

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1451
SPONSOR(S): Attkisson
TIED BILLS:

Competitive Solicitation of Contracts
IDEN./SIM. BILLS: CS/SB 1976

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Audit & Performance	6 Y, 0 N	De La Paz	De La Paz
2) Government Efficiency & Accountability Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

Currently, contracts for the purchase of most commodities and services are to be procured by competitive solicitation when the dollar amount is above \$25,000. 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.

In October 2004, the Auditor General recommended that the Legislature should consider revising current law to include provisions for the competitive procurement of revenue-generating contracts.

HB 1451 adds a new subsection in s. 287.057, F.S., to require that unless exempt from competitive solicitation requirements pursuant to s. 287.057(5), F.S., an agency must 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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to directly implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Chapter 287, F.S., governs the procurement of personal property and services by state agencies. The statement of legislative intent in section of ch. 287, F.S., states 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."¹

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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.⁴ 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.⁵ 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.⁶ 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.⁷ In 2006, a former Secretary and Regional Director of DOC pleaded guilty to accepting kickbacks from a subcontractor on the

¹ Section 287.001, F.S.

² Sections 287.057(1)(a), & 287.017(1)(b), F.S.

³ Rule 60A-1.002(3), F.A.C.

⁴ Section 287.017(2), F.S. (2000 Supp.)

⁵ Chapter 02-2-7, Laws of Florida

⁶ Rule 60A-1.012, F.A.C.

⁷ *Outsourcing of Canteen Operations*, Department of Corrections, Auditor General Report No. 2005-44. October 2004.

canteen services contract.

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C. SECTION DIRECTORY:

Section 1. Amends s. 287.057, F.S., relating to requiring agencies to procure contracts for the state through competitive solicitation.

Section 2. Provides an effective date.

II. 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:

There are indeterminate costs that contractors may incur in responding to competitive solicitations.

D. FISCAL COMMENTS:

There are indeterminate costs that state agencies may incur in the competitive solicitation process.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties and cities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

An amendment was adopted in the meeting of the Audit and Performance Committee on March 21, 2007, that required that if a governmental developer enters into a professional services contract to prepare a "design criteria package" for a "design-build contract" then the design criteria professional must be selected and contracted pursuant to s. 255.055(3), F.S.⁸ That subsection requires uniform public notice by a governmental developer when professional services must be purchased for a construction project that the Department of Management Services estimates will exceed \$250,000 or when the professional service fee for a planning or study activity exceeds \$25,000. In addition, the application of that subsection to design criteria professionals would require that they be certified as fully qualified according to the laws and regulations of the governmental developer. This subsection also sets forth specific criteria and considerations for each governmental developer to utilize in evaluating professional service providers.

Another amendment was adopted which authorizes notice that is "substantially identical" to that required under s. 287.057, F.S., relating to relating to procurement of commodities and contractual services, may be provided through a "public notice website established by the department." Currently, however, a public notice website for state procurements is available through the MyFloridaMarketPlace.com website operated and maintained by Accenture on contract with DMS. Nevertheless, the amendment provides that this additional or alternative public notice website must be ". . . freely accessible to the public and shall be operated by the website provider at no cost to the state." The amendment authorizes the website provider to charge a reasonable fee of not more than \$10 for the posting of the notice on this additional or alternative website, but the fee must not charge for public access to or use of any of the website's browsing features. The amendment requires the website provider to remit 15% of the revenues "that would have been generated through the posting of notice by traditional means in the courts within the state." It is unclear how the determination of revenues that "would have been generated" is to be made.

⁸ Section 287.055(2)(j) defines "design criteria package" to mean a concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the project.