



Legislative Fiscal Bureau

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September 21, 2005

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Substitute Amendment 1 to Assembly Bill 105 and to Senate Bill 56: Cost-Benefit Analyses for Contractual Services Procurements

Senate Substitute Amendment 1 (SSA 1) to 2005 Assembly Bill 105 (AB 105) and SSA 1 to Senate Bill 56 (SB 56) are identical and would direct the Department of Administration (DOA) to prescribe, by rule, uniform procedures for determining whether certain services are appropriate for contracting. The Assembly approved AB 105, as amended by Assembly Amendments 1, 2, and 4, on March 16, 2005, by a vote of 88-7. The bill was subsequently referred to the Senate Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform, which adopted SSA 1 to AB 105 and then recommended concurrence on separate votes of 5-0. SSA 1 to AB 105 was then referred to the Joint Committee on Finance.

Senate Bill 56 was also referred to the Senate Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform, which adopted SSA 1 to SB 56 and then recommended passage on separate votes of 5-0. SSA 1 to SB 56 was then referred to the Joint Committee on Finance.

CURRENT LAW

Under s. 16.705(1) of the statutes, the Department of Administration (DOA) or its agents may generally contract for the procurement of contractual services, if such services may be performed more economically or efficiently by contract, rather than by state employees. DOA may delegate this procurement authority to any executive branch agency. [Legislative and judicial branch agencies have independent procurement authority.]

Where a contractual services procurement is being planned, the agency requesting the procurement generally must provide a justification for the procurement, a description of the contractual services to be procured, a justification of the need for the contract, justification for not contracting with other state agencies, and a specification of the scope of the services to be performed.

Generally, state agency contractual services requests must also be reviewed by the Director of the Office of State Employment Relations to ensure that agencies: (1) have properly utilized the services of state employees; (2) have evaluated using LTE appointments instead of entering into a contractual services procurement; and (3) do not enter into a contract that would be in conflict with provisions of any existing state employee collective bargaining contract. Currently, DOA must promulgate rules governing state agencies' use of contractual services procurements.

Certain specialized types of contractual engineering services required by the Department of Transportation (DOT) are not currently subject to the DOA contractual services procurement requirements established under s. 16.705 of the statutes.

Annually, by October 15, DOA must report to the Governor, the Joint Committee on Finance, the Joint Legislative Audit Committee, and the appropriate legislative standing committees concerning state contractual service procurements during the preceding fiscal year. The report must detail the number, value and nature of the contractual services procurements made by each state agency.

SUMMARY OF THE SUBSTITUTE AMENDMENTS

Rules Relating to Contractual Services Procurements

Uniform Procurement Procedures. DOA would be required to establish, by rule, uniform procedures for determining whether services are appropriate for a contractual services procurement.

Uniform Cost-Benefit Analyses Required. DOA would be required to establish, by rule, procedures applicable to the Department and to delegated purchasing authorities requiring these agencies to conduct a uniform cost-benefit analysis of each proposed contractual service procurement involving an estimated expenditure of more than \$25,000. The analysis would have to be consistent with the analysis standards prescribed by DOA, by rule. Under SSA 1, a "cost benefit analysis" would be one which includes a comparison of the total costs, quality, technical expertise, and timeliness of a service performed by state employees and resources to the total cost, quality, technical expertise, and timeliness of the same service obtained through a contractual services procurement.

Continued Appropriateness of Contracting for Services. DOA would be required to establish, by rule, a requirement that state agencies periodically review and, before the renewal of

any contractual services contract, assess the continued appropriateness of procuring those services by contract, where the contract involves an estimated expenditure of more than \$25,000.

DOT Engineering Services Contracts to Adhere to Same Procedures. SSA 1 would require DOT, when engaging engineering, consulting, surveying, or other specialized services to conduct a uniform cost-benefit analysis, in accordance with standards established by rule, of each proposed contractual service procurement involving an estimated expenditure of more than \$25,000. The DOT analysis would have to include the same elements as those required for the analysis conducted by DOA. Further, DOT would be required to periodically review and, before the renewal of any contractual services contract, assess the continued appropriateness of procuring those services by contract, where the contract involves an estimated expenditure of more than \$25,000.

Emergency Rules. DOA and DOT, no later than the first day of the sixth month following enactment, would be required to promulgate emergency rules governing the operation of the above procedures and requirements. The emergency rules would remain in effect until the effective date of the permanent rules. In promulgating the emergency rules, neither DOA nor DOT would be required to provide evidence that an emergency exists or that the rule is required to preserve the public peace, health, safety, or welfare.

DOA Contractual Services Reporting

SSA 1 would require that DOA include in its annual report on contractual services procurements the following additional information: (1) a summary of the cost-benefit analyses prepared by state agencies in the preceding fiscal year; and (2) recommendations for the elimination of unneeded contractual services procurements and for the consolidation or re-solicitation of existing contractual services procurements. This information would first be required in the report submitted to the Governor and the appropriate legislative committees on October 15, 2006.

In addition, SSA 1 would require that each of the first three annual contractual services reports submitted by DOA following the general effective date of the act also include a list of the agencies that have completed training required for the preparation of the cost-benefit analyses required under the rules promulgated by DOA.

Additional Information in Fiscal Estimates on Bills

SSA 1 would require state agencies to include in the fiscal estimates prepared for pending legislation an indication of whether any increased costs incurred by the state under that pending legislation could be mitigated through the use of contractual services let in accordance with competitive procedures. This provision would first apply to fiscal estimates ordered to be prepared on the first day of the sixth month beginning after publication.

Differences between SSA 1 to AB 105 and AB 105, as Passed by the Assembly

While the SSA 1 versions of both AB 105 and SB 56 are identical, SSA 1 to AB 105 differs somewhat from AB 105, as amended, as it was passed by the Assembly.

The principal changes are as follows: (1) SSA 1 newly specifies that both the cost-benefit analyses conducted of proposed contractual services procurements and the review of the continued appropriateness of contractual services procurements would apply only to those procurements involving estimated expenditures of more than \$25,000; (2) the components of a cost-benefit analysis would also include a comparison of the "technical expertise" of the services performed by state employees compared to the "technical expertise" of the contractor; and (3) a parallel rule-making procedure would be established for DOT engineering services procurements relating to requiring cost-benefit analyses of proposed engineering services contractual procurements and the periodic review of the continued appropriateness of such procurements involving estimated expenditures of more than \$25,000. Under the bill, as passed by the Assembly, DOT would generally have been made subject to all of DOA's contractual services procurement procedural requirements under s. 16.705 of the statutes. Currently, DOT engineering services procurements are exempt from this provision.

FISCAL EFFECT

SSA 1 to AB 105 and SSA 1 to SB 56 do not appropriate any funding or authorize any additional positions.

However, DOA estimated that there would be an additional workload impact under the proposed legislation. DOA indicates that 279 contractual services contracts valued in excess of \$25,000 were issued in 2003-04. The Department assumed that it would take approximately eight hours of staff time to prepare a cost-benefit analysis of the average contract, resulting in additional workload of approximately 2,232 staff hours annually, or the equivalent of 1.0 FTE position. The Department further estimated that 0.25 FTE position would be required for the ongoing training of agency staff in the preparation of cost-benefit analyses training and that an additional 0.25 FTE position would be required in connection with the workload associated with reviewing an estimated 1,000 annual fiscal estimates to determine whether any costs under the proposed legislation could be mitigated through the use of contractual services. The Department estimated that the annual ongoing costs for salaries and fringe benefits associated with 1.5 FTE positions, if authorized and funded, would be \$93,600 annually.

One-time costs of \$45,000 were also estimated due to the following: (1) 500 hours related to the development of rules for the uniform cost-benefit analysis; and (2) 1,000 hours related to the initial training of agency staff in the conduct of the cost-benefit analyses.

The provisions of SSA 1 to AB 105 and SSA 1 to SB 56 would not appear to materially change the Department's workload estimates developed for the original bills.

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