HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 953 State Contracting
SPONSOR(S): Peters
TIED BILLS: **IDEN./SIM. BILLS:** SB 914

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	9 Y, 0 N	Harrington	Williamson
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	White	Topp
3) State Affairs Committee	15 Y, 0 N	Harrington	Camechis

SUMMARY ANALYSIS

Current law requires agencies to utilize a competitive solicitation process for contracts for commodities or services in excess of $35,000. Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which may include a request for proposal or invitation to negotiate. The agency must consider certain criteria when evaluating the proposal or reply before selecting a vendor.

The bill requires state agencies to consider the prior relevant experience of a vendor when evaluating the responses to a request for proposal or invitation to negotiate. Currently, agencies may consider such prior relevant experience, but agencies are not required to do so.

The bill does not have a fiscal impact on state or local government.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency[1] procurement of personal property and services. The Department of Management Services (department) is responsible for overseeing state purchasing activity, including professional and construction services, as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.[2] The department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[3]

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:[4]

- 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 proposal, 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, 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.

For contracts for commodities or services in excess of $35,000, agencies must utilize a competitive solicitation process;[5] however, certain contractual services and commodities are exempt from this requirement.[6] Section 287.012(6), F.S., provides that 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."

Evaluation Criteria

Prior to contracting, an agency must determine the integrity, reliability, and qualifications it will require in a vendor with regard to the capability of the vendor to fully perform the contract requirements.[7] Depending on the type of competitive solicitation utilized, an agency must consider certain criteria; however, agencies are not limited in what they may consider prior to contract.

If an agency utilizes a request for proposal, the agency must award the contract to the responsible and responsive vendor whose proposal is determined to be the most advantageous to the state after evaluating:

- Price;
- Renewal price, if renewal is contemplated; and

[1] Section 287.012(1), F.S., defines agency 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."
[2] *See* ss. 287.032 and 287.042, F.S.
[3] *Id*.
[4] *See ss*. 287.012(6) and 287.057, F.S.
[5] 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.
[6] *See* s. 287.057(3), F.S.
[7] Chapter 60A-1.006, F.A.C.

- Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor.[8]

For purposes of an invitation to negotiate, the criteria used to determine the acceptability of the reply, and for purposes of guiding the selection of the vendors with which the agency will negotiate, must be specified in the invitation to negotiate. The agency must evaluate the replies received against the evaluation criteria established in the invitation to negotiate in order to establish a competitive range of replies reasonably susceptible of award. The agency may select one or more vendors within the competitive range with which to negotiate. After negotiations, the agency must award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state, based on the selection criteria.

Effect of Proposed Changes

The bill requires agencies to consider the prior relevant experience of a vendor when evaluating responses to a request for proposal or invitation to negotiate. Currently, agencies may consider prior relevant experience, but agencies are not required to do so.

B. SECTION DIRECTORY:

Section 1. amends s. 287.057, F.S., revising the criteria for evaluating a proposal to include consideration of prior relevant experience of the vendor; revising the criteria for evaluating a response to an agency's invitation to negotiate to include consideration of prior relevant experience of the vendor.

Section 2. provides an effective date of July 1, 2014.

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:

None.

D. FISCAL COMMENTS:

None.

[8] Section 287.057(1)(b)3., F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.