

**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 Appropriations

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**BILL:** PCS/CS/SB 1616 (479650)

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); Governmental Oversight and Accountability Committee; and Senator Brodeur

**SUBJECT:** Agency Contracts for Commodities and Contractual Services

**DATE:** April 16, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Davis</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1616 revises several provisions of the part I of chapter 287, Florida Statutes, related to public procurement. The bill requires the Secretary of Management Services, rather than the Department of Management Services (DMS), make a written determination finding a contract to be cost effective and the best value to the state before an agency may be authorized to enter such contract let by the Federal Government, another state, or a political subdivision.

The bill provides that each agency contract must include authorization for the agency to inspect certain financial and programmatic records of the contractor relevant to the performance of the contract.

The bill requires an agency that issues a request for quote for contractual services for any state term contract with 25 vendors or fewer to issue a request to *all* approved vendors. For state term contracts with more than 25 vendors, the agency must issue a request to a minimum of 25 approved vendors.

The bill provides for the immediate disqualification from state term contract eligibility for a firm or individual who has been removed from the source of supply or placed on the convicted vendor list or the discriminatory vendor list.

The bill changes the electronic posting requirement for single source contracting from seven to 15 days and to require agencies report – on a quarterly basis – to the DMS each instance in which the agency entered into a single source purchase contract. The DMS is required to report such information to the Governor and the Legislature no later than January 1, 2022, and each January thereafter.

The bill restricts an agency from initiating a competitive solicitation that would require a change in law or change to the agency's budget, unless specifically authorized.

This bill amends the provision governing an agency's designation of a contract manager to prohibit a contract manager from having been employed, within the previous five years, by the vendor awarded the contractual services contract that he or she is assigned. The bill provides for primary responsibilities of a contract manager.

Current law requires the Chief Financial Officer provide training for accountability in contracts and grant management for a contract manager responsible for contracts in excess of the threshold amount for category two (\$35,000). The bill requires the Chief Financial Officer to evaluate this training every five years.

Current law requires a contract manager who is responsible for contracts over \$100,000 annually to complete training in contract management and become a certified contract manager. The bill requires this training to be completed within six months. The bill provides that in addition to the training provided under current law, such a contract manager must also complete the accountability in contracts and grant management training. The DMS is responsible for disseminating the training and certification requirements for certified contract managers and is required to evaluate the training every five years.

The bill provides that a contract manager who is responsible for contracts in excess of \$10 million annually, in addition to completing the accountability in contracts and grant management training and the contract management training and certification requirements, must possess at least five years of experience managing contracts in excess of \$5 million annually.

The bill permits a designated contract administrator to also serve as the contract manager for contracts less than \$500,000 annually, if he or she has completed the required training. For contracts in excess of \$500,000 annually, the contact administrator is prohibited from serving in both capacities.

The bill specifies that for contracts in excess of \$195,000 (category four threshold), the agency head must appoint at least three persons to *independently* evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity or contractual services sought. The bill specifies that a negotiation *team* conduct negotiations during a competitively sealed reply procurement. For a competitively procured contract in excess of \$1 million in any fiscal year, the negotiation team must include a certified contract negotiator.

Current law provides that for contracts in excess of \$10 million in any fiscal year, at least one person conducting negotiations must be a Project Management Professional. The bill specifies

that such Project Management Professional must provide guidance based on his or her experience, education, and competency to lead and direct complex projects.

The bill requires the DMS to establish and disseminate the training and certification requirements for certified contract negotiators. The bill provides for certification renewal and qualification requirements for certification. The DMS must evaluate such training every five years.

The bill provides that, beginning July 1, 2022, any person who supervises certain contract administrators or contract or grant managers to annually complete public procurement training for supervisors within 12 months of appointment to the supervisory position. The DMS is responsible for establishing and disseminating the training course content required for supervisors.

The bill requires a head of an agency to establish a four person “continuing oversight team” for each contractual services contract in excess of \$5 million. The bill requires the teams to meet to discuss the status of the contract, the pace of deliverables, the quality of deliverables, contractor responsiveness, and contractor performance; and requires the team to provide written notice to the agency head, the DMS, the Office of Policy and Budget within the Executive Office of the Governor, and the legislative appropriations committees in certain instances.

The bill provides that a contract may not contain a nondisclosure clause exempting certain information.

The bill provides that a vendor who is placed on the suspended vendor list is disqualified from bidding on or renewing a contract with the state and provides a mechanism for a vendor to petition for removal from the suspended vendor list.

The bill requires each agency inspector general to complete a risk based compliance audit of all contracts executed by the agency for the preceding three fiscal years and requires the audit to identify and evaluate any trend in vendor preference.

The bill makes conforming statutory changes.

The bill will have an indeterminate negative fiscal impact. *See* Part V, Fiscal Impact Statement.

The bill takes effect on July 1, 2021.

## **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.<sup>1</sup>

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<sup>1</sup> Section 287.012(1), F.S. The term “agency” is defined 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

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.<sup>2</sup> The agency head of the DMS is the “Secretary of Management Services” who is appointed by the Governor, subject to confirmation by the Florida Senate, and serves at the pleasure of the Governor.<sup>3</sup>

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.<sup>4</sup> The DMS negotiates contracts and purchasing agreements that are intended to leverage the state’s buying power.

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

- Category one: \$20,000.
- Category two: \$35,000.
- Category three: \$65,000.
- Category four: \$195,000.
- Category five: \$325,000.

***Written Agreements for Procurements Exceeding \$35,000***

Every procurement for contractual services in excess of the threshold amount in category two, \$35,000, with certain exceptions<sup>5</sup>, must be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services.<sup>6</sup> The provisions and conditions must, where applicable, include, but are not limited to a provision:

- That bills for fees or other compensation for services or expenses are to be submitted in detail sufficient for a proper preaudit and postaudit thereof.<sup>7</sup>
- That bills for travel expenses are to be submitted in accordance with statutory procedures.<sup>8</sup>
- Allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from provisions governing the inspection and copying of public records.<sup>9</sup>

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

<sup>2</sup> See ss. 287.032 and 287.042, F.S.

<sup>3</sup> Section 20.22(1), F.S.

<sup>4</sup> Section 287.042(16), F.S.

<sup>5</sup> Excepting providing of health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or the providing of other benefits as required by the Workers' Compensation Law.

<sup>6</sup> Section 287.058(1), F.S.

<sup>7</sup> Section 287.058(1)(a), F.S.

<sup>8</sup> Section 287.058(1)(b), F.S., referring to s. 112.061, F.S., and providing further that a state agency may establish rates lower than the maximum provided in that statute.

<sup>9</sup> Section 287.058(1)(c), F.S., referring to Art. I, § 24(a), Fla. Const., and s. 119.07(1), F.S.

- Specifying a scope of work that clearly establishes all tasks the contractor is required to perform.<sup>10</sup>
- Dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment; each deliverable must be directly related to the scope of work and specify a performance measure, that is, the required minimum acceptable level of service to be performed and criteria for evaluating the successful completion of each deliverable.<sup>11</sup>
- Specifying the criteria and the final date by which such criteria must be met for completion of the contract.<sup>12</sup>
- Specifying that the contract may be renewed for a period that may not exceed three years or the term of the original contract, whichever is longer, specifying the renewal price for the contractual service as set forth in the bid, proposal, or reply; specifying that costs for the renewal may not be charged; and specifying that renewals are contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds.<sup>13</sup>
- Specifying the financial consequences that the agency must apply if the contractor fails to perform in accordance with the contract.<sup>14</sup>
- Addressing the property rights of any intellectual property related to the contract and the specific rights of the State regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.<sup>15</sup>

The written agreement must be signed by the agency head or designee and the contractor before the rendering of any contractual service in excess of \$35,000.<sup>16,17</sup> Unless otherwise provided in the General Appropriations Act (GAA) or the substantive bill implementing the GAA, the Chief Financial Officer (CFO) may waive these requirements for services, which are included in law for procurement of commodities or contractual services.<sup>18</sup> A contract may not prohibit a contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding any contract to which the contractor and a state agency are parties, after contract execution and during the contract term.<sup>19</sup>

Each public agency contract for services must authorize the public agency to inspect the:

- Financial records, papers, and documents of the contractor that are directly related to the performance of the contract or the expenditure of state funds.

<sup>10</sup> Section 287.058(1)(d), F.S.

<sup>11</sup> Section 287.058(1)(e), F.S.

<sup>12</sup> Section 287.058(1)(f), F.S.

<sup>13</sup> Section 287.058(1)(g), F.S., noting, however, that exceptional purchase contracts pursuant to ss. 287.057(3)(a), and 287.057(3)(c), F.S., may not be renewed. *See Florida Dept. of Highway Safety and Motor Vehicles v. National Safety Com'n, Inc.*, 75 So. 3d 298 (Fla. 1st DCA 2011) (The purpose of the statute allowing state procurement contracts to include a renewal provision is to exempt the parties from the competitive bidding process for a limited time if they are mutually satisfied with the agreement; it does not guarantee any vendor the right to continue to do business with the State beyond the original term of the contract.).

<sup>14</sup> Section 287.058(1)(h), F.S.

<sup>15</sup> Section 287.058(1)(i), F.S.

<sup>16</sup> There is an exception in the case of a valid emergency as certified by the agency head.

<sup>17</sup> Section 287.058(2), F.S.

<sup>18</sup> Section 287.058(5), F.S.

<sup>19</sup> Section 287.058(6), F.S.

- Programmatic records, papers, and documents of the contractor that the public agency determines are necessary to monitor the performance of the contract or to ensure that the terms of the contract are being met.<sup>20</sup>

The contract must require the contractor to provide the records, papers, and documents requested by the public agency within 10 business days after the request is made.<sup>21</sup>

### ***Contract Renewals***

Current law allows contracts for commodities or contractual services to be renewed for a period that does not exceed three years or the term of the original contract, whichever is longer.<sup>22</sup> Renewal of a contract for commodities or contractual services must be in writing and is subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties.<sup>23</sup> A renewal contract may not include any compensation for costs associated with the renewal, is contingent upon satisfactory performance evaluations by the agency, and is subject to the availability of funds.<sup>24</sup>

If a contract amendment results in a longer contract term or increased payments, an agency may not renew or amend a contract for the outsourcing of a service or activity that has an original term value exceeding \$10 million before submitting a written report concerning contract performance to the Governor, the President of the Senate, and the Speaker of the House of Representatives.<sup>25</sup> The written report must be submitted at least 90 days before execution of the renewal or amendment.

### ***Alternate Contract Sources***

The DMS must evaluate contracts let by the Federal Government, another state, or a political subdivision for commodities or contractual services, often referred to as alternate contract sources to determine if the contracts are cost-effective and in the best interest of the state. If the DMS makes such determination in writing, then an agency may make purchases under the contract.<sup>26</sup>

### ***State Term Contracts & Request for Quotes***

Section 287.056, F.S., requires agencies and permits eligible users<sup>27</sup> to purchase commodities and contractual services from purchasing agreements and state term contracts<sup>28</sup> procured by the DMS.

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<sup>20</sup> Section 216.1366(1), F.S.

<sup>21</sup> Section 216.1366(2), F.S.

<sup>22</sup> Section 287.57(13), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Section 287.042(16), F.S.; see Agency Alternate Contract Source (ACS) Requests, available at [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_agency\\_resources/agency\\_alternate\\_contract\\_source\\_acs\\_requests](https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/agency_alternate_contract_source_acs_requests).

<sup>27</sup> Section 287.012(11), F.S., defines “eligible user” to mean any person or entity authorized by the Department of Management Services (DMS) pursuant to rule to purchase from state term contracts or to use the online procurement system.

<sup>28</sup> 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.

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 than that provided in the state term contract is available.<sup>29</sup> The use of a request for quote does not constitute a decision subject to protest.<sup>30</sup> 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.<sup>31</sup>

### ***Competitive-Solicitation***

With certain exceptions,<sup>32</sup> the procurement of commodities or contractual services in excess of category two, \$35,000, requires agencies to use a competitive solicitation process.<sup>33</sup> 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.<sup>34</sup> Agencies may use a variety of methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors, including:

- Single source contracts,<sup>35</sup> 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,<sup>36</sup> 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,<sup>37</sup> 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,<sup>38</sup> 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.

### ***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.<sup>39</sup> In

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<sup>29</sup> Section 287.056(2), F.S.

<sup>30</sup> Section 287.056(2), F.S.

<sup>31</sup> Rule 60A-1.043, F.A.C.

<sup>32</sup> Section 287.057(3)(e), F.S.

<sup>33</sup> Section 287.057(1), F.S.

<sup>34</sup> *Id.*

<sup>35</sup> Section 287.057(3)(c), F.S.

<sup>36</sup> Section 287.057(1)(a), F.S.

<sup>37</sup> Section 287.057(1)(b), F.S.

<sup>38</sup> Section 287.057(1)(c), F.S.

<sup>39</sup> Section 287.057(16)(a), F.S.

addition, the agency head must appoint three people<sup>40</sup> 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.<sup>41</sup>

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<sup>42</sup> 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.<sup>43</sup> If the value of a contract is in excess of \$10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional certified by the Project Management Institute.<sup>44</sup>

### **Qualifications for Contract Managers and Contract Negotiators**

Section 287.057(14), F.S., provides that for each contractual services contract, the agency must designate an employee to function as contract manager who must be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. Each contract manager who is responsible for contracts in excess of the threshold amount for category two (\$35,000) must complete training in accountability in contracts and grant management conducted by the CFO.<sup>45</sup>

Each contract manager responsible for contracts in excess of \$100,000 annually must complete training in contract management and become a certified contract manager.<sup>46</sup> The DMS must establish and disseminate the requirements for certification which include completing the training conducted by the CFO for accountability and grant management. All agency contract

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<sup>40</sup> 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.

<sup>41</sup> Section 287.057(16)(a)2., F.S.

<sup>42</sup> Rule 60A-1.041(3), F.A.C., provides that a person must meet the following requirements for Florida certified contract negotiator (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.

<sup>43</sup> Section 287.057(16)(b), F.S.

<sup>44</sup> *Id.*

<sup>45</sup> Section 287.057(14)(a), F.S.

<sup>46</sup> Section 287.057(14)(b), F.S.



managers must become certified within 24 months after establishment of the training and certification requirements by the DMS and the Department of Financial Services (DFS).

Each agency must designate at least one employee to serve as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who shall serve as a liaison with the contract managers and the DMS.<sup>47</sup>

For a contract in excess of the threshold amount for category four (\$195,000) the agency head must appoint:

- At least three persons 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.<sup>48</sup>
- At least three persons to conduct negotiations during a competitive sealed reply 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.<sup>49</sup>

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 contract negotiator based upon the DMS' rules.<sup>50</sup> If the value of a contract is in excess of \$10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute.

### **Project Management Professional**

Section 287.076, F.S., authorizes the DMS to implement a program to train state agency employees who are involved in managing outsourcings as Project Management Professionals, as certified by the Project Management Institute.<sup>51</sup> The Project Management Institute has stringent requirements for individuals to earn and maintain certification.<sup>52</sup> Subject to annual appropriations, the DMS, in consultation with entities subject to this part, shall identify personnel to participate in this training based on requested need and ensure that each agency is represented. The DMS may remit payment for this training on behalf of all participating personnel.

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<sup>47</sup> Section 287.057(15), F.S.

<sup>48</sup> Section 287.057(16)(a)1., F.S.

<sup>49</sup> Section 287.057(16)(a)2., F.S.

<sup>50</sup> See Rule 60A-1.041, F.A.C.

<sup>51</sup> See Project Management Institute, available at <https://www.pmi.org/> (last visited Mar. 4, 2021).

<sup>52</sup> DMS, *Project Management Professional*, [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/public\\_procurement\\_professional\\_development/project\\_management\\_professional](https://www.dms.myflorida.com/business_operations/state_purchasing/public_procurement_professional_development/project_management_professional) (last visited Mar. 11, 2021).

## 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.<sup>53</sup> Once registered, vendors are able to do business with the State of Florida executive branch agencies through the Vendor Information Portal.<sup>54</sup>

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>55</sup>

## Vendor Lists and Removal of Any Source of Supply

Based on the vendor registration process as set out in s. 287.042, F.S., and Rule 60A-1.006, F.A.C., the DMS maintains a vendor list. Section 287.042(1)(b), F.S., authorizes the DMS to remove from its vendor list “any source of supply” – any vendor – which fails to fulfill any of its duties specified in a contract. Rule 60A-1.006, F.A.C., prescribes a three step process for removing a vendor or source of supply. The agency must provide written notice of the nature of the vendor’s failure to perform and provide time certain (more than 10 days) for correcting the failure. Unless the vendor corrects its failure to perform or the agency determines the failure is legally excusable, the agency must find the vendor in default and issue a second notice stating (i) the reasons for default; (ii) that the agency will reprocure or has reprocured the commodities or services, and (iii) the amount of the reprocurement if known. The defaulting vendor is ineligible for award of a contract by the agency until the agency is reimbursed by the defaulting vendor for all reprocurement costs.<sup>56</sup> The defaulting vendor must be advised of the right to petition for an administrative hearing on the intended decision to remove the vendor from the list. An agency is required to provide a copy of all default actions to the DMS for removal from its vendor list.

The DMS maintains the following lists of vendors who have been removed for cause:

- Suspended Vendor List;<sup>57</sup>
- Convicted Vendor List;<sup>58</sup>
- Discriminatory Vendor List;<sup>59</sup>

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<sup>53</sup> 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 Department of Management Services (DMS), *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 Feb. 23, 2021).

<sup>54</sup> DMS, *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 Feb. 23, 2021).

<sup>55</sup> *Id.*

<sup>56</sup> Rule 60A-1.006(3)(c), F.A.C., provides that reprocurement costs may include both administrative costs and costs or price increases incurred or to be incurred as a result of the reprocurement.

<sup>57</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>58</sup> Section 287.133, F.S.

<sup>59</sup> Section 287.134(1)(c), F.S.

- Scrutinized List of Prohibited Companies;<sup>60,61</sup> and
- Vendor Complaint List.<sup>62</sup>

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

The suspended vendor list<sup>63</sup> includes vendors that have been removed from the vendor list for “failing to fulfill any of its duties specified in a contract with the State.”<sup>64</sup> Currently, the DMS has five vendors on the suspended vendor list: (1) Building Maintenance of America, LLC d/b/a Florida Building Maintenance; (2) Club Tex, Inc.; (3) Correctional Consultants; (4) iColor Printing and Mailing, Inc.; and (5) Visual Image Design Firm, LLC.<sup>65</sup>

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

The convicted vendor list comprises the 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>66</sup> A vendor 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 goods or services to a public entity, and a public entity may not accept any bid, proposal, or reply from, award any contract to, or contract any business with a vendor on the convicted vendor list.<sup>67</sup>

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.<sup>68</sup>

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<sup>60</sup> Section 287.135, F.S.

<sup>61</sup> 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.

<sup>62</sup> DMS tracks formal complaints issued to vendors by state agencies which is provided to agencies to assist in determining vendor responsibility pursuant to s. 287.057(1-3), F.S. There are currently no vendors on the vendor complaint list. DMS, *Vendor Complaint List*,

[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 Mar. 16, 2021).

<sup>63</sup> DMS, *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 Feb. 23, 2021).

<sup>64</sup> Section 287.042, F.S.; *See* Rule 60A-10.006, F.A.C.

<sup>65</sup> DMS, *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 Apr. 2, 2021).

<sup>66</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 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>67</sup> Section 281.133(2)(b), F.S.

<sup>68</sup> Section 287.133(2)(e), F.S.

A disqualified vendor may petition for removal no sooner than six months after being placed on the convicted vendor list.<sup>69</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 discriminatory vendor list consists of the names and addresses of any vendor that 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. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity. The investigative and administrative process for discriminatory vendors is the same as that described above for the convicted vendor list, including the removal process and specified timelines.<sup>70</sup> Currently, there are no vendors on the discriminatory vendor list.

### **Chief Financial Officer and Department of Financial Services**

As provided in the constitution,<sup>71</sup> the CFO is the chief fiscal officer of Florida and is responsible for settling and approving accounts against the state and keeping all state funds and securities.<sup>72</sup> The CFO is a member of the Governor's cabinet,<sup>73</sup> must reside at the seat of government of Florida, and must hold office in a room in the Capitol.<sup>74</sup>

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.<sup>75</sup> 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.<sup>76</sup> 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.<sup>77</sup>

The CFO also serves as the head of the DFS.<sup>78</sup> The DFS consists of the following divisions:

- The Division of Accounting and Auditing.
- The Division of Consumer Services.
- The Division of Funeral, Cemetery, and Consumer Services.

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<sup>69</sup> Section 287.133(2)(f), F.S.

<sup>70</sup> Section 287.134(3)(e), F.S.

<sup>71</sup> FLA. CONST. Art. IV, s.4(c).

<sup>72</sup> Section 17.001, F.S.

<sup>73</sup> FLA. CONST. Art. IV, s.4(a).

<sup>74</sup> Section 17.02, F.S.

<sup>75</sup> Section 17.03(1), F.S.

<sup>76</sup> Section 17.03(3), F.S.

<sup>77</sup> Section 17.03(4), F.S.

<sup>78</sup> Section 20.121, F.S.

- The Division of Insurance Agent and Agency Services.
- The Division of Investigative and Forensic Services.<sup>79</sup>
- The Division of Public Assistance Fraud.
- The Division of Rehabilitation and Liquidation.
- The Division of Risk Management.
- The Division of State Fire Marshal.
- The Division of Treasury.<sup>80</sup>
- The Division of Unclaimed Property.
- The Division of Workers' Compensation.
- The Division of Administration.
- The Office of Insurance Consumer Advocate.

### **Agency Inspectors General**

Section 20.55, F.S., establishes an office of inspector general in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government. It is the duty of each inspector general to:

- Advise in the development of performance measures, standards, and procedures for the evaluation of state agency programs;<sup>81</sup>
- Assess the reliability and validity of the information provided by the state agency on performance measures and standards, and make recommendations for improvement, if necessary, before submission of those measures and standards to the Executive Office of the Governor;<sup>82</sup>
- Review the actions taken by the state agency to improve program performance and meet program standards and make recommendations for improvement, if necessary;<sup>83</sup>
- With specified exception,<sup>84</sup> provide direction for, supervise, and coordinate audits, investigations, and management reviews relating to the programs and operations of the state agency;<sup>85</sup>
- Conduct, supervise, or coordinate other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;<sup>86</sup>

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<sup>79</sup> This division functions as a criminal justice agency for purposes of ss. 943.045-943.08. The division may conduct investigations within or outside of this state as it deems necessary. If, during an investigation, the division has reason to believe that any criminal law of this state has or may have been violated, it shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required. The division includes the following bureaus and office: (1) The Bureau of Forensic Services; (2) The Bureau of Fire, Arson and Explosives Investigations; (3) The Office of Fiscal Integrity; (4) The Bureau of Insurance Fraud; and (5) The Bureau of Workers' Compensation Fraud.

<sup>80</sup> This division includes a Bureau of Deferred Compensation responsible for administering the Government Employees Deferred Compensation Plan for state employees.

<sup>81</sup> Section 20.055(2)(a), F.S.

<sup>82</sup> Section 20.055(2)(b), F.S.

<sup>83</sup> Section 20.055(2)(c), F.S.

<sup>84</sup> When the inspector general does not possess the qualifications required by s. 20.055(4), F.S., the director of auditing shall conduct such audits.

<sup>85</sup> Section 20.055(2)(d), F.S.

<sup>86</sup> Section 20.055(2)(e), F.S.

- Keep the agency head or, for state agencies under the jurisdiction of the Governor, the Chief Inspector General informed concerning fraud, abuses, and deficiencies relating to programs and operations administered or financed by the state agency, recommend corrective action concerning fraud, abuses, and deficiencies, and report on the progress made in implementing corrective action;<sup>87</sup>
- Ensure effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies with a view toward avoiding duplication;<sup>88</sup>
- Review, as appropriate, rules relating to the programs and operations of such state agency and make recommendations concerning their impact;<sup>89</sup>
- Ensure that an appropriate balance is maintained between audit, investigative, and other accountability activities;<sup>90</sup> and
- Comply with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.<sup>91</sup>

Each inspector general reports to and is under the general supervision of the agency head and is not subject to supervision by any other employee of the state agency.<sup>92</sup> An inspector general may be removed from office by the agency head.<sup>93</sup> The agency head or agency staff may not prevent or prohibit the inspector general from initiating, carrying out, or completing any audit or investigation.<sup>94</sup>

To ensure that state agency audits are performed in accordance with applicable auditing standards, the inspector general or the director of auditing within the inspector general's office must possess qualifications specified by statute.<sup>95</sup> In carrying out the auditing duties and responsibilities of this act, each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency and conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of its findings.<sup>96</sup> Each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.<sup>97</sup> Except as otherwise provided, each inspector general must, no later than September 30 of each year, prepare an annual report summarizing the activities of the office during the immediately preceding state fiscal year.<sup>98</sup>

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<sup>87</sup> Section 20.055(2)(f), F.S.

<sup>88</sup> Section 20.055(2)(g), F.S.

<sup>89</sup> Section 20.055(2)(h), F.S.

<sup>90</sup> Section 20.055(2)(i), F.S.

<sup>91</sup> Section 20.055(2)(j), F.S.

<sup>92</sup> Section 20.055(3)(b), F.S.

<sup>93</sup> Section 20.055(3)(c), F.S.

<sup>94</sup> Section 20.055(3)(d), F.S.

<sup>95</sup> Section 20.055(4), F.S.

<sup>96</sup> Section 20.055(5), F.S.

<sup>97</sup> Section 20.055(6), F.S.

<sup>98</sup> Section 20.055(7)(a), F.S.

### III. Effect of Proposed Changes:

**Section 1** reenacts s. 216.1366, F.S.,<sup>99</sup> and removes the July 1, 2021, termination date to require each agency contractor services to include authorization for the agency to inspect certain records of the contractor. These records include both financial and programmatic records, papers, and documents of the contractor directly related to the performance of the contract and that are deemed necessary by the agency to monitor the performance of the contract. The contract must require the contractor to provide such records, papers, and documents requested by the agency within 10 business days after the request is made.

**Section 2** amends s. 287.042, F.S., to require the Secretary of Management Services to make a written determination finding a contract to be cost effective and the best value to the state before an agency may be authorized to enter such contract let by the Federal Government, another state, or a political subdivision.

**Section 3** amends s. 287.056, F.S., to require that when an agency issues a request for quote for contractual services for a state term with 25 vendors or fewer, the agency *must* issue a request for quote to *all vendors* approved to provide that contractual service. For any contract with more than 25 vendors, the agency must issue a request for quote to a minimum of 25 vendors approved to provide such contractual services.

This section also provides for the immediate disqualification from state term contract eligibility of a firm or individual who has been placed on the suspended vendor list pursuant to s. 287.1351, F.S., or placed on a disqualified vendor list pursuant to s. 287.133, F.S. (removal based upon public entity crime), or s. 287.134, F.S. (removal based on discriminatory practices).

**Section 4** amends s. 287.057, F.S., to change the electronic posting requirement for single source contracting from seven to 15 days. This section requires agencies to report, on a quarterly basis, to the Department of Management Services (DMS) each instance in which the agency entered into a single source purchase contract. Such report is to be in a manner and form prescribed by the DMS. The DMS is required to report such information to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than January 1, 2022, and each January 1 thereafter.

This section provides that a state agency as defined in s. 287.012, F.S.,<sup>100</sup> may not initiate a competitive solicitation for a product or service if the completion of the competitive solicitation would require a change in law or change to the agency's budget (other than a transfer authorized in law) unless the initiation of the competitive solicitation is specifically authorized in law, in the General Appropriations Act, or by the Legislative Budget Commission.<sup>101</sup> This prohibition does

<sup>99</sup> Section 106 of ch. 2020-114, Laws of Florida, created s. 216.1366, F.S., in order to implement the appropriation of funds in the special categories, contracted services, and expenses categories of the 2020-2021 General Appropriations Act.

<sup>100</sup> Section 287.012(1), F.S., defines "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 branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

<sup>101</sup> This provision has been part of the implementing bill for the General Appropriations Act for the past five years (2020-114(98), 2019-116(106), 2018-10(79), and 2017-71(52)).

not apply to a competitive solicitation when the agency head certifies that a valid emergency exists.

This section amends the provision governing an agency's designation of a contract manager to clarify that the contract manager works as a liaison *between* the contractor *and the agency*, and prohibits a contract manager from having been employed, within the previous five years, by the vendor awarded the contractual services contract that he or she is assigned.

This section sets forth the following primary responsibilities of a contract manager:

- Participating in the solicitation development and review of contract documents;
- Monitoring the contractor's progress and performance to ensure procured products and services conform to the contract requirements and to keep timely records of findings;
- Managing and documenting any changes to the contract through the amendment process authorized by the terms of the contract;
- Monitoring the contract budget to ensure sufficient funds are available throughout the term of the contract; and
- Exercising applicable remedies, as appropriate, when a contractor's performance is deficient.

Current law provides that the Chief Financial Officer (CFO) provide training for accountability in contracts and grant management for a contract manager responsible for contracts in excess of the threshold amount for category two (\$35,000). The bill requires the CFO to evaluate this training every five years.

Current law requires a contract manager responsible for contracts in excess of \$100,000 annually to complete training in contract management and become a certified contract manager. The bill requires this training be completed within six months of a contract manager being assigned responsibility of qualifying contracts. Additionally, the bill requires a contract manager to complete the accountability in contracts and grant management training. The DMS is required to evaluate such training every five years to assess its effectiveness and update the training curriculum.

This section provides that a contract manager responsible for contracts in excess of \$10 million annually must, in addition to the accountability in contracts and grant management training, and the training in contract management and certification, also possess at least five years of experience managing contracts in excess of \$5 million annually.

Current law requires a contract administrator be designated to maintain a contract file and financial information on all contractual services contracts. The bill permits a contract administrator to also serve as the contract manager for contracts less than \$500,000 annually, if he or she has completed the required training. For contracts in excess of \$500,000 annually, the contract administrator is prohibited from serving in both capacities.

The bill specifies that for contracts in excess of \$195,000, the agency head must appoint at least three persons to *independently* evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for the commodity or contractual services sought, and a *negotiation team* of at least three persons is to conduct negotiations during a competitive sealed reply procurement. In addition, a negotiation team for a competitively



procured contract in excess of \$1 million in any fiscal year must include a certified contract negotiator.

Current law provides that for contracts in excess of \$10 million in any fiscal year, at least one person conducting negotiations must be a Project Management Professional. The bill specifies that such Project Management Professional must provide guidance based on his or her experience, education, and competency to lead and direct complex projects.

The bill requires the DMS to establish and disseminate the certification and training requirements for certified contract negotiators. The bill specifies that the training must ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and appropriately involved in the procurement process. The DMS must evaluate such training every five years to assess its effectiveness and update the training curriculum.

A certified contract negotiator is required to complete training every five years for certification renewal. This section specifies that the qualification requirements for certification must include:

- At least 12 months experience as a purchasing agent, contract manager, or contract administrator for an agency or local governmental entity where at least 50 percent of the 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.
- Experience during the preceding five years in leading at least two federal, state, or local government negotiation teams through a negotiated procurement, or participation in at least three federal, state, or local government negotiated procurements.

In addition, this section requires any person who supervises certain contract administrators or contract or grant managers to annually complete public procurement training for supervisors within 12 months of appointment to the supervisory position. The DMS is responsible for establishing and disseminating the training course content required for supervisors, and training must commence no later than July 1, 2022.

This section requires a head of an agency to establish a continuing oversight team for each contractual services contract in excess of \$5 million after the award of such contract. The agency head must appoint at least four persons to the continuing oversight team, with one being the certified contract manager. If the value of the contract is in excess of \$10 million, at least one member must possess at least five years of experience in managing contracts of a similar scope or size. If the value of the contractual services contract is in excess of \$20 million, the continuing oversight team must consist of at least five persons, at least one member must be from a state agency other than the agency or agencies participating in the contract. Members of the continuing oversight team must be employees of the state and collectively have experience and knowledge in contract management, contract administration, contract enforcement, and the program areas and service requirements for the contractual services purchased.

For contracts in excess of \$5 million, each continuing oversight team is required to meet at least quarterly. For contracts in excess of \$10 million, each continuing oversight team must meet at

least monthly. A representative of the contractor must be made available to members of the continuing oversight team for at least one meeting every calendar quarter to respond to any questions or requests for information from the continuing oversight team concerning contractor performance.

This section requires that within 30 days after formation of the continuing oversight team, an initial meeting between the continuing oversight team and representatives of the contractor must convene to achieve a mutual understanding of the contract requirements, to provide the contractor with an orientation to the contract management process, and to explain the role of the continuing oversight team, contract manager, and contract administrator.

The continuing oversight team must meet to discuss the status of the contract, the pace of deliverables, the quality of deliverables, contractor responsiveness, and contractor performance. The contract administrator must be present at each meeting with the contract file and all applicable financial information. The continuing oversight team may submit written questions to the contractor concerning any items discussed during a continuing oversight team meeting. The contractor must respond to the team's questions within 10 business days of receiving the written questions. The questions and responses must be included in the contract file.

This section requires the continuing oversight team to provide written notification to:

- The agency head and the DMS of any deficiency in a contractor's performance which substantially affects the pace of deliverables or the likelihood of successful completion of the contract.
- The agency head, the DMS, and the Office of Policy and Budget in the Executive Office of the Governor of any significant change in contract scope and any increase in the cost of the contract that is five percent of the planned contract cost or greater within the fiscal year for contractual service contracts of at least \$5 million.
- The agency head, the DMS, the Office of Policy and Budget in the Executive Office of the Governor, and the legislative appropriations committees of any significant change in contract scope and any increase in the cost of the contract that is five percent of the planned contract cost or greater within the fiscal year for contractual service contracts of \$10 million or greater.

**Section 5** amends s. 287.058, F.S., to prohibit a contract from containing a nondisclosure clause prohibiting a contractor from disclosing information relevant to the performance of the contract to members or staff of the Senate or the House of Representatives.

**Section 6** creates s. 287.1351, F.S., regarding suspended vendors and state contracts. The bill prohibits 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, proposal, or reply to an agency or enter into or renew a contract to provide goods or services to an agency after its placement on the suspended vendor list. An agency may not accept a bid, proposal, or reply from, or enter into or renew any contract with, a vendor that is on the suspended vendor list until the vendor has been removed from such list and returned to the vendor list by the DMS. The bill defines the term "vendor" as a person or an entity that provides goods or services to an agency under a contract or submits a bid, proposal, or reply to provide goods or services to an agency.

This section requires an agency to notify the DMS of any vendor that has met the grounds for suspension and must provide documentation to the DMS evidencing the vendor's default or other grounds for suspension. The DMS must review the submitted documentation and decide whether good cause exists to remove the vendor from the vendor list and to place it on the suspended vendor list. The bill requires the DMS to notify the vendor in writing of its intent to remove the vendor from the vendor list and of the vendor's right to an administrative hearing, as well as the applicable procedures and time requirements for any such hearing. A vendor may not be removed from the vendor list without receiving an individual notice of intent from the DMS. If a vendor does not request an administrative hearing, the DMS must enter a final order removing the vendor from the vendor list.

This section provides that, within 21 days after receipt of the notice of intent, a vendor may file with the DMS a petition for a formal hearing to challenge the decision. If a vendor does not file a petition in a timely manner, 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.

This section provides that if a vendor is placed on the suspended vendor list, the vendor may file a petition with the DMS one year or more after entry of the final order of its suspension. A proceeding on the petition must be conducted in accordance with ch. 120, F.S., and an Administrative Law Judge (ALJ) may remove a vendor from the suspended vendor list if the ALJ determines it would be in the public interest. In determining whether removal from the list would be in the public interest, the ALJ may consider whether the suspended vendor has prepared a corrective action plan to address the original grounds for default or failure to fulfill the terms and conditions of the contract, reimbursed the agency for any procurement costs, or provided additional evidence that the vendor has taken other remedial action.

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 the date of denial. However, the DMS may petition for the suspended vendor's removal before the expiration period if, in the DMS's discretion, the removal of the vendor from the suspended list would be in the public's interest.

**Section 7** amends s. 287.136, F.S., to require, beginning October 1, 2021, and every three years thereafter, each agency inspector general to complete a risk-based compliance audit of all contract documents executed by the agency for the preceding three fiscal years. The audit must include an evaluation of and identify any trend in vendor preference. The audit findings must be submitted to the agency head, the Secretary of Management Services, and the Governor.

**Sections 8, 9, 10, 11, 12, 13, 14, 15, and 16** amends ss. 43.16, 215.971, 287.0571, 295.187, 394.47865, 402.7305, 408.045, 570.07, and 627.351, F.S., respectively, to make conforming changes.

**Section 17** 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.

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

None.

**B. Private Sector Impact:**

A private firm or individual may experience an indeterminate fiscal impact if such party is disqualified from state term contract eligibility upon removal from the vendor list as specified within the bill.

**C. Government Sector Impact:**

The bill will have an indeterminate negative fiscal impact on state government expenditures related to additional workload for:

- Additional contract performance reporting before executing a contract renewal or amendment due to lowering the reporting threshold;
- A potential increase in the number of vendors responding to RFQs for contractual services; and
- Expanding contract monitoring through continuing oversight teams and by requiring an agency inspector general to perform additional contract auditing.

The Department of Management Services (DMS) will incur additional costs related to workload for establishing and disseminating certification and training requirements for certified contract negotiators, for performing training evaluations every five years, and for maintain and administering the suspended vendor list.

Additionally, the six-month time limitation imposed on training for a contract manager responsible for contracts in excess of \$100,000 annually will likely require the DMS to expend additional resources to ensure timely training.

The Department of Financial Services may also incur nominal additional costs associated with specified training evaluation every five years.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 43.16, 215.971, 216.1366, 287.042, 287.056, 287.057, 287.0571, 287.058, 287.136, 295.187, 394.47865, 402.7305, 408.045, 570.07, and 627.351.

This bill creates the following section of the Florida Statutes: 287.1351.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**PCS (479650) by Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government):**

The proposed committee substitute:

- Revises the requirements related to requests for quotes for contractual services available on state term contract. Specifically, the CS provides that if there are 25 or fewer approved vendors on the state term contract, then the agency must issue a request for quote to all approved vendors. If there are more than 25 approved vendors, then the agency must issue the request for quote to at least 25 of the approved vendors on the state term contract.
- Increases certain contract thresholds that trigger certain oversight by the continuing oversight team.
- Includes a statutory reference to the definition of “agency”.

**CS by Governmental Oversight and Accountability on March 24, 2021:**

The CS:

- Adds language to reenact s. 216.1366, F.S., and remove the July 1, 2021, termination date, to require each agency contract for services to include authorization for the agency to inspect certain records of the contractor.
- Adds the requirement prohibiting an agency from initiating a competitive solicitation that would require a change in law or change to the agency's budget, unless specifically authorized.
- Revises the requirement that an agency issuing a request for quote for commodities or contractual services issue the request to *all* approved vendors to require a request for quote issued for *contractual services* be issued to all approved vendors if there are fewer than 100 approved vendors and to at least 100 of the approved vendors when there are more than 100 approved vendors.
- Adds the requirement that Department of Management Services (DMS) to report certain single source contract information received by agencies to the Governor and Legislature by a specified date.
- Removes the requirement that a contract manager who is responsible for contracts in excess of \$10 million annually be a Project Management Professional and instead requires such person to meet certain experience thresholds.
- Increases the threshold for when a contract administrator may also serve as a contract manager from a contract value of \$250,000 to a contract value of \$500,000.
- Specifies that for contracts in excess of \$195,000 that the evaluation is performed *independently*, and removes language regarding an evaluation *team*.
- Revises the experience requirements for qualification for certification as a contract negotiator, to require experience during the preceding five years in leading at least two, instead of three, federal, state, or local government negotiation teams through a negotiated procurement, or participation in at least three, instead of five, federal, state, or local government-negotiated procurements.
- Adds the requirement that supervisors of contract administrators or contract or grant managers must complete training within a specified period.
- Alters the membership requirements meeting requirements for the continuing oversight team (e.g., requires one member be the *certified* contract manager, rather than the contract manager; and removes the requirement that for contracts over \$5 million that one member must be a Project Management Professional and instead imposes an experience threshold).
- Provides more specificity for the notice requirements for the continuing oversight team.
- Adds the requirement that a contract may not contain a nondisclosure clause exempting certain information.
- Adds new language addressing the process for suspending vendors and provides that vendors who are 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 is disqualified from bidding on or renewing a contract with the state.
- Adds language providing a mechanism whereby a vendor placed on the suspended vendor list may petition for removal.
- Revises the requirement that each agency inspector general complete a compliance audit of all contracts executed by the agency every three years to completing a risk based compliance audit of all contracts executed by the agency.

- Makes conforming changes.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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