

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 952

INTRODUCER: Senator Burgess

SUBJECT: Water Management Districts

DATE: March 2, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schreiber</u>	<u>Rogers</u>	<u>EN</u>	Favorable
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 952 authorizes a water management district to purchase commodities and services from the contracts of other specified entities, when such contracts have been procured pursuant to certain processes and otherwise meet the procurement requirements of the water management district. The bill authorizes a water management district to purchase from the contracts of: special districts, municipalities, counties, or other political subdivisions; educational institutions; other states; the Federal Government; nonprofit entities; or purchasing cooperatives. The authorization does not apply to purchasing services in the fields of architecture, professional engineering, landscape architecture, or registered surveying and mapping.

A water management district may avoid costs associated with competitive procurement process if the district uses other contracts to purchase commodities and services.

The bill takes effect July 1, 2021.

II. Present Situation:

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency procurement of personal property and services. The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and contractual services, as well as commodities needed to support agency activities.¹ DMS establishes purchasing agreements and procures state term contracts for commodities and contractual services, and establishes uniform procurement policies, rules, and procedures.² DMS negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

¹ See ss. 287.032 and 287.042, F.S.

² *Id.*; see Fla. Admin. Code ch. 60A-1.

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These methods include the following:

- Single source contracts,³ used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid,⁴ used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals,⁵ which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate,⁶ which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors.

For procurement of commodities or contractual services in excess of \$35,000, agencies must use a competitive solicitation process.⁷ However, specified contractual services and commodities are not subject to competitive solicitation requirements.⁸

Chapter 287 defines "agency" to mean any unit of the executive branch of state government.⁹ This definition does not apply to water management districts or local governments, so generally these entities are not subject to the requirements of the chapter. In general, each water management district¹⁰ maintains its own processes and requirements for procurement.¹¹

Consultants' Competitive Negotiation Act

While the requirements of ch. 287, F.S., apply generally to state agencies only, s. 287.055, F.S., known as the Consultants' Competitive Negotiation Act, applies to state agencies as well as local

³ Section 287.057(3)(c), F.S.

⁴ Section 287.057(1)(a), F.S.

⁵ Section 287.057(1)(b), F.S.

⁶ Section 287.057(1)(c), F.S.

⁷ Section 287.057(1), F.S.

⁸ Section 287.057(3)(e), F.S.

⁹ Section 287.012(1), F.S. The term "agency" is defined as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges."

¹⁰ See 373.019(23), F.S. "Water management districts" are defined as "any flood control, resource management, or water management district operating under the authority of this chapter."

¹¹ See SFWMD, *Procurement*, <https://www.sfwmd.gov/doing-business-with-us/procurement> (last visited Feb. 9, 2021); see NFWFMD, *District Procurement*, <https://www.nfwfwater.com/Business-Finance/District-Procurement> (last visited Feb. 9, 2021); see SJRWMD, *Procurement*, <https://www.sjrwmd.com/finance/procurement/> (last visited Feb. 9, 2021); see SRWMD, *Bids & Contracts*, <https://www.mysuwanneeriver.com/26/Bids-Contracts> (last visited Feb. 9, 2021); see SWFWMD, *Procurement and Contracts Administration*, <https://www.swfwmd.state.fl.us/business/finance/procurement-and-contracts-administration> (last visited Feb. 9, 2021).

governments and water management districts.¹² The Act requires these entities to follow specified procedures when purchasing professional services involving the following fields:

- Architecture;
- Professional Engineering;
- Landscape Architecture; or
- Registered Surveying and Mapping.¹³

Purchasing from Other Entities' Contracts

Chapter 287, F.S., and rules pursuant thereto, authorize state agencies to purchase commodities and services from the contracts of other entities, such as the federal government and other states.¹⁴ Section 287.056, F.S., provides that state agencies must, and “eligible users” may, purchase commodities and contractual services from purchasing agreements established and state term contracts procured by DMS.¹⁵ The definition of eligible user includes water management districts.¹⁶ Thus, a water management district is authorized to purchase commodities and services from state agency contracts.

In 2009, the Legislature created s. 189.053, F.S., to authorize special districts to purchase commodities and contractual services, other than services the acquisition of which is governed by 287.055, F.S., from the purchasing agreements of other special districts, municipalities, or counties which have been procured pursuant to competitive bid, requests for proposals, requests for qualifications, competitive selection, or competitive negotiations, and which are otherwise in compliance with general law if the purchasing agreement of the other special district, municipality, or county was procured by a process that would have met the procurement requirements of the purchasing special district.¹⁷ The definition of “special districts” includes water management districts for these purposes.¹⁸ Thus, a water management district is authorized

¹² Section 287.055(2)(b), F.S. The term “agency” is defined as “the state, a state agency, a municipality, a political subdivision, a school district, or a school board.”

¹³ Section 287.055, F.S.

¹⁴ See s. 287.042(16), F.S.; see Fla. Admin. Code R. 60A-1.045(5). Alternative purchasing methods require approval from DMS.

¹⁵ See DMS, *State Contracts and Agreements*,

https://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements (last visited Feb. 10, 2021).

¹⁶ Section 287.012(11), F.S. “Eligible user” is defined in statute as “any person or entity authorized by the department pursuant to rule to purchase from state term contracts or to use the online procurement system”; Fla. Admin. Code R. 60A-1.001(2). “Eligible user” is defined in rule to include “(e) Political subdivisions, including counties, cities, towns, villages and districts, as described by Section 1.01(8), F.S., and instrumentalities thereof”; see s. 1.01(8), F.S. Providing that, in construing the statutes, the words “political subdivision” include “counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.”

¹⁷ Section 189.053, F.S. This process is referred to as “piggybacking.” The National Institute of Government Purchasing defines “piggybacking” as “a form of intergovernmental cooperative purchasing in which an entity will be extended the same pricing and terms of a contract entered into by another entity. Generally the originating entity will competitively award a contract that will include language allowing for other entities to utilize the contract, which may be to their advantage in terms of pricing, thereby gaining economies of scale that they would otherwise not receive if they competed on their own.” See *Public Procurement Practice, Use of Cooperative Contracts for Public Procurement*, <https://www.nigp.org/resource/global-best-practices/Use%2520of%2520Cooperative%2520Contracts%2520for%2520Public%2520Procurement%2520Best%2520Practice.pdf?dl=true> (last visited February 24, 2022).

¹⁸ Section 189.012(6), (7), F.S.

to purchase commodities and services from the contracts of other special districts, municipalities, and counties, pursuant to the specified standards.

III. Effect of Proposed Changes:

Section 1 creates s. 373.6075, F.S., to authorize a water management district to purchase commodities and contractual services from the contracts that have been procured by other entities pursuant to competitive bids, requests for proposals, requests for qualifications, competitive selection, or competitive negotiations, and that are otherwise in compliance with general law if the contract of the procuring entity was procured by a process that would have met the procurement requirements of the purchasing water management district. The bill authorizes water management districts, for contracts procured in the manner specified in the bill, to purchase from the contracts of the following entities:

- Special districts, municipalities, counties, or other political subdivisions;
- Educational institutions;
- Other states;
- The Federal Government;
- Nonprofit entities; or
- Purchasing cooperatives.

The grant of authority to water management districts to purchase from the contracts of other entities does not apply to professional services within the scope of practice of, or performed in connection with the professional employment or practice of, the following fields:

- Architecture;
- Professional Engineering;
- Landscape Architecture; or
- Registered Surveying and Mapping.

According to email correspondence from January 2021, the Southwest Florida Water Management District believes that the general language of the bill clarifies purchasing language for water management districts and puts them on equal footing with other public entities such as state agencies, counties, and municipalities that have broader “piggyback” authority.¹⁹

Section 2 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁹ Email from Cara Martin, Southwest Florida Water Management District Government and Community Affairs Office Chief (Jan. 14, 2021)(on file with the Florida Senate Environment and Natural Resources Committee). The email is referring to HB 169, which contains essentially the same substantive language as SB 952.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill may have an indeterminate, positive fiscal impact on water management districts by permitting the districts to purchase commodities and services from the contracts of other entities, potentially resulting in avoiding costs associated with the procurement process and potentially lower prices or better purchasing options. The Southwest Florida Water Management District has stated that the bill will result in efficiencies both in terms of the procurement process and cost savings.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 373.6075 of the Florida Statutes.

²⁰ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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