

STORAGE NAME: h2053a.gg

DATE: April 18, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
ANALYSIS**

BILL #: HB 2053 (PCB UCO 00-02)

RELATING TO: Electronic procurement

SPONSOR(S): Committee on Utilities & Communications and Representative Rojas

TIED BILL(S):

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

- (1) UTILITIES & COMMUNICATIONS YEAS 10 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
 - (3) GENERAL GOVERNMENT APPROPRIATIONS YEAS 8 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

State procurement of personal property and services is governed by ch. 287, F.S. Part I of this chapter provides for the competitive bidding and competitive proposals for procurement of commodities and contractual services. Currently, there is no specific authority for procurement using electronic means, including the use of the Internet for bid solicitations and submissions, or for Internet bidding for vendors desiring to sell products or services to the state.

This bill allows agencies to accept bids and proposals by electronic means *in lieu of, or in addition to* written bids or proposals.

It provides that invitations to bid and requests for proposals also may be published, or transmitted, by electronic means.

When it is in the best interest of the state, the State Technology Office may purchase, or authorize a purchase, of information technology or related resources *by negotiation*, rather than by competitive sealed bids. It is unclear what criteria will be used to determine what the best interest of the state is.

This bill requires the State Technology Office in the Department of Management Services to develop a program for online procurement of commodities and contractual services for qualified bidders.

It provides appropriate rulemaking authority for the office to implement the program.

This bill provides an effective date of upon becoming a law.

The Department anticipates no additional funding requirements associated with implementing this bill.

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., provides procedures for the state agencies to procure personal property and services. Currently, procurement of commodities and contractual services is usually conducted through a process using "competitive sealed bids" or "competitive sealed proposals." These are defined by s. 287.012(5), F.S., as the "receipt of two or more sealed bids or proposals submitted by responsive and qualified bidders or offerors."

An "invitation to bid" is a written solicitation for competitive sealed bids pursuant to s. 287.012(11), F.S., with the title, date, and hour of the public bid opening being stated in the solicitation document. The invitation to bid must also define the type of commodity, group of commodities, or services that are being sought. Subsection (15) of this section provides that a "request for proposals" is a written solicitation for competitive sealed proposals. The title, date, and hour of the public opening must be stated in the request.

Any purchase price for commodities or contractual services exceeding purchasing CATEGORY TWO (\$25,000) must be made using competitive sealed bids or competitive sealed proposals, except as provided in s. 287.057(3), F.S.

The State of Pennsylvania has conducted several online auction-style procurements of commodities under a pilot program. The Pennsylvania Department of General Services contracted with a private software vendor to conduct the on-line bidding activity. The department conducted three online auction-style procurements under this program through the summer of 1999. The procurements involved the purchase of 2.4 million pounds of coiled aluminum for the manufacture of license plates, 31 lots of anthracite coal to heat state institutions and facilities, and 972,000 tons of road salt. According to a representative of the software vendor, the state is looking into the feasibility of conducting auction-style procurements of contractual services.

C. EFFECT OF PROPOSED CHANGES:

Section 1 - Amends s. 287.012, F.S., allowing agencies to receive bids and proposals by electronic means in lieu of, or in addition to traditional written bids, and defining a "written solicitation" to include a solicitation published or transmitted by electronic means.

Section 2 - Amends s. 287.042(16)(a), F.S., requiring the Department of Management Services to consult with the State Technology Office on joint agreements involving purchases of information technology resources. Currently, the department is authorized to, but not required to consult with the State Technology Office involving such purchases.

Section 3 - Amends s. 287.057(3), F.S., allowing the State Technology Office to purchase, or to authorize an agency to purchase, information technology or information technology services *by negotiation* rather than competitive sealed bids or proposals.

This exemption from the current requirement for competitive bids or proposals is specifically intended to be made in the “best interest of the state”, and “under conditions most favorable to the public interest”. What the best interest of the state is, or how it should be determined, is not addressed in this bill.

The bill also creates a new subsection (22) in s. 282.057, F.S., requiring the State Technology Office to develop a program for online procurement of commodities and contractual services. It provides that only pre-qualified bidders may participate in online procurements. The bill allows the State Technology Office to contract for equipment and services necessary to implement online procurements.

The State Technology Office is authorized to adopt rules to implement the program for online procurement.

Section 4 - Provides an effective date of upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

Please see “Effect of Proposed Changes” section.

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:

No material impact on the private sector is anticipated.

D. FISCAL COMMENTS:

The DMS would use current resources or enter into a (no-cost) public/private partnership to implement the requirements of the bill.

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 an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties 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:

This bill authorizes the State Technology Office to adopt rules to implement a program for online auction-style procurements. It provides that the rules must include provisions:

- determining the requirements and qualification criteria for pre-qualifying bidders;
- establishing the procedures for conducting the online procurements;
- establishing the criteria for eligible commodities and contractual services; and
- establishing the procedures for providing access to online procurements.

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C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its meeting on April 5, 2000, the Committee on Governmental Operations reported this bill favorably, with 2 amendments. Both amendments replaced the term "auction", with the term "procurement". The purpose of the amendments was to clarify that even though the on-line activity described involves bidders, the activity is more accurately termed an auction-style procurement, or a procurement (from the state's perspective), rather than an auction. The amendments are traveling with the bill.

On April 18, 2000, the Committee on General Government Appropriations adopted one amendment to HB 2053. The amendment removes proposed language to allow the State Technology Office to purchase, or to authorize an agency to purchase, information technology or information technology resources by negotiation. The amendment is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON Committee on Utilities & Communications:

Prepared by:

Staff Director:

Patrick L. "Booter" Imhof

Patrick L. "Booter" Imhof

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

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Russell J. Cyphers, Jr.

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AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

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