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STATE OF FLORIDA

REPORT IA 22-503

OFFICE OF INSPECTOR GENERAL

AUDIT REPORT ON THE DEPARTMENT OF FINANCIAL SERVICES CONTRACT PROCUREMENT COMPLIANCE

*Audit of Contract Procurement Compliance by the Division of Administration,
Office of Purchasing and Contractual Services*

A handwritten signature in blue ink, appearing to read "David T. Harper".

David T. Harper, Inspector General
Office of Inspector General
Department of Financial Services

May 19, 2022



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EXECUTIVE SUMMARY

The Department of Financial Services (DFS), Office of Inspector General (OIG) conducted a compliance audit of the contract procurement process within the Division of Administration (Division), Office of Purchasing and Contractual Services (OPCS). The audit focused on selected contracts and associated internal controls that the DFS had designed and implemented to ensure its contracts were procured per applicable laws, rules, and DFS policies and procedures. Additionally, the audit included a review of the DFS' contract data on the Florida Accountability Contract Tracking System (FACTS) for its alignment with applicable state laws and any possible trends in vendor preference as provided in section 287.136, Florida Statutes.

The audit revealed opportunities for Division leadership to improve the FACTS data entry and the documentation of no conflict of interest attestation for all required employees, as implemented through the no conflict of interest form.¹

The OIG recommends that Division leadership enhance internal controls to ensure that contract data and documents are recorded in FACTS within the statutory 30-day deadline. Additionally, the OIG recommends that leadership ensure the complete documentation of the attestation of no conflict of interest for all employees taking part in the procurement and contracting process.

¹ DFS-C3-702, Internal Contract Route Slip. DFS used the route slip workbook to document the contract review and approval process for all written agreements for all dollar amounts and contracting entities. The route slip workbook contains an Attestation of No Conflict of Interest form to document that there is no conflict of interest between an employee's private interest and the performance of his or her procurement involvement of contract management duties. This form is available for download on the DFS intranet: <http://dfsintranet/Administration/generalservices/Lists/Contract%20Management/AllItems.aspx>.

INTRODUCTION AND BACKGROUND

Introduction

The OIG conducted a compliance audit of the DFS' contract procurement process within the OPCS. This audit was based on the OIG's fiscal year (FY) 2021-2022 Annual Audit Work Plan and satisfied the requirements of Florida House Bill 1079, passed during the 2020-2021 legislative session. House Bill 1079 amended section 287.136, Florida Statutes (F.S.) requiring a periodic risk-based compliance audit of all contracts executed by a state agency to identify any trends in vendor preferences.

Background

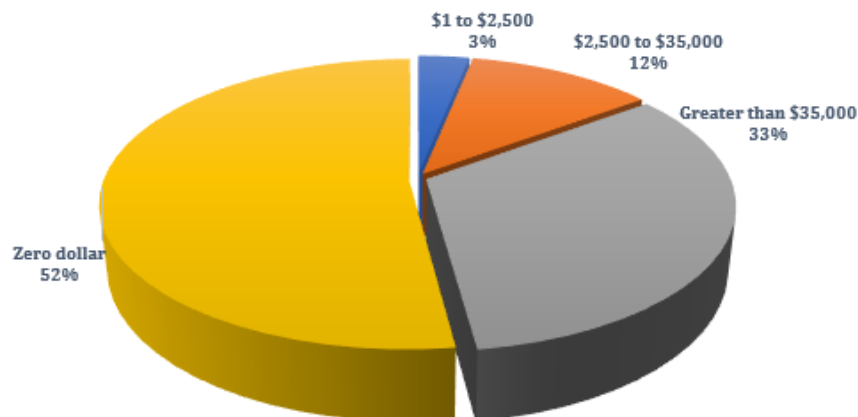
State law² requires "fair and open competition" in the public procurement of commodities and services to "reduce the appearance and opportunity for favoritism and inspire public confidence that contracts are awarded equitably and economically." To enable transparency and public scrutiny of contracts, state law³ further provides that "the Chief Financial Officer shall establish and maintain a secure contract tracking system available for viewing and downloading by the public through a secure website." DFS created the FACTS to provide the capability for state agencies to report their contracts to the public in one central location. Per section 215.985(14)(a), F.S., all agencies shall record their contract information in FACTS within 30 calendar days of executing the contracts.

The DFS Division of Accounting and Auditing is responsible for administering FACTS at the state level. The OPCS within the Division of Administration is the central point of contact for all purchasing, procurement, and contracting-related needs at the department level.

Between July 1, 2018, and June 30, 2021, DFS procured commodities and services by executing 94 contracts totaling \$233,271,822, as shown in Figure 1.

Figure 1

Distribution of Contracts by Dollar Value per Contract



Source: FACTS data, extracted on November 15, 2021

² Section 287.001, F.S.

³ Section 215.985(14), F.S.

Three contracts were valued at less than \$2,500 each.⁴ There were 11 contracts valued between \$2,500 and \$35,000 for the review period. In this category, contracts were for goods and services such as meeting facility rentals, labor services, and investment-related data services.⁵ Forty-nine contracts, each with zero-dollar value, were for services provided at a fixed-price or through cost-reimbursement where the total amount cannot be determined until the service is rendered or at no cost. Thirty-one contracts were for those valued above \$35,000 individually where a competitive solicitation for vendor selection is required unless excluded by statute.⁶ For the 31 contracts, eight were competitively procured leases⁷ of privately-owned space; five were procured through formal competitive solicitation under Chapter 287, F.S. The remaining 18 contracts met one or more of the statutory criteria for exclusion from the competition. Specifically:

- Three contracts for investment-related services were exempted from provisions of Chapter 287, F.S. per section 17.57(2), F.S.
- One contract was exempted from the competition as state law prescribes with whom the DFS must contract.⁸
- One contract was exempted because it was an inter-agency lease of space.⁹
- Four contracts for legal-, health-, and education-related services were exempted from competitive procurement.¹⁰
- Eight contracts for single-source procurement.¹¹
- One contract from an alternate contract source that was previously competitively procured by another state agency.¹²

From FY 2018 to FY 2021, the total dollar amount of contract procurements was \$233,271,822, of which 87% was for information technology (IT) consultation services (see Figure 2).

⁴ Per rule 60A-1.002(2), Florida Administrative Code (F.A.C.), purchases below \$2,500 “shall be carried out using good purchasing practices. Such practices include but are not limited to the receipt of written quotation or written records of telephone quotations.”

⁵ Rule 60A-1.002(3), F.A.C., specifies purchases within this range “may be made using written quotations, written records of telephone quotation, or informal bid to be opened upon receipt, whenever practical.”

⁶ Section 287.057(1), F. S.

⁷ Section 255.249, F.S., lays out specific requirements for leases of privately-owned space.

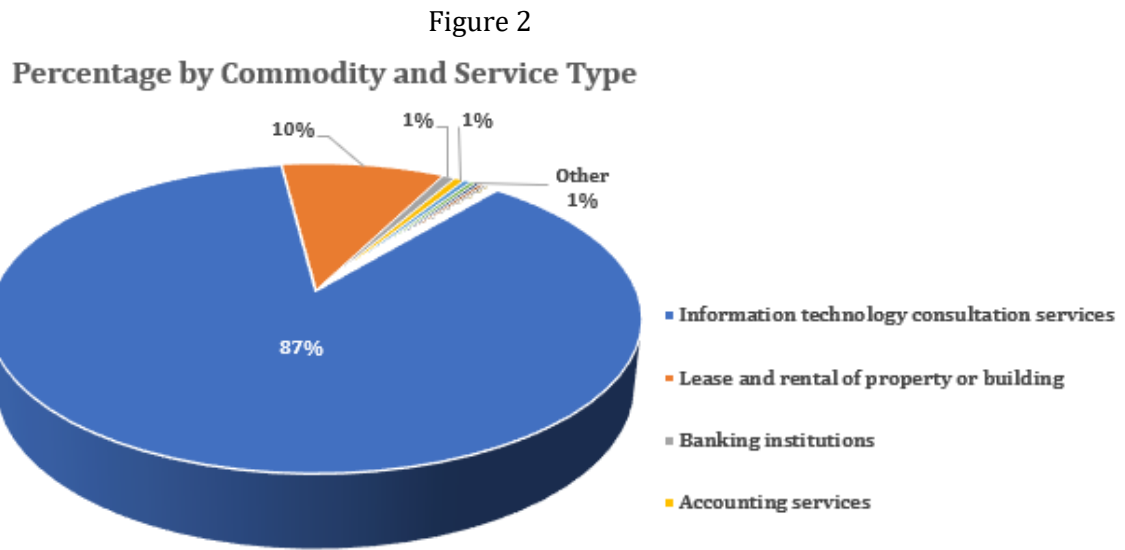
⁸ Section 287.057(10), F.S.

⁹ Section 287.057(3)(e)12, F.S.

¹⁰ Section 287.057(3)(e)4, 5 and 10, F.S.

¹¹ Section 287.057(3)(c), F.S., for purchase price exceeding the threshold amount of \$35,000, “commodities or contractual services available only from a single source may be excepted from the competitive solicitation requirements. If an agency believes that commodities or contractual services are available only from a single source, the agency shall electronically post a description of the commodities or contractual services sought for at least 15 business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. If it is determined in writing by the agency, after reviewing any information received from prospective vendors that the commodities or contractual services are available only from a single source, the agency shall provide notice of its intended decision to enter a single-source purchase contract in the manner specified in s. 120.57(3).”

¹² Section 287.042(16), F.S.

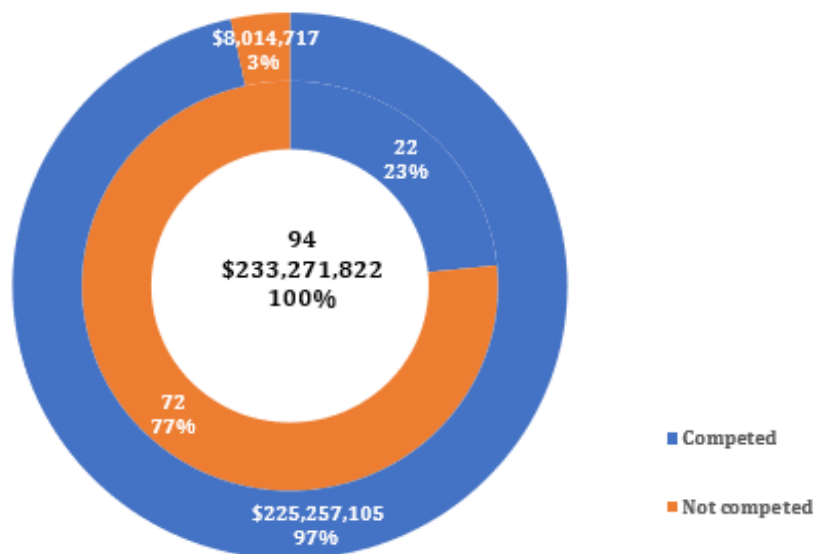


Source: FACTS data, extracted on November 15, 2021

In the three years, 10 vendors had been awarded contracts that accounted for nearly 98% of the total amount of \$233,271,822. The top two vendors were for the procurement of IT consultation services, where the amount accounted for 87% of the total, as shown in Figure 2 above.

DFS procured 22 of 94 contracts through competition during the three years from FY 2018 through FY 2021. The dollar amount of those 22 contracts comprised 97% of the total amount (see Figure 3). This audit primarily focused on the contracts that required competitive solicitation.

Figure 3
Dollar Amounts and Percentage of Contracts Procured Through Competition



Source: FACTS data, extracted on November 15, 2021

RESULTS OF REVIEW

As required by section 287.136, F.S., the OIG found no trends in vendor preference by DFS. The OIG concluded that DFS procured its commodities and contractual services in conformity with the requirements of the procurement laws and rules. DFS' internal controls were generally adequate to ensure compliance except as disclosed below.

Issue 1: Eight contracts were recorded in FACTS after the required 30-day deadline.

State law¹³ provides that within 30 calendar days after executing a contract, each state entity shall upload into FACTS certain contract information and electronic copies of the contract documents.

The OIG's review of 94 DFS contracts executed within the period July 1, 2018, through June 30, 2021, disclosed that eight contracts were recorded in FACTS after the 30-day deadline had expired. The delays were mainly caused by divisions or vendors responding late to the OPCS' requests regarding contract approvals, redactions, or registrations in the state purchasing systems.

Without effective controls to ensure contracts are timely recorded in FACTS, DFS may not be able to meet the statutory deadline and therefore, is unable to make the contract data and documents timely available for viewing and downloading by the public.

Recommendation

The OIG recommends that Division leadership enhance internal controls to ensure contract data and documents are recorded in FACTS within the 30-day deadline.

Issue 2: DFS did not consistently document that employees participating in the procurement or the contract review and approval process attested in writing that they were independent of, and had no conflict of interest in, the entities selected.

State law¹⁴ establishes that "it is essential to the proper conduct and operation of government that public officials be independent and impartial, and that the public office not be used for private gain other than the remuneration provided by law." Section 112.313(7)(a), F.S. specifies that elected officials and government employees "shall not have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee." DFS policies and

¹³ Section 215.985(14)(a), F.S., specifies each state entity shall post on FACTS within 30 calendar days after executing a contract 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, the applicable contract unit prices and deliverables, the total compensation to be paid or received under the contract, all payments made to the contractor to date, applicable contract performance measures, justification for goods or services not procured through competition, and electronic copies of the contract and procurement documents.

¹⁴ Section 112.311(1), F.S.

procedures¹⁵ provide that “DFS employees shall not maintain any contractual relationship that will create a conflict of interest between the employee’s private interests and the performance of his or her public duties.” The OPCS has implemented an Attestation of No Conflict of Interest form requiring that “for formal solicitations, all individuals participating in any way in the procurement or contract process attest in writing that they are independent of and have no conflict of interest in the entities selected.”¹⁶

The OIG reviewed DFS policies and procedures as well as documentation related to the procurement of a selection of contracts to determine whether the no conflict of interest requirements had been followed. The audit procedures revealed that DFS did not consistently document that individuals participating in the procurement or contract review and approval process were independent of, and had no conflict of interest in, the entities selected. Specifically, the audit tests disclosed that:

- For one contract procured through Request for Proposal (RFP), a formal solicitation process, DFS did not document the attestation of no conflict of interest from the Division Director, OPCS Purchasing Agent, Attorney Reviewer in the Office of General Counsel (OGC), Deputy General Counsel, the officer in Finance and Budget, Deputy Chief Financial Officer (DCFO) and Chief of Staff (COS) who participated in the procurement or contract review and approval process.
- For one amendment of a contract procured through Invitation to Negotiate (ITN), a formal solicitation process, DFS did not document the attestation of no conflict of interest from an Attorney Reviewer in OGC who participated in the contract review and approval process.

Absent effective controls to ensure that all required individuals complete the Attestation of No Conflict of Interest form, the risk is increased that DFS is unable to ensure the proper conduct and operation of government.

Recommendation

The OIG recommends that Division leadership strengthen the internal controls to ensure all individuals participating in the procurement or contract review and approval process complete the Attestation of No Conflict of Interest forms.

PURPOSE, SCOPE, OBJECTIVES, AND METHODOLOGY

The purpose of this audit was to evaluate the contracts procured and executed by DFS during FY 2018 through FY 2021 for compliance with Chapter 287, F.S., and other applicable procurement statutes. Per section 287.136(2), F.S., the audit included an evaluation of the FACTS data and identification of any trends in vendor preferences.

¹⁵ DFS Administrative Policies and Procedures (AP&P) 1-15, DFS Code of Ethics, effective October 2009, and DFS Contract Management Life Cycle and Procurement Guide, last modified September 2018.

¹⁶ The Attestation of No Conflict of Interest form is available on the DFS intranet: <http://dfs.intranet/Administration/generalservices/Lists/Contract%20Management/AllItems.aspx>. The form is also included in the DFS-C3-702, Internal Contract Route Slip, which is used to document the contract review and approval process for all written agreements for all dollar amounts and contracting entities.

The scope of the audit focused on the DFS' standard two-party agreements, three or more party agreements, revenue agreements, and master agreements¹⁷ for the period July 1, 2018, through June 30, 2021. The audit objectives were to:

- Determine whether DFS contracts were procured in compliance with section 287.057, F.S. and other applicable laws and rules.
- Determine whether contract data was appropriately recorded in FACTS according to applicable laws and rules, for selected contracts.
- Review the overall DFS contract data to identify any trends in vendor preference.

This compliance audit conforms with The International Professional Practices Framework (IPPF), published by The Institute of Internal Auditors. The IPPF requires the OIG to consider risk when planning to perform the audit and obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions that align with audit objectives. Additionally, the IPPF requires the auditors to meet objectivity requirements and possess the necessary collective knowledge, skills, and experience. The OIG believes that the audit evidence obtained provides a reasonable basis for the OIG findings and conclusions.

To accomplish audit objectives, the OIG:

- Reviewed applicable rules, laws, and internal policies and procedures.
- Conducted interviews with appropriate DFS staff and managers regarding the processes and controls implemented in the procurement and contracting process.
- Reviewed contract data recorded in the FACTS online application.
- Reviewed contract files, including the procurement documentation, for a selected sample of DFS contracts procured under Chapter 287, F.S.

MANAGEMENT'S RESPONSE

The Division of Administration's response is provided as an attachment. The OIG agrees with the response.

¹⁷ FACTS specifies definitions for the following contract types. Standard Two-Party Agreements by Statute are agreements where two parties agree on standard terms and conditions pursuant to applicable laws. Three or More Party Agreements refer to contracts where more than two parties agree on standard terms and services pursuant to applicable laws. Revenue Agreements are contracts where revenue is received for goods and services provided on behalf of governmental entities. An example of this would be contracted concessions or food services, where the contractor manages the delivery of services and charges user fees for them and then submits commissions back to the agency. Master Agreements are agreements where the pricing is agreed upon at the point of execution. However, services are not authorized to begin until a separate contractual document is issued (i.e., task or work orders). Examples of this would be surveyor contracts issued by the Department of Environmental Protection or engineering and surveying contracts issued by the Department of Transportation. This information is available on the FACTS website: <https://facts.fldfs.com/Charts/ContractTypeGlossary.aspx>.

ACKNOWLEDGEMENTS

The OIG would like to thank the Division of Administration leadership and staff for their input, cooperation, and assistance throughout the performance of this engagement.

The Office of Inspector General performs audits, consulting activities, and reviews of the Department of Financial Services' programs, activities, and functions to promote accountability, integrity, and efficiency in state government.

This engagement was conducted in conformance with The *International Standards for the Professional Practice of Internal Auditing*, published by The Institute of Internal Auditors, Inc., pursuant to Section 20.055, Florida Statutes, and *Principles and Standards for Offices of Inspectors General*, published by the Association of Inspectors General. This engagement was conducted by Tingting Fan, CISA, Senior Auditor, under the supervision of Debbie Clark, CPA, CIA, CISA, CIGA, CGAP, Director of Audit.

Please address inquiries regarding this report to the DFS Office of Inspector General at 850-413-3112.

DISTRIBUTION LIST

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Sara Hall, Inspector General, Department of Management Services

ATTACHMENT

RESPONSE TO PRELIMINARY AND TENTATIVE AUDIT FINDINGS

Issue 1: Eight contracts were recorded in FACTS after the required 30-day deadline.

The audit disclosed that eight DFS contracts were recorded in FACTS after the 30-day deadline had expired. The delays were mainly caused by divisions or vendors responding late to the OPCS requests regarding contract approvals, redactions, or registrations in the state purchasing systems.

Recommendation: The OIG recommends that Division leadership enhance internal controls to ensure contract data and documents are recorded in FACTS within the 30-day deadline.

Response: The Division's Office of Purchasing and Contractual Services will enhance internal controls and strengthen existing processes in this area by increasing the frequency of email alerts and reminders to Department staff and/or vendors, as appropriate.

Expected Completion Date for Corrective Action: July 1, 2022

Issue 2: DFS did not consistently document that employees participating in the procurement or the contract review and approval process attested in writing that they were independent of, and had no conflict of interest in, the entities selected.

The audit disclosed that DFS did not consistently document that individuals participating in the procurement or contract process were independent of, and had no conflict of interest in, the entities selected. Specifically, the audit tests disclosed that:

- For one contract procured through Request for Proposal (RFP), a formal solicitation process, DFS did not document the attestation of no conflict of interest from the Division Director, OPCS Purchasing Agent, Attorney Reviewer in the Office of General Counsel (OGC), Deputy General Counsel, the officer in Finance and Budget, Deputy Chief Financial Officer (DCFO) and Chief of Staff (COS) who participated in the procurement or contract review and approval process.
- For one amendment of a contract procured through Invitation to Negotiate (ITN), a formal solicitation process, DFS did not document the attestation of no conflict of interest from an Attorney Reviewer in OGC who participated in the contract review and approval process.

Recommendation: The OIG recommends that Division leadership strengthen the internal controls to ensure all individuals participating in the procurement or contract review and approval process complete the Attestation of No Conflict of Interest forms.

Response: The Division's Office of Purchasing and Contractual Services (OPCS) has already strengthened its internal controls in this area by implementing an electronic routing system (DocuSign), for the routing of contract/procurement documents. DocuSign is beneficial as a routing mechanism, as the OPCS has control over the required elements that each authorizing party must sign, which removes the possibility of error at the customer level.

Expected Completion Date for Corrective Action: Completed April 21, 2022