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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/11/2014	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 397 and 398

insert:

(e) The corporation is subject to s. 287.057 for the purchase of commodities and contractual services except as otherwise provided in this paragraph. Services provided by tradepersons or technical experts to assist a licensed adjuster



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10 in the evaluation of individual claims are not subject to the
11 procurement requirements of this section. Additionally, the
12 procurement of financial services providers and underwriters
13 must be made pursuant to s. 627.3513. Contracts for goods or
14 services valued at or more than \$100,000 are subject to approval
15 by the board.

16 1. The corporation is an agency for purposes of s. 287.057,
17 except that, for purposes of s. 287.057(22), the corporation is
18 an eligible user.

19 a. The authority of the Department of Management Services
20 and the Chief Financial Officer under s. 287.057 extends to the
21 corporation as if the corporation were an agency.

22 b. The executive director of the corporation is the agency
23 head under s. 287.057, except for resolution of bid protests for
24 which the board would serve as the agency head.

25 2. The corporation must provide notice of a decision or
26 intended decision concerning a solicitation, contract award, or
27 exceptional purchase by electronic posting. Such notice must
28 contain the following statement: "Failure to file a protest
29 within the time prescribed in this section constitutes a waiver
30 of proceedings."

31 a. A person adversely affected by the corporation's
32 decision or intended decision to award a contract pursuant to s.
33 287.057(1) or (3)(c) who elects to challenge the decision must
34 file a written notice of protest with the executive director of
35 the corporation within 72 hours after the corporation posts a
36 notice of its decision or intended decision. For a protest of
37 the terms, conditions, and specifications contained in a
38 solicitation, including ~~any~~ provisions governing the methods for



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39 ranking bids, proposals, replies, awarding contracts, reserving
40 rights of further negotiation, or modifying or amending any
41 contract, the notice of protest must be filed in writing within
42 72 hours after ~~the~~ posting ~~of~~ the solicitation. Saturdays,
43 Sundays, and state holidays are excluded in the computation of
44 the 72-hour time period.

45 b. A formal written protest must be filed within 10 days
46 after the date the notice of protest is filed. The formal
47 written protest must state with particularity the facts and law
48 upon which the protest is based. Upon receipt of a formal
49 written protest that has been timely filed, the corporation must
50 stop the solicitation or contract award process until the
51 subject of the protest is resolved by final board action unless
52 the executive director sets forth in writing particular facts
53 and circumstances that require the continuance of the
54 solicitation or contract award process without delay in order to
55 avoid an immediate and serious danger to the public health,
56 safety, or welfare.

57 (I) The corporation must provide an opportunity to resolve
58 the protest by mutual agreement between the parties within 7
59 business days after receipt of the formal written protest.

60 (II) If the subject of a protest is not resolved by mutual
61 agreement within 7 business days, the corporation's board must
62 transmit the protest to the Division of Administrative Hearings
63 and contract with the division to conduct a hearing to determine
64 the merits of the protest and to issue a recommended order place
65 the protest on the agenda and resolve it at its next regularly
66 scheduled meeting. The contract must provide for the corporation
67 to reimburse the division for any costs incurred by the division



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68 for court reporters, transcript preparation, travel, facility
69 rental, and other customary hearing costs in the manner set
70 forth in s. 120.65(9). The division has jurisdiction to
71 determine the facts and law concerning the protest and to issue
72 a recommended order. The division's rules and procedures apply
73 to these proceedings; the division's applicable bond
74 requirements do not apply. The protest must be heard by the
75 division ~~board~~ at a publicly noticed meeting in accordance with
76 procedures established by the division ~~board~~.

77 c. In a protest of an invitation-to-bid or request-for-
78 proposals procurement, submissions made after the bid or
79 proposal opening which amend or supplement the bid or proposal
80 may not be considered. In protesting an invitation-to-negotiate
81 procurement, submissions made after the corporation announces
82 its intent to award a contract, reject all replies, or withdraw
83 the solicitation that amends or supplements the reply may not be
84 considered. Unless otherwise provided by law, the burden of
85 proof rests with the party protesting the corporation's action.
86 In a competitive-procurement protest, other than a rejection of
87 all bids, proposals, or replies, the corporation's board must
88 conduct a de novo proceeding to determine whether the
89 corporation's proposed action is contrary to the corporation's
90 governing statutes, the corporation's rules or policies, or the
91 solicitation specifications. The standard of proof for the
92 proceeding is whether the corporation's action was clearly
93 erroneous, contrary to competition, arbitrary, or capricious. In
94 any bid-protest proceeding contesting an intended corporation
95 action to reject all bids, proposals, or replies, the standard
96 of review by the board is whether the corporation's intended



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97 action is illegal, arbitrary, dishonest, or fraudulent.

98 d. Failure to file a notice of protest or failure to file a
99 formal written protest constitutes a waiver of proceedings.

100 3. The board, acting as agency head, shall consider the
101 recommended order of an administrative law judge in a public
102 meeting and take final action on the protest. ~~Contract actions~~
103 and decisions by the board under this paragraph are final. Any
104 further legal remedy lies with the First District Court of
105 Appeal ~~must be made in the Circuit Court of Leon County.~~

106

107 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

108 And the directory clause is amended as follows:

109 Delete lines 90 - 91

110 and insert:

111 Section 2. Paragraphs (b), (e), and (hh) of subsection (6)
112 of section 627.351, Florida Statutes, are amended to read:

113

114 ===== T I T L E A M E N D M E N T =====

115 And the title is amended as follows:

116 Delete line 27

117 and insert:

118 projected deficit; requiring the corporation's board
119 to contract with the Division of Administrative
120 Hearings to hear protests of the corporation's
121 decisions regarding the purchase of commodities and
122 contractual services and issue a recommended order;
123 requiring the board to take final action in a public
124 meeting; revising the date for submitting