

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 7, 1998 Revised: _____

Subject: Comptroller; State Contracted Service

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Lombardi</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute requires: vendors entering procurement contracts (“Category Four” or above) must disclose the dollar amount of labor represented in each contract to the procuring state agency and the number of full-time equivalent (FTE) positions that dollar amount represents in the labor portion of each contract; each procuring agency shall record the estimates of labor dollars and FTE positions in the State Automated Management Accounting Subsystem (SAMAS); and that the Office of Comptroller provide SAMAS system capabilities for contracts entered into after December 31, 1998, to prepare compiled reports including contract labor dollars and the number of FTE positions to be published annually.

The committee substitute provides that suits at law and in equity may be brought and maintained by and against a public authority on any breach of contract that can be substantiated through the express or implied provision of a written contract.

The bill amends section 255.05, Florida Statutes.

This act shall take effect July 1, 1998, except that section 2 shall take effect after the Governor, in consultation with the cabinet, issues an executive order pursuant to s. 252.36, F.S., to make the necessary change to the State Automated Management Accounting Subsystem as provided by s. 14.025, F.S., as created by the act or July 1, 2000, whichever occurs earlier.

II. Present Situation:

Chapter 287, F.S., establishes purchasing policies and procedure for procuring state agencies of commodities and contractual services. Chapter 86-204, Laws of Florida, and codified by

s. 287.017, F.S., establishes purchasing threshold categories with respect to the procurement of personal property and services by the state. The categories are as follows:

	Threshold	Escalated Threshold
Category One:	\$5,000	\$5,500
Category Two	\$15,000	\$15,000
Category Three	\$20,000	\$23,000
Category Four	\$60,000	\$75,000
Category Five	\$120,000	\$150,000

Escalated threshold amounts reflect an annual adjustment for a nationally recognized price index or component thereof.

Section 287.057, F.S., stipulates that unless otherwise authorized by law, all contracts for the purchase of commodities¹ or contractual services² in excess of the “Category Two” threshold amount will be awarded by competitive sealed bid. Under the current law, there is no requirement that contractors disclose the dollar amount of labor represented in each contract or the number of FTE positions that dollar amount represents.

According to the Office of Comptroller, nearly **15,000** contracts are awarded annually at the “Category Four” procurement level.

Section 215.94(3), F.S., establishes the Department of Banking and Finance as the functional owner of SAMAS and may include, but is not limited to: (a) departmental, agency, or judicial branch accounting and reporting; (b) cost accounting; (c) production control; (d) state or central accounting and reporting; and (e) warrant preparation.

There are currently no requirements of the Department of Banking and Finance to report the amount spent each year on contract labor under state contracted services. Currently, database subsystems designed to produce this information in SAMAS do not exist. The system would have to be modified to produce the current request.

¹Commodity means any of the various supplies, materials, goods, merchandise, food, equipment, and other personal property, including mobile home, trailer, or other portable structure with floor space of less than 3,000 square feet, purchased, leased, or otherwise contracted for by the state and its agencies.

²Contractual services means the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. Contractual services may include: consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services.

III. Effect of Proposed Changes:

Vendors entering into procurement contracts after December 31, 1998 (“Category Four” or above) will be required to disclose the dollar amount of labor represented in each contract to the procuring state agency and the number of FTE positions that dollar amount represents in the labor portion of each contract. Each procuring agency will be required to record the estimates of labor dollars and FTE positions in SAMAS.

The Office of Comptroller will be required by December 31, 1998, to provide SAMAS system capabilities to prepare compiled reports that will include contract labor dollars and the number of FTE positions to be published annually.

The committee substitute provides that suits at law and in equity may be brought and maintained by and against a public authority on any breach of contract that can be substantiated through the express or implied provision of a written contract.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill provides that where a suit in contract is maintained against the public authority, no employee or agent of the public authority can be held personally liable in an amount that exceeds the liability limits contained in s. 768.28, F.S. In that section, liability is limited to \$100,000 per person, or, when totaled with all other claims or judgments, a maximum of \$200,000 per incident or occurrence.³

It is not clear whether the reference to s. 768.28, F.S., is intended to act as a waiver of sovereign immunity. Section 768.28(1), F.S., waives sovereign immunity in tort actions against an agency. The amendment specifically excludes liability for suits in tort. However, the Supreme Court of Florida has held that there exists an implied waiver of sovereign

³Section 768.28(5), F.S.

immunity in contract where the subject is an express, written contract that the state had statutory authority to enter.⁴

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Contractors will now be required to disclose salary and benefit information along with the number of FTE positions in contract bids. A fiscal impact cannot be quantified at this time.

C. Government Sector Impact:

The Department of Banking and Finance is currently in the process of redesigning SAMAS and other software associated with year 2000 compliant issues and will need existing staff to modify the system. As a result the department has asked that the modification not be made until after the year 2000 compliant issue has been resolved.

As mentioned previously, the number of contract awards at or above the “Category Four” level is rapidly approaching 15,000. Procuring agencies will be required to input contract labor dollars and associated FTE position information for each contract into the SAMAS system. The Office of Comptroller has expressed concerns relating to agency workloads and training requirements and their associated fiscal impact as a result of the additional reporting requirements. There will be a first fiscal year cost of \$111,122.

VI. Technical Deficiencies:

The bill requires that the dollar amount of labor represented in all contracts to the state and the number of FTE positions that dollar amount represents be reported annually by the Office of Comptroller. However, it does not suggest where the information is to be reported.

VII. Related Issues:

The statute proposes that the Office of Comptroller compile the information submitted by contractors; however, the Comptroller will not insure the accuracy or the integrity of the information. Any conclusions drawn from the compiled data would be subject to inferences and interpretations.

⁴Pan-Am Tobacco Corp. v. Department of Corrections, 471 So.2d 4 (Fla. 1984).

There may be a logistics problem in comparing FTE positions and their associated salary and benefit dollars in the private sector to those of the public sector. Large and small businesses today have the option of employee leasing to buffer economic cycles and to minimize the number of full-time company employees. Employee leasing also minimizes the fixed portion of benefit and overhead cost to the company. Depending upon the demand for the profession or labor type, the estimated value of a leased employee may be significantly overstated or understated relative to that of a public employee. For example, unskilled labor on a leased basis is considerably less expensive because the leasing company may only pay benefits for federal withholding, FICA and Medicare, and workers' compensation insurance. On the other hand, professional leased services in high demand require high rates of hourly pay. The higher the rate of pay, the higher the benefits associated with federal withholding, FICA and Medicare, and occasionally workers' compensation. In addition, leased professionals also receive benefits for insurance, vacation, and retirement. Thus, in comparing public vs. private labor expenditures and FTE positions, a distinction must be made between unskilled and skilled labor for purposes of estimating labor efficiency.

Given the number of contracts awarded each year at the "Category Four" level and above, there is the possibility that a small, uninformed contractor submitting the lowest bid may default from the bid process due to the new reporting provisions.

Section 119.07(3)(m), F.S., includes decay provisions for vendors submitting confidential information under sealed bids or proposals. Salary and benefit structures can be a crucial part of the competitive bidding process and are not usually available in public documents. There is a possibility that another competitor could significantly harm the competitive market position of a vendor if they obtained this type of information.

VIII. Amendments:

None.