request, that agency must send a "notice of intended award."

Notice of the intended award, including rejection of some or all of bids or proposals received . . . shall be given by posting the bid, negotiation or proposal tabulations where the bids, negotiations or proposals were opened . . . All notices of decision or intended

⁴ Rule 6C-18.035(1), F.A.C.

⁵ Rule 60A-1.001(8), F.A.C.

⁶ Rule 60A-1.006, F.A.C.

⁷ Section 287.017(1), F.S., states that a Category Two purchasing is at least \$25,000.

⁸ Rule 60A-1.002(4)(a), F.A.C.

decisions shall contain the protest statement provided by Rule 28-110.005(3), F.A.C.,⁹ and show the beginning and ending post time and dates for the bid or proposal or negotiation posting, or if noticed by certified mail, indicated such action must be taken within 72 hours after receipt of such notice.¹⁰

The FAC specifies a 72-hour period in which any protest action may be taken against an intended award.

Chapter 120, F.S.

Chapter 120, F.S. is the Florida Administrative Procedure Act. Section 120.57(3), F.S., states:

Any person who is adversely affected by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the bid tabulation or after receipt of the notice of the agency decision or intended decision and shall file a formal written protest within 10 days after filing the notice of protest. With respect to a protest of the specifications contained in an invitation to bid or request for proposals, the notice of protest shall be filed in writing within 72 hours after the receipt of notice of the project plans and specifications or intended project plans and specifications in an invitation to bid or request for proposals, and the formal written protest shall be filed within 10 days after the date the notice of protest is filed.

Therefore, both the FAC and Chapter 120, F.S., specify a 72-hour period in which any protest action may be taken against an agency decision or intended decision.

C. EFFECT OF PROPOSED CHANGES:

HB 1945 amends s. 287.012, F.S., by adding two additional methods of solicitation to be used by agencies in the procurement process. The term "invitation to negotiate" is already defined in the FAC. HB 1945 codifies this definition.

"Invitation to Negotiate" means a written solicitation that calls for responses to select one or more persons or business entities with which to commence negotiations for the procurement of commodities or contractual services.

"Request for a quote" is the second method of solicitation added by HB 1945.

"Request for a quote" means a solicitation that calls for pricing information for the purposes of competitively selecting and procuring commodities and contractual services from qualified vendors or registered vendors.

HB 1945 specifies that a "request for a quote" is a solicitation for contractual services from qualified vendors or registered vendors.

The FAC and the Administrative Code currently provides a 72-hour period within which to protest an adverse agency action. HB 1945 codifies that requirement, with specificity, with regard to a request for proposal, invitation to bid, or an invitation to negotiate, including any provisions governing the methods for ranking proposals, awarding contracts, reserving rights of further negotiation, or the modification or amendment of any contract.

⁹ Rule 28-110.005(3), F.A.C., states: "When a bond is required, a notice of decision or intended decision shall contain this statement: 'Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.'"

¹⁰ Rule 60A-1.001(9), F.A.C.

HB 1945 amends s. 287.042(4), F.S., to allow DMS to develop procedures to be used by an agency for issuing invitations to bid, invitations to negotiate, RFPs, and requests for a quote, or other competitive procurement processes. Section 287.042(3), F.S., currently grants DMS authority “to adopt rules necessary to carry out the purposes of this section.” Accordingly, DMS already has existing statutory authority to adopt rules to effectuate this new requirement.

HB 1945 amends s. 287.042(5), F.S., which currently allows DMS to prescribe the methods of securing competitive sealed bids to include responses and quotes, as well as procedures for identifying vendors; setting qualifications; evaluating responses, bids, and proposals; ranking respondents and proposers; selecting invitees and proposers; and conducting negotiations.

HB 1945 amends s. 287.057, F.S., by providing that if an agency determines that the use of an invitation to bid or a request for proposal is *not practical*, commodities or contractual services may be procured by an invitation to negotiate or by a request for a quote.

This amended language is similar to the current language in s. 287.057(2), F.S., which states: “When an agency determines in writing that the use of competitive sealed bidding is *not practicable* [italics added], commodities or contractual services shall be procured by competitive sealed *proposals* [italics added].”

HB 1945 further amends Chapter 287, F.S., by adding the two additional methods of solicitations, “invitation to negotiate” and “request for a quote”, where statute currently references RFPs and invitations to bid.

HB 1945 additionally amends Chapter 287, F.S., by substituting the term “proposer” in lieu of the term “offeror” throughout the bill.

D. SECTION-BY-SECTION ANALYSIS:

See “Effect of Proposed Changes.”

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Lauren Cyran

J. Marleen Ahearn, Ph.D., J.D.