

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5401 (PCB GOAS 13-03) Transparency in State Contracting

SPONSOR(S): Government Operations Appropriations Subcommittee; Ingram

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Appropriations Subcommittee	10 Y, 0 N	Keith	Topp
1) Appropriations Committee	22 Y, 0 N	Keith	Leznoff

SUMMARY ANALYSIS

The Chief Financial Officer (CFO) is responsible for setting and approving accounts against the state and keeping all state funds and securities. The CFO's duties also include contract review, procurement training, and auditing. The Transparency Florida Act requires the CFO to provide a state contract management system for purposes of providing access to information and documentation relating to contracts procured by governmental entities; however, the contract itself is not part of the information disclosed on the website.

Effective July 1, 2013, the bill expands the contract information that agencies are required to upload onto the Florida Accountability Contract Tracking System (FACTS). Specifically, the bill requires state agencies to upload the following information into FACTS:

- The names of the contracting entities.
- The procurement method utilized.
- The contract beginning and ending dates.
- The nature and type of commodities or services purchased.
- Applicable contract unit prices and deliverables.
- Total compensation to be paid or received under the contract.
- All payments made to the contractor to date.
- Applicable contract performance measures.
- An electronic copy of the contract that has been redacted to conceal confidential or exempt information.

The Department of Legal Affairs, Department of Agriculture and Consumer Services, Department of Financial Services, and the Judicial Branch are exempt from the contract posting requirements; however, they may choose to upload contract information to FACTS.

The bill requires each agency to redact confidential or exempt information from the contract before posting it to the website. The bill provides a process for state agencies to follow when a document has been posted that has not been properly redacted. The website is required to display a notice of the right of an affected party to request redaction.

The bill also provides a disclaimer from liability to the CFO and the Department of Financial Services for failure to properly redact information. The bill authorizes the CFO to adopt rules.

The bill conforms to the proposed House of Representatives' FY 2013-14 General Appropriations Act which provides \$713,167 in funding to implement the FACTS System. The provisions of this bill provide the CFO with the statutory authority to compel the agencies to post the contracts to the FACTS System. The bill will likely have a minimal fiscal impact on state agencies in uploading contracts to the FACTS System as well as redacting the confidential or exempt information prior to uploading the contracts. It is anticipated that the provisions of the bill will be handled within existing agency resources.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chief Financial Officer and Department of Financial Services

The CFO is an elected constitutional Cabinet member.¹ The CFO serves as the chief financial officer of the state and is responsible for setting and approving accounts against the state and keeping all state funds and securities.² Such responsibilities include, but are not limited to, auditing and adjusting accounts of officers and those indebted to the state,³ paying state employee salaries,⁴ and reporting all disbursements of funds administered by the CFO.⁵

The CFO also serves as the head of the Department of Financial Services (DFS), which executes the duties of the CFO.⁶ DFS consists of the following divisions:

- The Division of Accounting and Auditing;
- The Division of State Fire Marshall;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agents and Agency Services;
- The Division of Consumer Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Office of Insurance Consumer Advocate;
- The Division of Funeral, Cemetery, and Consumer Services; and
- The Division of Public Assistance Fraud.⁷

The Financial Services Commission; Board of Funeral, Cemetery, and Consumer Services; and Strategic Markets Research and Assessment Unit also are established within DFS.⁸

Florida Accountability Contract Tracking System

Section 215.985(16), F.S., requires the CFO to provide public access to a state contract management system that provides information and documents related to contracts procured by governmental entities. The data collected in the system must include the contracting agency, the procurement method, and other pertinent contract information. Each time a major change to an existing contract is made, the agency must update the information in the contracting management system within 30 days. The website is known as the Florida Accountability Contract Tracking System (FACTS).⁹

¹ Art. 4, s. 4(a) and (c) of the State Constitution.

² Art. 4, s. 4(c) of the State Constitution, and s. 17.001, F.S.

³ Section 17.04, F.S.

⁴ See s. 17.09, F.S.

⁵ Section 17.11, F.S.

⁶ See s. 20.121, F.S.

⁷ Section 20.121(2), F.S.

⁸ Sections 20.121(3), (4), and (6), F.S.

⁹ The FACTS website can be found online at: <http://www.myfloridacfo.com/aadir/statewidecontractreporting.htm> (last visited on March 14, 2013).

Current law also requires each state agency to report to DFS, within three working days of executing a contract, the following information relating to certain contracted activities:¹⁰

- The nature of the commodities or services provided;
- The term of the contract;
- The final obligation made by the agency;
- A summary of any time constraints that apply to the procurement;
- The justification for not using the competitive solicitation, including any statutory exemption or exception; and
- Other information regarding the contract or the procurement that DFS requires.¹¹

All of the information provided to DFS, however, is not included in FACTS. The contracting agency is not required to upload the contract into FACTS.

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹²

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Government Sunset Review Act¹³ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Effect of the Bill

The bill requires state agencies¹⁴ to upload contracts that have been redacted to exclude confidential or exempt information to the contract management website within 30 days after execution. In addition to uploading the redacted contract, the agency must provide on the website information pertaining to the contract, including the following information:

- The names of the contracting entities.
- The procurement method.
- The contract beginning and ending dates.
- The nature or type of the commodities or services purchased.
- Applicable contract unit prices and deliverables.
- Total compensation to be paid or received under the contract.
- All payments made to the contractor to date.

¹⁰ Agencies must submit the information to DFS for contracts in excess of Category Two (\$35,000) if the goods and services were not purchased by competitive solicitation or from a state term contract. Section 216.0111(2), F.S.

¹¹ Section 216.0111, F.S.

¹² Article I, s. 24(c) of the State Constitution.

¹³ See s. 119.15, F.S.

¹⁴ The bill provides that "state agency" has the same meaning as defined in s. 216.011, F.S., excluding the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, and the Judicial Branch. However, the bill permits those entities to utilize the contract management website.

- Applicable contract measures.

Agencies must update the information in the system within 30 days of an amendment to the existing contract. Agencies also must post to the system the information required for each existing contract that was executed more than 30 days prior to July 1, 2013.

The Department of Legal Affairs, Department of Agriculture and Consumer Services, Department of Financial Services, and the Judicial Branch are exempt from the contract posting requirements; however, they may choose to upload contract information to FACTS.

The bill provides that contracts available on the contract tracking system must not reveal information made confidential or exempt by law. If a party to the contract discovers that an electronic copy of the contract has not been properly redacted, the bill provides a process for the agency to follow, upon being notified or discovering the error. The agency must immediately remove the contract, redact the confidential or exempt information, and republish the contract to the website within seven days. Agencies must notify the CFO upon becoming aware that an electronic copy of a contract posted on the website has not been properly redacted. The contract tracking system must display a notice of the right of an affected party to request redaction of confidential or exempt information.

The bill provides that the CFO, DFS, and any officer, employee, or contractor thereof, is not liable for failure of a state agency to redact confidential or exempt information. It provides that posting the contract on the contract tracking system does not supersede the duty of an agency to respond to a public records request or to a subpoena. The bill provides that the CFO may adopt rules to administer the section. In addition, the bill requires the CFO to use appropriate Internet security measures to ensure that no person has the ability to alter or modify records available on the website.

B. SECTION DIRECTORY:

Section 1. amends s. 215.985, F.S., relating to transparency in government spending.

Section 2. provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill conforms to the proposed House of Representatives' Appropriation Act for FY 2013-14 as \$713,167 and 4.00 FTE are provided in the GAA to implement the FACTS System. The provisions of this bill provide the CFO with the statutory authority to compel the agencies to post the contracts to the FACTS System as well as redacting the confidential or exempt information prior to uploading the contracts. The bill will likely have a minimal fiscal impact on state agencies in uploading contracts to the FACTS System. It is anticipated that the provisions of the bill will be handled within existing agency resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires executive agencies to upload contracts and contract related information on a secure contract management website. The bill may have a minimal fiscal impact on agencies, because staff responsible for complying with the uploading requirements could require training on the system and on public records exemptions. Agencies also could incur minimal costs associated with redacting the confidential or exempt information prior to uploading the contract documents. It is anticipated that the provisions of the bill will be handled within existing agency resources. The bill conforms to the proposed House of Representatives' General Appropriation Act for FY 2013-14 as \$713,167 and 4.00 FTE are provided to implement the FACTS System.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the CFO to create rules pertaining to the contract management website and provides a grant of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES