

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 169 Purchase of Commodities and Services by Water Management Districts

SPONSOR(S): Maggard

TIED BILLS: **IDEN./SIM. BILLS:** SB 952

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|-----------|---------|--|
| 1) Environment, Agriculture & Flooding Subcommittee | 17 Y, 1 N | Melkun | Moore |
| 2) Agriculture & Natural Resources Appropriations Subcommittee | 12 Y, 0 N | White | Pigott |
| 3) State Affairs Committee | 24 Y, 0 N | Melkun | Williamson |

SUMMARY ANALYSIS

Under current law, water management districts (WMDs) are authorized to purchase commodities and contractual services from state agency contracts. The law also specifies that special districts, which include WMDs, may purchase commodities and contractual services from the purchasing agreements of other special districts, municipalities, or counties under certain circumstances if the purchasing agreement of the other special district, municipality, or county was procured by a process that would have met the procurement requirements of the purchasing special district.

The bill authorizes WMDs to purchase commodities and contractual services, excluding certain professional services, from the purchasing contracts of special districts, municipalities, counties, other political subdivisions, educational institutions, other states, nonprofit entities, purchasing cooperatives, or the federal government that have been procured pursuant to competitive bid, request for proposal, request for qualification, competitive selection, or competitive negotiation. The purchasing contract of the other entity must be otherwise in compliance with general law and must be procured by a process that meets the procurement requirements of the WMD.

The bill may have an indeterminate positive fiscal impact on the state.

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 that include:

- 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 proposals, 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

Consultants' Competitive Negotiation Act

Generally, the requirements of ch. 287, F.S., do not apply to local governments or special districts because these entities are not included in the definition of "agency." However, s. 287.055, F.S., known as the Consultants' Competitive Negotiation Act (CCNA), applies to state agencies as well as local governments and special districts, including water management districts (WMDs).⁷ The CCNA requires these entities to use a qualifications-based selection process when procuring the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper.⁸

Purchasing from Other Entities' Contracts

Section 287.056, F.S., specifies that "eligible users" are authorized to purchase commodities and contractual services from purchasing agreements established and state term contracts procured by DMS.⁹ DMS is authorized to specify through rule the individuals and entities that are considered eligible

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(1), 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 287.055(2)(b), F.S., defines the term "agency" as the state, a state agency, a municipality, a political subdivision, a school district, or a school board. Section 373.019(23), F.S., defines "water management district" as any flood control, resource management, or water management district operating under the authority of ch. 373, F.S.

⁸ Section 287.055, F.S.

⁹ Section 287.056(1), F.S.

users.¹⁰ Pursuant to this authority, DMS has defined “eligible users” to include political subdivisions, which include WMDs.¹¹ Therefore, WMDs are authorized to purchase commodities and services from state agency contracts.

Current law also authorizes special districts, including WMDs, to purchase commodities and contractual services from the purchasing agreements of other special districts, municipalities, or counties that have been procured pursuant to competitive bid, requests for proposals, requests for qualifications, competitive selection, or competitive negotiations, and that are otherwise in compliance with general law if the purchasing agreement of the other special district, municipality, or county was procured by a process that would have met the procurement requirements of the purchasing special district.¹²

Effect of the Bill

The bill authorizes WMDs to purchase commodities and contractual services, excluding professional services subject to the CCNA, from the purchasing contracts of special districts, municipalities, counties, other political subdivisions, educational institutions, other states, nonprofit entities, purchasing cooperatives, or the federal government that have been procured pursuant to competitive bid, request for proposal, request for qualification, competitive selection, or competitive negotiation. The purchasing contract of the other entity must be otherwise in compliance with general law and must be procured by a process that meets the procurement requirements of the WMD.

B. SECTION DIRECTORY:

Section 1. Creates s. 373.6075, F.S., to authorize WMDs to purchase commodities and contractual services from the purchasing contracts of certain entities under certain conditions.

Section 2. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive fiscal impact on the WMDs because purchasing commodities and contractual services from the purchasing contracts of other entities reduces the costs associated with the procurement process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

¹⁰ See s. 287.012(11), F.S.

¹¹ Rule 60A-1.001(2), F.A.C., defines “eligible users” to include political subdivisions, including counties, cities, towns, villages and districts, as described by s. 1.01(8), F.S., and instrumentalities thereof.

¹² Chapter 2009-217, Laws of Fla.; s. 189.053, F.S.

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

None.