

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 Governmental Oversight and Accountability

BILL: CS/SB 1448

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Jones

SUBJECT: Information Technology Procurement

DATE: March 24, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Candelaria	McVaney	GO	Fav/CS
2.			AEG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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 FDS oversight of cabinet agency IT projects from \$25 million to \$20 million.

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 be employed throughout the project lifecycle with the primary objective of independent verification and validation being to provide an objective assessment of products and processes throughout the project lifecycle.

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 and modification of any planned procurements to ensure it complies with the enterprise architecture 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 less than 100 vendors. For any state term contract with more than 100 vendors, an agency must issue a request for quote to at least 100 of the vendors approved to provide such commodity or contractual service.

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

The FDS may incur significant workload increases and associated costs as it undertakes new contract monitoring responsibilities for state agency IT projects in excess of \$10 million. The Department of Management Services 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 21, 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 to fully support cloud-first policy¹. The FDS partners with all state agencies to deliver better 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 entities within the enterprise through development, the support of cloud-first policy, and the consideration of ways in which 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.

The FDS has the authority to perform project oversight on all state agency IT projects which have been appropriated \$10 million or more. 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

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.

³ Section 282.0051(1)(b)(1-3), F.S.

has a total project cost of \$25 million or more and which impacts other state agencies. The FDS 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.⁴

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. 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.⁵

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.⁶

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.⁷ A state term contract is a term contract that is competitively procured and is used by agencies and eligible users.⁸ 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 users⁹ may request for quotes to obtain written pricing or services information from a state term contract vendor for commodities or contractual services.¹⁰ The purpose of a request for quote 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.¹¹

⁴ *Id.*

⁵ Section 282.0051(2)(a-b), F.S.

⁶ Section 282.206(1), F.S.

⁷ The Department of Management Services, *State Contracts and Agreements*, available at dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements, (last visited March 16, 2021)

⁸ 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..

⁹ 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.

¹⁰ Section 287.056, F.S.

¹¹ *Id.*

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.¹²

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. Pursuant to s. 287.042(1)(b), F.S., the DMS has been granted authority to remove from its vendor list any source of supply which fails to fulfill any of its duties specified in a contract. The DMS maintains the following lists of vendors who have been removed for cause:

- Suspended Vendor List;¹³
- Convicted Vendor List;¹⁴
- Discriminatory Vendor List;¹⁵
- Scrutinized List of Prohibited Companies;¹⁶ and
- Vendor Complaint List.¹⁷

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 agency 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.

¹² Section 287.0591, F.S.

¹³ Rule 60A-1.006(2), F.A.C. (vendors that have been removed for failing to fulfill any of its duties specified in a State contract)

¹⁴ Section 287.133, F.S.

¹⁵ Section 287.134(1)(b), F.S.

¹⁶ Section 287.135, F.S.

¹⁷ 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 March 18, 2021)

At a minimum, 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.

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 be employed throughout the project lifecycle with the primary objective of independent verification and validation being to provide an objective assessment of products and processes throughout the project lifecycle. An entity providing independent verification and validation 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 request for quotes to purchase IT commodities, consultant services, or staff augmentation contractual services, to issue a request for quotes to all vendors approved to provide such commodities or services for any state term contract with less than 100 vendors. For any contract with more than 100 vendors, the agency must issue a request for quote to at least 100 of the vendors approved to provide such commodity or contractual service. Use of a request for quote 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 requests for quotes 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 identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Digital Service may incur additional workload associated with an increase in project oversight over cabinet agencies IT projects meeting a certain cost threshold. Based on this additional project oversight workload, the FDS may need additional personnel and other resources to comply with the new requirements of this bill.

The bill requires the FDS to perform post-award contract monitoring for state agency IT projects that have a total project cost of \$10 million or more. Currently, the FDS only performs project oversight for IT projects in excess of \$10 million and does not conduct contract monitoring of any IT projects. In order to comply with the requirements of the bill, the FDS may need additional personnel, and require additional resources, to perform post-award contract monitoring for IT projects that are expected to exceed \$10 million.

State agencies may experience additional workload due to more qualified vendors responding to request for quotes.

The Department of Management Services 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 sections 282.0051 and 287.0591 of the Florida Statutes.

IX. Additional Information:

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

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
