SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Children and Families Committee

BILL: CS/SB 1476

SPONSOR: Children and Families Committee and Senator Campbell

SUBJECT: Department of Children and Family Services

DATE: March 16, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Whiddon	CF	**Fav/CS**
2.			GO	
3.			HA	
4.			WM	
5.				
6.				

I. Summary:

The committee substitute for Senate Bill 1476 removes a provision of law exempting the Department of Children and Families (DCF or the department) from the requirements of chapter 287, F.S., and requires that DCF competitively procure all contracts in excess of $25,000, as required by chapter 287 F.S. In addition, the committee substitute requires that, when DCF uses the exemption from competitive procurement set forth in s. 287.057(5)(f)(13), F.S., to procure services from postsecondary institutions, DCF must provide an opportunity for all postsecondary institutions to bid on the procurement. The committee substitute provides that when this exemption is used it applies only to the contract between DCF and the postsecondary institution and not to any services or commodities provided by the postsecondary institution agency through a private vendor.

The committee substitute requires that, prior to initiating competitive procurement for outsourcing pursuant to chapter 287, F.S., DCF develop a validated business plan describing and analyzing the service proposed for outsourcing or privatization. It details the requirements of the business plan and requires that the plan be submitted in DCF's legislative budget request (LBR). The committee substitute also describes the process for submitting the proposal to the Legislature when the proposal for outsourcing or privatization occurs outside the usual LBR cycle.

The committee substitute sets requirements in addition to those described in chapter 287, F.S., for DCF contracts in excess of $250,000, and describes those requirements. It requires that, when the value of a contract exceeds $1 million, at least one of the DCF negotiators be a certified contract negotiator. It limits the ability of DCF to amend contracts without the approval of the Executive Office of the Governor and the Administration Commission under certain

circumstances. It requires DCF and the Department of Management Services (DMS) to develop contract templates and guidelines reflecting the requirements of the bill. It requires DCF to verify the performance of contractors prior to the renewal of a contract and to explain any differences between the required performance and the actual performance of the contractor.

The committee substitute sets forth the requirements and processes for contract managers and contract monitors. It requires DCF to make available electronically to the Legislature all documents associated with DCF's procurement and contracting functions.

The committee substitute directs the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to conduct two reviews of the contract management and accountability structures of DCF and to report its findings to the Legislature by February 1, 2006 and February 1, 2007.

The committee substitute amends s. 409.1671, F.S., to conform definitions.

The committee substitute creates an unnumbered section of Florida Statutes. It also amends ss. 402.73 and 409.1671, F.S., and repeals s. 402.72, F.S.

II. Present Situation:

For at least 10 years, legislative concern has been expressed about the cost effectiveness and accountability of human services contracting.[1] Despite these concerns, the process of outsourcing at DCF, as at other state agencies, has continued to increase. While some services such as those in the mental health and substance abuse arenas have long been provided by private vendors through contracts with DCF, others have been outsourced only in recent years. The total annualized value of DCF contracts with outside vendors as of February 2005 is $1.4 billion.

To date, the largest and most comprehensive outsourcing initiative undertaken by DCF has been the initiation of Community-Based Care (CBC) in the child welfare area. This undertaking, described in s. 409.1671, F.S., has resulted in responsibility for virtually all child welfare services that occur after the completion of the child protective investigation being transferred to private vendors through contracting arrangements.[2] All areas of the state other than Dade-Monroe are now receiving child welfare services through contracts between DCF and "lead agencies." In some cases, these lead agencies, which are statutorily required to be non-profit corporations, provide child welfare services directly and in other instances subcontract for those services. The total annualized value of DCF/CBC contracts for FY 2004-2005 is $489,969,729.

By the beginning of 2005, DCF had arranged to provide all or most services contractually rather than by state employees in at least the following program areas: child welfare, mental health, substance abuse, domestic violence, and refugee services. Only in the Adult Services program office and the Economic Services program office (ESS) are services primarily delivered by state employees. In late 2004, DCF also proposed a model for outsourcing the delivery of ESS

[1] *Procurement and Contracting Reform*, Interim Project Report 97-P-35, The Florida Senate Committee on Governmental Reform and Oversight (September 1997).

[2] In 5 counties of the state, investigations are performed by local Sheriff's departments who have entered into agreements with DCF to perform the services.

activities to private vendors. While this complete outsourcing was not approved, DCF is currently working toward an implementation plan for placing many of the local ESS activities in communities, retaining a small number of state employees to make determinations of eligibility for ESS services and to provide oversight of the ESS activities.

During the transition from a service delivery model in which state employees perform most of the responsibilities legislatively assigned to an agency to one where private providers perform most of these responsibilities, uncertainty has developed as to the appropriate role and authority of the state agency in providing oversight and accountability. Confusion has also arisen during this transition period as to the appropriate terminology to use in describing this contracting-out model, with some statutes referring to this activity as “privatization,”[3] when the more generally accepted and less confusing term is “outsourcing.”

Additionally, since DCF has traditionally been a service-delivery organization, most of the institutional knowledge of the institution is related to programs and services. As a result, most of the staff utilized for contract negotiation, monitoring, and management have been persons whose primary knowledge base is in programmatic issues rather than in contracting issues. Vendors, on the other hand, often bring trained and experienced contract negotiators to the table. While programmatic knowledge brings strengths to contract design and management, the lack of specific contract procurement, management, and monitoring expertise has historically resulted in contracts which have not provided the best use of state dollars. In 1998, the Legislature created “contract management units” in part to address this problem.[4] The language describing the duties of these units, however, lacked clarity as to the responsibilities of contract monitoring and contract managing.

The 2000 Legislature approved 30 new positions for contract monitoring, adding to the 80 already existing in DCF, for a peak strength statewide of 110. By October 2004 information provided by districts and zones identified only 60 positions assigned to contract monitoring. The number of contract administration and management positions in DCF have also declined, although not as dramatically.

Experts have identified the planning, or “sourcing,” stage of governmental decision-making about methods of providing services as critical but often neglected. Florida law currently contains no provisions regarding the sourcing decision. When sourcing is studied in a business-like way, the document produced is a business case. In producing a business case, an agency should analyze the current situation including benchmark data, develop criteria for out-sourcing, evaluate outsourcing options against the criteria, and develop a recommended course of action.[5] A business case should contain, at a minimum, fiscal data for the immediately preceding 12 months, a summary of industry best practices where available, and analysis of any relevant statutory provisions, state and federal. The business case document should include an analysis of options evaluated, a recommended solution, a transition management strategy, performance metrics, and a recommended procurement process.[6]

[3] See, for example, s. 409.1671, F.S.
[4] s. 402.72, F.S.
[5] *Gate Process Overview*, Center for Efficient Government, http://dms.myflorida.com/dms/administration/center_for_efficient_government/projects (March 4, 2005).
[6] Id.

In June 2003 the Chief Inspector General, in a report addressing contracting issues for all state agencies, identified the need for additional oversight and accountability as critical issues to be addressed "to ensure the expected savings are realized, and that, ultimately, Florida taxpayers receive a fair return on their tax dollars."[7] This same report noted that, after examining almost 500 audit findings, "controls over contracting are in a state of disrepair."[8]

The DCF Inspector General (DCF/IG) has conducted a series of audits examining the contracting practices of the agency. In April 2004 for example, the DCF/IG identified weaknesses in documentation and monitoring of the Child Welfare Education Program.[9]

In January 2005 the DCF/IG issued an audit report examining the use of the governmental agency exemption[10] for selected contracts between DCF and Florida State University (FSU).[11] This statutory exemption allows state agencies to contract with other governmental entities, including universities, without competitive solicitation. According to this report, between July 1, 2001 and June 30, 2004, DCF procured more than $396 million using the governmental agency exemption. A substantial portion of this amount (43 percent) was spent in the Child Welfare arena. More than $78 million of the total amount was spent via contracts with various state universities, including more than $9.7 million to FSU. The primary finding of the audit was that the use of the governmental agency exemption in the contracts examined as part of the audit "skirted procurement laws and left the department with questionable yields from contracts."[12]

This report followed on the heels of a series of unfavorable press articles regarding contracting practices at DCF during the late spring and summer of 2004.[13] In part, as a result of the information surfaced in these articles, the then-Secretary of DCF, after accepting the resignations of two of his aides in July, himself resigned in August 2004.[14]

The Office of Program Policy Analysis and Government Accountability (OPPAGA) has also conducted a series of studies of DCF contracting policies. In its most recent report, released in draft form in March 2005 OPPAGA identifies weaknesses in DCF accountability for fiscal functions and recommends that DCF "further refine its contracting monitoring system."[15]

Chapter 287, Florida Statutes, describes a comprehensive process for the procurement of commodities and contractual services by executive agencies. This chapter describes numerous requirements for fair and open competition among vendors, agency maintenance of written documentation that supports procurement decisions, and implementation of monitoring

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[7] *Road Map to Excellence in Contracting,* Executive Office of the Governor Report 2003-3, p.1.
[8] Id.
[9] *Title IV-E Child Welfare Education Program- Diagnosis: Internal Controls Improvement Needed,* Audit Report A-04-11, DCF Inspector General, April 16, 2004.
[10] s. 287.057(5)(f)13, F.S.
[11] *Contracting with Florida State University Using the Governmental Agency Exemption,* Audit Report A-07-2004-019, DCF Inspector General, January 26, 2005.
[12] Id. p. 2.
[13] See, for example, *At DCF, Welfare was Personal,* Palm Beach Post, July 22, 2004.
[14] See articles in St. Petersburg Times, July 16 and August 31, 2004.
[15] *Child Welfare Transition Nearly Complete; Budget Allocation and Oversight Systems Need Strengthening,* Office of Program Policy Analysis and Government Accountability, draft report (March 2005).

mechanisms. The legislative intent language for the chapter explains that these processes are necessary in order to:

- Reduce improprieties and opportunities for favoritism;
- Insure the equitable and economical award of public contracts; and
- Inspire public confidence in state procurement.[16]

The authority of DCF to contract is contained in s. 20.19(1)(c), F.S. Additional provisions related to contracting for DCF services are scattered throughout the statutes, with the primary site being ss. 402.72 and 402.73, F.S. Section 402.73(3), F.S., exempts DCF from conforming to the requirement of chapter 287, F.S., requiring procurement by competitive sealed bids.[17]

In March 2004 the Center for Efficient Government (Center) was established by Executive Order of the Governor. This Center, located in the Department of Management Services, requires agencies seeking to outsource activities to proceed through a five-stage process: business case development, procurement, contract management, transition management, and post-implementation. Currently, according to its web site, seven projects are in the process of review by the center. Of these, three are projects related to DCF. Two of the DCF projects are alternative proposals relating to ESS modernization.[18]

There are currently no statutory requirements for certified contract negotiators.

III. Effect of Proposed Changes:

The committee substitute for SB 1476 removes a provision of law exempting DCF from the requirements of chapter 287, F.S., and requires that DCF competitively procure all contracts in excess of $25,000, as required by chapter 287, F.S. It clarifies the process by adding definitions of terms not defined in Chapter 287, F.S. These terms include “contract manager,” “contract monitor,” “outsourcing,” “performance measure,” “performance standard,” and “privatize.”

The committee substitute requires that, when DCF uses the exemption from competitive procurement set forth in s. 287.057(5)(f)(13), F.S. to procure services from postsecondary institutions, DCF must provide an opportunity for all postsecondary institutions to bid on the procurement. Additionally, the committee substitute provides that when this exemption is used, it applies only to the contract between DCF and the postsecondary institution and not to any services or commodities provided by the postsecondary institution agency through a private vendor.

The committee substitute requires that, prior to initiating competitive procurement pursuant to chapter 287, F.S., DCF develop a validated business plan describing and analyzing the service proposed for outsourcing or privatization. It details the requirements of the business plan and requires that the plan be submitted in DCF’s legislative budget request (LBR). The committee substitute requires that, if the proposal for outsourcing is made during the fiscal year and the proposal was not made as part of the LBR process, DCF provide to the Governor, the President

[16] Section 287.001, F.S.
[17] Section 287.057(1) and (2).
[18] http://dms.myflorida.com/dms/administration/center_for_efficient_government/projects (March 4, 2005).

of the Senate, the Speaker of the House of Representatives, the chairs of the legislative appropriations committees and the chairs of the relevant substantive committees the validated business case for the proposal at least 45 days before the release of any solicitation documents. It prohibits any budgetary changes to existing programs inconsistent with DCF's approved budget unless these changes are expressly approved by the LBC.

The committee substitute sets requirements for contract provisions in addition to those described in chapter 287, F.S., for DCF contracts in excess of $250,000. These requirements include:

- A detailed scope of work that clearly specifies each service and deliverable to be provided, including a description of each deliverable or activity which is quantifiable, measurable, and verifiable;
- Associated costs and savings, specific payment terms and payment schedules, including incentive and penalty provisions, criteria governing payment, and a clear and specific schedule to complete all required activities needed to transfer the service from the state to the contractor;
- Clear and specific identification of all required performance measures and performance standards;
- A requirement that the contractor maintains adequate accounting records that comply with all applicable federal and state laws and generally accepted accounting principles;
- A requirement authorizing DCF and the state to have access to and conduct audits of all records related to the contract and the outsourced service;
- A requirement that ownership of any intellectual property developed in the course of, or as a result of, work or services performed under the contract transfer to the state if the contractor ceases to provide the outsourced service;
- A requirement describing the timing and substance of all plans and status or progress reports required;
- A requirement that the contractor comply with all public records laws;
- A requirement that any state funds provided for the purchase of or improvements to real property are contingent on the contractor granting the state a security interest in the property;
- A provision that the contractor annual submit and verify, pursuant to s. 92.525, F.S., all required financial statements;
- A provision that the contractor will be held responsible and accountable for all work covered under the contract including any work performed by subcontractors. The contract must state that DCF is allowed to monitor the performance of any subcontractor.

For contracts exceeding $250,000 in value, DCF is required to obtain the approval of the Executive Office of the Governor (EOG) for amendments increasing the value of the contract by $250,000 or more, or extending the term of the contract by one year or more. The department is required to notify the chairs of the legislative appropriations committees at the time of requesting approval for such an amendment, and the Governor is required to withhold approval for 14 days after receiving such a request. If the chair of the appropriations committee of either house of the Legislature objects to the amendment within the 14-day period, the Governor may either disapprove the request or submit it to the Administration Commission. If the Administration Commission approves the request by a 2/3 vote of the members present, with the Governor voting in the affirmative, DCF may proceed with the procurement. Amendments which result from legislative direction including the General Appropriations Act and the federal appropriations act are exempted from the approval requirements.

For contracts exceeding $250,000, the committee substitute requires DCF and the Department of Management Services (DMS) to develop contract templates and guidelines. It requires DCF to verify the performance of contractors prior to the renewal of a contract in excess of $250,000 and to explain any difference s between the required performance and the actual performance of the contractor. It requires that, when the value of a contract exceeds $1 million, at least one of the DCF negotiators be a certified contract negotiator.

The committee substitute sets forth the requirements and processes for contract managers and contract monitors, including a requirement that contract monitoring units be staffed by career service employees. It requires DCF to make available electronically to the Legislature all documents associated with DCF's procurement and contracting functions.

The committee substitute directs OPPAGA to conduct two reviews of the contract-management and accountability structures of DCF and to report its findings to the Legislature by February 1, 2006 and February 1, 2007.

The committee substitute amends s. 409.1671, F.S., to conform definitions, replacing the word "privatize" with "outsource" throughout.

It preserves the requirement that systems and controls be implemented to ensure financial integrity and service provision quality in the Medicaid waiver service system, amending s. 402.73, F.S., to change the name of the agency responsible for meeting that requirement from DCF to the Agency for Persons with Disabilities.

The bill has an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the committee substitute furthers the goals expressed in s. 287.001, F.S., private vendors and the public will benefit from a more fair and open process for awarding state contracts through DCF.

C. Government Sector Impact:

The Department of Children and Families reports that implementation of the requirement for certified contract negotiators will cost $41,250 annually.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.