

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 1428

INTRODUCER: Senator Wright

SUBJECT: Procurement Procedures

DATE: March 9, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Candelaria	McVaney	GO	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1428 requires the Department of Management Services to develop procedures that require current and prospective contractors to disclose, in writing, whether such contractor is owned or controlled by a foreign government as a prerequisite to providing commodities or contractual services to the state.

The bill takes effect upon becoming a law.

II. Present Situation:

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.¹ As a result, the DMS develops a list of interested vendors and contractors by classes of commodities² or contractual services.³ Section 287.012(7), F.S., defines a contractor as “a person who contracts to sell commodities or contractual services to an

¹ Section 287.042(3), F.S.

² 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.

³ 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 chapter 255 and rules adopted thereunder.

agency.” The DMS also develops procedures for advertising solicitations, the receipt and opening of bids, proposals and replies, an agency to decide to contract, an agency in maintaining a contract file for each contract, an agency to issue solicitations that promote competition, and agencies to use when procuring information technology commodities and contractual services that ensure compliance with public records requirements and archiving requirements.⁴ The DMS prescribes the methods of securing competitive seals bids, proposals, and replies. These methods include procedures for identifying vendors and contractors, setting qualifications, conducting question and answer periods, and ranking and selecting vendors and contractors.

Agency Process for Procurement of Contractual Services

State agencies who wish to procure contractual services in excess of \$35,000⁵ must go through a competitive solicitation process. All competitive solicitations are required to be made available simultaneously to all vendors, and must include the time and date for the receipt of bids, proposals or replies, along with the contractual terms and conditions applicable to the procurement.⁶ An agency has three methods of procurement. These include an invitation to bid, a request for proposals, and an invitation to negotiate.⁷

Invitation to Bid

Once an agency is capable of defining the scope of work for which is a contractual service is required, the agency may solicit an invitation to bid (ITB). Each ITB must include a detailed description of the commodities or contractual services sought and whether the agency contemplates renewal of the contract.⁸ If the agency contemplates renewal of the contract, each bid submitted in response to an ITB must include the price for each year for which the contract may be renewed.

Request for Proposals

An agency uses a request for proposals (RFP) when the purposes and uses for the contractual service or commodity being sought can be specifically defined and the agency can identify deliverables. A vendor may respond with various versions of services or commodities to meet the specification of the solicitation document. Each RFP must include a statement describing the commodities or contractual services sought, the relative importance of price, and whether the agency contemplates renewal of contract.⁹ The contract is awarded by written notice to the responsible and responsive vendor whose proposal is the most advantageous to the state.

Invitation to Negotiate

The invitation to negotiate (ITN) is a solicitation used by an agency intended to determine the best method for achieving a specific goal or solving a particular problem. The ITN process identifies one or more responsive vendors with which an agency may negotiate in order to receive the best value. In order to issue an ITN, the head of the agency must determine in writing

⁴ Section 287.042(3)(a-h), F.S.

⁵ Section 287.017, F.S.

⁶ Section 287.057(1), F.S.

⁷ Section 287.057(1)(a-c), F.S.

⁸ Section 287.057(1)(a), F.S.

⁹ Section 287.057(1)(b), F.S.

the reasons that procurement by an ITB or an RFP is not practicable. The 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 deems will provide the best value to the state.¹⁰

III. Effect of Proposed Changes:

Section 1 amends s. 287.042, F.S., to require the DMS to develop procedures that require current and prospective contractors to provide the DMS with a written declaration that discloses whether the contractor is owned or controlled by a foreign government.

Section 2 provides that bill take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Art. I, Sec. 10 of the Florida Constitution prohibits the Legislature from enacting any law that impairs the obligation of contracts. The bill requires current contractors to provide the DMS with a written declaration disclosing whether they are owned or controlled by a foreign government as a prerequisite “to providing commodities or contractual services.” To the extent this requirement is interpreted to mean the contractor will not be permitted to fulfill its contractual obligations (and be paid), the bill may impair the obligations of a current contract between a state agency and a contractor.

¹⁰ Section 287.057(1)(c), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DMS may incur additional workload associated with overseeing that new and prospective contractors comply with the requirements of the bill.

VI. Technical Deficiencies:

Lines 22 through 27 require a current contractor to provide a disclosure to DMS as to whether they are owned or controlled by a foreign government as a prerequisite to providing commodities and contractual services. As discussed above, such requirement may “have the effect of rewriting antecedent contracts” in a manner that “change[es] the substantive rights of the parties to existing contracts.”¹¹ Thus, the Legislature may consider an amendment to apply the change to contracts executed, extended, renewed, or amended after the effective date of the bill.

The bill does not define the term “foreign government.” This term is defined s. 876.22, F.S.,¹² to mean “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.” The Legislature may want to consider an amendment to clarify the meaning of this term within the bill by referencing the definition in s. 876.22, F.S., or defining it anew for purposes of this section.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.042 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

¹¹ *Searcy, Denney, Scarola, Barnhart & Shipley v. State*, 209 So.3d 1181, 1192 (Fla. 2017)

¹² Florida Statute Sections 876.22 to 876.31, F.S., concern subversive activities, and outlaw the existence or functioning of any subversive organization or foreign subversive organization in the state.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
