

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 305 Procurement Procedures for Educational Institutions

SPONSOR(S): Government Operations Subcommittee and Drake

TIED BILLS: **IDEN./SIM. BILLS:** SB 350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N, As CS	Moore	Williamson
2) Education Appropriations Subcommittee	12 Y, 0 N	Dobson	Heflin
3) State Affairs Committee	17 Y, 0 N	Moore	Camechis

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.

As part of their duties, district school boards, Florida College System institution boards of trustees, and university boards of trustees are required to adopt rules or regulations to be followed when making purchases.

The bill authorizes district school boards, Florida College System institutions, and universities to make purchases through an online procurement system, an electronic auction service, or other efficient procurement tool.

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

Agency Procurements

Chapter 287, F.S., regulates state agency¹ 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.² DMS 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:

- 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 goods or services 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.⁴

For contracts for commodities or services in excess of \$35,000, agencies must utilize a competitive solicitation process.⁵ However, specified contractual services and commodities are not subject to competitive solicitation requirements.⁶

Section 287.056, F.S., requires agencies to purchase commodities and contractual services from purchasing agreements established and state term contracts procured, pursuant to s. 287.057, F.S., by DMS. Each agreement must include:

- A provision specifying a scope of work that clearly establishes all tasks that the contractor must perform.
- A provision dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.⁷

¹ 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.

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

⁶ See s. 287.057(3)(e), F.S.

⁷ Section 287.056(1), F.S.

State Universities Purchasing Procurements

Section 1001.706, F.S., provides powers and duties of the Board of Governors of the State University System. 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.⁸ The Board of Governors also 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.⁹ Each university board of trustees is required to adopt regulations to be followed in making purchases.¹⁰

Florida College System Institutions Purchasing Procurements

Section 1001.64, F.S., outlines the powers and duties of Florida College System institution boards of trustees. Each board of trustees is required to use purchasing agreements and 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.¹¹ The board must also adopt rules to be followed when making purchases.¹²

District School Boards Purchasing Procurements

Section 1001.42, F.S., provides powers and duties of the district school boards. As part of its duties, the school board must secure purchasing regulations and amendments thereto from DMS. Prior to any purchase, the district school board's staff must determine the lowest price available to the school board under such regulations, and the school board must give consideration to such price, provided a regulation applicable to the item or items being purchased has been adopted by the Department of Education.¹³ District school boards may also use prices established by the Division of Purchasing within DMS through its state purchasing agreement price schedule.¹⁴

Each district school board must adopt rules to be followed when making purchases.¹⁵ 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.¹⁶ 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.¹⁷

Effect of Proposed Changes

The bill authorizes district school boards, Florida College System institutions, and universities to make purchases through an online procurement system, an electronic auction service, or other efficient procurement tool.

B. SECTION DIRECTORY:

Section 1 amends s. 1010.04, F.S., relating to purchasing by school districts, Florida College System institutions, and universities.

Section 2 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁸ Section 1001.706(3)(i), F.S.

⁹ Section 1010.04(4)(b), F.S.

¹⁰ Section 1010.04(2), F.S.

¹¹ Section 1001.64(48), F.S.

¹² Section 1010.04(2), F.S.

¹³ Section 1001.42(12)(j), F.S.

¹⁴ Chapter 6A-1.012(5), F.A.C.

¹⁵ Section 1010.04(2), F.S.

¹⁶ Section 1010.04(3), F.S.

¹⁷ Section 1010.04(4), F.S.

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.

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 expenditure 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Government Operations Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute codified the bill's provisions in the Education Code instead of chapter 287, F.S. Chapter 287, F.S., governs state agencies and does not apply to district school boards, Florida College System institutions, or universities.

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