

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1149 Required Disclosure by Contractors of Foreign Ownership or Control

**SPONSOR(S):** Government Operations Subcommittee, Plakon

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1428

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 0 N, As CS	Roth	Smith
2) Public Integrity & Elections Committee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

The Department of Management Services (DMS) is responsible for establishing a system of procurement policies, procedures, and practices for agencies to use while acquiring commodities and contractual services. As a result, DMS develops a list of interested vendors by classes of commodities or contractual services. DMS also develops procedures:

- For advertising solicitations;
- For the receipt and opening of bids, proposals, or replies by an agency;
- To be used by an agency in deciding to contract;
- To be used by an agency in maintaining a contract file for each contract;
- To be used by an agency for issuing solicitations;
- To be used by an agency when issuing requests for information and requests for quotes; and
- To be used by state agencies when procuring information technology commodities and contractual services that ensure compliance with public records requirements and records retention and archiving requirements.

The bill requires DMS to develop procedures that require current and prospective contractors, as a prerequisite to providing commodities or contractual services to the state pursuant to a contract executed, extended, renewed, or amended on or after July 1, 2021, to provide DMS with a written declaration that discloses whether the contractor is owned or controlled by a foreign government.

The bill may have an indeterminate negative fiscal impact on state government.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### The Department of Management Services

The Department of Management Services (DMS) is responsible for establishing a system of procurement policies, procedures, and practices for agencies to use while acquiring commodities and contractual services.<sup>1</sup> As a result, DMS develops a list of interested vendors by classes of commodities<sup>2</sup> or contractual services.<sup>3</sup> DMS also develops procedures:<sup>4</sup>

- For advertising solicitations;
- For the receipt and opening of bids, proposals, or replies by an agency;
- To be used by an agency in deciding to contract;
- To be used by an agency in maintaining a contract file for each contract;
- To be used by an agency for issuing solicitations;
- To be used by an agency when issuing requests for information and requests for quotes; and
- To be used by state agencies when procuring information technology commodities and contractual services that ensure compliance with public records requirements and records retention and archiving requirements.

DMS prescribes the methods of securing competitive sealed bids, proposals, and replies. These methods include procedures for identifying vendors, setting qualifications, conducting question and answer periods, and ranking and selecting vendors.<sup>5</sup>

##### Competitive Solicitation for Commodities or Contractual Services

Florida law requires state agencies that wish to procure commodities or contractual services in excess of \$35,000<sup>6</sup> to use a competitive solicitation process.<sup>7</sup> A competitive solicitation is 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 procurement method.<sup>8</sup> Depending on the type of contract and scope of work or goods sought, an agency may use one of three procurement methods: invitation to bid,<sup>9</sup> request for proposals,<sup>10</sup> or invitation to negotiate.<sup>11</sup>

#### *Invitation to Bid*

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<sup>1</sup> Section 287.042(3), F.S.

<sup>2</sup> Section 287.012(5), F.S., defines “commodity” to mean 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>3</sup> Section 287.012(8), F.S., defines “contractual service” to mean the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services. The term does not include a contract for the furnishing of labor or materials for the construction, renovation, repair, modification, or demolition of a facility, building, portion of building, utility, park, parking lot, or structure or other improvement to real property entered into pursuant to ch. 255 and rules adopted thereunder.

<sup>4</sup> Section 287.042(3)(a-h), F.S.

<sup>5</sup> Section 287.042(4)(a), F.S.

<sup>6</sup> See s. 287.017, F.S., for a list of purchasing categories and their corresponding threshold amounts.

<sup>7</sup> Section 287.057(1), F.S.

<sup>8</sup> Section 287.012(6), F.S.

<sup>9</sup> Section 287.057(1)(a), F.S.

<sup>10</sup> Section 287.057(1)(b), F.S.

<sup>11</sup> Section 287.057(1)(c), F.S.

When an agency is capable of defining the scope of work or specific commodity sought, then an agency must use an invitation to bid (ITB). An ITB must include a detailed description of the commodity or contractual service sought and whether the agency contemplates renewal of the contract. If the agency contemplates renewal of the contract, then each bid submitted in response to an ITB must include the price for each year for which the contract may be renewed. Bid evaluations must include consideration of the total cost for each year of the contract, including renewal years, and the contract must be awarded to the responsible and responsive vendor who submits the lowest responsive bid.<sup>12</sup>

#### *Request for Proposals*

An agency must use a request for proposals (RFP) when the purposes and uses for the contractual service or commodity sought can be specifically defined and the agency is capable of identifying necessary deliverables. A vendor may respond with various versions of services or commodities to meet the specification of the solicitation document. Before issuing an RFP, the agency must specify in writing the reasons an ITB is not practicable. An RFP must include a statement describing the commodities or contractual services sought, the relative importance of price and other evaluation criteria, and whether the agency contemplates renewal of the contract. The contract is awarded by written notice to the responsible<sup>13</sup> and responsive vendor<sup>14</sup> whose proposal is most advantageous to the state.<sup>15</sup>

#### *Invitation to Negotiate*

An invitation to negotiate (ITN) is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem. It identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value. Before issuing an ITN, the agency head must specify in writing the reasons an ITB or an RFP are not practicable. An ITN must include questions being explored, the facts being sought, and the specific goals of the solicitation. The agency may select one or more vendors to begin negotiations and then award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state.<sup>16</sup>

### **Effect of the Bill**

The bill requires DMS to develop procedures that require current and prospective contractors,<sup>17</sup> as a prerequisite to providing commodities or contractual services to the state pursuant to a contract executed, extended, renewed, or amended on or after July 1, 2021, to provide DMS with a written declaration that discloses whether the contractor is owned or controlled by a foreign government.

Additionally, the bill provides that “foreign government” has the same meaning as defined in s. 876.22(4), F.S., where “foreign government” means the government of any country, nation, or group of nations other than the Government of the United States or of one of the states thereof.

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

**Section 1:** Amends s. 287.042, F.S., relating to powers, duties, and functions.

**Section 2:** Provides an effective date of on becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

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<sup>12</sup> Section 287.057(1)(a), F.S.

<sup>13</sup> A “responsible vendor” is a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. Section 287.012(25), F.S.

<sup>14</sup> A “responsive vendor” is a vendor that has submitted a bid, proposal, or reply that conforms in all material aspects to the solicitation. Section 287.012(27), F.S.

<sup>15</sup> Section 287.057(1)(b), F.S.

<sup>16</sup> Section 287.057(1)(c), F.S.

<sup>17</sup> Section 287.012(7), F.S., defines a contractor to mean a person who contracts to sell commodities or contractual services to an agency.

1. Revenues:

The bill does not impact state government revenues.

2. Expenditures:

There may be an indeterminate negative fiscal impact to DMS in developing procedures that require contractors to disclose if they are owned or controlled by a foreign government.<sup>18</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not impact local government revenues.

2. Expenditures:

The bill does not impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to create an economic impact on the private sector.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill may require DMS to create rules; however, DMS currently has broad rulemaking authority and is able to adopt rules as necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2021, the Government Operations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment limited the disclosure by a current or prospective contractor, declaring whether they are owned or controlled by a foreign government, to a contract executed, extended, renewed, or amended on or after July 1, 2021. The amendment also provided that the term "foreign government" has the same meaning as s. 876.22(4), F.S.

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<sup>18</sup> Department of Management Services, Agency Analysis of 2021 House Bill 1149, p. 3 (March 5, 2021).

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