

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Governmental Operations Committee

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BILL: SPB 7078

INTRODUCER: For consideration by Governmental Operations Committee

SUBJECT: Competitive Solicitation of Contracts

DATE: February 12, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson		<b>Pre-meeting</b>
2.				
3.				
4.				
5.				
6.				

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## I. Summary:

This bill requires competitive solicitation of a contract in which an agency authorizes a contractor to use governmental authority to provide a service, or authorizes a contractor to use government property for the purpose of selling goods or services.

This bill amends section 287.057 of the Florida Statutes.

## II. Present Situation:

Chapter 287, F.S., governs the procurement of personal property and services by state agencies. The legislative intent section of ch. 287, F.S.,<sup>1</sup> declares that the Legislature “recognizes that fair and open competition is a basic tenant of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured.”

Pursuant to ch. 287, F.S., contracts for the purchase of most commodities and services are to be procured by competitive solicitation<sup>2</sup> when the dollar amount is above a certain threshold established in s. 287.017, F.S. That threshold, last changed in 1999,<sup>3</sup> is currently \$25,000.<sup>4</sup>

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<sup>1</sup> Section 287.001, F.S.

<sup>2</sup> Section 287.057(1)(a), F.S.

<sup>3</sup> Chapter 99-399, s. 43, L.O.F.

<sup>4</sup> Section 287.017(1)(b), F.S.

Purchases between \$2,500 and \$25,000 may be made using written quotations, written records of telephone quotations, or informal bids to be opened upon receipt, whenever practical.<sup>5</sup>

Before the 2002 Regular Session, statute required the Department of Management Services (DMS) to annually adjust the purchasing category amounts pursuant to rule that set forth an adjustment process and designated a nationally recognized price index.<sup>6</sup> These adjustments were never made, however, and during the 2002 Regular Session, legislation requested by DMS was enacted which retained the requirement for rule adjustment of the categories, but which repealed the requirement that the adjustment occur annually.<sup>7</sup> DMS rule currently provides for the adjustment of the categories by State Purchasing within the DMS based upon the April publication of the United States Department of Commerce Survey of Current Business Table 7.11B Price Index for State and Local Government.<sup>8</sup> To date, the DMS has not made the adjustment to the thresholds required by statute; accordingly, the operative category amounts for agency procurements are those currently set forth in statute, as indicated above.

**Revenue-Generating Contracts:** Though used infrequently, state agencies enter into contracts with vendors which do not require the direct outlay of state funds to the contractor, but generate a financial benefit to the vendor or the agency, or both.

One such contract, between the Department of Corrections (DOC) and a contractor for the operation of DOC canteens, has recently been the subject of intense scrutiny. DOC did not competitively procure the contract with Keefe Commissary Network in accordance with ch. 287, F.S., stating that since the contract was revenue generating and not a purchase under ch. 287, F.S., competitive solicitation was not required.<sup>9</sup> In 2006, a former Secretary and Regional Director of DOC pleaded guilty to accepting kickbacks from a subcontractor on the canteen services contract.

The Auditor General recommended in Report No. 2005-044 that the Legislature should consider revising current law to include provisions for the competitive procurement of revenue-generating contracts.

### III. Effect of Proposed Changes:

The bill adds a new subsection in s. 287.057, F.S., to require that an agency procure by competitive solicitation any contract that authorizes a contractor to use governmental authority to provide a service, or authorizes a contractor to use government property for the purpose of selling goods or services, if the sum of estimated gross revenues to be generated under the contract for the state, the contractor, or both exceed \$25,000.<sup>10</sup>

The bill takes effect July 1, 2007.

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<sup>5</sup> Rule 60A-1.002(3), F.A.C.

<sup>6</sup> Section 287.017(2), F.S. (2000 Supp.).

<sup>7</sup> Chapter 02-207 s. 10, L.O.F.

<sup>8</sup> Rule 60A-1.012, F.A.C.

<sup>9</sup> *Outsourcing of Canteen Operations*, Department of Corrections, Auditor General Report No. 2005-044, October 2004.

<sup>10</sup> Category Two of the purchasing categories in s. 287.017(1), 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:

Contractors may incur costs associated with responding to competitive solicitations. Those costs are indeterminate.

## C. Government Sector Impact:

Agencies may incur additional administrative costs associated with the competitive solicitation process. Those costs are indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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

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