

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 574

INTRODUCER: Senator Montford

SUBJECT: Government Procurement

DATE: March 9, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	<b>Pre-meeting</b>
2.			AED	
3.			AP	

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**I. Summary:**

SB 574 recognizes “reverse auctions” as a means to procure commodities and contractual services. A reverse auction allows eligible users to submit electronic bids for goods and services in real time on a website that uses third-party software managed by an approved vendor and state agency or other governmental entity. The bill revises the term “eligible user.” The Department of Management Services (DMS) is required to maintain a program for reverse auctions and to adopt rules to administer reverse auctions. DMS is authorized to contract for equipment and services to implement reverse auctions.

The authority of the Department of Agriculture and Consumer Services to use its own online system for procuring commodities and contractual services remains unchanged. SB 574 authorizes the Department of Education to conduct reverse auctions and other online procurement programs in providing assistance to district school boards. The bill authorizes the Board of Governors to adopt regulations governing a university’s participation in reverse auctions.

The bill also reenacts specified sections of F.S. to incorporate changes made to ch. 287, F.S.

**II. Present Situation:**

Chapter 287, F.S., regulates state agency<sup>1</sup> procurement of personal property and services.<sup>2</sup> Agencies may use a variety of procurement methods, depending on the cost and characteristics

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<sup>1</sup> 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.

<sup>2</sup> 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.

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 (ITB)," 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.<sup>3</sup>

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.<sup>4</sup> However, specified contractual services and commodities are not subject to competitive-solicitation requirements.<sup>5</sup>

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by DMS, a water management district, or state agencies.<sup>6</sup>

### **Online Procurement of Commodities and Contractual Services**

Pursuant to s. 287.057(22), F.S., DMS is required to maintain a program for online procurement of commodities and contractual services in consultation with the Chief Financial Officer (Department of Financial Services) and the Agency for State Technology (AST). DMS has authority to contract for equipment and services to develop and implement online procurement in consultation with the AST and in compliance with standards of AST.<sup>7</sup> DMS is required to adopt rules for the administration of the program for online procurement.<sup>8</sup> DMS may also impose and collect fees for use of the online procurement system.<sup>9</sup>

DMS's online procurement program is MyFloridaMarketPlace (MFMP). MFMP is used by the Division of State Purchasing for formal solicitations (ITB, RFP, and ITN) and by state agencies

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<sup>3</sup> See ss. 287.012(6) and 287.057, F.S.

<sup>4</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. 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.

<sup>5</sup> See s. 287.057(3)(e), F.S.

<sup>6</sup> See ss. 287.042(2)(c) and 120.57(3), F.S.

<sup>7</sup> Section 287.057(22)(a), F.S. Also, see s. 282.0051(4), F.S. (AST has responsibility to perform project oversight on all state agency information technology project costs of \$10 million or more that are funded in the General Appropriations Act or other law.)

<sup>8</sup> Section 287.057(22)(b), F.S. See Rules 60A-1.030-1.033, F.A.C.

<sup>9</sup> Section 287.057(22)(c), F.S.

for informal quotes and electronic invoicing.<sup>10</sup> MFMP has been in operation for more than ten years.<sup>11</sup>

Section 570.07(42), F.S., provides the Department of Agriculture and Consumer Services with the authority to utilize its own online system for procurement of commodities and contractual services.

### **Reverse Auctions**

Reverse auctions are not a current method of procuring commodities and contractual services for state agencies under Ch. 287, F.S. DMS's MFMP sourcing application has conducted reverse auctions within the confines of the existing competitive procurement solicitations of ITB, RFP, and ITN. The MFMP application has inherent reverse auction functionality. In reverse auctions, vendors do not see the prices of competing vendors, because of the sealed bid, proposal or reply requirements of s. 287.057, F.S., but they do see their ranking.<sup>12</sup> DMS previously used this functionality to conduct two reverse auctions: 1) In 2007 for STC 250-040-08-1 for PCs, Laptops and Monitors, and 2) Office Supplies and Toner Cartridges.

The reverse auction functionality is available for use by the Division of State Purchasing. To roll-out this functionality, state agencies would require system changes to the MFMP application; however, to support a state agency pilot those changes could be accomplished for minimal cost.

Additionally, the vendor community has used MFMP to respond to formal solicitations conducted by the Division of State Purchasing and informal quotes by state agencies. Through the MFMP Utilization Initiative, DMS has made a significant investment in communicating and training vendors in how to use MFMP application. Using the reverse auction functionality of MFMP would require minimal additional vendor training efforts, however, transitioning to a new third party system would require vendors to become familiar with a wholly new system.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 287.012, F.S., to define "reverse auction" and amend the definition of "eligible user."

"Reverse auction" is defined as a procurement of commodities or contractual services conducted on a centralized website that uses third-party software and is jointly managed by an approved vendor and state agency or other governmental entity using state procurement processes. Eligible users submit electronic bids through the website in response to a competitive solicitation.

The definition of the term "eligible user" includes those that "participate in reverse auctions". The term "eligible user" would appear to include vendors selling commodities or services to state

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<sup>10</sup> Analysis from DMS dated February 3, 2015, on file with the Committee on Governmental Oversight and Accountability.

<sup>11</sup> See [http://www.dms.myflorida.com/business\\_operations/state\\_purchasing](http://www.dms.myflorida.com/business_operations/state_purchasing).

<sup>12</sup> DMS analysis dated February 3, 2015.

agencies. Section 287.057, F.S., describes bids for procurements as sealed prior to bidding. A reverse auction requires bids to be open.

**Section 2** amends s. 287.057, F.S., to require the Department of Management Services to:

- maintain a program for reverse auctions;
- contract for equipment and services necessary for reverse auctions;
- adopt rules for reverse auctions;
- impose and collect fees for reverse auctions; and
- compensate a provider for managing a reverse auction website.

**Section 3** amends s. 570.07(42), F.S., by revising the functions, powers, and duties of the Department of Agriculture and Consumer Services to conform to changes made by this bill.

**Section 4** amends s. 1006.27(1), F.S., by authorizing the Department of Education (DOE) to use reverse auctions and other online procurement programs in assisting district school boards with purchases of buses, equipment and supplies and by requiring DOE to adopt rules establishing procedures for the use of reverse auctions by district school boards.

**Section 5** amends s. 1010.04(4)(b), F.S., by providing the Board of Governors with authority to adopt regulations governing a state university's participation in reverse auctions.

**Section 6** reenacts sections 120.57(3)(g) and 283.33(3), F.S., relating to procedures for a protest of a contract solicitation or award and contracts for printing of publications to incorporate amendments made by this bill to s. 287.012, F.S.

**Section 7** reenacts s. 627.351(6)(e), F.S., relating to Citizens Property Insurance Corporation's purchase of commodities and contractual services for the purpose of incorporating amendments made by this bill to s. 287.057, F.S.

**Section 8** provides an effective date of July 1, 2015.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

**B. Private Sector Impact:**

Indeterminate.

**C. Government Sector Impact:**

Minimal.

**VI. Technical Deficiencies:**

The concept of reverse auctions requires that bids be open so that vendors can bid against each other. This conflicts with the sealed bid requirement of s. 287.057, F.S.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 287.012, 287.057, 570.07, 1006.27, and 1010.04.

This bill reenacts the following sections of the Florida Statutes: 120.57(3)(g), 283.33(3), and 627.351(6)(e).

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.