

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1448

INTRODUCER: Appropriation Committee; Governmental Oversight and Accountability Committee; and Senator Jones

SUBJECT: Information Technology Procurement

DATE: April 18, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Candelaria</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1448 expands the powers, duties, and functions of the Florida Digital Service (FDS).

The bill requires the FDS to establish technical standards to ensure that state agencies information technology (IT) projects comply with the enterprise architecture.

The bill decreases the cost threshold that triggers the FDS oversight of cabinet agency IT projects from \$25 million to \$20 million. It also removes the requirement that a cabinet agency IT project impact one or more other agencies before triggering the FDS project oversight.

The bill requires the FDS to include in its IT-related policies a requirement that IT commodities and services purchased by the state meet the National Institute of Standards and Technology Cybersecurity Framework.

For an IT project where project oversight is required, the FDS must include in its IT related policies a requirement that independent verification and validation (IV&V) be employed throughout the project lifecycle with the primary objective of IV&V being to provide an objective assessment of products and processes. Entities providing IV&V may not have technical, managerial, or financial interest and may not have responsibility for, or participate in, any other aspect of the project.

For IT state term contracts, the bill requires the Secretary of Management Services and the state chief information officer to certify in writing when a contract for IT commodities, consultant services, or staff augmentation contractual services should exceed 48 months because it is in the best interest of the state.

For state agency IT projects totaling \$10 million or more, a state agency must provide written notice to the FDS of any planned procurements. For these IT projects, the FDS must participate in the development of specifications and recommend modification of any planned procurements to ensure it complies with the enterprise architecture, and must participate in post-award contract monitoring.

The bill requires an agency to issue a request for quote to all vendors approved to provide IT commodities, consultant services, or staff augmentation contractual services for a state term contract with 25 approved vendors or fewer. For any state term contract with more than 25 vendors, an agency must issue a request for quote to at least 25 of the vendors approved to provide such commodity or contractual service.

Beginning October 1, 2021, and annually thereafter, the Department of Management Services (DMS) must prequalify firms and individuals to provide IT staff augmentation contractual services on a state term contract.

The bill will have an indeterminate fiscal impact on state government expenditures. The FDS may incur additional workload increases and associated costs as it undertakes new contract monitoring responsibilities for state agency IT projects in excess of \$10 million. The DMS may experience additional workload and associated costs in prequalifying firms and individuals to provide staff augmentation contractual services on a state term contract.

The bill takes effect July 1, 2021.

II. Present Situation:

The Florida Digital Service

Section 282.0051, F.S., creates the Florida Digital Service (FDS) within the Department of Management Services (DMS) to propose innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation and interoperability, and to fully support the cloud-first policy¹. The FDS partners with all state agencies to deliver government services through design and technology.

The FDS is responsible for developing an enterprise architecture, project management and oversight standards, and technology policy for the management of the state's information technology (IT)² resources. The enterprise architecture must acknowledge the unique needs of

¹ Section 282.0051(1), F.S.

² Section 282.0041(1), F.S., defines "information technology" to mean equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form.

entities within the enterprise through development, support the cloud-first policy, and address how IT infrastructure may be modernized.³ The project management and oversight standards established by the FDS must be observed by state agencies implementing IT projects.⁴

The DMS, through the FDS, has the authority to perform project oversight on all state agency IT projects that have a total project cost of \$10 million or more and funded in the General Appropriations Act or any other law.⁵ The FDS is also responsible for providing project oversight on any IT project of the Department of Financial Services (DFS), the Department of Legal Affairs (DLA), and the Department of Agriculture and Consumer Services (DACCS), which has a total project cost of \$25 million or more and which impacts other state agencies. The DMS must report to, on a quarterly basis, the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives if it identifies any IT projects as high-risk.⁶

The Secretary of Management Services must designate a state chief information officer, who is responsible for administering the FDS. The chief information officer, prior to being appointed, must have at least five years of experience in the development of IT strategic planning and development or information technology policy, and, preferably, have leadership-level experience in the design, development, and deployment of interoperable software and data solutions.⁷ The state chief information officer, in consultation with the Secretary of Management Services, is responsible for designating a state chief data officer. The state chief data officer must be a proven and effective administrator who must have significant and substantive experience in data management, data governance, interoperability, and security.⁸

Cloud-First Policy in State Agencies

The Legislature finds that each state agency should adopt a cloud-first policy that first considers cloud-computing solutions in its technology sourcing strategy for technology initiatives or upgrades. In the procurement process, state agencies should show a preference for cloud-computing solutions that minimize or do not use state data center infrastructure. Further, each state agency should adopt formal procedures for the evaluation of cloud-computing options for existing applications, and develop a strategic plan to address its inventory of applications located at the state data center.⁹

State Term Contracts and Agreements

The Division of State Purchasing within the DMS procures state contracts and agreements for commodities and services that are frequently bought together.¹⁰ A state term contract is a term

³ Section 282.0051(1)(b)1-3., F.S.

⁴ Section 282.0051(1)(c), F.S.

⁵ Section 282.0051(1)(d), F.S.

⁶ *Id.*

⁷ Sections 282.0051(2)(a), F.S.

⁸ Sections 282.0051(2)(b), F.S.

⁹ Section 282.206(1), F.S.

¹⁰ The Department of Management Services, *State Contracts and Agreements*, available at https://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements, (last visited Apr. 7, 2021)

contract that is competitively procured and is used by agencies and eligible users.¹¹ Each agency agreement is required to specify the scope of work that establishes all tasks that the contractor is required to perform, and to divide the contract into quantifiable, measureable, and verifiable units of deliverables. Agencies and eligible users¹² may issue a request for quote (RFQ) to obtain written pricing or services information from a state term contract vendor for commodities or contractual services.¹³ The purpose of a RFQ is to determine whether a price, term, or condition more favorable to the agency or eligible user than that provided in the state term contract is available.¹⁴

If the DMS issues a competitive solicitation for a state term contract for IT commodities, consultant services, or staff augmentation contractual services, the FDS must participate in such competitive solicitations. The state term contract may not exceed 48 months, unless the Secretary of Management Services, and the state chief information officer certify to the Executive Office of the Governor that a longer contract term is in the best interest of the state.¹⁵

Disqualified Vendors List

The DMS maintains a vendor list based on the vendor registration process in s. 287.042, F.S., and Rule 60A-1.006, F.A.C. The DMS is authorized to remove from its vendor list any source of supply which fails to fulfill any of its duties specified in a contract.¹⁶ The DMS maintains the following lists of vendors who have been removed for cause:

- Suspended Vendor List;¹⁷
- Convicted Vendor List;¹⁸
- Discriminatory Vendor List;¹⁹
- Scrutinized List of Prohibited Companies;²⁰ and
- Vendor Complaint List.²¹

National Institute of Standards and Technology

The National Institute of Standards and Technology (NIST) was founded in 1901 and is part of the U.S. Department of Commerce.²² The NIST's cybersecurity programs seek to enable greater development and application of practical, innovative security technologies and methodologies in

¹¹ Section 287.012(28), F.S., defines a "state term contract" to mean a term contract that is competitively procured by the department pursuant to s. 287.057, F.S., and that is used by agencies and eligible users pursuant to s. 287.056, F.S.

¹² Section 287.012(11), F.S. defines an "eligible user" as any person or entity authorized by the department pursuant to rule to purchase from state term contracts or to use the online procurement system.

¹³ Section 287.056, F.S.

¹⁴ *Id.*

¹⁵ Section 287.0591, F.S.

¹⁶ Section 287.042(1)(b), F.S.

¹⁷ Fla. Admin. Code R. 60A-1.006(2), (vendors that have been removed for failing to fulfill any of its duties specified in a State contract).

¹⁸ Section 287.133, F.S.

¹⁹ Section 287.134(1)(b), F.S.

²⁰ Section 287.135, F.S.

²¹ Department of Management Services, *Vendor Complaint List*, available at https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists/vendor_complaint_list, (last visited Mar. 18, 2021)

²² Nist.gov, *About NIST*, available at <https://www.nist.gov/about-nist> (last visited Apr. 7, 2021).

an attempt to enhance the country's ability to address current and future computer and information security challenges.²³

III. Effect of Proposed Changes:

Section 1 amends s. 282.0051, F.S., to expand the powers, duties, and functions of the Florida Digital Service. In some instances, these expanded powers shift the FDS from providing enterprise-wide IT governance to providing additional daily operational input and oversight over agency IT projects. This section requires the FDS to establish technical standards to ensure that state agencies IT projects comply with the enterprise architecture.

This section decreases the total project costs threshold for which the FDS must perform project oversight from \$25 million or more to \$20 million or more for cabinet agency IT projects. The bill removes the requirement that the IT project must impact one or more agencies in order for FDS project oversight to be triggered on cabinet agency IT projects. Consequently, the FDS will have increased oversight over cabinet agency IT projects which meet this new threshold.

The bill provides that the IT related policies established by the FDS for all IT contracts must include two additional requirements. First, the FDS must include in its IT related policies a requirement that IT commodities and services purchased by the state meet the National Institute of Standards and Technology Cybersecurity Framework. Second, for an IT project where project oversight is required, the FDS must include in its IT related policies a requirement that IV&V be employed throughout the project lifecycle with the primary objective of IV&V being to provide an objective assessment of products and processes throughout the project lifecycle. An entity providing IV&V may not have technical, managerial, or financial interest in the project and may not have responsibility for, or participate in, any other aspect of the project.

This section requires a state agency to provide the FDS with written notice of any planned procurement relating to an IT project having a total project cost of \$10 million or more. The FDS must participate in the development of specifications and recommend modifications to any planned procurement by state agencies so that the procurement complies with the enterprise architecture. Further, the FDS is required to participate in the post-award contract monitoring for IT projects.

Section 2 amends s. 287.0591, F.S. to delete obsolete language relating to information technology.

This section clarifies that for state term contracts, the Secretary of Management Services and the state chief information officer must certify in writing to the Executive Office of the Governor that a contract longer than 48 months for IT commodities, consultant services, or staff augmentation contractual services is in the best interest of this state.

This section requires an agency issuing a RFQ to purchase IT commodities, consultant services, or staff augmentation contractual services, to issue a RFQ to all vendors approved to provide such commodities or services for any state term contract with 25 approved vendors or fewer. For

²³ *Id.*

any contract with more than 25 approved vendors, the agency must issue a RFQ to at least 25 of the approved vendors. Use of a RFQ does not constitute a decision or intended decision that is subject to protest under s. 120.57(3), F.S.

This section provides that beginning October 1, 2021, and annually thereafter, the DMS must prequalify firms and individuals to provide staff augmentation contractual services on a state term contract. To prequalify a firm or an individual, the DMS must consider the capability, experience, and past performance record of the firm or individual for staff augmentation contractual services. Once a firm or individual has been prequalified, it may respond to RFQs from an agency to provide contractual services. Individuals or firms placed on the convicted vendors list, discriminatory vendor list, or removed from the source of supply are not eligible for a state term contract.

Section 3 provides that the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and 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:

None.

C. Government Sector Impact:

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

- A potential increase in the number of vendors responding to RFQs for IT commodities, consultant services, or staff augmentation contractual services;
- An increase in project oversight over cabinet agencies' IT projects meeting the decreased cost threshold; and
- Requiring post-award contract monitoring of IT projects that have a total project cost of \$10 million or more.

The DMS may experience an insignificant fiscal impact in prequalifying firms and individuals to provide staff augmentation contractual services on a state term contract.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 282.0051 and 287.0591.

IX. Additional Information:

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

CS/CS by Appropriation on April 15, 2021:

The committee substitute revises the requirements related to RFQs for IT commodities and contractual services available on a state term contract. The CS reduces the number of RFQs an agency must issue from 100 approved vendors to all approved vendors for any contract with 25 or fewer approved vendors. If there are more than 25 approved vendors, the CS requires agencies to issue a RFQ to at least 25 approved vendors on the state term contract.

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

The CS makes the following revisions to the underlying bill:

- The total number of vendors that an agency must issue a request for quotes on a contract for IT commodities or contractual services changes from all approved vendors to at least 100 approved vendors.
- The total project cost for the Florida Digital Service to be involved in the procurement, development, and post-award contract monitoring of IT projects is increased from \$5 million to \$10 million.

The CS adds the following issues that were not addressed in the underlying bill:

- Requires the FDS to establish an IT policy that requires any contract for IT commodities or services to meet the National Institute of Standards and Technology Cybersecurity Framework.
- Requires the FDS to establish an IT policy that requires certain IT projects employ an independent verification and validation throughout an IT project's lifecycle.

The CS removed the following provisions that were included in the underlying bill:

- The Florida Digital Service must participate in the formation and negotiation of a contract for an IT project having a total cost of more than \$5 million.
- The total project cost threshold that triggers Florida Digital Service oversight for all state agency IT project is reduced from \$10 million to \$5 million.

B. Amendments:

None.