

CHAPTER NO. 413

HOUSE BILL NO. 1256

By Representatives McMillan, Harmon, West, Hackworth and Mr. Speaker Naifeh and Representatives Henri Brooks, Shaw, Rinks, Hargrove, Bone, Maddox, Vaughn, Litz, Sontany, Fraley, Coleman, Cobb, Borchert, Shepard, Langster, Tindell, Fitzhugh, Pinion, Yokley, Todd, Kent, Gresham, Brenda Turner, Montgomery, Briley, Head

Substituted for: Senate Bill No. 917

By Senator Kyle

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 12, relative to public purchases, bidding, and contracts.

WHEREAS, state procurement and information technology executives recognize the need to improve the current procurement process for information technology hardware, software, and services; and

WHEREAS, enhancements in Tennessee's procurement practices for information technology can save taxpayers money by increasing the flexibility of purchases, making it possible for agencies to take advantage of the ongoing price and performance improvements that take place in one of the most volatile and fast-changing industries in the world; and

WHEREAS, many states have demonstrated the benefits gained from implementing procurement reforms; and

WHEREAS, a reformed procurement system can spur on the economic well-being of Tennessee by increasing its ability to attract business through the use of up-to-date procurement tools, such as electronic commerce and electronic bidding systems; and

WHEREAS, a reformed procurement system can expand and enhance the delivery of services to citizens and businesses in Tennessee by speeding the implementation of automated systems that provide information and services to citizens and businesses; and

WHEREAS, the report of National Association of State Information Resource Executives (NASIRE) and the National Association of State Purchasing Officials (NASPO) on procurement reform identifies certain changes that can save millions of dollars; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 12-4-109(a)(1), is amended by add the following new items:

(G)

(1) All requests, in accordance with rules authorized by this subdivision (a)(1), to procure service by negotiation with only one service provider, hereinafter referred to as a "non-competitive contract", shall be contemporaneously filed with the fiscal review committee of the general

assembly and the commissioner of finance and administration. Such requests shall document the following:

- (i) Description of service to be acquired;
- (ii) Explanation of the need for or requirement placed on the procuring agency to acquire the service;
- (iii) Name and address of the proposed contractor's principal owner(s);
- (iv) Evidence that the proposed contractor has experience in providing the same or similar service and evidence of the length of time the contractor has provided the same or similar service;
- (v) Explanation of whether the service was ever bought by the procuring agency in the past, and if so, what method was used to acquire it and who was the contractor;
- (vi) Description of procuring agency efforts to use existing state employees and resources or, in the alternative, to identify reasonable, competitive, procurement alternatives (rather than to use non-competitive negotiation); and
- (vii) Justification of why the state should acquire the service through non-competitive negotiation.

(2) The provisions of subdivision (G)(1), relative to filing requests with the fiscal review committee, shall only apply to proposed non-competitive contracts with a term of more than one (1) year or which are renewable by either party that would extend the contract beyond twelve (12) months and which have a cumulative value, including all possible renewals, of two hundred fifty thousand dollars (\$250,000) or more. The fiscal review committee shall have fifteen (15) days from receipt of the request to comment on the proposed contract. After such fifteen-day period, any such contract authorized by the commissioner may be executed.

(3) All other requests to negotiate non-competitive contracts shall be reviewed by the fiscal review committee after approval by the commissioner of finance and administration. With respect to such requests, the fiscal review committee shall be provided the same information to be submitted in accordance with subdivision (G)(1).

(H) All requests, approved in accordance with rules authorized by this subdivision (a)(1), to permit an exception to said rules shall be filed with the fiscal review committee of the general assembly.

(I) The department of finance and administration, office of contracts review shall file a personal, professional, and consultant service contract report quarterly with the fiscal review committee of the general assembly. Said report shall list contracts

approved in accordance with rules authorized by this subdivision (a)(1) during the prior quarter and detail whether or not each contract procurement was competitive.

SECTION 2. Tennessee Code Annotated, Section 12-4-119, is amended by adding the following new subsection:

(e) Authorization of the commissioner of finance and administration permitting a limitation of liability shall be in writing and shall be filed with the fiscal review committee of the general assembly.

SECTION 3. This act shall take effect July 1, 2003, the public welfare requiring it.

PASSED: May 29, 2003


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 24th day of June 2003


PHIL BREDESEN, GOVERNOR