

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: CS/SB 1290

INTRODUCER: Governmental Oversight and Accountability Committee, Senator Altman, and others

SUBJECT: Transportation Services Procurement

DATE: March 20, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	Fav/CS
2.			TR	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1290 creates a new provision within the state agency procurement laws mandating that an agency must consider the following two things, when evaluating replies to competitive solicitations for cargo, freight, or package delivery services:

- Whether a vendor uses alternative fuels, and
- The fuel efficiency of the vehicles used by the vendor.

II. Present Situation:

State Procurement of and Contracts for Personal Property and Services

Chapter 287, F.S., regulates state agency¹ procurement of personal property² and services.³ 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, such as office supplies, vehicles, and information technology.⁴ The Division of State Purchasing in the DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

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 include the following:

- Single source contracts, which are 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, which are 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 (RFP), 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 (ITN), which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.⁵

Criteria used to evaluate proposals received pursuant to a request for proposals must include, but are not limited to:

- Price;
- Renewal price, if renewal is contemplated; and
- Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor.⁶

¹ As defined in s. 287.012(1), F.S., "agency" means 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.

² Personal property" is not independently defined for purposes of ch. 287, F.S., but the chapter title for Chapter 287, F.S., is "Procurement of Personal Property and Services." Additionally, the definition of "commodity" in s. 287.012(5), F.S., is "any of the various supplies, materials, goods, merchandise, food, equipment, information technology, and other personal property, including a mobile home, trailer, or other portable structure that has less than 5,000 square feet of floor space, purchased, leased, or otherwise contracted for by the state and its agencies." This definition is used in Part I of Ch. 287, F.S., "Commodities, Insurance, and Contractual Services."

³ Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

⁴ See ss. 287.032 and 287.042, F.S.

⁵ See ss. 287.012(6) and 287.057, F.S.

⁶ Section 287.057(1)(b)3., F.S.

In invitations to negotiate, the criteria to be used in determining the acceptability of the reply and guiding the selection of the vendors with which the agency will negotiate must be specified in the ITN.⁷

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.⁸ However, specified contractual services and commodities are not subject to competitive solicitation requirements.⁹

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the DMS, a water management district, or certain other agencies.¹⁰

III. Effect of Proposed Changes:

The bill creates s. 287.0836, F.S., relating to sustainable transportation services procurements.

The bill requires an agency to consider the following two things, when evaluating replies to competitive solicitations for cargo, freight, or package delivery services:

- Whether a vendor uses alternative fuels (including natural gas), and
- The fuel efficiency of the vehicles used by the vendor.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ Section 287.057(1)(c)3., F.S.

⁸ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., “competitive solicitation” means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁹ See s. 287.057(3)(f), F.S.

¹⁰ See s. 287.042(2)(c), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate. If the bill is interpreted as a preference for vendors with alternative fuel or fuel-efficient vehicles, vendors with those operational characteristics might obtain more contracts.

C. Government Sector Impact:

Indeterminate. The bill does not address price, and the interplay between the implied preference in the bill and cost is difficult to determine in advance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires agencies to “consider” vendor use of alternative fuels and vehicle fuel efficiency in certain procurements. Use of the word “consider” means that agencies will have discretion to weigh the relevance of these factors in any given procurement. The exercise of discretion in the procurement process can provide grounds for aggrieved vendors to protest agency decisions.

The bill requires consideration of whether a vendor uses alternative fuels and fuel-efficient vehicles generally. It does not require information related to a vendor’s fuel usage *in performance of the Florida contract*. If the intent of the legislature is to reward or incentivize vendor use of alternative fuels and fuel-efficient vehicles in performance of contracts in Florida, the bill should so specify. Otherwise, a vendor could get consideration for conduct occurring outside Florida.

VIII. Statutes Affected:

This bill creates section 287.0836 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 20, 2014:

The CS narrows the bill to merely require an agency to consider the following two things, when evaluating replies to competitive solicitations for cargo, freight, or package delivery services:

- Whether a vendor uses alternative fuels, and
- The fuel efficiency of the vehicles used by the vendor.

- B. **Amendments:**

None.