

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 615 Electronic Auction Services  
**SPONSOR(S):** Government Operations Subcommittee; Hutson  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 574

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

### SUMMARY ANALYSIS

Chapter 287, F.S., regulates state agency procurement of personal property and services. The Department of Management Services (DMS) 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. Although not specifically authorized, DMS has conducted a reverse auction while utilizing its online procurement program, MyFloridaMarketPlace. In reverse auctions, vendors do not see the prices of competing vendors, because of sealed bid, proposal, or reply requirements, but vendors do see their ranking.

The bill defines the term “electronic auction services” to mean a procurement conducted on a centralized website using third party software, jointly managed by an approved vendor and an agency or governmental entity, and using the procurement process set forth in s. 287.057, F.S., or other authorized means of obtaining competitive prices in an auction environment.

The bill authorizes a district school board to adopt purchasing rules to assist with the efficient and effective procurement of goods and services, including online procurement, electronic auction services, and multistate purchasing consortia.

The bill requires the Department of Education to use electronic auction services, or other efficient procurement tools and multistate purchasing consortia when assisting district school boards in securing school buses, contractual needs, equipment, and supplies. It authorizes district school boards to use electronic auction services or other efficient procurement tools.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Procurement of Commodities and Services

###### *Agency Procurements*

Chapter 287, F.S., regulates state agency<sup>1</sup> procurement of personal property and services. The Department of Management Services (DMS) 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>2</sup> DMS 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, specified contractual services and commodities are not subject to competitive solicitation requirements.<sup>6</sup>

*Department of Education, District School Boards, and Board of Governors Purchasing Procurements* Section 1001.42, F.S., provides powers and duties of the district school boards. Among its duties, the school board must secure purchasing regulations and amendments from DMS. Prior to any purchase, the district school board must have reported to it by its staff, and give consideration to, the lowest price available to it under such regulations, provided a regulation applicable to the item or items being purchased has been adopted by the Department of Education.<sup>7</sup> District school boards may use prices established by the Division of Purchasing within DMS through its state purchasing agreement price schedule.<sup>8</sup>

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<sup>1</sup> Section 287.012(1), F.S., defines the term "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>2</sup> See ss. 287.032 and 287.042, F.S.

<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 threshold amount (\$35,000) contained in s. 287.017, F.S., to be competitively procured.

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

<sup>7</sup> Section 1001.42(12)(j), F.S.

<sup>8</sup> Chapter 6A-1.012(5), F.A.C.

Each district school board must adopt rules to be followed when making purchases.<sup>9</sup> In some counties, the county purchasing agent has authority to make purchases for the benefit of other governmental agencies within the county. In such a case, the district school board may purchase from the current county contracts.<sup>10</sup>

The State Board of Education may, by rule, provide for alternative procedures for school districts for bidding or purchasing in cases in which the character of the item requested renders competitive bidding impractical.<sup>11</sup> The Board of Governors may, by regulation, provide for alternative procedures for state universities for bidding or purchasing in cases in which the character of the item requested renders competitive bidding impractical. In addition, the Board of Governors must adopt regulations requiring universities to use purchasing agreements or state term contracts pursuant to s. 287.056, F.S., or enter into consortia and cooperative agreements to maximize the purchasing power for goods and services.<sup>12</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 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 AST and in compliance with the standards of AST.<sup>13</sup> DMS is required to adopt rules for the administration of the program for online procurement.<sup>14</sup> DMS may impose and collect fees for use of the online procurement system.<sup>15</sup>

DMS's online procurement program is MyFloridaMarketPlace (MFMP). MFMP is used by the Division of State Purchasing for formal solicitations, and by state agencies<sup>16</sup> for informal quotes and electronic invoicing.<sup>17</sup> MFMP has been in operation for more than 10 years.<sup>18</sup>

#### Reverse Auctions

Reverse auctions are not a specified procurement method for commodities or contractual services in chapter 287, F.S. However, MFMP has conducted reverse auctions within the confines of the existing competitive procurement solicitations (invitations to bid, requests for proposals, and invitations to negotiate). The MFMP application has inherent reverse auction functionality. In reverse auctions, vendors do not see the prices of competing vendors, because of sealed bid, proposal, or reply requirements, but vendors do see their ranking.<sup>19</sup> DMS previously used this functionality to conduct two reverse auctions for:<sup>20</sup>

1. Computers, laptops, and monitors; and
2. Office supplies and toner cartridges.

The reverse auction functionality is available for use by the Division of State Purchasing. Other state agencies would require system changes to the MFMP application to gain functionality of reverse auction services. However, according to DMS, a pilot program could be accomplished for minimal cost.<sup>21</sup>

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

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<sup>9</sup> Section 1010.04(2), F.S.

<sup>10</sup> Section 1010.04(3), F.S.

<sup>11</sup> Section 1010.04(4), F.S.

<sup>12</sup> Section 1001.706(3)(i), F.S.

<sup>13</sup> Section 287.057(22)(a), F.S.; *see also* 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>14</sup> Section 287.057(22)(b), F.S. *See* Rules 60A-1.030-1.033, F.A.C.

<sup>15</sup> Section 287.057(22)(c), F.S.

<sup>16</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.

<sup>17</sup> DMS Bill Analysis for HB 615 (February 8, 2015)(on file with the Government Operations Subcommittee).

<sup>18</sup> *See* [http://www.dms.myflorida.com/business\\_operations/state\\_purchasing](http://www.dms.myflorida.com/business_operations/state_purchasing) (last visited March 20, 2015).

<sup>19</sup> DMS Bill Analysis for HB 615 (February 8, 2015).

<sup>20</sup> *Id.*

<sup>21</sup> DMS Analysis for SB 574 (February 26, 2015)(on file with the Government Operations Subcommittee).

Initiative, DMS has made a significant investment in communicating and training vendors in how to use the MFMP application.<sup>22</sup> 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.<sup>23</sup>

### **Effect of Proposed Changes**

The bill defines the term “electronic auction services” to mean a procurement conducted on a centralized website using third party software, jointly managed by an approved vendor and an agency or governmental entity, and using the procurement process set forth in s. 287.057, F.S., or other authorized means of obtaining competitive prices in an auction environment.

The bill authorizes a district school board to adopt purchasing rules to assist with the efficient and effective procurement of goods and services, including online procurement, electronic auction services, and multistate purchasing consortia.

The bill requires the Department of Education to use electronic auction services or other efficient procurement tools and multistate purchasing consortia when assisting district school boards in securing school buses, contractual needs, equipment, and supplies. It also authorizes district school boards to use electronic auction services or other efficient procurement tools.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 1001.42, F.S., revising the powers and duties of the district school board to authorize the adoption of rules regarding procurement practices.

Section 2 amends s. 1006.27, F.S., authorizing a district school board’s use of electronic auction services in conjunction with bid pooling for school buses and related purchases.

Section 3 provides an effective date of July 1, 2015.

## **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.

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill directs DMS to adopt rules relating to electronic auction services.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Title

The bill relates to “electronic auction services,” but it authorizes a district school board to adopt rules relating to multistate purchasing consortia. As such, the sponsor may want to consider an amendment to remove the provisions that relate to purchasing consortia or revise the relating to clause.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 24, 2015, the Government Operations Subcommittee adopted one strike-all amendment and reported the bill favorable with a committee substitute. The committee substitute:

- Removes amendments to chapter 287, F.S.;
- Provides that a district school board may adopt purchasing rules, which may allow for the use of electronic auction services and multistate purchasing consortia; and
- Allows a district school board to use electronic auction services for the purpose of securing school buses, contractual needs, equipment, and supplies at a reasonable price.

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