

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 1952

INTRODUCER: Senator Albritton

SUBJECT: Evidence of Vendor Financial Stability

DATE: January 25, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Limonas-Borja</u>	<u>McVanev</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AEG</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1952 specifies three forms of evidence an agency must accept if it requires a vendor to show financial stability during the competitive solicitation process for the procurement of commodities and contractual services. Such evidence includes:

- Audited financial statements that demonstrate the vendor’s satisfaction of generally accepted financial stability criteria.¹
- Documentation of an investment-grade rating from a credit rating agency designated as a nationally recognized statistical rating organization by the Securities and Exchange Commission.
- For a vendor with annual revenues exceeding \$1 billion, a letter issued by the chief financial officer or controller verifying such vendor’s satisfaction of generally accepted financial stability criteria.²

The bill is not expected to impact state or local government revenue or expenditures.

The bill takes effect July 1, 2022.

II. Present Situation:

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency procurement of personal property and services. The term “agency” is defined broadly to mean any unit of the executive branch of state government.³

¹ The bill does not define the term “generally accepted financial stability criteria” nor are there a set of established generally accepted criteria related to “financial stability.” See Section VI. for technical deficiencies.

² *Id.*

³ Section 287.012(1), F.S., defines the term “agency” to mean any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive

The Department of Management Services (DMS) is responsible for overseeing state purchasing activity, including professional and contractual services, as well as commodities needed to support agency activities.⁴

The DMS is authorized to evaluate contracts let by the federal government, another state, or a political subdivision for the provision of commodities and contract services and, when it is determined to be cost effective and in the best interest of the state, to enter into written agreement authorizing a state agency to make purchases under such contract.⁵ The DMS negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

Section 287.017, F.S., establishes the purchasing categories, which are threshold amounts linked to other requirements in Chapter 287, as follows:

- Category One: \$20,000;
- Category Two: \$35,000;
- Category Three: \$65,000;
- Category Four: \$195,000; and
- Category Five: \$325,000.

State Term Contracts & Request for Quotes

Section 287.056, F.S., requires agencies and permits eligible users⁶ to purchase commodities and contractual services from purchasing agreements and state term contracts⁷ procured by the DMS.

Agencies and eligible users may use a request for quote, to obtain written pricing or services information from a state term contract vendor to determine whether a more favorable price, term or condition that that provided in the state term contract is available.⁸ The use of a request for quote does not constitute a decision subject to protest.⁹ Rule 60A-1.043, F.A.C., requires agencies to request at least two quotes from state term contracts with multiple vendors, unless (i) the purchase is less than Category One (\$20,000), or (ii) the state term contract requires otherwise. Agencies must document the justification for a selection based on receipt of less than two quotes.¹⁰

branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

⁴ See ss. 287.032 and 287.042, F.S.

⁵ Section 287.042(16), F.S.

⁶ Section 287.012(11), F.S., defines "eligible user" to mean any person or entity authorized by the DMS pursuant to rule to purchase from state term contracts or to use the online procurement system.

⁷ Section 287.012(28), F.S., defines "state term contract" to mean a term contract that is competitively procured by the DMS pursuant to s. 287.057, F.S., and that is used by agencies and eligible users pursuant to s. 287/056, F.S.

⁸ Section 287.056(2), F.S.

⁹ Section 287.056(2), F.S.

¹⁰ Rule 60A-1.043, F.A.C.

Competitive Solicitation

With certain exceptions,¹¹ the procurement of commodities or contractual services in excess of Category Two, \$35,000, requires agencies to use a competitive solicitation process.¹² Any form of competitive solicitation must be made available simultaneously to all vendors, must include the time and date for the receipt of bids, proposals, or replies, and must include all contractual terms and conditions applicable to the procurement.¹³ Depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors, agencies may use a variety of methods, including:

- Single source contracts,¹⁴ 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 (ITB),¹⁵ 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. The agency specifically defines the scope of work for the contractual service and establishes precise specifications for the commodity or group of commodities;
- Requests for proposals (RFP),¹⁶ 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 (ITN),¹⁷ 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, by an agency dealing with a limited number of vendors. Agencies must specify the criteria in determining the acceptability and selection of the vendors in which the agency will invite to negotiate.

Chapter 287, F.S., grants an agency discretion in setting criteria for the award of a contract via competitive solicitation. For example, s. 287.057(1)(b)4., F.S., which governs the award of a contract via a RFP, provides that the "contract shall be awarded in writing to the *responsible*¹⁸ and *responsive*¹⁹ vendor whose proposal is determined ... to be the most advantageous to the state, taking into consideration the price and other criteria set forth in the request for proposals." Similarly, for an ITN, s. 287.057(1)(c)4., F.S., provides that the "agency shall award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state." Additional criteria or information requested for determining whether such vendor is responsible include:

- References of the vendor;
- Documents evidencing a vendor's technical expertise; and

¹¹ Section 287.057(3)(e), F.S.

¹² Section 287.057(1), F.S.

¹³ *Id.*

¹⁴ Section 287.057(3)(c), F.S.

¹⁵ Section 287.057(1)(a), F.S.

¹⁶ Section 287.057(1)(b), F.S.

¹⁷ Section 287.057(1)(c), F.S.

¹⁸ Section 287.012(25), F.S. defines "responsible vendor" to mean 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. This definition includes the financial capacity of the vendor.

¹⁹ Section 287.012(27), F.S. defines "responsive vendor" to mean a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.

- A showing of financial capacity (also referred to as financial ability,²⁰ financial viability,²¹ or financial stability²²) by submitting financial data, including audited financial statements.

Contract Evaluations and Negotiations

For a contract in excess of \$195,000, the agency head must appoint at least three people to evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought.²³ In addition, the agency head must appoint three people²⁴ to conduct negotiations during an invitation to negotiate procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought.²⁵

If the value of a contract is in excess of \$1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a Florida certified contract negotiator (FCCN)²⁶ in order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process.²⁷ If the value of a contract is in excess of \$10 million in any fiscal year,

²⁰ See, for example, *The Escambia County School District Request for Proposal #161301*, p. 18, file:///C:/Users/borja.gabriela/Downloads/Bid_161301.pdf.

²¹ See, for example, *Department of Juvenile Justice Solicitation #10706 – Statewide Clinical Laboratory Testing Services*, p. 23, file:///C:/Users/borja.gabriela/Downloads/F1236158504_RFP_10706_SolicitationDocument.pdf.

²² Rule 25-17.0832, F.A.C.

²³ Section 287.057(16)(a), F.S.

²⁴ Section 287.057(16)(b), F.S., provides that if the value of the contract is in excess of \$1 million in any fiscal year, then at least one person conducting negotiations must be certified as a contract negotiator. If the value of the contract is in excess of \$10 million in any fiscal year, then at least one person conducting negotiations must be a Project Management Professional certified by the Project Management Institute.

²⁵ Section 287.057(16)(a)2., F.S.

²⁶ Rule 60A-1.041(3), F.A.C., provides that a person must meet the following requirements for FCCN Certification, which is valid for five years or until the expiration date stated on the person's FCCN certificate, whichever is later:

- Successful completion of the FCCN certification course;
- At least 12 months' experience as a purchasing agent, contract manager, or contract administrator for an agency or local government entity, where the job description for the position required that at least half of the employee's designated duties included procuring commodities or contractual services, participating in contract negotiation, contract management, or contract administration, or working as an agency attorney whose duties included providing legal counsel to the agency's purchasing or contracting staff; and
- Experience during the preceding five years in leading at least one federal, state, or local government negotiation team through a negotiated procurement, or participation in at least two federal, state, or local government negotiated procurements. Negotiated procurements include those from a single source; those negotiated when fewer than two responsive bids, proposals, or replies are received; and contract renewals. Employees must provide documentation to show compliance with the experience and participation requirements when submitting the application.

²⁷ Section 287.057(16)(b), F.S.

at least one of the persons conducting negotiations must be a Project Management Professional certified by the Project Management Institute.²⁸

Vendor Registration and the Vendor Bid System

Any vendor that wishes to provide goods or services to the state must register in the Vendor Registration System.²⁹ Once registered, vendors are able to do business with the State of Florida executive branch agencies through the Vendor Information Portal.³⁰

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.³¹

Chief Financial Officer and Department of Financial Services

The chief financial officer (CFO) of Florida is responsible for settling and approving accounts against the state and maintaining all state funds and securities.³² The CFO, using generally accepted auditing procedures for testing or sampling, must examine, audit, and settle all accounts, claims, and demands, whatsoever, against the State, arising under any law or resolution of the Legislature, and issue a warrant directing the payment out of the State Treasury of such amount as he or she allows thereon.³³ The CFO may adopt and disseminate to the agencies procedural and documentation standards for payment requests and may provide training and technical assistance to the agencies for these standards.³⁴ In addition, the CFO has the legal duty of delivering all state warrants and will be charged with the official responsibility of the protection and security of the state warrants while in his or her custody. The CFO may delegate this authority to other state agencies or officers.³⁵

III. Effect of Proposed Changes:

Section 1 amends s. 287.057, F.S., to require any agency that requires a vendor to show financial stability³⁶ during a competitive solicitation process to accept the following as evidence of such financial stability:

²⁸ *Id.*

²⁹ In order to register, a vendor must provide the following information: (1) Company Name; (2) Federal Tax ID; (3) Tax Filing Name; (4) Business Location; (5) Commodities and Services Offered; and (5) Certified Business and Enterprise Status. See The Department of Management Services, *Vendor Resources*, available at

https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited, January 19, 2022).

³⁰ See The Department of Management Services, *Vendor Resources*, available at

https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited, January 19, 2022).

³¹ *Id.*

³² Section 17.001, F.S.

³³ Section 17.03(1), F.S.

³⁴ Section 17.03(3), F.S.

³⁵ Section 17.03(4), F.S.

³⁶ This is not a defined term in chapter 287, F.S.

- Audited financial statements that demonstrate the vendor’s satisfaction of generally accepted financial stability criteria;³⁷
- Documentation of an investment-grade rating from a credit rating agency designated as a nationally recognized statistical rating organization by the Securities and Exchange Commission; or
- For a vendor with annual revenues exceeding \$1 billion, a letter issued by the chief financial officer or controller verifying such vendor’s satisfaction of generally accepted financial stability criteria.

Section 2 provides that the bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or 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:

Some vendors may experience an increase in costs associated with acquiring the required evidence to prove financial stability.

³⁷ The bill does not define the term “generally accepted financial stability criteria” nor are there a set of established generally accepted criteria related to “financial stability.” . See Section VI. for technical deficiencies.

C. Government Sector Impact:

The bill is not expected to impact state or local government revenue or expenditures.

VI. Technical Deficiencies:

The bill uses the term “generally accepted financial stability criteria.” This language strongly suggests - by including “generally accepted” - that there is an identifiable group of “generally accepted” rules or standards for financial stability— perhaps, similarly to “generally accepted accounting principles.” However, there are no such identifiable rules or criteria. Thus, the inclusion of this phrase in the bill may hinder the ability for audited financial statements or a letter issued by the chief financial officer or controller to be used as evidence.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.057 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.