

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 305	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Government Operations Subcommittee; Drake and others	113 Y's	0 N's
COMPANION BILLS:	CS/SB 350	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 305 passed the House on February 18, 2016, as CS/SB 350. The bill includes portions of SB 7036.

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 requires each district school board and Florida College System institution board of trustees to review purchasing agreements established and state term contracts procured by DMS before purchasing nonacademic commodities and services to determine whether such agreements and contracts would be more economically beneficial. The bill requires each bid specification for nonacademic commodities or services to include a statement indicating that the available agreements and contracts have been reviewed. The bill also authorizes each district school board to use the cooperative state purchasing programs managed through the regional consortium service organizations.

The bill may have an indeterminate fiscal impact on the private sector, the state, and local governments.

The bill was approved by the Governor on March 9, 2016, ch. 2016-31, L.O.F., and will become effective on July 1, 2016.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

Regional Consortium Service Organizations

Section 1001.451, F.S., authorizes school districts with 20,000 or fewer unweighted full-time equivalent students to enter into cooperative agreements to form a regional consortium service organization. Each regional consortium service organization must provide, at a minimum, three of the following services:

- Exceptional student education;
- Teacher education centers;
- Environmental education;
- Federal grant procurement and coordination;
- Data processing;
- Health insurance;
- Risk management insurance;
- Staff development;

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.

- Purchasing; or
- Planning and accountability.¹⁸

In order to provide programs and services to participating school districts in an economical manner, a regional consortium service organization is authorized to establish purchasing and bidding programs in lieu of individual school district bid arrangements.¹⁹

Effect of the Bill

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 requires each district school board and Florida College System institution board of trustees to review the purchasing agreements and state term contracts available under s. 287.056, F.S., before purchasing nonacademic commodities and services to determine whether such agreements and contracts would be more economically beneficial. The bill requires each bid specification for nonacademic commodities or services to include a statement indicating that the available agreements and contracts have been reviewed. The bill also authorizes each district school board to use the cooperative state purchasing programs managed through the regional consortium service organizations. These provisions do not apply to services that are eligible for reimbursement under the federal E-rate program administered by the Universal Service Administrative Company.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the private sector. The bill may shift some contracting dollars toward businesses that have entered into purchasing agreements with DMS and vendors who hold state term contracts.

¹⁸ Section 1001.451(1), F.S.

¹⁹ Section 1001.451(3), F.S.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on the state and local governments. District school boards and Florida College System institutions may realize some cost savings to the extent goods and services are available at lower costs through the state term contracts and purchasing agreements. District school boards may also realize cost savings by utilizing cooperative state purchasing programs managed through regional consortium service organizations. However, the extent of these potential cost savings is unknown.