

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1281 Department of Management Services

SPONSOR(S): Government Accountability Committee; Oversight, Transparency & Administration
Subcommittee; Albritton

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1540

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	14 Y, 0 N, As CS	Moore	Harrington
2) Government Accountability Committee	23 Y, 0 N, As CS	Moore	Williamson

SUMMARY ANALYSIS

Current law 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. DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power. Where state laws do not apply to local governments, such entities may develop their own policies regarding procurement.

The bill creates the Statewide Procurement Efficiency Task Force for the purpose of evaluating the effectiveness and value of state and local procurement laws and policies to the taxpayers of the state and determining where inconsistencies in such laws and policies exist. The bill requires the task force to submit a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2018. Such report must, at a minimum, include recommendations for consideration by the Legislature to promote procurement efficiency, streamline procurement policies, establish best management practices, and encourage increased use of state term contracts. The bill provides that the task force terminates on December 31, 2018.

The bill may have an indeterminate negative fiscal impact on the state. The bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Procurement of Commodities and Services

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:⁴

- 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;⁵ however, certain contractual services and commodities are exempt from this requirement.⁶

State Term Contracts

Current law authorizes DMS to establish purchasing agreements and procure state term contracts for commodities and contractual services using the procurement methods described above.⁷ These contracts are generally developed for purchases of commodities and services that are ongoing and common to multiple state agencies. State agencies are required to use state term contracts when they are available.⁸ Other eligible users, such as counties, cities, and school districts may also utilize state term contracts.⁹

¹ 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."

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

⁶ See s. 287.057(3), F.S.

⁷ Section 287.042(2)(a), F.S.

⁸ Section 287.056(1), F.S.

⁹ *Id.*

Other Procurement Policies

Chapter 287, F.S., includes various other requirements and policies applicable to procurement for state or local government entities, including:

- Requiring state agencies, municipalities, political subdivisions, school districts, and school boards to procure professional architectural, engineering, landscape architectural, or survey and mapping services using a qualifications-based procedure when such services exceed a certain cost;¹⁰
- Requiring state agencies, universities, colleges, school districts, or other political subdivisions of the state (except counties and cities) to provide a preference to Florida businesses;¹¹
- Allowing counties, cities, community colleges, and district school boards to set aside up to 10 percent or more of procurement funds for the purpose of entering into contracts with minority business enterprises;¹²
- Prohibiting state agencies and political subdivisions from accepting bids from or awarding contracts to a person or entity convicted of a public entity crime under certain circumstances;¹³ and
- Prohibiting state agencies from accepting bids from or awarding contracts to a person or entity that has been found by a court to have committed discrimination on the basis of race, gender, national origin, disability, or religion under certain circumstances.¹⁴

Where state laws do not apply to local governments, such entities may develop their own policies regarding procurement.

Advisory Bodies

Section 20.052, F.S., provides that an advisory body created by specific statutory enactment as an adjunct to an executive agency must be established, evaluated, or maintained in accordance with certain requirements. An advisory body may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose,¹⁵ and it must be terminated by the Legislature when it is no longer necessary and beneficial to the furtherance of the public purpose.¹⁶ The private citizen members of an advisory body that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.¹⁷

Effect of Proposed Changes

The bill creates the Statewide Procurement Efficiency Task Force for the purpose of evaluating the effectiveness and value of state and local procurement laws and policies to the taxpayers of the state and determining where inconsistencies in such laws and policies exist. The task force must be composed of the following 12 members:

- The Secretary of DMS or his or her designee, who must serve as chair.
- Five members appointed by the Governor, as follows:
 - One county government official.
 - One municipal government official.
 - One district school board member.
 - One professional engineer licensed under ch. 471, F.S.
 - One general contractor as defined in s. 489.105(3)(a), F.S.¹⁸

¹⁰ Consultants' Competitive Negotiation Act, s. 287.055, F.S.

¹¹ Section 287.084(1)(a), F.S.

¹² Section 287.093, F.S.

¹³ Section 287.133(2)(b), F.S.

¹⁴ Section 287.134(2)(b), F.S.

¹⁵ Section 20.052(1), F.S.

¹⁶ Section 20.052(2), F.S.

¹⁷ Section 20.052(5)(a), F.S.

¹⁸ Section 489.105(3)(a), F.S., defines the term "general contractor" to mean a contractor whose services are unlimited as to the type of work that he or she may do, who may contract for any activity requiring licensure under part I of ch. 489, F.S., and who may perform any work requiring licensure under that part, except as otherwise provided in s. 489.113, F.S.

- Two members appointed by the Speaker of the House of Representatives, as follows:
 - A member of the House of Representatives.
 - An attorney who is a member in good standing of The Florida Bar and has expertise in procurement law.
- Two members appointed by the President of the Senate, as follows:
 - A member of the Senate.
 - An attorney who is a member in good standing of The Florida Bar and has expertise in procurement law.
- The Chief Financial Officer, or his or her designee who must be an employee of the Department of Financial Services.
- The state chief information officer or his or her designee.

The bill requires the task force members to be appointed by July 31, 2017. The task force must meet to establish procedures for the conduct of its business and to elect a vice chair by August 31, 2017. The task force must meet at the call of the chair. A majority of the members of the task force constitutes a quorum, and a quorum is necessary for the purpose of voting on any action or recommendation of the task force. All task force meetings must be held in Tallahassee, unless otherwise decided by the task force. No more than two meetings may be held in other locations for the purpose of taking public testimony. DMS is required to provide administrative and technical support for the task force, and task force members must serve without compensation or reimbursement for per diem or travel expenses.

The bill requires the task force to submit a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by July 1, 2018. Such report must, at a minimum, include recommendations for consideration by the Legislature to promote procurement efficiency, streamline procurement policies, establish best management practices, and encourage increased use of state term contracts.

The task force is terminated on December 31, 2018.

B. SECTION DIRECTORY:

Section 1. amends s. 287.057, F.S., relating to procurement of commodities or contractual services.

Section 2. provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on DMS because the agency is required to provide administrative and technical support to the task force.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill does not appear to have an impact on local government expenditures.

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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2017, the Oversight, Transparency & Administration Subcommittee adopted a proposed committee substitute and one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removed the provisions of the bill that placed DMS under the authority of the Governor and Cabinet and required the Governor and Cabinet to appoint an executive director of DMS; and
- Added the Chief Financial Officer or his or her designee to the Statewide Procurement Efficiency Task Force.

On April 19, 2017, the Government Accountability Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment revised the membership of the task force by adding the state chief information officer or a designee and replacing the three representatives of the business community appointed by the Governor with one professional engineer and one general contractor appointed by the Governor.

This analysis is drafted to the committee substitute as approved by the Government Accountability Committee.