

**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.)

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

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BILL: SB 788

INTRODUCER: Senator Cruz

SUBJECT: State Contracting

DATE: March 2, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Candelaria	McVaney	GO	<b>Favorable</b>
2.	_____	_____	AEG	_____
3.	_____	_____	AP	_____

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**I. Summary:**

SB 788 prohibits a vendor that defaults or fails to fulfill terms and conditions of a state contract from submitting a bid, proposal, or entering into or renewing a contract to provide any goods or services to an agency after placement on the suspended vendor list.

The bill requires an agency to notify and provide supporting documentation to the Department of Management Services (DMS) of any vendor that has failed to fulfill the terms and conditions of a state contract. DMS must determine whether good cause exists to place any such vendor on the suspended vendor list. DMS is required to notify a vendor in writing upon its determination of good cause and intent to remove the vendor from the vendor list. The vendor may file a petition for a formal hearing to challenge the DMS's decision to remove the vendor from the vendor list. Vendors who are placed on the suspended vendor list may petition for removal from the list after a period of one year after entry of the final order of its suspension. A vendor may be removed from the suspended vendor list upon a determination by the administrative law judge that removal would be in the public interest. The bill specifies that if a petition for removal is denied, the vendor is prohibited from filing another petition for removal for at least 9 months after the date of the denial. The bill permits the DMS to petition for the vendor's removal prior to the expiration of the 9 month period if it determines removal from the suspended vendor list would be in the public interest.

The DMS may incur additional workload and costs associated with maintaining the suspended vendor list and providing due process to vendors petitioning to be removed from the list.

The bill takes effect July 1, 2021.

## II. Present Situation:

### **Agency Process for Procurement of Contractual Services**

State agencies who wish to procure contractual services in excess of \$35,000<sup>1</sup> 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.<sup>2</sup> An agency has three methods of procurement. These include an invitation to bid, a request for proposals, and an invitation to negotiate.<sup>3</sup>

#### ***Invitation to Bid***

Once an agency is capable of defining the scope of work for which 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.<sup>4</sup> 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.<sup>5</sup> 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 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.<sup>6</sup>

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<sup>1</sup> Section 287.017, F.S.

<sup>2</sup> Section 287.057(1), F.S.

<sup>3</sup> Section 287.057(1)(a-c), F.S.

<sup>4</sup> Section 287.057(1)(a), F.S.

<sup>5</sup> Section 287.057(1)(b), F.S.

<sup>6</sup> Section 287.057(1)(c), F.S.

## **Doing Business with the State of Florida**

### ***Requirements for Vendor Registration***

Any vendor that wishes to provide goods or services to the state must register in the Vendor Registration System. In order to register, a vendor must provide the following information:

- Company Name;
- Federal Tax ID;
- Tax Filing Name;
- Business Location;
- Commodities and Services Offered; and
- Certified Business and Enterprise Status.<sup>7</sup>

### ***Vendor Information Portal***

Once registered, vendors are able to do business with the State of Florida executive branch agencies through the Vendor Information Portal (VIP).<sup>8</sup> The VIP system is designed to streamline interactions with vendors and the state government entities that purchase goods and services. The system provides a portal where vendors can finish registering, receive information on upcoming bids, post information on products and services, receive purchase orders electronically, view payment information, and review their performance.<sup>9</sup>

### ***Vendor Bid System***

The Vendor Bid System (VBS), allows for agencies to post competitive solicitations of \$35,000 or more. These solicitations include ITBs, RFPs, and ITNs for all vendors to review. Vendors can then bid, submit proposals, or submit a request to negotiate with the state agency through the VBS. A vendor will be notified through the VBS if its bid has been chosen and proceed by following bid specifications, timelines, and budgets.<sup>10</sup>

### **Vendor Lists and the Process for Vendors in Default**

The DMS maintains a vendor list based on the vendor registration process in s. 287.042, F.S., and Rule 60A-1.006, F.A.C. Pursuant to s. 287.042(1)(b), F.S., the DMS has been granted authority to remove from its vendor list any source of supply which fails to fulfill any of its duties specified in a contract. The DMS maintains the following lists of vendors who have been removed for cause:

- Suspended Vendor List;<sup>11</sup>
- Convicted Vendor List;<sup>12</sup>
- Discriminatory Vendor List;<sup>13</sup>

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<sup>7</sup> The Department of Management Services, *Vendor Resources*, available at [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/vendor\\_resources](https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources) (last visited, February 23, 2021)

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Rule 60A-1.006(2), F.A.C. (vendors that have been removed for failing to fulfill any of its duties specified in a State contract)

<sup>12</sup> Section 287.133, F.S.

<sup>13</sup> Section 287.134(1)(b), F.S.

- Scrutinized List of Prohibited Companies;<sup>14</sup> and
- Vendor Complaint List.

### ***Suspended Vendor List***

The DMS maintains a suspended vendor list<sup>15</sup> in accordance with the vendor registration process provided in s. 287.042, F.S., and Rule 60A-10.006, F.A.C. If a vendor fails to perform the duties provided in the contract, the agency will notify the vendor, in writing, the nature of the failure to perform and provide a timeframe for correcting the failure. Reasonable time should not generally be less than 10 days after receipt of notice. The notification will provide that, should the vendor fail to perform within the time provided, the vendor will be removed from the agency's approved list. The agency will find the vendor in default and shall issue a second notice stating the reason the vendor is considered at fault, that the agency will reprocur or has reprocured the commodities, and the amount of the reprocurement if known.

The vendor will not be eligible for award of a contract by the agency until the vendor has reimbursed the agency for the reprocurement costs. Reprocurement costs may include both administrative costs and costs or price increases incurred or to be incurred as a result of the reprocurement. Pursuant to s. 120.57, F.S., the defaulting vendor will be advised of the right to petition for an administrative hearing on the intended decision to remove the vendor from the list and shall be given a time certain within which to submit the petition. Until such time as the vendor reimburses the agency for all reprocurement costs and the agency is satisfied that further instances of default will not occur, the defaulting vendor cannot be eligible for award of a contract by the agency. To satisfy the agency that further instances will not occur, the defaulting vendor shall provide a written corrective action plan addressing the original grounds for default.

Currently, the DMS has five vendors on the suspended vendor list:

- Building Maintenance of America, LLC d/b/a Florida Building Maintenance  
333 North Falkenburg Road #A117, Tampa, FL 33619;
- Club Tex, Inc., 2025 Broadway, Suite #15G, New York, NY 10023;
- Correctional Consultants, LLC, P.O. Box 515, Chattahoochee, FL 32324;
- iColor Printing and Mailing, Inc., 22873 Lockness Avenue, Torrance, CA 90501; and
- Visual Image Design Firm, LLC, 6845 Narcoossee Road, Suite 59, Orlando, FL 32822.<sup>16</sup>

### ***Convicted Vendor List***

The DMS has a list of names and addresses of those who have been disqualified from the public contracting and purchasing process due to the conviction of a public entity crime.<sup>17</sup> A vendor

<sup>14</sup> Section 287.135, F.S.

<sup>15</sup> *Vendor Registration and Vendor Lists*,

[https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_agency\\_resources/vendor\\_registration\\_and\\_vendor\\_lists](https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists) (last visited February 23, 2021).

<sup>16</sup> *Suspended Vendor List*,

[https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_agency\\_resources/vendor\\_registration\\_and\\_vendor\\_lists/suspended\\_vendor\\_list](https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/suspended_vendor_list) (last visited February 23, 2021).

<sup>17</sup> Section 287.133, F.S.; Section 287.133(1)(f), F.S., defines the term "public entity" to mean the State of Florida, any of its departments or agencies, or any political subdivision. Section 287.133(1)(g) defines "public entity crime" to mean a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity

who has been placed on the convicted vendor list following a conviction may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity. A public entity may not accept any bid, proposal, or award any contract with a vendor on the convicted vendor list.

After receiving information that a vendor has been convicted of a public entity crime, the DMS must investigate and determine whether good cause exists to place the vendor on the convicted vendor list. If good cause exists, the DMS must provide written notification to the vendor of its intent to place that vendor on the convicted vendor list, and of the vendors' legal rights. If the vendor does not request an administrative hearing, the DMS must enter a final order placing the vendor on the convicted vendor list.

The vendor may file a petition for a formal hearing pursuant to ss. 120.569 and 120.57(1), F.S., to determine whether it is in the public interest<sup>18</sup> for that vendor to be placed on the convicted vendor list. If the administrative law judge determines that the vendor was not convicted or is not an affiliate of such vendor, that vendor or affiliate shall not be placed on the convicted vendor list.<sup>19</sup>

A vendor placed on the convicted vendor list may petition for removal from the list no sooner than six months from the date of the final order placing the vendor on that list. A vendor's removal is subject to such conditions as may be prescribed by the administrative law judge upon a determination that removal is in the public interest. If a petition for removal is denied, the vendor may not petition for another hearing on removal for a period of nine months after such denial, unless the petition is based upon a reversal of the conviction on appellate review or a pardon. The DMS may petition for removal prior to the expiration of such period if, in its discretion, it determines that removal would be in the public interest.<sup>20</sup>

Since 2016, five vendors have petitioned not to be placed on the convicted vendor list. Currently, there is one vendor on the convicted vendor list, Calixte, Jacques A. (Haitian American Association Against Cancer, Inc.).

### ***Discriminatory Vendor List***

The DMS maintains a list of the names and addresses of any entity which has been disqualified from the public contracting and purchasing powers due to a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion by an entity under s. 287.134, F.S. A vendor who has been placed on the discriminatory vendor list

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or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

<sup>18</sup> Section 287.133(3)(e)(2-3), F.S., provides that in determining whether it is in the public interest to place a vendor or affiliate on the convicted vendor list, the administrative law judge shall consider whether the vendor committed a public entity crime, the nature and details of the crime, and the degree of culpability of the vendor

<sup>19</sup> Section 287.133(3)(e)(4), F.S.

<sup>20</sup> *Id.*

may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity.<sup>21</sup>

The investigative and administrative process for discriminatory vendors is the same as that described above for the convicted vendor list. Additionally, the removal process and specified timelines are identical.

Currently, there are no vendors on the discriminatory vendor list.

### ***Scrutinized List of Prohibited Companies***

Companies on the scrutinized companies with activities in Sudan list or on the scrutinized companies with activities in the Iran petroleum energy sector list are prohibited from bidding on, submitting a proposal or, or entering into or renewing a contract with an agency or local government entity for goods and services of \$1 million or more.<sup>22</sup> The State Board of Administration (the board) is charged with maintaining a complete list of scrutinized companies who are judged if they meet the criteria outlined in s. 215.473, F.S.

If the board identifies a company which has active business operations that meet the criteria for scrutiny, the board shall send a written notice informing the company of its scrutinized status and that it may become subject to divestment by the public fund. The notice must inform the company of the opportunity to clarify its business activities and encourage the company to cease its activities within 90 days in order to avoid divestment by the public fund. If the company ceases activities within the provided timeframe, they will be removed from the scrutinized list.

If after 90 days following the written notice the company continues to have scrutinized activities, the board shall sell, redeem, divest, or withdraw all publicly traded securities of the company within 12 months of the company's appearance on the list. A company that the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Iran or Sudan is not subject to divestment.

There are currently 78 companies on the scrutinized list of prohibited companies. No companies were added to the scrutinized list in the fourth quarter of 2020.

### ***Vendor Complaint List***

The DMS tracks formal complaints issued to vendors by state agencies. The complaints, and information associated with them, are provided to agencies to assist in determining vendor responsibility<sup>23</sup>. There are no vendors on the vendor complaint list at this time.<sup>24</sup>

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<sup>21</sup> Section 287.134, F.S.

<sup>22</sup> Section 287.135, F.S.

<sup>23</sup> Section 287.012(25), F.S. defines the term "responsible vendor" as 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.

<sup>24</sup> The Department of Management Services, *Vendor Complaint List*, available at [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_agency\\_resources/vendor\\_registration\\_and\\_vendor\\_lists/vendor\\_complaint\\_list](https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/vendor_complaint_list) (last visited February 24, 2021)

### III. Effect of Proposed Changes:

**Section 1** creates s. 287.1351, F.S., to prohibit a vendor that is in default on any contract with an agency or has otherwise repeatedly demonstrated an inability to fulfill the terms and conditions of previous state contracts from submitting a bid, or proposal to an agency after its placement on the suspended vendor list. The bill defines “vendor” as a person or entity that provides goods and services to an agency under a contract or submits a bid, proposal, to an agency. An agency may not accept a bid, or enter into or renew any contract with a vendor that is on the suspended vendor list until the vendor has been removed from the suspended vendor list and returned to the vendor list by the DMS.

An agency is required to notify the DMS of any vendor that has met grounds for suspension as specified by the bill. The DMS will review submitted evidence by the agency, and decide whether good cause exists to remove the company from the vendor list and to place it on the suspended vendor list. A vendor may not be removed from the vendor list without receiving an individual notice of intent from the department. Within 21 days after receipt of the notice of intent, a vendor may file a petition for a formal hearing pursuant to ss. 120.569 and 120.57, F.S. If a vendor does not file a petition in a timely matter, it is deemed to have waived its right to a hearing, and the DMS’s decision to remove the vendor from the list becomes final agency action.

If placed on the suspended vendor list, a vendor may file a petition with the DMS one year or more after entry of the final order of its suspension. The proceeding of the petition must be conducted in accordance with Chapter 120. If a petition for removal from the suspended vendor list is denied, the vendor may not petition for another hearing for at least nine months after date of denial. The DMS may petition for the suspended vendor’s removal if in the department’s discretion, the removal of the vendor from the suspended list would be in the public’s interest.

**Section 2** provides that the bill takes effect July 1, 2021.

### 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:**

None identified.

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

None.

**B. Private Sector Impact:**

Vendors may incur costs associated with petitioning for removal from the suspended vendors list.

**C. Government Sector Impact:**

The DMS may incur additional workload and costs associated with maintaining the suspended vendor list and providing due process to vendors petitioning to be removed from the list.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. None. Statutes Affected:**

This bill creates section 287.1351 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.

**B. Amendments:**

None.