

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 Appropriations

BILL: CS/CS/SB 1150

INTRODUCER: Appropriations Committee; Governmental Oversight and Accountability Committee; and
Senators Benacquisto and Brandes

SUBJECT: State Contracting

DATE: April 22, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	Fav/CS
2.	Betta	Hansen	AP	Fav/CS
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 1150 revises provisions relating to state agency contracting and related duties of the Department of Management Services (DMS), and creates new duties for the Chief Financial Officer (CFO) in the state agency contracting process. The bill:

- Deletes a requirement that the DMS maintain a vendor list;
- Deletes contract documentation requirements for specified agreements;
- Requires that invitations to bid must be awarded to the responsible and responsive vendor who submits the lowest responsive bid;
- Deletes a requirement that agencies seek approval of the DMS for single source purchases;
- Requires that specified accountability provisions be included in grant agreements;
- Requires certified grant managers on grant agreements valued over \$35,000;
- Permits the CFO to audit grant agreements before execution, and requires the CFO audit of grant agreements after execution;
- Permits the CFO to audit certain agency contracts before execution, and requires a CFO audit of certain agency contracts after execution;

- Requires that every contract of more than \$35,000 must have a certified contract manager; and
- Specifies the types of information that agencies must make available on the contract tracking system.

The bill also amends the Public Records Act to:

- Require each state agency and local government contract for services in which the contractor is acting on behalf of the governmental entity to require the contractor to comply with public records laws, and require the contracting governmental entity to enforce the contract provisions if the contractor does not comply with a public records request; and
- Amend the provision governing attorney fees to provide that “reasonable attorney fees” include those incurred in litigating entitlement to, and the determination or quantification of, attorney fees for the underlying civil action.

The bill may have a minimal fiscal impact on state agencies related to the training and certification of grant and contract managers. This fiscal impact is indeterminate and could most likely be handled within existing agency resources. SB 1764 related to transparency in government spending provides four positions and \$713,067 to support the contract tracking system within the Department of Financial Services.

This bill substantially amends the following sections of the Florida Statutes: 119.12, 215.971, 215.985, 287.012, 287.042, 287.056, 287.057, 287.0571, 287.058, 287.076, 16.0155, 283.33, 394.457, 402.7305, 409.9132, 427.0135, 445.024, 627.311, 627.351, 765.5155, and 893.055.

The bill repeals section 216.0111, Florida Statutes.

The bill creates sections 119.0701 and 287.136, Florida Statutes.

II. Present Situation:

State Procurement of and Contracts for Personal Property and Services

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency¹ procurement of personal property and services.² 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, such as office supplies, vehicles, and information technology.³ The Division of State Purchasing in the DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

¹ As defined in s. 287.012(1), F.S., “agency” means 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 Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

³ See ss. 287.032 and 287.042, F.S.

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are 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," 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 high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.⁴

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.⁵ However, specified contractual services and commodities are not subject to competitive solicitation requirements.⁶

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the DMS, a water management district, or certain other agencies.⁷

Purchases and Procurements

Section 287.056, F.S., requires agencies (and allows eligible users) to purchase commodities and contractual services from purchasing agreements established and state term contracts procured by the DMS. Each agency agreement made pursuant to this authority must include provisions:

- Specifying a scope of work; and
- Dividing the contract into quantifiable deliverables directly related to the scope of work, which must specify the minimum level of service to be performed.

Section 287.058, F.S., requires that every procurement of contractual services in excess of \$35,000 must also include the above scope of work deliverables provisions.

⁴ See ss. 287.012(6) and 287.057, F.S.

⁵ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means 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.

⁶ See s. 287.057(3)(f), F.S.

⁷ See s. 287.042(2)(c), F.S.

Agreements Funded with Federal and State Assistance

Current law requires an agency agreement that provides state financial assistance to a recipient or subrecipient,⁸ or that provides federal financial assistance to a subrecipient,⁹ to include a provision specifying a scope of work that clearly establishes the tasks the recipient or subrecipient is required to perform, and a provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the agency before payment. Each deliverable must be directly related to the scope of work and must specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.¹⁰

Reporting of State Agency Contract Information

Current law requires each state agency to report to the Department of Financial Services (DFS) the following information relating to certain contracted activities:

- The nature of the commodities or services provided;
- The term of the contract;
- The final obligation made by the agency;
- A summary of any time constraints that apply to the procurement;
- The justification for not using a competitive solicitation, including any statutory exemption or exception; and
- Other information regarding the contract or the procurement that the DFS requires.¹¹

Qualifications for Contract Managers and Contract Negotiators

Current law requires certain contract managers to attend training conducted by the Chief Financial Officer (CFO).¹² It also requires certain contract negotiators to be certified based upon rules adopted by the DMS.¹³

Chief Financial Officer and Department of Financial Services

The CFO is an elected constitutional Cabinet member.¹⁴ The CFO serves as the chief fiscal officer of the state and is responsible for settling and approving accounts against the state and keeping all state funds and securities.¹⁵ Such responsibilities include, but are not limited to, auditing and adjusting accounts of officers and those indebted to the state,¹⁶ paying state employee salaries,¹⁷ and reporting all disbursements of funds administered by the CFO.¹⁸

⁸ As defined in s. 215.97, F.S.

⁹ As defined by applicable United States Office of Management and Budget circulars.

¹⁰ See s. 215.971, F.S.

¹¹ See s. 216.0111, F.S.

¹² See s. 287.057(14), F.S.

¹³ See s. 287.057(16)(b), F.S.

¹⁴ See art. 4, s. 4(a) and (c), Fla. Const.

¹⁵ See art. 4, s. 4(c), Fla. Const., and s. 17.001, F.S.

¹⁶ See s. 17.04, F.S.

¹⁷ See s. 17.09, F.S.

¹⁸ See s. 17.11, F.S.

The CFO also serves as the head of the DFS, which executes the duties of the CFO.¹⁹ The DFS consists of the following divisions:

- The Division of Accounting and Auditing;
- The Division of State Fire Marshal;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agents and Agency Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Office of Insurance Consumer Advocate;
- The Division of Funeral, Cemetery, and Consumer Services; and
- The Division of Public Assistance Fraud.²⁰

The Financial Services Commission;²¹ Board of Funeral, Cemetery, and Consumer Services;²² and Strategic Markets Research and Assessment Unit²³ also are established within the DFS.

Transparency Florida Act

The Transparency Florida Act (act)²⁴ created financial reporting requirements for certain public entities for the purpose of making that information publicly available. Among other provisions, it required:

- The Executive Office of the Governor to establish a website making certain information relating to state financial expenditures available to the public;²⁵
- Each water management district to make a monthly financial statement available on its website;²⁶ and

¹⁹ See s. 20.121, F.S.

²⁰ Section 20.121(2), F.S.

²¹ The Financial Services Commission is composed of the Governor and of the Cabinet members, and includes the Office of Insurance Regulation and the Office of Financial Regulation. The offices are responsible for activities of the commission relating to regulation and investigation of violations of laws relating to insurance and financial institutions. See s. 20.121(3)(a), F.S.

²² The Board of Funeral, Cemetery, and Consumer Services is created within the Division of Funeral, Cemetery, and Consumer Services, and regulates licenses issued under ch. 497, F.S. (Funeral, Cemetery, and Consumer Services). See ss. 20.121(4) and 497.103, F.S.

²³ The Strategic Markets Research and Assessment Unit creates reports on issues, trends, and threats that broadly impact the condition of the financial services industries. See s. 20.121(6), F.S.

²⁴ Chapter 2009-74, s. 2, L.O.F. (codified at s. 215.985, F.S.).

²⁵ See s. 215.985(3), F.S.

²⁶ See s. 215.985(12), F.S.

- The CFO to provide public access to a state contract management system providing information and documentation relating to government contracts. The act specifies data that must be collected in the system and provides that in the event of a major contract change or a new contract, the affected state governmental entity must update the system within 30 days.²⁷

Public Records Laws

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.²⁸

Public policy regarding access to government records is addressed further in the Florida Statutes. The Public Records Act²⁹ guarantees every person's right to inspect and copy any state or local government public record³⁰ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.³¹

Anyone who is denied access to a public record may file a civil action to seek a court order requiring the agency that denied access to open its records.³² If the court determines that the agency unlawfully refused to permit a public record to be inspected or copied, the court must assess and award, against the agency responsible, the reasonable costs of enforcement. Reasonable costs of enforcement include reasonable attorney's fees.³³

Current law requires some state agency outsourcing contracts to provide that the contractor must comply with public records laws;³⁴ however, there is no such general requirement for all state and local government contracts in which the contractor is acting on behalf of the governmental entity.

²⁷ See s. 215.985(16), F.S.

²⁸ Article I, s. 24(c) of the Fla. Const.

²⁹ Chapter 119, F.S.

³⁰ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

³¹ Section 119.07(1)(a), F.S.

³² See s. 119.11, F.S.

³³ Section 119.12, F.S.

³⁴ See s. 287.0571, F.S.

III. Effect of Proposed Changes:

Public Records

Section 1 creates s. 119.0701, F.S., to require specified public records provisions to be included in certain agency contracts. Specifically, the bill requires all state agency or local government contracts for services in which the contractor is acting on behalf of the governmental entity to require the contractor to comply with public records laws. The bill further provides that if such a contractor or its subcontractors does not comply with a public records request, then the contracting governmental entity must enforce the contract provisions in accordance with the contract.

Section 2 amends the attorney fee provision in Ch. 119, F.S., relating to public records, to provide that the “reasonable costs of enforcement” for which attorney fees may be awarded include reasonable attorney fees incurred in litigating entitlement to attorney fees for the underlying matter.

Additional Requirements for Grant Agreements

Section 3 amends s. 215.971, F.S., to add additional requirements for agreements funded with federal or state assistance. Specifically, the bill requires that such agreements must include:

- A provision specifying the financial consequences that apply if the recipient or subrecipient fails to perform the minimum level of service required by the agreement. The provision can be excluded from the agreement only if financial consequences are prohibited by the federal agency awarding the grant. Funds refunded to a state agency from a recipient or subrecipient for failure to perform as required under the agreement may be expended only in direct support of the program from which the agreement originated.
- A provision specifying that a recipient or subrecipient of federal or state financial assistance may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.
- A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the state agency.
- A provision specifying that any funds paid in excess of the amount to which the recipient or subrecipient is entitled under the terms and conditions of the agreement must be refunded to the state agency.
- Any additional information required pursuant to the Florida Single Audit Act.

Chief Financial Officer Audit of Proposed Grant Agreements

The bill provides that the Chief Financial Officer (CFO) may audit agreements funded with state or federal assistance before the execution of the agreements in accordance with rules adopted by the Department of Financial Services (DFS). The audit must ensure that applicable laws have been met; that the agreement document contains a clear statement of work, quantifiable and measurable deliverables, performance measures, financial consequences for nonperformance, and clear terms and conditions that protect the interests of the state; and that the associated costs of the agreement are not unreasonable or inappropriate. The audit must ensure that all

contracting laws have been met and that documentation is available to support the contract. A contract that does not comply with this section may be returned to the submitting agency for revision.

The CFO may establish dollar thresholds and other criteria for determining which agreements will be audited before execution. The CFO may revise such thresholds and other criteria for an agency or a unit of an agency as he or she deems appropriate. The CFO has up to 10 business days after receipt of the proposed grant agreement to make a final determination regarding deficiencies in the agreement. The CFO and the agency entering into the contract may agree to a longer review period. The CFO will provide the agency with information regarding any contract deficiencies. The agency will be responsible for addressing the deficiencies, and has the option of resubmitting the agreement for subsequent reviews. The CFO must perform a subsequent review to verify that all deficiencies have been addressed upon processing the first payment.

Grant Management

For each grant agreement, the state agency must designate an employee to function as a grant manager responsible for enforcing performance of the agreement's terms and conditions and who must serve as a liaison with the recipient or subrecipient. Each grant manager responsible for agreements in excess of \$35,000 must complete the training and become a certified contract manager as provided under s. 287.057(14), F.S.

The CFO must establish and disseminate uniform procedures for grant management pursuant to s. 17.03(3), F.S., to ensure that services have been rendered in accordance with agreement terms before the agency processes an invoice for payment. The procedures must include, but need not be limited to, procedures for monitoring and documenting recipient or subrecipient performance, reviewing and documenting all deliverables for which payment is requested by the recipient or subrecipient, and providing written certification by the grant manager of the agency's receipt of goods and services. The grant manager must reconcile and verify all funds received against all funds expended during the grant agreement period and produce a final reconciliation report.

Chief Financial Officer Audit of Executed Grant Agreements

The CFO must perform audits of the executed state and federal grant agreement documents and grant manager's records. The CFO's designee must discuss the audit and potential findings with the official whose office is subject to audit. The final audit report must be submitted to the agency head. Within 30 days after the receipt of the final audit report, the agency head must submit to the CFO a written statement of explanation or rebuttal concerning findings requiring corrective action, including corrective action to be taken to preclude a recurrence.

State Contract Tracking System

Section 4 amends s. 215.985(16), F.S., to modify the CFO's duties with regards to the state contract tracking system. Within 30 calendar days after executing a contract, each state agency as

defined in s. 216.011(1), F.S.,³⁵ must post on the contract tracking system the following contract information and documentation:

- The names of the contracting entities.
- The procurement method.
- The contract beginning and end dates.
- The nature or type of the commodities or services purchased.
- Applicable contract unit prices and deliverables.
- Total compensation to be paid or received under the contract.
- All payments made to the contractor to date.
- Applicable contract performance measures.
- The justification for not using competitive solicitation to procure the contract, including citation to any statutory exemption or exception from competitive solicitation.
- Electronic copies of the contract and procurement documents that have been redacted to conceal exempt or confidential information.
- Any other information required by the Chief Financial Officer.

Documentation that could reveal attorney work product or strategy does not have to be posted on the tracking system.

Each governmental entity must redact exempt or confidential information from the procurement or contract documents before posting. If a state agency becomes aware that an electronic copy of a contract or procurement document that it posted has not been properly redacted, the state agency must immediately notify the CFO so that the contract or procurement document may be removed. Within 7 business days, the state agency must provide the CFO with a properly redacted copy for posting.

If a party to a contract discovers that a document has not been properly redacted, the party may request that the posting entity redact the information; upon receipt of such a request, the posting entity must redact the confidential or exempt information.

The bill provides a disclaimer from liability to the CFO and DFS for the failure of a posting entity to properly redact information. The bill allows the CFO to make information posted on the system available for viewing and downloading by the public. The CFO may prohibit the posting of records on the public website that could jeopardize the health, safety, or welfare of the public. Requests for copies of documents in the system, or subpoenas for documents, must be made to or served on the entity that maintains the original documents, not the CFO or DFS. The bill provides DFS authority to adopt rules to administer the subsection.

Section 5 repeals s. 216.0111, F.S., which specifies the agency contract information required to be submitted to DFS. That information is now included in s. 215.985, F.S.

³⁵ Section 216.011(1)(qq), F.S., defines “state agency” or “agency” as any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.

Definitions

Section 6 amends s. 287.012, F.S., to provide a definition for “governmental entity,” which means a political subdivision or agency of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, nonprofit public university or college, single-purpose or multipurpose special district, single-purpose or multipurpose public authority, metropolitan or consolidated government, separate legal entity or administrative entity, or any agency of the Federal Government.

The bill also amends the definitions for “best value,” “commodity,” “electronic posting,” and “extension.”

Powers and Duties of the Department of Management Services

Section 7 amends s. 287.042, F.S., by removing the requirement that DMS establish and maintain a vendor list, and authorizing DMS to lead or enter into joint agreements with governmental entities for the purchase of commodities or contractual services that can be used by multiple agencies.

Purchases and Procurements

Section 8 amends s. 287.056., F.S., to eliminate the requirement that “agency agreements” made pursuant to s. 287.056, F.S., must include provisions:

- specifying a scope of work; and
- dividing the contract into quantifiable deliverables directly related to the scope of work, which must specify the minimum level of service to be performed.

The deleted provisions also appear in s. 287.058(1)(d) and (e), F.S., which applies to procurements of contractual services in excess of \$35,000. Deleting the provision in s. 287.056, F.S., has the effect of removing the statutorily-required scope of work and deliverables requirements applicable to purchases made from some state term contracts and state purchasing agreements.

Section 9 amends s. 287.057, F.S., to require that contracts awarded pursuant to an invitation to bid must be awarded to the responsible and responsive vendor that submits the lowest responsive bid.

The bill modifies the process for awarding single source contracts, by deleting provisions that require agencies to submit forms for approval from DMS for specified single source contracts prior to entering into contracts with vendors.

The bill deletes a provision permitting the Support Program in DMS to purchase insurance by negotiation, and provides that services or commodities provided by governmental entities do not have to be competitively solicited. .

The bill provides that contract extensions and renewals are subject to the same terms and conditions set forth in the initial contract and any written amendments, and that an agency may negotiate a lower price in a contract renewal.

Current law requires DMS, in consultation with the Agency for Enterprise Information Technology and the Comptroller, to develop a program for online procurement of commodities and contractual services. The bill inserts a reference to the CFO in place of the Comptroller, and removes a reference to the Agency for Enterprise Information Technology, as the Agency for Enterprise Information Technology is defunct. Because MyFloridaMarketPlace is developed already, the bill provides that DMS and the CFO must maintain, rather than develop, a program for online procurement of commodities and contractual services.

Contract Managers

Section 10 amends s. 287.057(14), F.S., effective December 1, 2014, to require that every contract manager responsible for a contract of more than \$35,000 must be certified as a contract manager in training conducted jointly by the DMS and the DFS.

Contracts

Section 12 amends s. 287.058, F.S., to require that deliverables in contracts must include performance measures, and that the agreement may be signed by an agency head's designee.

The bill also changes terminology regarding purchases made in valid emergencies, to provide for "written statements" of emergencies instead of "certifications."

Pre-execution Audit of Contracts by Chief Financial Officer

The CFO is given the authority to audit contracts before execution. The audit must ensure that all contracting laws have been met; that the contract document contains a clear statement of work, quantifiable and measureable deliverables, performance measures, financial consequences for nonperformance, and clear terms and conditions that protect the interests of the state; that documentation is available to support the contract; and that the associated costs of the contract are not unreasonable or inappropriate. A contract that does not comply may be returned to the submitting agency for revision.

The CFO may establish dollar thresholds and other criteria for sampling the agreements that are to be audited prior to execution.

DFS has 10 business days to make a final determination regarding deficiencies in the contract. DFS and the agency entering into the contract may agree to a longer review period. The CFO will provide the agency with information regarding any contract deficiencies. The agency will be responsible for addressing the deficiencies, and has the option of resubmitting the agreement for subsequent reviews. The CFO must perform a subsequent review to verify that all deficiencies have been addressed upon processing the first payment.

Chief Financial Officer Audit of Executed Contract Documents

Section 13 creates s. 287.136, F.S., which requires the CFO to perform audits of the executed contract documents and contract manager's records to ensure that adequate internal controls are

in place for complying with the terms and conditions of the contract and for the validation and receipt of goods and services. At the conclusion of the audit, the CFO must discuss the audit and potential findings with the official whose office is subject to audit. The final audit report must be submitted to the agency head. Within 30 days after the receipt of the final audit report, the agency head must submit to the CFO a written statement of explanation or rebuttal concerning findings requiring corrective action, including corrective action to be taken to preclude a recurrence.

Project Management Professionals Training

Section 14 amends s. 287.076, F.S., to provide that Project Management Professionals training for personnel involved in managing outsourcings and negotiations is subject to annual appropriations.

Cross References

Sections 11 and 15 through 25 amend ss. 287.0571, 16.0155, 283.33, 394.457, 402.7305, 409.9132, 427.0135, 445.024, 627.311, 627.351, 765.5155, and 893.055, F.S., to correct cross references.

Effective Date

Section 26 provides an effective date of July 1, 2013, unless otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Single Subject and Title Requirements

Article III, Section 6 of the Florida Constitution provides that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” The single subject clause contains three requirements: that each law embrace only one subject, that the law may include any matter that is properly

connected with the subject, and that the subject be briefly expressed in the title.³⁶ The single subject of an act is to be derived from the short title.³⁷ “A connection between a provision [in an act] and the subject is proper (1) if the connection is natural or logical, or (2) if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject.”³⁸ The title provision of Article III, Section 6, is intended to provide sufficient notice to parties interested in the contents of particular bills. “The title of a statute need not index all of the statute's contents. The proper test is whether the title is so worded as not to mislead a person of average intelligence as to the scope of the enactment and is sufficient to put that person on notice and cause him to inquire into the body of the statute itself.”³⁹

The short title of this bill is “[a]n act relating to governmental accountability,” and the bill contains provisions relating to procurement and contractual requirements, and attorney fees under the Public Records Act. If this bill were challenged under Article III, Section 6 of the constitution, the presumption is in favor of constitutionality, and a court would apply a highly deferential standard of review.⁴⁰

Separation of Powers

The separation of powers provision in the Constitution of the State of Florida states:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

The separation of powers doctrine encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. The second is that no branch may delegate to another branch its constitutionally assigned power. *Chiles v. Children A, B, C, D, E, & F*, 589 So.2d 260, 264 (Fla.1991). Under the nondelegation doctrine the legislature may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law. *Sims v. State*, 754 So.2d 657, 668 (2000). Further, the nondelegation doctrine precludes the legislature from delegating its powers absent ascertainable minimal standards and guidelines. *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985).

In this bill, the CFO is permitted to audit grant agreements and certain state agency contracts before they are executed, but the bill provides no legislative standards or thresholds specifying when the CFO may exercise this discretion. The bill specifies that the CFO may establish the dollar thresholds and other criteria for sampling the contracts to be audited before execution. Absent legislative direction on the standards and

³⁶ *Franklin v. State*, 887 So.2d 1063, 1072, (Fla. 2004)

³⁷ *Id.* at 1075.

³⁸ *Id.* at 1078.

³⁹ *Williams v. State*, 370 So.2d 1143, 1144 (Fla. 1979).

⁴⁰ *Franklin* at 1073.

guidelines to be utilized by the CFO when determining which contracts are to audited, those provisions potentially violate the nondelegation portion of the separation of powers doctrine.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on state agencies related to the training and certification of grant and contract managers. This fiscal impact is indeterminate and could most likely be handled within existing agency resources.

Senate Bill 1764, which contains substantively the same provisions with regard to the state contract tracking system, provides a 2013-2014 fiscal year appropriation of \$326,775 in recurring funds and \$386,292 in nonrecurring funds from the General Revenue Fund, as well as four fulltime equivalent positions with associated salary rate of 231,409, to the DFS for implementation of the state contract tracking system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 8 of the bill removes scope of work and deliverables requirements applicable to state purchasing agreements and smaller purchases from state term contracts. Deleting these provisions could make it more difficult to determine whether agencies are receiving the best value from their contracting efforts.

Section 12 of the bill provides that as part of the CFO's pre-execution audit of contracts, a contract that does not comply with the contract requirement provisions of s. 287.058, F.S., "may be returned to the submitting agency for revision." Requirements in paragraph (b) of that section make it clear the CFO must return the contract to the agency, so this line could be clarified to make the duty mandatory, or could be merged into subsection (b), or eliminated.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Appropriations on April 18, 2013:

- Requires specified public records provisions to be included in certain agency contracts;
- Amends the attorney fee provision relating to public records, to provide that the “reasonable costs of enforcement” for which attorney fees may be awarded include reasonable attorney fees incurred in litigating entitlement to attorney fees for the underlying matter;
- Deletes a requirement that the DMS maintain a vendor list;
- Deletes contract documentation requirements for specified agreements;
- Requires that invitations to bid must be awarded to the responsible and responsive vendor who submits the lowest responsive bid; and
- Deletes a requirement that agencies seek approval of the DMS for single source purchases;

CS by Governmental Oversight and Accountability on March 14, 2013:

The CS removes provisions in the bill that gave the CFO explicit “approval” authority before execution of contracts, and shortens the time the CFO has to report contract deficiencies back to the agency from 21 days to 10 business days. The CS also specifies that the CFO will provide information about the contract deficiencies to the agency, which is responsible for addressing the deficiencies.

B. Amendments:

None.