

By Senators Benacquisto and Brandes

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1 A bill to be entitled
2 An act relating to state contracting; amending s.
3 215.971, F.S.; requiring agreements funded with state
4 or federal financial assistance to include additional
5 provisions; authorizing the Chief Financial Officer to
6 audit and approve agreements prior to execution;
7 requiring state agencies to designate a grants manager
8 for each agreement and providing requirements and
9 procedures for managers; requiring the Chief Financial
10 Officer to perform audits of executed agreements and
11 to discuss such audits with agency officials;
12 requiring the agency head to respond to the audit;
13 reordering and amending s. 215.985, F.S.; revising
14 provisions relating to the Chief Financial Officer's
15 intergovernmental contract tracking system under the
16 Transparency Florida Act; requiring state agencies to
17 post certain information in the tracking system and to
18 update that information; requiring that exempt and
19 confidential information be redacted from contracts
20 and procurement documents posted on the system;
21 authorizing the Chief Financial Officer to make
22 available to the public the information posted on the
23 system through a secure website; authorizing the
24 Department of Financial Services to adopt rules;
25 repealing s. 216.0111, F.S., relating to a requirement
26 that state agencies report certain contract
27 information to the Department of Financial Services
28 and transferring that requirement to s. 215.985, F.S.;
29 amending s. 287.057, F.S.; requiring certain contract

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30 managers to be certified and directing the Department
31 of Management Services to be responsible for
32 establishing the requirements for certification;
33 amending s. 287.058, F.S.; authorizing the Chief
34 Financial Officer to audit and approve agreements
35 prior to execution; creating s. 287.136, F.S.;

36 requiring the Chief Financial Officer to perform
37 audits of executed contract documents and to discuss
38 such audits with the agency officials; requiring the
39 agency head to respond to the audit; providing an
40 effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Section 215.971, Florida Statutes, is amended to
45 read:

46 215.971 Agreements funded with federal or ~~and~~ state
47 assistance.-

48 (1) ~~For~~ An agency agreement that provides state financial
49 assistance to a recipient or subrecipient, as those terms are
50 defined in s. 215.97, or that provides federal financial
51 assistance to a subrecipient, as defined by applicable United
52 States Office of Management and Budget circulars, must ~~the~~
53 ~~agreement shall include~~ all of the following:

54 (a) ~~(1)~~ A provision specifying a scope of work that clearly
55 establishes the tasks that the recipient or subrecipient is
56 required to perform. ~~;~~ ~~and~~

57 (b) ~~(2)~~ A provision dividing the agreement into quantifiable
58 units of deliverables that must be received and accepted in

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59 writing by the agency before payment. Each deliverable must be
60 directly related to the scope of work and ~~must~~ specify the
61 required minimum level of service to be performed and the
62 criteria for evaluating the successful completion of each
63 deliverable.

64 (c) A provision specifying the financial consequences that
65 apply if the recipient or subrecipient fails to perform the
66 minimum level of service required by the agreement. The
67 provision can be excluded from the agreement only if financial
68 consequences are prohibited by the federal agency awarding the
69 grant. Funds refunded to a state agency from a recipient or
70 subrecipient for failure to perform as required under the
71 agreement may be expended only in direct support of the program
72 from which the agreement originated.

73 (d) A provision specifying that a recipient or subrecipient
74 of federal or state financial assistance may expend funds only
75 for allowable costs resulting from obligations incurred during
76 the specified agreement period.

77 (e) A provision specifying that any balance of unobligated
78 funds which has been advanced or paid must be refunded to the
79 state agency.

80 (f) A provision specifying that any funds paid in excess of
81 the amount to which the recipient or subrecipient is entitled
82 under the terms and conditions of the agreement must be refunded
83 to the state agency.

84 (g) Any additional information required pursuant to s.
85 215.97.

86 (2) The Chief Financial Officer may audit and approve
87 agreements funded with state or federal assistance before the

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88 execution of such agreements in accordance with rules adopted by
89 the Department of Financial Services. The audit must ensure that
90 applicable laws have been met; that the agreement document
91 contains a clear statement of work, quantifiable and measurable
92 deliverables, performance measures, financial consequences for
93 nonperformance, and clear terms and conditions that protect the
94 interests of the state; and that the associated costs of the
95 agreement are not unreasonable or inappropriate. The audit must
96 ensure that all contracting laws have been met and that
97 documentation is available to support the contract. A contract
98 that does not comply with this section may be rejected and
99 returned to the submitting agency for revision.

100 (a) The Chief Financial Officer may establish dollar
101 thresholds and other criteria for determining which agreements
102 will be audited before execution. The Chief Financial Officer
103 may revise such thresholds and other criteria for an agency or a
104 unit of an agency as he or she deems appropriate.

105 (b) The Chief Financial Officer shall have up to 21
106 calendar days after receipt of the proposed grant agreement to
107 make a final determination regarding approval of an agreement.
108 The Chief Financial Officer and the agency entering into the
109 contract may agree to a longer review period.

110 (3) For each agreement funded with federal or state
111 financial assistance, the state agency shall designate an
112 employee to function as a grant manager who shall be responsible
113 for enforcing performance of the agreement's terms and
114 conditions and who shall serve as a liaison with the recipient
115 or subrecipient.

116 (a) Each grant manager who is responsible for agreements in

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117 excess of the threshold amount for CATEGORY TWO under s. 287.017
118 must complete the training and become a certified contract
119 manager as provided under s. 287.057(14).

120 (b) The Chief Financial Officer shall establish and
121 disseminate uniform procedures for grant management pursuant to
122 s. 17.03(3) to ensure that services have been rendered in
123 accordance with agreement terms before the agency processes an
124 invoice for payment. The procedures must include, but need not
125 be limited to, procedures for monitoring and documenting
126 recipient or subrecipient performance, reviewing and documenting
127 all deliverables for which payment is requested by the recipient
128 or subrecipient, and providing written certification by the
129 grant manager of the agency's receipt of goods and services.

130 (c) The grant manager shall reconcile and verify all funds
131 received against all funds expended during the grant agreement
132 period and produce a final reconciliation report. The final
133 report must identify any funds paid in excess of the
134 expenditures incurred by the recipient or subrecipient.

135 (4) The Chief Financial Officer shall perform audits of the
136 executed state and federal grant agreement documents and grant
137 manager's records in order to ensure that adequate internal
138 controls are in place for complying with the terms and
139 conditions of such agreements and for validation and receipt of
140 goods and services.

141 (a) At the conclusion of the audit, the Chief Financial
142 Officer's designee shall discuss the audit and potential
143 findings with the official whose office is subject to audit. The
144 final audit report shall be submitted to the agency head.

145 (b) Within 30 days after the receipt of the final audit

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146 report, the agency head shall submit to the Chief Financial
147 Officer or designee, his or her written statement of explanation
148 or rebuttal concerning findings requiring corrective action,
149 including corrective action to be taken to preclude a
150 recurrence.

151 Section 2. Subsection (2) of section 215.985, Florida
152 Statutes, is reordered and amended and subsection (16) of that
153 section is amended, to read:

154 215.985 Transparency in government spending.—

155 (2) As used in this section, the term:

156 (c)~~(a)~~ "Governmental entity" means any state, regional,
157 county, municipal, special district, or other political
158 subdivision whether executive, judicial, or legislative,
159 including, but not limited to, any department, division, bureau,
160 commission, authority, district, or agency thereof, or any
161 public school, Florida College System institution, state
162 university, or associated board.

163 (d)~~(b)~~ "Website" means a site on the Internet which is
164 easily accessible to the public at no cost and does not require
165 the user to provide any information.

166 (a)~~(e)~~ "Committee" means the Legislative Auditing Committee
167 created in s. 11.40.

168 (b) "Contract" means any written agreement or purchase
169 order issued for the purchase of goods or services and any
170 written agreements for the receipt of federal or state financial
171 assistance.

172 (16) The Chief Financial Officer shall establish and
173 maintain a secure, shared state contract tracking ~~provide public~~
174 ~~access to a state contract management system.~~

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175 (a) Within 30 calendar days after executing a contract,
176 each state agency as defined in s. 216.011(1) shall post all of
177 the following that provides information and documentation
178 relating to that contract on the contract tracking system, as
179 required by rule: ~~contracts procured by governmental entities.~~

180 1. The names of the contracting entities.

181 2. The procurement method.

182 3. The contract beginning and end dates.

183 4. The nature or type of the commodities or services
184 purchased.

185 5. Applicable contract unit prices and deliverables.

186 6. Total compensation to be paid or received under the
187 contract.

188 7. All payments made to the contractor to date.

189 8. Applicable contract performance measures.

190 9. The justification for not using competitive solicitation
191 to procure the contract, including citation to any statutory
192 exemption or exception from competitive solicitation, if
193 applicable.

194 10. Electronic copies of the contract and procurement
195 documents that have been redacted to conceal exempt or
196 confidential information.

197 11. Any other information required by the Chief Financial
198 Officer.

199 ~~(a) The data collected in the system must include, but need~~
200 ~~not be limited to, the contracting agency; the procurement~~
201 ~~method; the contract beginning and ending dates; the type of~~
202 ~~commodity or service; the purpose of the commodity or service;~~
203 ~~the compensation to be paid; compliance information, such as~~

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204 ~~performance metrics for the service or commodity; contract~~
205 ~~violations; the number of extensions or renewals; and the~~
206 ~~statutory authority for providing the service.~~

207 (b) The affected state governmental agency shall update the
208 information described in paragraph (a) in the contract tracking
209 system within 30 calendar days after a major modification or
210 amendment change to an existing contract or the execution of a
211 new contract, agency procurement staff of the affected state
212 governmental entity shall update the necessary information in
213 the state contract management system. A major modification or
214 amendment change to a contract includes, but is not limited to,
215 a renewal, termination, or extension of the contract, or an
216 amendment to the contract as determined by the Chief Financial
217 Officer.

218 (c) Each state agency identified in paragraph (a) shall
219 redact, as defined in s. 119.011, exempt or confidential
220 information from the contract or procurement documents before
221 posting an electronic copy on the contract tracking system.

222 1. If a state agency becomes aware that an electronic copy
223 of a contract or procurement document that it posted has not
224 been properly redacted, the state agency must immediately notify
225 the Chief Financial Officer so that the contract or procurement
226 document may be removed. Within 7 business days, the state
227 agency shall provide the Chief Financial Officer with a properly
228 redacted copy for posting.

229 2. If a party to a contract, or authorized representative,
230 discovers that an electronic copy of a contract or procurement
231 document on the system has not been properly redacted, the party
232 or representative may request the state agency that posted the

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233 document to redact the exempt or confidential information. Upon
234 receipt of a request in compliance with this subparagraph, the
235 state agency that posted the document shall redact the exempt or
236 confidential information.

237 a. Such request must be in writing and delivered by mail,
238 facsimile, or electronic transmission or in person to the state
239 agency that posted the information. The request must identify
240 the specific document, the page numbers that include the exempt
241 or confidential information, the information that is exempt or
242 confidential, and the relevant statutory exemption. A fee may
243 not be charged for a redaction made pursuant to such request.

244 b. If necessary, a party to the contract may petition the
245 circuit court for an order directing compliance with this
246 paragraph.

247 3. The Chief Financial Officer, the Department of Financial
248 Services, or any officer, employee, or contractor thereof, is
249 not responsible for redacting exempt or confidential information
250 from an electronic copy of a contract or procurement document
251 posted by another state agency on the system and is not liable
252 for the failure of the state agency to redact the exempt or
253 confidential information. The Chief Financial Officer may notify
254 the posting state agency if a document posted on the tracking
255 system contains exempt or confidential information.

256 (d) Pursuant to ss. 119.01 and 119.07, the Chief Financial
257 Officer may make information posted on the contract tracking
258 system available for viewing and download by the public through
259 a secure website. Unless otherwise provided by law, information
260 retrieved electronically pursuant to this paragraph is not
261 admissible in court as an authenticated document.

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262 1. The Chief Financial Officer may regulate and prohibit
263 the posting of records that could facilitate identity theft or
264 fraud, such as signatures; compromise or reveal an agency
265 investigation; reveal the identity of undercover personnel;
266 reveal proprietary confidential business information or trade
267 secrets; reveal an individual's medical information; or reveal
268 any other record or information that the Chief Financial Officer
269 believes may jeopardize the health, safety, or welfare of the
270 public. However, such prohibition does not supersede the duty of
271 a state agency to provide a copy of a public record upon
272 request. The Chief Financial Officer shall use appropriate
273 Internet security measures to ensure that no person has the
274 ability to alter or modify records available on the website.

275 2. Records made available on the website, including
276 electronic copies of contracts or procurement documents, may not
277 reveal information made exempt or confidential by law. Notice of
278 the right of an affected party to request redaction of exempt or
279 confidential information pursuant to paragraph (c) must be
280 displayed on the website.

281 (e) The posting of information on the contract tracking
282 system or the provision of contract information on a website for
283 public viewing and downloading does not supersede the duty of a
284 state agency to respond to a public record request for such
285 information or to a subpoena for such information.

286 1. A request for a copy of a contract or procurement
287 document or a certified copy of a contract or procurement
288 document must be made to the state agency that is party to the
289 contract. Such request may not be made to the Chief Financial
290 Officer or the Department of Financial Services or any officer,

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291 employee, or contractor thereof unless the Chief Financial
292 Officer or department is a party to the contract.

293 2. A subpoena for a copy of a contract or procurement
294 document or certified copy of a contract or procurement document
295 must be served on the state agency that is a party to the
296 contract and that maintains the original documents. The Chief
297 Financial Officer or the Department of Financial Services or any
298 officer, employee, or contractor thereof may not be served a
299 subpoena for those records unless the Chief Financial Officer or
300 the department is a party to the contract.

301 (f) The Chief Financial Officer may adopt rules to
302 administer this subsection.

303 Section 3. Section 216.0111, Florida Statutes, is repealed.

304 Section 4. Subsection (14) of section 287.057, Florida
305 Statutes, is amended to read:

306 287.057 Procurement of commodities or contractual
307 services.—

308 (14) For each contractual services contract, the agency
309 shall designate an employee to function as contract manager who
310 is shall be responsible for enforcing performance of the
311 contract terms and conditions and serve as a liaison with the
312 contractor. Each contract manager who is responsible for
313 contracts in excess of the threshold amount for CATEGORY TWO
314 established under s. 287.017 must be a certified contract
315 manager. The Department of Management Services is responsible
316 for establishing and disseminating the requirements for
317 certification, which include completing the ~~attend~~ training
318 conducted by the Chief Financial Officer for accountability in
319 contracts and grant management. The Chief Financial Officer

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320 shall establish and disseminate uniform procedures pursuant to
321 s. 17.03(3) to ensure that contractual services have been
322 rendered in accordance with the contract terms before the agency
323 processes the invoice for payment. The procedures must ~~shall~~
324 include, but need not be limited to, procedures for monitoring
325 and documenting contractor performance, reviewing and
326 documenting all deliverables for which payment is requested by
327 vendors, and providing written certification by contract
328 managers of the agency's receipt of goods and services.

329 Section 5. Subsection (7) is added to section 287.058,
330 Florida Statutes, to read:

331 287.058 Contract document.—

332 (7) The Chief Financial Officer may audit contracts subject
333 to this chapter before the execution of such contracts in
334 accordance with rules adopted by the Department of Financial
335 Services. The audit must ensure that applicable laws have been
336 met; that the contract document contains a clear statement of
337 work, quantifiable and measurable deliverables, performance
338 measures, financial consequences for nonperformance, and clear
339 terms and conditions that protect the interests of the state;
340 and that the associated costs of the contract are not
341 unreasonable or inappropriate. The audit must ensure that all
342 contracting laws have been met and that documentation is
343 available to support the contract. A contract that does not
344 comply with this section may be rejected and returned to the
345 submitting agency for revision.

346 (a) The Chief Financial Officer may establish dollar
347 thresholds and other criteria for sampling the contracts that
348 are to be audited before execution. The Chief Financial Officer

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349 may revise such thresholds and other criteria for an agency or
350 the unit of an agency as deemed appropriate.

351 (b) The Chief Financial Officer has up to 21 calendar days
352 after receipt of the proposed contract to make a final
353 determination regarding approval of the contract and shall
354 provide the audit report to the agency entering into the
355 contract. The Chief Financial Officer and the agency entering
356 into the contract may agree to a longer review period.

357 Section 6. Section 287.136, Florida Statutes, is created to
358 read:

359 287.136 Audit of executed contract documents.—The Chief
360 Financial Officer shall perform audits of the executed contract
361 documents and contract manager's records to ensure that adequate
362 internal controls are in place for complying with the terms and
363 conditions of the contract and for the validation and receipt of
364 goods and services.

365 (1) At the conclusion of the audit, the Chief Financial
366 Officer's designee shall discuss the audit and potential
367 findings with the official whose office is subject to audit. The
368 final audit report shall be submitted to the agency head.

369 (2) Within 30 days after the receipt of the final audit
370 report, the agency head shall submit to the Chief Financial
371 Officer or designee, his or her written statement of explanation
372 or rebuttal concerning findings requiring corrective action,
373 including corrective action to be taken to preclude a
374 recurrence.

375 Section 7. This act shall take effect July 1, 2013.