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FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/15
 SPONSOR Rue/Garcia Richard LAST UPDATED 03/04/15 HB _____
 SHORT TITLE Sunshine Portal State Contract Info SB 537/aPAC
 ANALYST Boerner

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY15 | FY16 | FY17 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|-----------------------------------|---------|---------|--------|-------------------|---------------------------|------------------|
| Implementation Costs | \$150.0 | \$200.0 | \$0.0 | \$350.0 | Nonrecurring | General Fund/OSF |
| Operations and Maintenance | | | \$20.0 | \$60.0 | Recurring | General Fund/OSF |
| Total | \$150.0 | \$200.0 | \$20.0 | \$410.0 | | |

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 240 which amends the Sunshine Portal Act to include additional functionality regarding information related to the Workforce Solutions Department.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Information Technology (DoIT)
 Office of the State Auditor (OSA)

SUMMARY

Synopsis of Senate Public Affairs Amendment:

The SPAC amendment reverses previously deleted language describing the type of contract information to be included on Portal, namely the recipient of the contract, the purpose of the contract, and the amounts expended. A second change pushes out the implementation date for the bill's requirements from January 1, 2016 to January 1, 2017.

Synopsis of Original Bill

Senate Bill 537 amends the Sunshine Portal Act regarding information required for state contracts. The bill adds language stating that no later than January 1, 2016, the information shall include:

- the name of the recipient of the contract;
- the purpose of the contract;
- the amounts expended on the contract;
- a copy of or an internet web site link to a copy of the contract document, including amendments; and
- a copy of or an internet web site link to a copy of a resident certificate issued pursuant to Section 13-1-22 NMSA1978 (Resident business, resident veteran business, resident contractor and resident veteran contractor certification) and used in the award of a contract;

FISCAL IMPLICATIONS

DoIT notes the fiscal impacts above are estimates based on DoIT's experience in implementing currently mandated Portal functionality. Additionally, estimates are based on a number of assumptions discussed below. Finally, there will likely be an increase in recurring costs associated with the operation of the Portal, largely based on storage and bandwidth utilization (DoIT states a very rough estimate of \$10 thousand to \$20 thousand is reasonable).

As discussed in more detail below, the fiscal analysis provided by DoIT assumes implementation of this legislation would likely be achieved by providing a secure mechanism for agencies to upload contract documents directly to the Portal.

There are also indirect fiscal impacts that are not quantified; there will likely need to be additional scanning equipment and licensing procured by each entity that issues contracts (see "Technical Issues" below).

SIGNIFICANT ISSUES

OSA notes that its office is required to thoroughly examine and audit the financial affairs of governmental entities that receive public funds and investigates allegations of fraud, waste and abuse throughout the state. To the extent that SB 537 enhances disclosure requirements with regard to state contracts, the legislation would provide a greater degree of transparency that may be helpful during OSA investigations. In particular, this type of information may be useful in examining allegations of procurement code violations.

DoIT argues that with the advent of the Sunshine Portal, transparency and open government in the state were greatly enhanced. A key feature of the Portal is the inclusion of all purchases made by the state. Currently, procuring agency, vendor information, purchase encumbrance, and expenditure information are all available. The Portal currently meets all statutory requirements for including "contract" data largely through the posting of information from purchase orders.

A logical next step as prescribed by this legislation is the inclusion of the accompanying documents, such as the contractual agreements themselves rather than limited information about the contracts. When the Portal was first established, purchase orders (PO) were identified as an ideal way to provide contract expenditure information. For example, PO's contained every required field required by statute. Secondly, every PO is centralized by the state's SHARE system. As such, providing regular updates to the Portal did not require a substantial overhaul to the state's business process to achieve the functionality currently available on the Portal.

DoIT notes regarding providing contract documents themselves, the situation is much different. There is not a single location that every contractual agreement in the state transits, even in the case of final signature. For example, consider that professional-service contracts are routed through the Contract Review Bureau in DFA, while general-service contracts are routed through the state Purchasing Division at GSD. Additionally, several agencies and types of contracts are exempted from having to go through either DFA or GSD before finalizing a contract. As a result, most agencies have developed custom solutions for routing, tracking, scanning, and storing contract documents.

For these reasons, the governance challenges associated with this legislation are more significant than the technological challenges. A holistic evaluation of the contract processes across state agencies (and branches) that would culminate in a uniform manner from which these documents could be collected for posting into the Portal is beyond the scope of this legislation. As such, there are two potential solutions:

- Requiring each agency to maintain online copies of any contract documents executed therein, with links to those documents maintained in the Portal; or
- Providing a secure mechanism for these agencies to upload these contract documents directly to the Portal.

The second option is seen as more desirable from the standpoint of process standardization, as well as from a technology perspective (the first option would lead to the implementation of a number of duplicative and redundant document management solutions).

The analysis that is presented in the subsequent sections follows from this background, and assumes the second option as the most viable path.

PERFORMANCE IMPLICATIONS

DoIT notes the prescribed date of 1 January 2016 is not realistic given the need to implement this system on a statewide scale, particularly given the governance challenges that need to be overcome across all agencies and branches (see “Amendments” below). Also, it is noted that DoIT will be devoting substantial resources to the implementation of the One-Stop Business Portal, pending updates to the Sunshine Portal, and the SHARE upgrade in the same timeframe. Given that almost the entirety of DoIT’s budget is based on enterprise revenue, these resources will be stretched thin.

ADMINISTRATIVE IMPLICATIONS

DoIT notes that requiring agencies to upload contractual documents (and any subsequent amendments), is an additional step in the contract process both at the agencies themselves, and particularly at the “control agencies” that oversee the contracting process. It is noted, however, that the process may not require policing, as the public will be able to quickly determine if a contract document that accompanies a purchase order is not uploaded.

DoIT notes also that providing contract documents in the Portal will likely reduce the number of Inspection of Public Records Act (IPRA) requests statewide.

TECHNICAL ISSUES

It is assumed that a key feature of including contract documentation will be the ability for users of the Portal to cross reference purchase/expenditure data with the enabling contract vehicles. As noted above, while all currently required information is available in the case PO information, the same is not true for the additional data that will be required to provide a two-way reference between documents. As such, it will require more of an agency than simply uploading a scan of a contract document to the Portal; it will require that certain other data (so-called metadata) also be entered. Several interface solutions could be implemented; however, it will cost money and require resources within DoIT and agencies (training and support for example).

By requiring agencies to upload scans of executed contract documents, there will necessarily be procurement of additional scanning equipment, software licenses, and intermediary storage solutions across the state enterprise. For many agencies, commodity equipment will be sufficient, but for those agencies that occasionally issue contract documents of over one thousand pages, more industrial equipment will be required.

OTHER SUBSTANTIVE ISSUES

DoIT states there could be some confusion in the case that not all POs require a contract document, or in the case of certain procurements issued against statewide price agreements.

Additionally, some contract documents contain proprietary or confidential information on behalf of the state's vendors that require additional sensitivity and/or processing. These situations are each unique and will require additional legal analysis by the agency. Additionally, just the method of redaction will require either more time of employees or money for licensing a technical solution. Future training requirements in this regard may need to be promulgated by the State Purchasing Director.

Lastly, there may need to be guidance issued on the Portal for purchase orders established before the mandated deadline in this legislation to minimize confusion regarding why contract documents do not appear before a certain issuance date.

ALTERNATIVES

DoIT points out an alternative would be to direct an existing body to examine existing state contract processes in the interim to address issues that could potentially impact the state's ability to meet a mandated timeline for posting contract documents. The Governor's Procurement Reform Task Force could adopt such a tasking.

AMENDMENTS

DoIT recommends an amendment changing the deadline to 1 January 2017.

CEB/aml/bb/je