

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 973 Transportation Services Procurement

**SPONSOR(S):** Government Operations Subcommittee; Wood

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 0 N, As CS	Harrington	Williamson
2) Appropriations Committee			
3) State Affairs Committee			

### 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 whether the vendor uses alternative fuels, including natural gas, and the fuel efficiency of the vehicles used when evaluating a proposal or reply received pursuant to a request for proposal or an invitation to negotiate for services related to cargo, freight, or package delivery. Currently, agencies may consider such factors, but agencies are not required to do so.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Department of Management 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.<sup>1</sup> The department provides a wide variety of services including approving the acquisition and disposal of motor vehicles and watercraft.

#### Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency<sup>2</sup> procurement of personal property and services. The department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.<sup>3</sup>

Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which include:<sup>4</sup>

- 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;<sup>5</sup> however, certain contractual services and commodities are exempt from this requirement.<sup>6</sup> 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.<sup>7</sup> 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.

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<sup>1</sup> See ss. 287.032 and 287.042, F.S.

<sup>2</sup> 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."

<sup>3</sup> *Id.*

<sup>4</sup> See ss. 287.012(6) and 287.057, F.S.

<sup>5</sup> 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.

<sup>6</sup> See s. 287.057(3), F.S.

<sup>7</sup> Chapter 60A-1.006, F.A.C.

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
- Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor.<sup>8</sup>

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.

#### Alternative Fuel

The Department of Environmental Protection (DEP) is responsible for developing and implementing strategies to reduce air pollution from mobile sources, such as trucks, buses, passenger vehicles, and planes. The Florida Clean Fuel Act<sup>9</sup> establishes an advisory board within DEP for the purpose of studying the implementation of alternative fuel vehicles and to formulate recommendations on expanding the use of alternative fuel vehicles in this state. Alternative fuels are defined as “electricity, biodiesel, natural gas, propane, and any other fuel that may be deemed appropriate by DEP with guidance from the advisory board.”<sup>10</sup>

In addition to DEP, the Department of Agriculture and Consumer Services (DACS) also regulates in the area of alternative fuels. Natural gas fuel means any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle. The term includes all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas.<sup>11</sup>

#### Consideration of Fuel Efficiency

The Department of Management Services must encourage other state government entities to analyze transportation fuel usage, including the different types and percentages of fuels consumed, and report such information to the department.<sup>12</sup> However, current law does not require an agency to consider the fuel efficiency or use of alternative fuels when evaluating replies or proposals, although they may choose to do so.

#### **Effect of Proposed Changes**

The bill requires agencies to consider whether the vendor uses alternative fuels, including natural gas, and the fuel efficiency of the vehicles used when evaluating a proposal or reply received pursuant to a request for proposal or an invitation to negotiate for services related to cargo, freight, or package delivery. Currently, agencies may consider such factors, but agencies are not required to do so.

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<sup>8</sup> Section 287.057(1)(b)3., F.S.

<sup>9</sup> Chapter 99-248, L.O.F.; codified as s. 403.42, F.S.

<sup>10</sup> Section 403.42(2)(a), F.S.

<sup>11</sup> Section 377.810(2)(f), F.S. For purposes of the section, natural gas fuel does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.

<sup>12</sup> Section 287.16(11), F.S.

**B. SECTION DIRECTORY:**

Section 1. creates s. 287.0836, F.S., relating to transportation services procurement; requiring agencies to consider certain criteria when issuing a request for proposal or invitation to negotiate for specified transportation services.

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:**

The bill could have a positive impact on those vendors offering certain transportation services using fuel efficiency vehicles or alternative fuels.

**D. FISCAL COMMENTS:**

None.

**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**

On March 25, 2014, the Government Operations Subcommittee adopted a proposed committee substitute and reported the bill favorably with a committee substitute. The proposed committee substitute:

- Removed the requirement that DMS adopt rules to implement a sustainable transportation procurement policy;
- Revised the provisions in the bill providing that certain requirements must be considered when procuring specified transportation projects;
- Removed the provision that allowing DMS to give appropriate weight, in its discretion, to the criteria established in rule; and
- Removed the provision allowing DMS to comment on the combined economic and environmental impacts of implementing the bill.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.