

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: SB 1616

INTRODUCER: Senator Brodeur

SUBJECT: Agency Contracts for Commodities and Contractual Services

DATE: March 23, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	Pre-meeting
2.			AEG	
3.			AP	

I. Summary:

SB 1616 revises several provisions of the part I of chapter 287, F.S., 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 when an agency issues a request for quote to obtain written pricing or services from a vendor, it *must* issue a request for quote to *all vendors* approved to provide that commodity or service.

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 7 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.

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 5 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 6 months. The bill also 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 be a Project Management Professional, as certified by the Project Management Institute.

The bill permits a designated contract administrator to also serve as the contract manager for contracts less than \$250,000 annually, if he or she has completed the required training. For contracts in excess of \$250,000 annually, the contract administrator is prohibited from serving in both capacities.

Current law provides that for contracts over the Category Four threshold (\$195,000), an agency head must appoint (1) at least three persons to evaluate proposals and replies; and (2) at least three persons to conduct negotiations during a competitive sealed reply procurement. The bill provides that these groups are an “evaluation team” and a “negotiation team,” respectively.

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 is to 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 5 years.

The bill requires an agency to establish a four person continuing oversight team for each contractual services contract in excess of \$1 million. The bill provides such teams must meet at least quarterly. The bill requires the continuing oversight team to provide written notification to certain entities under specified circumstances.

The bill requires, beginning October 1, 2021, and every 3 years thereafter, each agency inspector general to complete a compliance audit of all contract documents executed by the agency for the preceding 3 fiscal years.

The bill will have an indeterminate 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.¹ 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.² 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.³

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

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

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

Use of State Term Contracts & Request for Quotes

Section 287.056, F.S., requires agencies and permits eligible users⁵ to purchase commodities and contractual services from purchasing agreements and state term contracts⁶ procured by the DMS. Agencies and eligible users may use a request for quote, to obtain written pricing or services information from a state term contract vendor to determine whether a more favorable price, term or condition that that provided in the state term contract is available.⁷ The use of a request for quote does not constitute a decision subject to protest.⁸ 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

¹ 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 branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.”

² See ss. 287.032 and 287.042, F.S.

³ Section 20.22(1), F.S.

⁴ Section 287.042(16), F.S.

⁵ Section 287.012(11), F.S., defines “eligible user” to mean any person or entity authorized by the DMS pursuant to rule to purchase from state term contracts or to use the online procurement system.

⁶ 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.

⁷ Section 287.056(2), F.S.

⁸ Section 287.056(2), F.S.

otherwise. Agencies must document the justification for a selection based on receipt of less than two quotes.⁹

Competitive-Solicitation

With certain exceptions,¹⁰ the procurement of commodities or contractual services in excess of Category Two, \$35,000, require agencies to use a competitive solicitation process.¹¹ 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.¹² 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,¹³ 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,¹⁴ 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,¹⁵ 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,¹⁶ 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.

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 Chief Financial Officer (CFO).¹⁷

Each contract manager responsible for contracts in excess of \$100,000 annually must complete training in contract management and become a certified contract manager.¹⁸ 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

⁹ Rule 60A-1.043, F.A.C.

¹⁰ Section 287.057(3)(e), F.S.

¹¹ Section 287.057(1), F.S.

¹² *Id.*

¹³ Section 287.057(3)(c), F.S.

¹⁴ Section 287.057(1)(a), F.S.

¹⁵ Section 287.057(1)(b), F.S.

¹⁶ Section 287.057(1)(c), F.S.

¹⁷ Section 287.057(14)(a), F.S.

¹⁸ 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.

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.¹⁹

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.²⁰
- 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.²¹

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.²² 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. The Project Management Institute has stringent requirements for individuals to earn and maintain certification.²³ 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.

¹⁹ Section 287.057(15), F.S.

²⁰ Section 287.057(16)(a)1., F.S.

²¹ Section 287.057(16)(a)2., F.S.

²² See Rule 60A-1.041, F.A.C.

²³ Department of Management Services, *Project Management Professional*, https://www.dms.myflorida.com/business_operations/state_purchasing/public_procurement_professional_development/project_management_professional (last visited March 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.²⁴ Once registered, vendors are able to do business with the State of Florida executive branch agencies through the Vendor Information Portal.²⁵

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.²⁶

Vendor Lists and Removal of Any Source of Supply

Based on the vendor registration process as set out in s. 287.042 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.²⁷ 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;²⁸
- Convicted Vendor List;²⁹
- Discriminatory Vendor List;³⁰

²⁴ In order to register, a vendor must provide the following information: (1) Company Name; (2) Federal Tax ID; (3) Tax Filing Name; (4) Business Location; (5) Commodities and Services Offered; and (5) Certified Business and Enterprise Status. See The Department of Management Services, *Vendor Resources*, available at

https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited, February 23, 2021)

²⁵ The Department of Management Services, *Vendor Resources*, available at

https://www.dms.myflorida.com/business_operations/state_purchasing/vendor_resources (last visited, February 23, 2021).

²⁶ *Id.*

²⁷ 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.

²⁸ 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)

²⁹ Section 287.133, F.S.

³⁰ Section 287.134(1)(b), F.S.

- Scrutinized List of Prohibited Companies;^{31,32} and
- Vendor Complaint List.³³

The suspended vendor list³⁴ 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.”³⁵ 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, 6845 Narcoossee Road, Suite 59, Orlando, FL 32822.³⁶

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.³⁷ Section 287.133, F.S., provides vendors with due process and an opportunity to be heard before being placed on the convicted vendor list.³⁸ Additionally, this section provides a mechanism for disqualified vendors to petition for removal no sooner than 6 months after being placed on the convicted vendor list.³⁹ 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.).

The discriminatory vendor list consists of the names and addresses of any vendor which has been disqualified from the public contracting and purchasing powers due to a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion by an entity under s. 287.134, F.S. An agency must provide vendors with due process and opportunity to be heard before placing a vendor on the discriminatory vendor list.⁴⁰

Additionally, this section provides a mechanism for disqualified vendors to petition for removal

³¹ Section 287.135, F.S.

³² 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.

³³ The 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. Department of Management Services, *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 March 16, 2021).

³⁴ *Vendor Registration and Vendor Lists*, https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists (last visited February 23, 2021).

³⁵ Section 287.042, F.S.; *See* Rule 60A-10.006, F.A.C.

³⁶ *Suspended Vendor List*, https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/suspended_vendor_list (last visited February 23, 2021).

³⁷ 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.

³⁸ Section 287.133(2)(e), F.S.

³⁹ Section 287.133(2)(f), F.S.

⁴⁰ Section 287.134(3)(d), F.S.

no sooner than 6 months after being placed on the convicted vendor list. A vendor placed on the discriminatory vendor list may petition for removal no sooner than 6 months following its disqualification.⁴¹ Currently, there are no vendors on the discriminatory vendor list.

A vendor placed on the convicted vendor list or the discriminatory list may not:

- Submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity;
- Submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work;
- Submit bids, proposals, or replies on leases of real property to a public entity; and
- Be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the Category Two threshold, \$35,000, for a period of 36 months following the date of being placed on the convicted vendor list.⁴²⁴³

Chief Financial Officer and Department of Financial Services

As provided in the constitution,⁴⁴ 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.⁴⁵ The CFO is a member of the Governor's cabinet,⁴⁶ must reside at the seat of government of Florida, and must hold office in a room in the Capital.⁴⁷

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.⁴⁸ 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.⁴⁹ 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.⁵⁰

The CFO also serves as the head of the Department of Financial Services (DFS).⁵¹ DFS consists of the following divisions:

- The Division of Accounting and Auditing;
- The Division of Consumer Services;

⁴¹ Section 287.134(3)(e), F.S.

⁴² Section 287.133(2)(a), F.S.

⁴³ Similarly, a public entity is prohibited from transacting business with vendors placed on the convicted vendor list or discriminatory business list. *See* 287.133(2)(b) and 287.134(2)(b), F.S.

⁴⁴ FLA. CONST. Art. IV, s.4(c).

⁴⁵ Section 17.001, F.S.

⁴⁶ FLA. CONST. Art. IV, s.4(a).

⁴⁷ Section 17.02, F.S.

⁴⁸ Section 17.03(1), F.S.

⁴⁹ Section 17.03(3), F.S.

⁵⁰ Section 17.03(4), F.S.

⁵¹ Section 20.121, F.S.

- The Division of Funeral, Cemetery, and Consumer Services;
- The Division of Insurance Agent and Agency Services;
- The Division of Investigative and Forensic Services;⁵²
- 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;⁵³
- The Division of Unclaimed Property;
- The Division of Workers' Compensation;
- The Division of Administration; and
- 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;⁵⁴
- 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;⁵⁵
- Review the actions taken by the state agency to improve program performance and meet program standards and make recommendations for improvement, if necessary.⁵⁶
- With specified exception,⁵⁷ provide direction for, supervise, and coordinate audits, investigations, and management reviews relating to the programs and operations of the state agency;⁵⁸
- 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;⁵⁹

⁵² 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.

⁵³ This division includes a Bureau of Deferred Compensation responsible for administering the Government Employees Deferred Compensation Plan for state employees.

⁵⁴ Section 20.055(2)(a), F.S.

⁵⁵ Section 20.055(2)(b), F.S.

⁵⁶ Section 20.055(2)(c), F.S.

⁵⁷ 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.

⁵⁸ Section 20.055(2)(d), F.S.

⁵⁹ 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;⁶⁰
- Ensure effective coordination and cooperation between the Auditor General, federal auditors, and other governmental bodies with a view toward avoiding duplication;⁶¹
- Review, as appropriate, rules relating to the programs and operations of such state agency and make recommendations concerning their impact;⁶²
- Ensure that an appropriate balance is maintained between audit, investigative, and other accountability activities;⁶³ and
- Comply with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.⁶⁴

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.⁶⁵ An inspector general may be removed from office by the agency head.⁶⁶ The agency head or agency staff may not prevent or prohibit the inspector general from initiating, carrying out, or completing any audit or investigation.⁶⁷

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.⁶⁸ 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.⁶⁹ 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.⁷⁰ Except as otherwise provided, each inspector general must, not later than September 30 of each year, prepare an annual report summarizing the activities of the office during the immediately preceding state fiscal year.⁷¹

III. Effect of Proposed Changes:

Section 1 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

⁶⁰ Section 20.055(2)(f), F.S.

⁶¹ Section 20.055(2)(g), F.S.

⁶² Section 20.055(2)(h), F.S.

⁶³ Section 20.055(2)(i), F.S.

⁶⁴ Section 20.055(2)(j), F.S.

⁶⁵ Section 20.055(3)(b), F.S.

⁶⁶ Section 20.055(3)(c), F.S.

⁶⁷ Section 20.055(3)(d), F.S.

⁶⁸ Section 20.055(4), F.S.

⁶⁹ Section 20.055(5), F.S.

⁷⁰ Section 20.055(6), F.S.

⁷¹ Section 20.055(7)(a), F.S.

an agency may be authorized to enter such contract let by the Federal Government, another state, or a political subdivision.

Section 2 amends s. 287.056, F.S., to require that when an agency issues a request for quote to obtain written pricing or services information from a state term contract vendor, the agency *must* issue a request for quote to *all vendors* approved to provide that commodity or contractual service.

This section also provides for the immediate disqualification from state term contract eligibility of a firm or individual who has been removed from the source of supply pursuant to s. 287.042(1)(b), 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 3 amends s. 287.057, F.S., to change the electronic posting requirement for single source contracting from 7 to 15 days. This section requires agencies to report, on a quarterly basis, to the 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.

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 5 years, by the vendor awarded the contractual services contract that he or she is assigned.

Section 3 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 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 6 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 be a Project Management Professional (PMP), as certified by the Project Management Institute.

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 \$250,000 annually, if he or she has completed the required training. For contracts in excess of \$250,000 annually, the contract administrator is prohibited from serving in both capacities.

Current law provides that for contracts over the Category Four threshold (\$195,000), an agency head must appoint (1) at least three persons to evaluate proposals and replies; and (2) at least three persons to conduct negotiations during a competitive sealed reply procurement. The bill provides that these groups are an “evaluation team” and a “negotiation team,” respectively.

The bill requires at least one person conducting negotiations be a certified contract negotiator if the contract is in excess of \$1 million, in any fiscal year. Current law provides that for contracts in excess of \$10 million in any fiscal year, at least one person conducting negotiations must be a PMP. The bill specifies that such PMP is to 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 5 years to assess its effectiveness and update the training curriculum.

A certified contract negotiator is required to complete training every 5 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 5 years in leading at least three federal, state, or local government negotiation teams through a negotiated procurement, or participation in at least five federal, state, or local government negotiated procurements.

Section 3 also requires an agency to establish a continuing oversight team for each contractual services contract in excess of \$1 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 contract manager. If the value of the contract is in excess of \$5 million, at least one member must be a PMP, as certified by the Project Management Institute. Members of the continuing oversight team must collectively have experience and knowledge in contract management, contract administration, contract enforcement, and the program areas and service requirements for the contractual services purchased.

This section requires continuing oversight teams to meet at least quarterly to discuss the status of the contract, the pace of deliverables, and contractor performance. The contract administrator is required to be present at each meeting with the contract file and all applicable financial information.

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.
- 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 5 percent of the planned contract cost or greater within the fiscal year for contractual service contracts of less than \$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 5 percent of the planned contract cost or greater within the fiscal year for contractual service contracts of \$5 million or greater.

Section 4 amends s. 287.136, F.S., to require, beginning October 1, 2021, and every 3 years thereafter, each agency inspector general to complete a compliance audit of all contract documents executed by the agency for the preceding 3 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.

Section 5 provides that the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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. The bill increases the mandatory use of Project Management Professionals (PMP) in state contracting, thus, the Project Management Institute will experience an indeterminate positive fiscal impact as the sole certifying entity.

C. Government Sector Impact:

The bill will have an indeterminate fiscal impact on the government sector. Agencies may experience an increase in cost and/or labor in complying with the single source reporting requirement, establishing contract oversight teams (to the extent applicable), and complying with the three year contract compliance audit. The DMS may incur additional costs in establishing and disseminating certification and training requirements for certified contract negotiators and in performing training evaluations every 5 years.

Additionally, the 6 month time limitation imposed on training for a contract manager responsible for contracts in excess of \$100,000 annually will likely require DMS to expend additional resources to ensure timely training. DMS is responsible for contracting with Project Management Institute for certification as a PMP. This is a fairly expensive certification - approximately \$1,800. Many agencies likely will not have sufficient PMPs on staff to comply with the terms of the bill. Thus, DMS will incur additional costs associated with facilitating certifications for PMPs. The Department of Financial Services may also incur nominal additional costs associated with specified training evaluation every 5 years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 287.042, 287.056, 287.057, and 287.136.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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