HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:   HB 1137   Information Technology Procurement
SPONSOR(S): Fabricio
TIED BILLS: **IDEN./SIM. BILLS:**   SB 1448

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Roth	Smith
2) State Administration & Technology Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Digital Service (FDS) is established within the Department of Management Services (DMS) and is administered by a state chief information officer. FDS is tasked with proposing 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 policy. The powers and duties of FDS include developing an enterprise architecture and establishing project management and oversight standards that state agencies must comply with when implementing information technology (IT) projects.

In addition to the current project management and oversight standards FDS must establish, the bill requires FDS to establish technical standards that agencies must comply with to ensure IT projects comply with the enterprise architecture.

The bill lowers the IT project threshold amount that triggers FDS project 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 FDS project oversight.

The bill increases FDS's involvement in IT projects with a total cost of more than $5 million by requiring:
- State agencies to provide FDS with written notice of any planned procurement of an IT project;
- FDS to participate in the development of specifications and recommend modifications to any planned procurement of an IT project by state agencies to ensure compliance with the enterprise architecture; and
- FDS to participate in post-award contract monitoring.

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.

The bill requires DMS to prequalify firms and individuals to provide IT staff augmentation contractual services on state term contract on an annual basis. Once a firm or individual has been prequalified to provide the IT staff augmentation service, they may respond to a request for quote (RFQ) issued by an agency to provide the service. However, a firm or individual removed from the source of supply due to failure to fulfill any of the duties specified in a contract with the state or placed on a disqualified vendor list, is immediately disqualified from state term contract eligibility.

The bill further requires an agency issuing an RFQ to purchase IT commodities, consultant services, or staff augmentation contractual services from the state term contract to issue the RFQ to all approved vendors.

The bill may have a negative indeterminate fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Digital Service

The Florida Digital Service (FDS) is established within the Department of Management Services (DMS) and is administered by a state chief information officer.[1] FDS is tasked with proposing 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 policy.[2]

The powers and duties of FDS include developing an enterprise architecture[3] that acknowledges the unique needs of the entities within the enterprise,[4] supports the state's cloud-first policy,[5] and addresses how information technology (IT) infrastructure may be modernized.[6] Additionally, FDS must establish project management and oversight standards that state agencies must comply with when implementing IT projects.[7] FDS must provide training opportunities to state agencies to assist in the adoption of the project management and oversight standards. To support data-driven decision-making, the standards must include, but are not limited to:[8]

- Performance measurements and metrics that objectively reflect the status of an IT project based on a defined and documented project scope, cost, and schedule.
- Methodologies for calculating acceptable variances in the projected versus actual scope, schedule, or cost of an IT project.
- Reporting requirements, including requirements designed to alert all defined stakeholders that an IT project has exceeded acceptable variances defined and documented in a project plan.
- Content, format, and frequency of project updates.

FDS must provide project oversight[9] on all state agency[10] IT projects that have a total project cost of at least $10 million and on any cabinet agency[11] IT project that has a total project cost of at least $25 million and that impacts one or more other agencies.[12] FDS must report quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives

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[1] Section 282.0051(2)(a), F.S.

[2] Section 282.0051(1), F.S.

[3] "Enterprise architecture" means a comprehensive operational framework that contemplates the needs and assets of the enterprise to support interoperability. Section 282.0041(15), F.S.

[4] The "enterprise" includes state agencies and the Department of Legal Affairs, the Department of Financial Services, and the Department of Agriculture and Consumer Services. Section 282.0041(14), F.S.

[5] *See* s. 282.206, F.S.

[6] Section 282.0051(1)(b), F.S.

[7] Section 282.0051(1)(c), F.S.

[8] Section 282.0051(1)(c)1.- 4., F.S.

[9] "Project oversight" means an independent review and analysis of an information technology project that provides information on the project's scope, completion timeframes, and budget and that identifies and quantifies issues or risks affecting the successful and timely completion of the project. Section 282.0041(27), F.S.

[10] The term "state agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. Unless specifically provided, the term does not include the Department of Legal Affairs, the Department of Agriculture and Consumer Services, or the Department of Financial Services. Section 282.0041(33), F.S.

[11] The cabinet agencies are the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services.

[12] Such IT projects must comply with the applicable IT architecture, project management and oversight, and reporting standards established by DMS, acting through FDS. Section 282.0051(1)(n)1., F.S.

on any IT project that DMS identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in a project plan.[13]

FDS must establish best practices for procurement of IT products and cloud-computing services[14] and establish an IT policy for all IT-related state contracts, including state term contracts for IT commodities, consultant services, and staff augmentation services.[15] The policy must include identification of the IT product and service categories for inclusion in state term contracts, requirements to be included in solicitations for state term contracts, evaluation criteria for the award of IT-related state term contracts, the term of each IT-related state term contract, and the maximum number of vendors authorized on each such contract.[16]

Upon the adoption of the enterprise architecture standards, FDS may create a process to receive written notice from state agencies of any planned or existing procurement of IT projects subject to enterprise architecture standards,[17] and may participate in the development of specifications and recommend modifications to any planned procurement by state agencies to ensure compatibility with the enterprise architecture.[18]

State Agency Competitive Solicitations
Current law requires state agencies that wish to procure commodities or contractual services in excess of $35,000[19] to use a competitive solicitation process.[20] Depending on the type of contract and scope of work or goods sought, an agency may use one of three procurement methods:

- Invitation to bid (ITB): An agency must use an ITB when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.[21]
- Request for proposals (RFP): An agency must use an RFP when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables.[22]
- Invitation to negotiate (ITN): An ITN is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.[23]

State Term Contracts
A state term contract is a contract for commodities or contractual services that is competitively procured by DMS and that is used by agencies and eligible users.[24] Agencies must purchase commodities or contractual services from a state term contract if one has been competitively procured by DMS.[25] Agencies may use a request for quote (RFQ)[26] to obtain written pricing or services information from a

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[13] The report must include a risk assessment, including fiscal risks, associated with proceeding to the next state of the project, and a recommendation for corrective actions required, including suspension or termination of the project. Section 282.0051(1)(d) and (n)2., F.S.

[14] Section 282.0051(1)(g), F.S.

[15] Section 282.0051(1)(q)1., F.S.

[16] Current law also requires FDS to evaluate vendor responses for IT-related state term contract solicitations and invitations to negotiate, answer vendor questions on such state term contract solicitations, and ensure that the IT policy is included in all solicitations and contracts that are executed by DMS. *Id.*

[17] Section 282.0051(4)(a), F.S.

[18] Section 282.0051(4)(b), F.S.

[19] *See* s. 287.017, F.S., for a list of purchasing categories and their corresponding threshold amounts.

[20] Section 287.057(1), F.S.

[21] Section 287.057(1)(a), F.S.

[22] Section 287.057(1)(b), F.S.

[23] Section 287.057(1)(c), F.S.

[24] Section 287.042(2)(a), F.S.

[25] Section 287.056(1), F.S.

[26] A "request for quote" is an oral, electronic, or written request for written pricing or services information from a state term contract vendor for commodities or contractual services available on a state term contract from that vendor. Section 287.012(24), F.S.

state term contract vendor. The purpose of an RFQ is to determine whether a price, term, or condition is more favorable to the agency or eligible user than that provided in the state term contract.

FDS Participation
FDS must participate in any competitive solicitation issued by DMS for a state term contract for IT commodities, consultant services, or IT staff augmentation contractual services.[27] The term of such contract may not exceed 48 months, unless the DMS Secretary 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.[28]

Vendor Disqualification
DMS disqualifies from contract eligibility any vendor who has:
- Failed to fulfill any of its duties specified in a contract with the state. The vendor may be reinstated when DMS is satisfied that further instances of default will not occur.[29]
- Been placed on the convicted vendor list for violating any state or federal law 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.[30] The vendor may not transact business with any public entity in excess of $35,000, for the following 36 months after being placed on the list.[31] However, the vendor may petition the Division of Administrative Hearings (DOAH) for a formal hearing to be removed from the list.[32]
- Been placed on the discriminatory vendor list for a violation of any state or federal law prohibiting discrimination.[33] The vendor may petition DOAH for a formal hearing to be removed from the list.[34]

Effect of the Bill

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[27] Section 287.0591(4), F.S.
[28] Section 287.0591(1) – (3), F.S.
[29] Section 287.042(1)(b), F.S.
[30] Section 287.133(1)(g), F.S.
[31] Section 287.133(2)(a), F.S.
[32] Section 287.133(e), F.S.
[33] Section 287.134(1)(b), F.S.
[34] Section 287.134(3)(d), F.S.

The bill requires DMS to prequalify firms and individuals to provide IT staff augmentation contractual services on state term contract on an annual basis. As part of the prequalification process, DMS must consider, at a minimum, the capability, experience, and past performance record of the firm or individual. Once a firm or individual has been prequalified to provide the IT staff augmentation service, they may respond to an RFQ issued by an agency to provide the service. However, a firm or individual removed from the source of supply due to failure to fulfill any of the duties specified in a contract with the state or placed on a disqualified vendor list, is immediately disqualified from state term contract eligibility. The use of an RFQ does not create a decision that is subject to protest.

The bill requires an agency issuing an RFQ to purchase IT commodities, consultant services, or staff augmentation contractual services from the state term contract, to issue the RFQ to all approved vendors. Currently, an agency is not required to notify all qualified vendors.

B. SECTION DIRECTORY:

Section 1: Amends s. 282.0051, F.S., relating to Department of Management Services; Florida Digital Service; powers, duties, and functions.

Section 2: Amends s. 287.0591, F.S., relating to information technology.

Section 3: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to impact state government revenues.

2. Expenditures:

   The bill may have a negative indeterminate fiscal impact on state government expenditures. The bill requires FDS to provide input on IT procurements meeting a certain threshold; however, the costs associated with this requirement should be absorbed within existing resources. The bill also requires DMS to prequalify certain vendors to provide services on state term contract, but this cost should be minimal to the department. Individual agencies may experience a moderate increase in workload when reviewing RFQs as more vendors may potentially respond.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

   The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   The bill does not appear to create an economic impact on the private sector.

D. FISCAL COMMENTS:

   None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill may require DMS, acting through FDS, to create rules; however, DMS currently has broad rulemaking authority and is able to adopt rules as necessary to administer the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES