

House Bill No. 1977

An act relating to state procurement; amending s. 61.1826, F.S.; conforming a cross reference to changes made by this act; amending s. 120.57, F.S.; specifying the manner in which notice of decisions and intended decisions concerning procurement are to be provided; defining the term “electronically post”; providing procedures applicable to a protest of a contract solicitation or award; specifying the type of notice that starts the time for filing a notice of protest; providing that state holidays are not included in the time for filing a notice of protest; specifying the types of submissions that may be considered in a protest; clarifying and conforming provisions; amending ss. 283.32, 283.33, 283.34, and 283.35, F.S.; conforming the sections to changes made by the act; conforming a cross reference; amending s. 287.001, F.S.; clarifying legislative intent with respect to state procurement; amending s. 287.012, F.S.; revising definitions; defining additional terms; amending s. 287.017, F.S.; eliminating the requirement for annual adjustments of purchasing categories; amending 287.022, F.S.; conforming a cross reference to changes made by the act; amending ss. 287.032 and 287.042, F.S.; revising the purpose, duties, and functions of the Department of Management Services; clarifying and conforming provisions; providing procedures for the listing of commodities and services offered by certain nonprofit agencies organized pursuant to ch. 413, F.S.; providing that eligible users may purchase from state term contracts; providing that the protest bond amount shall be a specified percentage of the estimated contract amount; providing that official bank checks may be accepted in lieu of a bond; requiring the department to develop procedures for issuing solicitations, requests for information, and requests for quotes; prescribing the manner in which solicitations are to be noticed; providing an exception for the 10-day notice requirement for solicitations; requiring the department to develop procedures for electronic posting; requiring the department to develop methods for conducting question-and-answer sessions regarding solicitations; providing that the Office of Supplier Diversity may consult with the department regarding solicitation distribution procedures; providing that rules may be distributed to agencies via an electronic medium; requiring written documentation of certain agency decisions; eliminating the department’s responsibilities for the management of state surplus property; amending s. 287.045, F.S., relating to the procurement of products and materials with recycled content; clarifying and conforming provisions; amending s. 287.056, F.S.; specifying entities that are required or permitted to purchase from purchasing agreements and state term contracts; providing for use of a request for quote to obtain pricing or services information; amending s. 287.057, F.S.; clarifying and conforming provisions; revising requirements for solicitations; providing for question-and-answer sessions regarding solicitations; providing requirements for emergency procurements; providing that agency purchases from certain existing contracts are exempt from competitive-

solicitation requirements; providing requirements for single-source procurement; conforming cross references to changes made by the act; providing requirements for contract renewal; clarifying that exceptional purchase contracts may not be renewed; providing requirements for persons appointed to evaluate proposals and replies and to negotiate contracts; prohibiting certain persons or entities from receiving contracts; specifying the entities responsible for developing an on-line procurement system; amending s. 287.0572, F.S.; clarifying and conforming provisions; requiring that the cost of all state contracts be evaluated by present-value methodology; amending s. 287.058, F.S.; revising provisions relating to renewal which must be contained in a contract; clarifying that exceptional purchase contracts may not be renewed; conforming cross references to changes made by the act; amending s. 287.059, F.S.; clarifying and conforming provisions; amending s. 287.0595, F.S.; revising requirements for the Department of Environmental Protection with respect to contracts for pollution response; clarifying and conforming provisions; repealing s. 287.073, F.S., relating to the procurement of information technology resources; amending s. 287.0731, F.S.; revising requirements for a team for contract negotiations; amending ss. 287.0822, 287.084, 287.087, 287.093, and 287.09451, F.S., relating to procurement of beef and pork, preference for state businesses and businesses with drug-free-workplace programs, minority business enterprises, and the Office of Supplier Diversity; clarifying and conforming provisions to changes made by the act; amending s. 287.095, F.S.; providing requirements for certain products produced by a certain corporation; providing an exception; repealing s. 287.121, F.S., relating to assistance by the Department of Legal Affairs; amending ss. 287.133 and 287.134, F.S., relating to prohibitions on the transaction of business with certain entities convicted of public-entity crimes and entities that have engaged in discrimination; clarifying and conforming provisions; amending s. 287.1345, F.S., relating to the surcharge on users of state term contracts; authorizing the Department of Management Services to collect surcharges from eligible users; amending s. 373.610, F.S.; clarifying that the provision applies to contractors; amending s. 373.611, F.S.; providing that water management districts may contract to limit damages recoverable from certain entities during procurement; amending ss. 394.457, 394.47865, 402.73, 408.045, 445.024 and 455.2177, F.S., relating to the power to contract by the Department of Children and Family Services, the Agency for Health Care Administration, the Regional Work Force Boards, and the Department of Business and Professional Regulation and their power to privatize and procure; conforming cross references; clarifying and conforming provisions; amending s. 413.033, F.S.; revising a definition; amending s. 413.035, F.S.; providing content requirements for certain products; amending s. 413.036, F.S.; providing that ch. 287, F.S., does not apply to purchases made from certain nonprofit agencies; specifying provisions required to be contained in certain state procurement contracts; limiting purchases of products or services by state agencies from sources other than the nonprofit agency for the blind or

severely handicapped under certain circumstances; amending s. 413.037, F.S., to conform; repealing s. 413.034, F.S., relating to the Commission for Purchase from the Blind or Other Severely Handicapped; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (e) of subsection (1) of section 61.1826, Florida Statutes, is amended to read:

61.1826 Procurement of services for State Disbursement Unit and the non-Title IV-D component of the State Case Registry; contracts and cooperative agreements; penalties; withholding payment.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that the clerks of court play a vital role, as essential participants in the establishment, modification, collection, and enforcement of child support, in securing the health, safety, and welfare of the children of this state. The Legislature further finds and declares that:

(e) The potential loss of substantial federal funds poses a direct and immediate threat to the health, safety, and welfare of the children and citizens of the state and constitutes an emergency for purposes of s. 287.057(5)(a) ~~s. 287.057(4)(a)~~.

Section 2. Subsection (3) of section 120.57, Florida Statutes, is amended to read:

120.57 Additional procedures for particular cases.—

(3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO CONTRACT SOLICITATION BIDDING OR AWARD.—Agencies subject to this chapter shall ~~use~~ utilize the uniform rules of procedure, which provide procedures for the resolution of protests arising from the contract solicitation or award bidding process. Such rules shall at least provide that:

(a) The agency shall provide notice of a ~~its~~ decision or intended decision concerning a ~~bid solicitation, or a contract award, or exceptional purchase by electronic posting.~~ This notice shall contain the following statement: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes." as follows:

1.—~~For a bid solicitation, notice of a decision or intended decision shall be given by United States mail or by hand delivery.~~

2.—~~For any decision of the Department of Management Services concerning a request by an agency for approval of an exceptional purchase under part I of chapter 287 and the rules of the Department of Management Services, notice of a decision or intended decision shall be given by posting such notice in the office of the Department of Management Services.~~

3.—~~For any other agency decision, notice of a decision or intended decision shall be given either by posting the bid tabulation at the location where the~~

bids were opened or by certified United States mail or other express delivery service, return receipt requested.

The notice required by this paragraph shall contain the following statement: ~~“Failure to file a protest within the time prescribed in s. 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes.”~~

(b) Any person who is adversely affected by the agency decision or intended decision shall file with the agency a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision ~~bid tabulation or after receipt of the notice of the agency decision or intended decision~~ and shall file a formal written protest within 10 days after ~~filing the notice of protest~~. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract an invitation to bid or in a request for proposals, the notice of protest shall be filed in writing within 72 hours after the posting receipt of notice of the solicitation, project plans and specifications in an invitation to bid or request for proposals, and ~~The formal written protest shall be filed within 10 days after the date the notice of protest is filed. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this chapter. The formal written protest shall state with particularity the facts and law upon which the protest is based. Saturdays, Sundays, and state legal holidays shall be excluded in the computation of the 72-hour time periods provided by this paragraph.~~

(c) Upon receipt of the formal written protest ~~that which~~ that has been timely filed, the agency shall stop the ~~bid solicitation process or the contract award process~~ until the subject of the protest is resolved by final agency action, unless the agency head sets forth in writing particular facts and circumstances which require the continuance of the ~~bid solicitation process or the contract award process~~ without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(d)1. The agency shall provide an opportunity to resolve the protest by mutual agreement between the parties within 7 days, excluding Saturdays, Sundays, and state legal holidays, after receipt of a formal written protest.

2. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and state legal holidays, after receipt of the formal written protest, and if there is no disputed issue of material fact, an informal proceeding shall be conducted pursuant to subsection (2) and applicable agency rules before a person whose qualifications have been prescribed by rules of the agency.

3. If the subject of a protest is not resolved by mutual agreement within 7 days, excluding Saturdays, Sundays, and state legal holidays, after receipt of the formal written protest, and if there is a disputed issue of material fact, the agency shall refer the protest to the division for proceedings under subsection (1).

(e) Upon receipt of a formal written protest referred pursuant to this subsection, the director of the division shall expedite the hearing and assign an administrative law judge who shall commence a hearing within 30 days after the receipt of the formal written protest by the division and enter a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the administrative law judge, whichever is later. Each party shall be allowed 10 days in which to submit written exceptions to the recommended order. A final order shall be entered by the agency within 30 days of the entry of a recommended order. The provisions of this paragraph may be waived upon stipulation by all parties.

(f) In a protest to an invitation to bid or request for proposals procurement competitive-procurement protest, no submissions made after the bid or proposal opening which amend or supplement amending or supplementing the bid or proposal shall be considered. In a protest to an invitation to negotiate procurement, no submissions made after the agency announces its intent to award a contract, reject all replies, or withdraw the solicitation which amend or supplement the reply shall be considered. Unless otherwise provided by statute, the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the solicitation bid or proposal specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious. In any bid-protest proceeding contesting an intended agency action to reject all bids, proposals, or replies, the standard of review by an administrative law judge shall be whether the agency's intended action is illegal, arbitrary, dishonest, or fraudulent.

(g) For purposes of this subsection, the definitions in s. 287.012 apply.

Section 3. Section 283.32, Florida Statutes, is amended to read:

283.32 Recycled paper to be used by each agency; printing bids certifying use of recycled paper; percentage preference in awarding contracts.—

(1) Each agency shall purchase, when economical, recycled paper if and when recycled paper can be obtained that is of adequate quality for the purposes of the agency.

(2) Each agency shall require that a vendor that person who submits a bid for a contract for printing and that who wishes to be considered for the price preference described in s. 287.045 to shall certify in writing the percentage of recycled content of the material used for such printing. Such vendor person may certify that the material contains no recycled content.

(3) Upon evaluation of bids for each printing contract, the agency shall identify the lowest responsive bid bidder and any other responsive bids in which it has been bidders who have certified that the materials used in printing contain at least the minimum percentage of recycled content that is set forth by the department. In awarding a contract for printing, the

agency may allow up to a 10-percent price preference, as provided in s. 287.045, to a responsible and responsive vendor that bidder who has certified that the materials used in printing contain at least the minimum percentage of recycled content established by the department. If no vendors bidders offer materials for printing that contain the minimum prescribed recycled content, the contract shall be awarded to the responsible vendor that submits the lowest responsive bid ~~qualified bidder~~.

Section 4. Section 283.33, Florida Statutes, is amended to read:

283.33 Printing of publications; lowest bidder awards.—

(1) Publications may be printed and prepared in-house, by another agency or the Legislature, or purchased on bid, whichever is more economical and practicable as determined by the agency. An agency may contract for binding separately when more economical or practicable, whether or not the remainder of the printing is done in-house. A vendor bidder may subcontract for binding and still be considered a responsible vendor ~~qualified bidder or offeror~~, notwithstanding s. 287.012(24) ~~s. 287.012(13)~~.

(2) All printing of publications that cost in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO and purchased by agencies shall be let upon contract to the vendor that submits the lowest responsive bid and that will bidder, ~~who shall~~ furnish all materials used in printing. Such contract shall specify a definite term and a definite number of copies.

(3) Except as otherwise provided for in this part, a contract for printing of a publication shall be subject to, when applicable, the definitions in s. 287.012, and shall be considered a commodity for that purpose.

(4) The provisions of s. 946.515(4) shall not apply to purchases of printing.

Section 5. Section 283.34, Florida Statutes, is amended to read:

283.34 State officers not to have interests in printing contract.—No member of the Legislature or other officer of this state may have an interest, directly or indirectly, in any printing contract as provided for in s. 283.33; however, nothing in this section prohibits a member of the Legislature from receiving such a contract when the member or his or her firm has submitted the lowest responsive bid ~~is the lowest bidder of all bidders submitting competitive bids~~ for the contract.

Section 6. Section 283.35, Florida Statutes, is amended to read:

283.35 Preference given printing within the state.—Every agency shall give preference to vendors bidders located within the state when awarding contracts to have materials printed, whenever such printing can be done at no greater expense than the expense of awarding a contract to a vendor bidder located outside the state and can be done at a level of quality comparable to that obtainable from a vendor bidder located outside the state.

Section 7. Section 287.001, Florida Statutes, is amended to read:

287.001 Legislative intent.—The Legislature recognizes that fair and open competition is a basic tenet of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured. It is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures to be utilized by state agencies in managing and procuring commodities and contractual services; that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained; and that adherence by the agency and the vendor ~~contractor~~ to specific ethical considerations be required.

Section 8. Section 287.012, Florida Statutes, is amended to read:

287.012 Definitions.—As used ~~The following definitions shall apply in this part, the term:~~

(1) “Agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the University and College Boards of Trustees or the state universities and colleges Board of Regents or the State University System.

(2) “Agency head” means, with respect to an agency headed by a collegial body, the executive director or chief administrative officer of the agency.

(3) “Artist” means an individual or group of individuals who profess and practice a demonstrated creative talent and skill in the area of music, dance, drama, folk art, creative writing, painting, sculpture, photography, graphic arts, craft arts, industrial design, costume design, fashion design, motion pictures, television, radio, or tape and sound recording or in any other related field.

(4) “Best value” means the highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design, and workmanship.

~~(5)~~(4) “Commodity” means any of the various supplies, materials, goods, merchandise, food, equipment, information technology, and other personal property, including a mobile home, trailer, or other portable structure with floor space of less than ~~5,000~~ 3,000 square feet, purchased, leased, or otherwise contracted for by the state and its agencies. “Commodity” also includes interest on deferred-payment commodity contracts approved pursuant to s. 287.063 entered into by an agency for the purchase of other commodities. However, commodities purchased for resale are excluded from this definition. Further, a prescribed drug, medical supply, or device required by a licensed health care provider as a part of providing health services involving

examination, diagnosis, treatment, prevention, medical consultation, or administration for clients at the time the service is provided is not considered to be a “commodity.” Printing of publications shall be considered a commodity when let upon contract pursuant to s. 283.33, whether purchased for resale or not.

~~(6)(5)~~ “Competitive sealed bids,” or “competitive sealed proposals,” or “competitive sealed replies” mean the process of receiving refers to the receipt of two or more sealed bids, or proposals, or replies submitted by responsive vendors and qualified bidders or offerors and includes bids, or proposals, or replies transmitted by electronic means in lieu of or in addition to written bids, or proposals, or replies.

~~(7)~~ “Competitive solicitation” or “solicitation” means an invitation to bid, a request for proposals, or an invitation to negotiate.

~~(8)(6)~~ “Contractor” means a person who contracts to sell commodities or contractual services to an agency.

~~(9)(7)~~ “Contractual service” means the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services. “Contractual service” does not include any contract for the furnishing of labor or materials for the construction, renovation, repair, modification, or demolition of any facility, building, portion of building, utility, park, parking lot, or structure or other improvement to real property entered into pursuant to chapter 255 and rules adopted thereunder.

~~(10)(8)~~ “Department” means the Department of Management Services.

~~(11)~~ “Electronic posting” or “electronically post” means the posting of solicitations, agency decisions or intended decisions, or other matters relating to procurement on a centralized Internet website designated by the department for this purpose.

~~(12)~~ “Eligible user” means any person or entity authorized by the department pursuant to rule to purchase from state term contracts or to use the on-line procurement system.

~~(13)(9)~~ “Exceptional purchase” means any purchase of commodities or contractual services excepted by law or rule from the requirements for competitive solicitation or acquisition, including, but not limited to, purchases from a single source; purchases upon receipt of less than two responsive bids, or proposals, or replies; purchases made by an agency, after receiving approval from the department, from a contract procured, pursuant to s. 287.057(1), (2), or (3), by another agency; and purchases made without advertisement in the manner required by s. 287.042(3)(b) without publication of notice in the Florida Administrative Weekly, and exceptions granted

by the department for a purchase of commodities from other than a state term contract vendor.

~~(14)~~(10) “Extension” means an increase in the time allowed for the contract period due to circumstances which, without fault of either party, make performance impracticable or impossible, or which prevent a new contract from being executed, with or without a proportional increase in the total dollar amount, with any increase to be based on the method and rate previously established in the contract.

(15) “Information technology” has the meaning ascribed in s. 282.0041.

~~(16)~~(11) “Invitation to bid” means a written solicitation for competitive sealed bids with the title, date, and hour of the public bid opening designated and specifically defining the commodity, group of commodities, or services for which bids are sought. It includes instructions prescribing all conditions for bidding and shall be distributed to all prospective bidders simultaneously. The invitation to bid is used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required. A written solicitation includes a solicitation that is electronically posted ~~published or transmitted by electronic means.~~

(17) “Invitation to negotiate” means a written solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. The invitation to negotiate is used when the agency determines that negotiations may be necessary for the state to receive the best value. A written solicitation includes a solicitation that is electronically posted.

~~(18)~~(12) “Minority business enterprise” has the same meaning ascribed ~~as that provided~~ in s. 288.703.

(19) “Office” means the Office of Supplier Diversity of the Department of Management Services.

~~(13)~~ “Qualified bidder,” “responsible bidder,” “qualified offeror,” or “responsible offeror” means a person who has the capability in all respects to perform fully the contract requirements and has the integrity and reliability which will assure good faith performance.

~~(20)~~(14) “Renewal” means contracting with the same contractor for an additional contract period after the initial contract period, only if pursuant to contract terms specifically providing for such renewal.

(21) “Request for information” means a written request made by an agency to vendors for information concerning commodities or contractual services. Responses to these requests are not offers and may not be accepted by the agency to form a binding contract.

~~(22)~~(15) “Request for proposals” means a written solicitation for competitive sealed proposals with the title, date, and hour of the public opening

designated. A written solicitation includes a solicitation published or transmitted by electronic means. The request for proposals is used when it is not practicable for the agency to ~~is incapable of specifically define~~ defining the scope of work for which the commodity, group of commodities, or contractual service is required and when the agency is requesting that a responsible vendor ~~qualified offeror~~ propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document. A written solicitation includes a solicitation that is electronically posted. A request for proposals includes, but is not limited to, general information, applicable laws and rules, functional or general specifications, statement of work, proposal instructions, and evaluation criteria. Requests for proposals shall state the relative importance of price and any other evaluation criteria.

(23) “Request for a quote” means an oral or written request for written pricing or services information from a state term contract vendor for commodities or contractual services available on a state term contract from that vendor.

(24) “Responsible vendor” means a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good-faith performance.

(25)(16) “Responsive bid,” or “responsive proposal” or “responsive reply” means a bid, or proposal, or reply submitted by a responsive, and responsible vendor or qualified bidder or offeror which conforms in all material respects to the solicitation invitation to bid or request for proposals.

(26)(17) “Responsive vendor bidder” or “responsive offeror” means a vendor that person who has submitted a bid, or proposal, or reply that which conforms in all material respects to the solicitation invitation to bid or request for proposals.

(27) “State term contract” means a term contract that is competitively procured by the department pursuant to s. 287.057 and that is used by agencies and eligible users pursuant to s. 287.056.

(28)(18) “Term contract” means an indefinite quantity contract wherein a party agrees to furnish commodities or contractual services during a defined prescribed period of time, the expiration of which concludes the contract.

(19) “Office” means the Office of Supplier Diversity of the Department of Management Services.

(20) “Invitation to negotiate” means a written solicitation that calls for responses to select one or more persons or business entities with which to commence negotiations for the procurement of commodities or contractual services.

(21) “Request for a quote” means a solicitation that calls for pricing information for purposes of competitively selecting and procuring commodities and contractual services from qualified or registered vendors.

~~(22) “Information technology” means 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.~~

Section 9. Subsection (2) of section 287.017, Florida Statutes, is amended to read:

287.017 Purchasing categories, threshold amounts; procedures for automatic adjustment by department.—

(2) The department shall adopt rules to ~~annually~~ adjust the amounts provided in subsection (1) based upon the rate of change of a nationally recognized price index. Such rules shall include, but not be limited to, the following:

(a) Designation of the nationally recognized price index or component thereof used to calculate the proper adjustment authorized in this section.

(b) The procedure for rounding results.

(c) The effective date of each ~~annual~~ adjustment based upon the previous calendar year data.

Section 10. Subsections (1) and (3) of section 287.022, Florida Statutes, are amended to read:

287.022 Purchase of insurance.—

(1) Insurance, while not a commodity, nevertheless shall be purchased for all agencies by the department, except that agencies may purchase title insurance for land acquisition and may make emergency purchases of insurance pursuant to ~~s. 287.057(5)(a) s. 287.057(4)(a)~~. The procedures for purchasing insurance, whether the purchase is made by the department or by the agencies, shall be the same as those set forth herein for the purchase of commodities.

(3) ~~The department of Management Services~~ and the Division of State Group Insurance shall not prohibit or limit any properly licensed insurer, health maintenance organization, prepaid limited health services organization, or insurance agent from competing for any insurance product or plan purchased, provided, or endorsed by the department or the division on the basis of the compensation arrangement used by the insurer or organization for its agents.

Section 11. Section 287.032, Florida Statutes, is amended to read:

287.032 Purpose of department.—It shall be the purpose of the Department of Management Services:

(1) To promote efficiency, economy, and the conservation of energy and to effect coordination in the purchase of commodities and contractual services for the state.

(2) To provide uniform commodity and contractual service procurement policies, rules, procedures, and forms for use by ~~the various agencies~~ and eligible users ~~in procuring contractual services~~.

(3) To procure and distribute ~~state-owned surplus tangible personal property and~~ federal surplus tangible personal property allocated to the state by the Federal Government.

Section 12. Section 287.042, Florida Statutes, is amended to read:

287.042 Powers, duties, and functions.—The department shall have the following powers, duties, and functions:

(1)(a) To canvass all sources of supply, establish and maintain a vendor list, and contract for the purchase, lease, or acquisition ~~in any manner~~, including purchase by installment sales or lease-purchase contracts which may provide for the payment of interest on unpaid portions of the purchase price, of all commodities and contractual services required by any agency under this chapter ~~competitive bidding or by contractual negotiation~~. Any contract providing for deferred payments and the payment of interest shall be subject to specific rules adopted by the department.

(b) The department may remove from its vendor list any source of supply which fails to fulfill any of its duties specified in a contract with the state. It may reinstate any such source of supply when it is satisfied that further instances of default will not occur.

(c) In order to promote cost-effective procurement of commodities and contractual services, the department or an agency may enter into contracts that limit the liability of a vendor consistent with s. 672.719.

(d) The department shall issue commodity numbers for all products of the corporation operating the correctional industry program which meet or exceed department specifications.

(e) The department shall, ~~beginning October 1, 1991,~~ include the products offered by the corporation on any listing prepared by the department which lists state term contracts executed by the department. The products or services shall be placed on such list in a category based upon specification criteria developed through a joint effort of the department and the corporation and approved by the department.

(f) The corporation may submit products and services to the department for testing, analysis, and review relating to the quality and cost comparability. If, after review and testing, the department approves of the products and services, the department shall give written notice thereof to the corporation. The corporation shall pay a reasonable fee charged for testing its products by the Department of Agriculture and Consumer Services.

(g) The department shall include products and services that are offered by a qualified nonprofit agency for the blind or for the other severely handicapped organized pursuant to chapter 413 and that have been determined to be suitable for purchase pursuant to s. 413.035 on any department listing of state term contracts. The products and services shall be placed on such list in a category based upon specification criteria developed by the department in consultation with the qualified nonprofit agency.

(h)(g) The department may collect fees for the use of its electronic information services. The fees may be imposed on an individual transaction basis or as a fixed subscription for a designated period of time. At a minimum, the fees shall be determined in an amount sufficient to cover the department's projected costs of such services, including overhead in accordance with the policies of the Department of Management Services for computing its administrative assessment. All fees collected pursuant to this paragraph shall be deposited in the Grants and Donations Trust Fund for disbursement as provided by law.

~~(2)(a) To establish plan and coordinate purchases in volume and to negotiate and execute purchasing agreements and procure state term contracts for commodities and contractual services, pursuant to s. 287.057, under which state agencies shall, and eligible users may, make purchases pursuant to s. 287.056, and under which a federal, county, municipality, institutions qualified pursuant to s. 240.605, private nonprofit community transportation coordinator designated pursuant to chapter 427, while conducting business related solely to the Commission for the Transportation Disadvantaged, or other local public agency may make purchases. The department may restrict purchases from some term contracts to state agencies only for those term contracts where the inclusion of other governmental entities will have an adverse effect on competition or to those federal facilities located in this state. In such planning or purchasing the Office of Supplier Diversity may monitor to ensure that opportunities are afforded for contracting with minority business enterprises. The department, for state term contracts, and all agencies, for multiyear contractual services or term contracts, shall explore reasonable and economical means to utilize certified minority business enterprises. Purchases by any county, municipality, private nonprofit community transportation coordinator designated pursuant to chapter 427, while conducting business related solely to the Commission for the Transportation Disadvantaged, or other local public agency under the provisions in the state purchasing contracts, and purchases, from the corporation operating the correctional work programs, of products or services that are subject to paragraph (1)(f), are exempt from the competitive solicitation sealed bid requirements otherwise applying to their purchases.~~

(b) As an alternative to any provision in s. 120.57(3)(c), the department may proceed with the competitive bid solicitation or contract award process of a term contract bid when the secretary of the department or his or her designee sets forth in writing particular facts and circumstances which demonstrate that the delay incident to staying the solicitation bid process or contract award process would be detrimental to the interests of the state. After the award of a contract resulting from a competitive solicitation bid

in which a timely protest was received and in which the state did not prevail, the contract may be canceled and reawarded to the prevailing party.

(c) Any person who files an action protesting a decision or intended decision pertaining to contracts administered by the department, a water management district, or an a state agency pursuant to s. 120.57(3)(b) shall post with the department, the water management district, or the state agency at the time of filing the formal written protest a bond payable to the department, the water management district, or state agency in an amount equal to 1 percent of the estimated contract amount. ~~department's, the water management district's, or the state agency's estimate of the total volume of the contract or \$5,000, whichever is less, which bond shall be conditioned upon the payment of all costs which may be adjudged against him or her in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding.~~ For protests of decisions or intended decisions of the department pertaining to agencies' requests for approval of exceptional purchases, the bond shall be in an amount equal to 1 percent of the estimated requesting agency's estimate of the contract amount for the exceptional purchase requested or \$5,000, whichever is less. The estimated contract amount shall be based upon the contract price submitted by the protestor or, if no contract price was submitted, the department, water management district, or agency shall estimate the contract amount based on factors including, but not limited to, the price of previous or existing contracts for similar commodities or contractual services, the amount appropriated by the Legislature for the contract, or the fair market value of similar commodities or contractual services. The agency shall provide the estimated contract amount to the vendor within 72 hours, excluding Saturdays, Sundays, and state holidays, after the filing of the notice of protest by the vendor. The estimated contract amount is not subject to protest pursuant to s. 120.57(3). The bond shall be conditioned upon the payment of all costs and charges that are adjudged against the protestor in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. In lieu of a bond, the department, the water management district, or state agency may, in either case, accept a cashier's check, official bank check, or money order in the amount of the bond. If, after completion of the administrative hearing process and any appellate court proceedings, the department, water management district, or agency prevails, it shall recover all costs and charges which shall be included in the final order or judgment, excluding attorney's fees. This section shall not apply to protests filed by the Office of Supplier Diversity. Upon payment of such costs and charges by the protestor person protesting the award, the bond, cashier's check, official bank check, or money order shall be returned to the protestor him or her. If, after the completion of the administrative hearing process and any appellate court proceedings, the protestor ~~the person protesting the award~~ prevails, the protestor ~~he or she~~ shall recover from the department, water management district, or agency ~~water management district~~, all costs and charges which shall be included in the final order or ~~of~~ judgment, excluding attorney's fees.

(d) ~~The terms, conditions, and specifications of a request for proposal, request for quote, invitation to bid, or invitation to negotiate, including any~~

~~provisions governing the methods for ranking proposals, awarding contracts, reserving rights of further negotiation, or the modification of amendment of any contract, are subject to challenge only by filing a protest within 72 hours after the notice of the terms, conditions, or specifications as provided in s. 120.57(3)(b).~~

~~(3) To have general supervision, through the state agencies, of all store-rooms and stores operated by the agencies and to have supervision of inventories of all commodities belonging to the state agencies. The duties imposed by this section do not relieve any state agency from accountability for commodities under its control.~~

~~(3)(4) To establish a system of coordinated, uniform procurement policies, procedures, and practices to be used by agencies in acquiring commodities and contractual services, which shall include, but not be limited to:~~

~~(a) Development of a list of interested vendors to be maintained by classes of commodities and contractual services. This list shall not be used to prequalify vendors or to exclude any interested vendor from bidding.~~

~~(b)1. Development of procedures for advertising solicitations. These the releasing of requests for proposals, requests for quotes, invitations to bid, invitations to negotiate, and other competitive acquisitions which procedures must provide for electronic posting of solicitations for shall include, but are not limited to, notice by publication in the Florida Administrative Weekly, on Government Services Direct, or by mail at least 10 days before the date set for receipt submittal of bids, proposals, or replies bids, unless the department or other agency determines in writing that a shorter period of time is necessary to avoid harming the interests of the state. The Office of Supplier Diversity may consult with the department agencies regarding the development of solicitation bid distribution procedures to ensure that maximum distribution is afforded to certified minority business enterprises as defined in s. 288.703.~~

~~2. Development of procedures for electronic posting. The department shall designate a centralized website on the Internet for the department and other agencies to electronically post solicitations, decisions or intended decisions, and other matters relating to procurement. From July 1, 2002, until July 1, 2003, the department shall publish a notice in each edition of the Florida Administrative Weekly which indicates the specific URL or Internet address for the centralized website.~~

~~(c) Development of procedures for the receipt and opening of bids, responses, quotes, or proposals, or replies by an agency. Such procedures shall provide the Office of Supplier Diversity an opportunity to monitor and ensure that the contract award is consistent with the requirements of s. 287.09451.~~

~~(d) Development of procedures to be used by an agency in deciding to contract, including, but not limited to, identifying and assessing in writing project needs and requirements, availability of agency employees, budgetary constraints or availability, facility equipment availability, current and pro-~~

jected agency workload capabilities, and the ability of any other state agency to perform the services.

(e) Development of procedures to be used by an agency in maintaining a contract file for each contract which shall include, but not be limited to, all pertinent information relating to the contract during the preparatory stages; a copy of the solicitation; invitation to bid or request for proposals, documentation relating to the solicitation bid process; opening of bids, proposals, or replies; evaluation and tabulation of bids, proposals, or replies; and determination and notice of award of contract.

(f) Development of procedures to be used by an agency for issuing solicitations that include requirements to describe commodities, services, scope of work, and deliverables in a manner that promotes competition invitations to bid, invitations to negotiate, requests for proposal, requests for quote, or other competitive procurement processes.

(g) Development of procedures to be used by an agency when issuing requests for information and requests for quotes.

~~(4)(5)(a)~~ To prescribe the methods of securing competitive sealed bids, ~~responses, quotes, and proposals, and replies.~~ Such methods may include, but are not limited to, procedures for identifying vendors; setting qualifications; conducting conferences or written question and answer periods for purposes of responding to vendor questions; evaluating responses, bids, and proposals, and replies; ranking and respondents and proposers; selecting vendors invitees and proposers; and conducting negotiations.

(b) To prescribe, in consultation with the State Technology Office, procedures for procuring information technology and information technology consultant services which provide for public announcement and qualification, competitive solicitations selection, competitive negotiation, contract award, and prohibition against contingent fees. Such procedures shall be limited to information technology consultant contracts for which the total project costs, or planning or study activities, are estimated to exceed the threshold amount provided for in s. 287.017, for CATEGORY TWO.

~~(5)(6)~~ To prescribe specific commodities and quantities to be purchased locally.

~~(6)(7)(a)~~ To govern the purchase by any agency of any commodity or contractual service and to establish standards and specifications for any commodity.

(b) Except for the purchase of insurance, the department may delegate to agencies the authority for the procurement of and contracting for, ~~or the purchase, lease, or acquisition of,~~ commodities or contractual services.

~~(7)(8)~~ To establish definitions and classes of commodities and contractual services. Agencies shall follow the definitions and classes of commodities and contractual services established by the department in acquiring or purchasing commodities or contractual services. The authority of the department under this section shall not be construed to impair or interfere with

the determination by state agencies of their need for, or their use of, services including particular specifications.

~~(8)~~(9) To ~~provide furnish copies of~~ any commodity and contractual service purchasing rules to the Comptroller and all agencies through an electronic medium or other means affected thereby. ~~Agencies may~~ The Comptroller shall not approve any account or request direct any payment of any account for the purchase of any commodity or the procurement of any contractual service covered by a purchasing or contractual service rule except as authorized therein. The department shall furnish copies of rules adopted by the department to any county, municipality, or other local public agency requesting them.

~~(9)~~(10) To require that every agency furnish information relative to its commodity and contractual services purchases and methods of purchasing commodities and contractual services to the department when so requested.

~~(10)~~(11) To prepare statistical data concerning the method of procurement, terms, usage, and disposition of commodities and contractual services by state agencies. All agencies shall furnish such information for this purpose to the office and to the department, as the department or office may call for, but no less frequently than annually, on such forms or in such manner as the department may prescribe.

~~(11)~~(12) To establish and maintain programs for the purpose of disseminating information to government, industry, educational institutions, and the general public concerning policies, procedures, rules, and forms for the procurement of commodities and contractual services.

~~(12)~~(13) Except as otherwise provided herein, to adopt rules necessary to carry out the purposes of this section, including the authority to delegate to any state agency any and all of the responsibility conferred by this section, retaining to the department any and all authority for supervision thereof. Such purchasing of commodities and procurement of contractual services by state agencies shall be in strict accordance with the rules and procedures prescribed by the department of ~~Management Services~~.

~~(13)~~(14) If the department determines in writing that it is in the best interest of the state, to award to multiple suppliers contracts for commodities and contractual services established by the department for use by all agencies. Such awards may be on a statewide or regional basis. If regional contracts are established by the department, multiple supplier awards may be based upon multiple awards for regions. Agencies may award contracts to a responsible and the lowest-qualified responsive vendor bidder on a statewide or regional basis.

~~(14)~~(15) To procure and distribute ~~state-owned surplus tangible personal property and~~ federal surplus tangible personal property allocated to the state by the Federal Government.

~~(15)~~(16)(a) To enter into joint agreements with governmental agencies, as defined in s. 163.3164(10), for the purpose of pooling funds for the purchase of commodities or information technology that can be used by multiple

agencies. However, the department shall consult with the State Technology Office on joint agreements that involve the purchase of information technology. Agencies entering into joint purchasing agreements with the department or the State Technology Office shall authorize the department or the State Technology Office to contract for such purchases on their behalf.

(b) Each agency that has been appropriated or has existing funds for such purchases, shall, upon contract award by the department, transfer their portion of the funds into the department's Grants and Donations Trust Fund for payment by the department. These funds shall be transferred by the Executive Office of the Governor pursuant to the agency budget amendment request provisions in chapter 216.

(c) Agencies that sign such joint agreements are financially obligated for their portion of the agreed-upon funds. If any agency becomes more than 90 days delinquent in paying such funds, the department of ~~Management Services~~ shall certify to the Comptroller the amount due, and the Comptroller shall transfer the amount due to the Grants and Donations Trust Fund of the department from any of the agency's available funds. The Comptroller shall report all such transfers and the reasons for such transfers to the Executive Office of the Governor and the legislative appropriations committees.

~~(16)~~(17)(a) To evaluate contracts let by the Federal Government, another state, or a political subdivision for the provision of commodities and contract services, and, when it is determined in writing to be cost-effective and in the best interest of the state, to enter into a written agreement authorizing an ~~a~~ state agency to make purchases under a contract approved by the department and let by the Federal Government, another state, or a political subdivision.

(b) For contracts pertaining to the provision of information technology, the State Technology Office, in consultation with the department, shall assess the technological needs of a particular agency, evaluate the contracts, and determine whether to enter into a written agreement with the letting federal, state, or political subdivision body to provide information technology for a particular agency.

Section 13. Section 287.045, Florida Statutes, is amended to read:

287.045 Procurement of products and materials with recycled content.—

(1)(a) ~~The department of Management Services,~~ in cooperation with the Department of Environmental Protection, shall review and revise existing procurement procedures and specifications for the purchase of products and materials to eliminate any procedures and specifications that explicitly discriminate against products and materials with recycled content except where such procedures and specifications are necessary to protect the public health, safety, and welfare.

(b) Each ~~state~~ agency shall review and revise its procurement procedures and specifications for the purchase of products and materials to eliminate

any procedures and specifications that explicitly discriminate against products and materials with recycled content, except if such procedures and specifications are necessary to protect the public health, safety, and welfare.

(2)(a) The department and each ~~state~~ agency shall review and revise its procurement procedures and specifications for the purchase of products and materials to ensure to the maximum extent feasible that each agency uses state contracts to purchase products or materials that may be recycled or reused when these products or materials are discarded.

(b) The Auditor General shall assist in monitoring the product procurement requirements.

(3) As part of the review and revision required in subsection (2), the department and each agency shall review its procurement provisions and specifications for the purchase of products and materials to determine which products or materials with recycled content could be procured by the department or other agencies and the amount of recycled content that can technologically be contained in such products or materials. The department and other agencies must use the amounts of recycled content and postconsumer recovered material determined by the department in issuing solicitations ~~invitations to bid~~ for contracts for the purchase of such products or materials.

(4) Upon completion of the review required in subsection (3), the department and other agencies ~~or an agency~~ shall require that a person who submits a bid, proposal, or reply for a contract for the purchase of products or materials identified in subsection (3) and who wishes to be considered for the price preference described in subsection (5) certify in writing the percentage of recycled content in the product or material that is subject to the bid, proposal, or reply. A person may certify that the product or material contains no recycled content.

(5) Upon evaluation of bids, proposals, or replies for every public contract that involves the purchase of products or materials identified in subsection (3), the department or other ~~an~~ agency shall identify the lowest responsible and responsive vendor bidder and other responsible and responsive vendors bidders who have certified that the products or materials contain at least the minimum percentage of recycled content and postconsumer recovered material that is set forth in the solicitation invitation ~~for the bids~~. The department or agency may consider life-cycle costing when evaluating a bid, proposal, or reply on a product that consists of recycled materials. The department shall adopt rules that specify the criteria to be used when considering life-cycle costing in evaluating bids, proposals, or replies. The rules must take into consideration the specified warranty periods for products and the comparative expected service life relative to the cost of the products. In awarding a contract for the purchase of products or materials, the department or other ~~an~~ agency may allow up to a 10-percent price preference to a responsible and responsive vendor bidder who has certified that the products or materials contain at least the minimum percentage of recycled content and postconsumer recovered material and up to an additional 5-percent price preference to a responsible and responsive vendor bidder who has

certified that the products or material are made of materials recovered in this state. The amount of the price preference must be commensurate with the certified amounts of recycled material and postconsumer recovered material and materials recycled from products in this state, contained in the product or materials on a sliding scale as established by department rule, which rule shall not become effective prior to November 1, 1994. Reusable materials and products shall be used where economically and technically feasible. If no vendors ~~bidders~~ offer products or materials with measurable life-cycle costing factors or the minimum prescribed recycled and postconsumer content, the contract must be awarded to the lowest qualified responsible and responsive vendor bidder.

(6) For the purposes of this section, the term “recycled content” means materials that have been recycled that are contained in the products or materials to be procured, including, but not limited to, paper, aluminum, steel, glass, plastics, and composted material. The term does not include the virgin component of internally generated scrap that is commonly used in industrial or manufacturing processes or such waste or scrap purchased from another manufacturer who manufactures the same or a closely related product. Recycled content printing and fine writing grades of paper shall contain at least 10 percent postconsumer recovered materials.

(7) Any person may request the department to evaluate a product or material with recycled content if the product or material is eligible for inclusion under state contracts. The department shall review each reasonable proposal to determine its merit and, if it finds that the product or material may be used beneficially, it may incorporate that product or material into its procurement procedures.

(8) The department and each state agency shall review and revise its procedures and specifications on a continuing basis to encourage the use of products and materials with recycled content and postconsumer recovered material and shall, in developing new procedures and specifications, encourage the use of products and materials with recycled content and postconsumer recovered material.

(9) After November 1, 1994, the department may discontinue contracting for products or materials the recycled content of which does not meet the requirements of subsection (3) if it determines that products or materials meeting those requirements are available at a cost not to exceed an additional 10 percent of comparable virgin products.

(10) An A state agency, or a vendor person ~~contracting~~ with such agency with respect to work performed under contract, must procure products or materials with recycled content if the department determines that those products or materials are available pursuant to subsection (5). Notwithstanding any other provision to the contrary, for the purpose of this section, the term “agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch including the Department of the Lottery, the legislative branch, the judicial branch, the University and College Boards of Trustees, and the state universities and

colleges and the State University System. A decision not to procure such items must be based on the department's determination that such procurement is not reasonably available within an acceptable period of time or fails to meet the performance standards set forth in the applicable specifications or fails to meet the performance standards of the agency.

(11) Each state agency shall report annually to the department its total expenditures on, and use of, products with recycled content and the percentage of its budget that represents purchases of similar products made from virgin materials. The department shall design a uniform reporting mechanism and prepare annual summaries of statewide purchases delineating those with recycled content to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 14. Section 287.056, Florida Statutes, is amended to read:

287.056 Agency Purchases from purchasing agreements and state term contracts ~~executed by the department.~~—

(1) Agencies shall, and eligible users may, purchase commodities and contractual services from the purchasing agreements established and state term contracts procured, pursuant to s. 287.057, ~~negotiated and executed by the department, as authorized in s. 287.042(2).~~

(2) Agencies may have the option to purchase commodities or contractual services from state term any written agreements or contracts procured, pursuant to s. 287.057, ~~negotiated and executed by the department which contain a user surcharge pursuant to s. 287.1345 or such other agreements as determined by the department.~~

(3) Agencies and eligible users may use a request for quote to obtain written pricing or services information from a state term contract vendor for commodities or contractual services available on state term contract from that vendor. 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. Use of a request for quote does not constitute a decision or intended decision that is subject to protest under s. 120.57(3).

Section 15. Section 287.057, Florida Statutes, is amended to read:

287.057 Procurement of commodities or contractual services.—

(1)(a) Unless otherwise authorized by law, all contracts for the purchase of commodities or contractual services in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO shall be awarded by competitive sealed bidding. An invitation to bid shall be made available simultaneously to all vendors and must issued ~~which shall include a detailed description of the commodities or contractual services sought; the time and date for the receipt submittal of bids and of the public opening; and all contractual terms and conditions applicable to the procurement of commodities or contractual services, including the criteria which shall include, but need not be limited to, price,~~ to be used in determining acceptability of the

bid. If the agency contemplates renewal of the contract, that fact must ~~it shall~~ be so stated in the invitation to bid. The bid shall include the price for each year for which the contract may be renewed. Evaluation of bids shall include consideration of the total cost for each year as submitted ~~quoted~~ by the vendor bidder. ~~No Criteria that were not set forth in the invitation to bid may not be used in determining acceptability of the bid that was not set forth in the invitation to bid.~~

(b) The contract shall be awarded with reasonable promptness by written notice to the responsible ~~qualified~~ and responsive vendor that bidder ~~who~~ submits the lowest responsive bid. This bid must be determined in writing to meet the requirements and criteria set forth in the invitation to bid.

(2)(a) ~~If~~ When an agency determines in writing that the use of an invitation to bid ~~competitive sealed bidding~~ is not practicable, commodities or contractual services shall be procured by competitive sealed proposals. A request for proposals shall be made available simultaneously to all vendors, and must include ~~which includes~~ a statement of the commodities or contractual services sought; the time and date for the receipt of proposals and of the public opening; and all contractual terms and conditions applicable to the procurement of ~~commodities or contractual services~~, including the criteria, which shall include, but need not be limited to, price, to be used in determining acceptability of the proposal ~~shall be issued~~. The relative importance of price and other evaluation criteria shall be indicated. If the agency contemplates renewal of the commodities or contractual services contract, that fact must ~~it shall~~ be so stated in the request for proposals. The proposal shall include the price for each year for which the contract may be renewed. Evaluation of proposals shall include consideration of the total cost for each year as submitted ~~quoted~~ by the vendor offeror. ~~To assure full understanding of and responsiveness to the solicitation requirements, discussions may be conducted with qualified offerors. The offerors shall be accorded fair and equal treatment prior to the submittal date specified in the request for proposals with respect to any opportunity for discussion and revision of proposals.~~

(b) The contract award shall be awarded ~~made~~ to the responsible and responsive vendor offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and the other criteria set forth in the request for proposals. The contract file shall contain documentation supporting the basis on which the award is made.

(3)(a) If the agency determines in writing that the use of an invitation to bid or a request for proposals will not result in the best value to the state, the agency may procure commodities and contractual services by competitive sealed replies. The agency's written determination must specify reasons that explain why negotiation may be necessary in order for the state to achieve the best value and must be approved in writing by the agency head or his or her designee prior to the advertisement of an invitation to negotiate. An invitation to negotiate shall be made available to all vendors simultaneously and must include a statement of the commodities or contractual services sought; the time and date for the receipt of replies and of the public opening; and all terms and conditions applicable to the procurement, including the criteria to be used in determining the acceptability of the reply. If

the agency contemplates renewal of the contract, that fact must be stated in the invitation to negotiate. The reply shall include the price for each year for which the contract may be renewed.

(b) The agency shall evaluate and rank responsive replies against all evaluation criteria set forth in the invitation to negotiate and shall select, based on the ranking, one or more vendors with which to commence negotiations. After negotiations are conducted, the agency shall award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state. The contract file must contain a short plain statement that explains the basis for vendor selection and that sets forth the vendor's deliverables and price, pursuant to the contract, with an explanation of how these deliverables and price provide the best value to the state.

(4) Prior to the time for receipt of bids, proposals, or replies, an agency may conduct a conference or written question and answer period for purposes of assuring the vendor's full understanding of the solicitation requirements. The vendors shall be accorded fair and equal treatment.

~~(3) If an agency determines that the use of an invitation to bid or a request for a proposal will not result in the best value to the state, based on factors including, but not limited to, price, quality, design, and workmanship, the agency may procure commodities and contractual services by an invitation to negotiate. An agency may procure commodities and contractual services by a request for a quote from vendors under contract with the department.~~

~~(5)(4) When the purchase price of commodities or contractual services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, no purchase of commodities or contractual services may be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies responses to an invitation to negotiate or a request for a quote unless:~~

(a) The agency head determines in writing that an immediate danger to the public health, safety, or welfare or other substantial loss to the state requires emergency action. After the agency head makes such a written determination, the agency may proceed with the procurement of commodities or contractual services necessitated by the immediate danger, without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies competition. However, such emergency procurement shall be made by obtaining pricing information from at least two prospective vendors, which must be retained in the contract file, unless the agency determines in writing that the time required to obtain pricing information will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the state with such competition as is practicable under the circumstances. The agency shall furnish copies of all the written determinations determination certified under oath and any other documents relating to the emergency action to the department. A copy of the statement shall be furnished to the Comptroller with the voucher authorizing payment. The individual purchase of personal clothing, shelter, or supplies which are

needed on an emergency basis to avoid institutionalization or placement in a more restrictive setting is an emergency for the purposes of this paragraph, and the filing with the department of such statement is not required in such circumstances. In the case of the emergency purchase of insurance, the period of coverage of such insurance shall not exceed a period of 30 days, and all such emergency purchases shall be reported to the department.

(b) ~~The purchase is made by an agency from a state term contract procured, pursuant to this section, Purchasing agreements and contracts executed by the department or by an agency, after receiving approval from the department, from a contract procured, pursuant to subsection (1), subsection (2), or subsection (3), by another agency agencies under authority delegated by the department in writing are excepted from bid requirements.~~

(c) ~~Commodities or contractual services available only from a single source may be excepted from the competitive-solicitation bid requirements. When 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 a period of at least 7 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:~~

1. Provide notice of its intended decision to enter a single-source purchase contract in the manner specified in s. 120.57(3), if the amount of the contract does not exceed the threshold amount provided in s. 287.017 for CATEGORY FOUR.

2. Request approval from the department for the single-source purchase, if the amount of the contract exceeds the threshold amount provided in s. 287.017 for CATEGORY FOUR. The agency shall initiate its request for approval in a form prescribed by the department, which request may be electronically transmitted, if it is determined that such commodities or services are available only from a single source and such determination is documented. However, if such contract is for an amount greater than the threshold amount provided in s. 287.017 for CATEGORY FOUR, the agency head shall file a certification of conditions and circumstances with the department and shall obtain the prior approval of the department. The failure of the department to approve or disapprove the agency's request of an agency for prior approval within 21 days after receiving such request or within 14 days after receiving from the agency additional materials requested by the department shall constitute prior approval of the department. If the department approves the agency's request, the agency shall provide notice of its intended decision to enter a single-source contract in the manner specified in s. 120.57(3) To the greatest extent practicable, but no later than 45 days after authorizing the exception in writing, the department shall combine single source procurement authorizations for identical information technology resources for which the purchase price exceeds the threshold amount provided in s. 287.017 for CATEGORY FOUR, and shall

~~negotiate and execute volume purchasing agreements for such procurements on behalf of the agencies.~~

(d) When it is in the best interest of the state, the secretary of ~~the department Management Services~~ or his or her designee may authorize the Support Program to purchase insurance by negotiation, but such purchase shall be made only under conditions most favorable to the public interest.

(e) Prescriptive assistive devices for the purpose of medical, developmental, or vocational rehabilitation of clients are excepted from competitive ~~solicitation sealed bid and competitive sealed proposal~~ requirements and shall be procured pursuant to an established fee schedule or by any other method which ensures the best price for the state, taking into consideration the needs of the client. Prescriptive assistive devices include, but are not limited to, prosthetics, orthotics, and wheelchairs. For purchases made pursuant to this paragraph, state agencies shall annually file with the department a description of the purchases and methods of procurement.

(f) The following contractual services and commodities are not subject to the competitive ~~solicitation sealed bid~~ requirements of this section:

1. Artistic services.
2. Academic program reviews.
3. Lectures by individuals.
4. Auditing services.
5. Legal services, including attorney, paralegal, expert witness, appraisal, or mediator services.
6. Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration.
7. Services provided to persons with mental or physical disabilities by not-for-profit corporations which have obtained exemptions under the provisions of s. 501(c)(3) of the United States Internal Revenue Code or when such services are governed by the provisions of Office of Management and Budget Circular A-122. However, in acquiring such services, the agency shall consider the ability of the ~~vendor contractor~~, past performance, willingness to meet time requirements, and price.
8. Medicaid services delivered to an eligible Medicaid recipient by a health care provider who has not previously applied for and received a Medicaid provider number from the Agency for Health Care Administration. However, this exception shall be valid for a period not to exceed 90 days after the date of delivery to the Medicaid recipient and shall not be renewed by the agency.
9. Family placement services.
10. Prevention services related to mental health, including drug abuse prevention programs, child abuse prevention programs, and shelters for

runaways, operated by not-for-profit corporations. However, in acquiring such services, the agency shall consider the ability of the ~~vendor contractor~~, past performance, willingness to meet time requirements, and price.

11. Training and education services provided to injured employees pursuant to s. 440.49(1).

12. Contracts entered into pursuant to s. 337.11.

13. Services or commodities provided by governmental agencies.

(g) Continuing education events or programs that are offered to the general public and for which fees have been collected that pay all expenses associated with the event or program are exempt from requirements for competitive solicitation sealed bidding.

~~(6)(5)~~ If less than two responsive bids, ~~or proposals, or replies~~ for commodity or contractual services purchases are received, the department or ~~other~~ the agency may negotiate on the best terms and conditions. The ~~department or other~~ agency shall document the reasons that such action is in the best interest of the state in lieu of resoliciting competitive sealed bids, ~~or proposals, or replies~~. ~~Each~~ The agency shall report all such actions to the department on a quarterly basis, in a manner and form prescribed by the department.

~~(7)(6)~~ Upon issuance of any solicitation invitation to bid or request for proposals, an agency shall, upon request by the department, forward to the department one copy of each solicitation invitation to bid or request for proposals for all commodity and contractual services purchases in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO. An agency shall also, upon request, furnish a copy of all competitive solicitation sealed bid or competitive sealed proposal tabulations. The Office of Supplier Diversity may also request from the agencies any information submitted to the department pursuant to this subsection.

~~(8)(7)(a)~~ In order to strive to meet the minority business enterprise procurement goals set forth in s. 287.09451, an agency may reserve any contract for competitive solicitation sealed bidding only among certified minority business enterprises. Agencies shall review all their contracts each fiscal year and shall determine which contracts may be reserved for solicitation bidding only among certified minority business enterprises. This reservation may only be used when it is determined, by reasonable and objective means, before the solicitation invitation to bid that there are capable, qualified certified minority business enterprises available to submit a bid, proposal, or reply on a contract to provide for effective competition. The Office of Supplier Diversity shall consult with any agency in reaching such determination when deemed appropriate.

(b) Before a contract may be reserved for solicitation bidding only among ~~by~~ certified minority business enterprises, the agency head must find that such a reservation is in the best interests of the state. All determinations shall be subject to s. 287.09451(5). Once a decision has been made to reserve a contract, but before sealed bids, proposals, or replies are requested, the

agency shall estimate what it expects the amount of the contract to be, based on the nature of the services or commodities involved and their value under prevailing market conditions. If all the sealed bids, proposals, or replies received are over this estimate, the agency may reject the bids, proposals, or replies and request new ones from certified minority business enterprises, or the agency may reject the bids, proposals, or replies and reopen the bidding to all eligible vendors qualified bidders.

(c) All agencies shall consider the use of price preferences of up to 10 percent, weighted preference formulas, or other preferences for vendors ~~contractors~~ as determined appropriate pursuant to guidelines established in accordance with s. 287.09451(4) to increase the participation of minority business enterprises.

(d) All agencies shall avoid any undue concentration of contracts or purchases in categories of commodities or contractual services in order to meet the minority business enterprise purchasing goals in s. 287.09451.

~~(9)~~(8) An agency may reserve any contract for competitive solicitation sealed bidding only among vendors qualified bidders who agree to use utilize certified minority business enterprises as subcontractors or subvendors. The percentage of funds, in terms of gross contract amount and revenues, which must be expended with the certified minority business enterprise subcontractors and subvendors shall be determined by the agency before such contracts may be reserved. In order to bid on a contract so reserved, the vendor qualified bidder shall identify those certified minority business enterprises which will be utilized as subcontractors or subvendors by sworn statement. At the time of performance or project completion, the contractor shall report by sworn statement the payments and completion of work for all certified minority business enterprises used in the contract.

~~(10)~~(9) An agency shall not divide the procurement of commodities or contractual services so as to avoid the requirements of subsections (1) through (5), (2), and (3).

~~(11)~~(10) A contract for commodities or contractual services may be awarded without competition if state or federal law prescribes with whom the agency must contract or if the rate of payment is established during the appropriations process.

~~(12)~~(11) If two equal responses to a solicitation or a request for quote an invitation to bid or request for proposals are received and one response is from a certified minority business enterprise, the agency shall enter into a contract with the certified minority business enterprise.

~~(13)~~(12) Extension of a contract for contractual services shall be in writing for a period not to exceed 6 months and shall be subject to the same terms and conditions set forth in the initial contract. There shall be only one extension of a contract unless the failure to meet the criteria set forth in the contract for completion of the contract is due to events beyond the control of the contractor.

~~(14)(13) Except for those contracts initially procured pursuant to paragraph (3)(a) or paragraph (3)(c), Contracts for commodities or contractual services may be renewed for a period that may not exceed 3 years or on a yearly basis for no more than 2 years or for a period no longer than the term of the original contract, whichever period is longer. Renewal of a contract for commodities or contractual services shall be in writing and shall be subject to the same terms and conditions set forth in the initial contract. If the commodity or contractual service is purchased as a result of the solicitation of bids, or proposals, or replies, the price of the commodity or contractual service to be renewed cost of any contemplated renewals shall be specified included in the bid, proposal, or reply invitation to bid or request for proposals. A renewal contract may not include any compensation for costs associated with the renewal. Renewals shall be contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts pursuant to s. 287.057(5)(a) and (c) may not be renewed.~~

~~(15)(14) For each contractual services contract, the agency shall designate an employee to function as contract manager who shall be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. The agency shall establish procedures to ensure that contractual services have been rendered in accordance with the contract terms prior to processing the invoice for payment.~~

~~(16)(15) Each agency shall designate at least one employee who shall serve as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who shall serve as a liaison with the contract managers and the department.~~

~~(17) For a contract in excess of the threshold amount provided in s. 287.017 for CATEGORY FOUR, the agency head shall appoint:~~

~~(a) At least three persons to evaluate proposals and replies who collectively have experience and knowledge in the program areas and service requirements for which commodities or contractual services are sought.~~

~~(b) At least three persons to conduct negotiations during a competitive sealed reply procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought.~~

~~(16) For requests for proposals, a selection team of at least three employees who have experience and knowledge in the program areas and service requirements for which contractual services are sought shall be appointed by the agency head to aid in the selection of contractors for contracts of more than the threshold amount provided in s. 287.017 for CATEGORY FOUR.~~

~~(18)(17) A No person who receives a contract that which has not been procured pursuant to subsection (1) through (5), subsection (2), or subsection (3) to perform a feasibility study of the potential implementation of a subsequent contract, who participates participating in the drafting of a solicitation invitation to bid or request for proposals, or who develops developing~~

a program for future implementation, ~~is not shall~~ be eligible to contract with the agency for any other contracts dealing with that specific subject matter, ~~and; nor shall~~ any firm in which such person has any interest ~~is not be~~ eligible to receive such contract. However, this prohibition does not prevent a vendor who responds to a request for information from being eligible to contract with an agency.

(19)~~(18)~~ Each agency shall establish a review and approval process for all contractual services contracts costing more than the threshold amount provided for in s. 287.017 for CATEGORY THREE which shall include, but not be limited to, program, financial, and legal review and approval. Such reviews and approvals shall be obtained before the contract is executed.

~~(19) The department may establish state contractual service term contracts. Such contracts may be utilized by any agency, county, municipality, or local public agency.~~

(20) In any procurement that costs more than the threshold amount provided for in s. 287.017 for CATEGORY TWO and is accomplished without competition, the individuals taking part in the development or selection of criteria for evaluation, the evaluation process, and the award process shall attest in writing that they are independent of, and have no conflict of interest in, the entities evaluated and selected.

(21) Nothing in this section shall affect the validity or effect of any contract in existence on October 1, 1990.

(22) An agency may contract for services with any independent, nonprofit college or university which is located within the state and is accredited by the Southern Association of Colleges and Schools, on the same basis as it may contract with any state university and college institution in the State University System.

(23)(a) The department, in consultation with the State Technology Office and the Comptroller, shall develop a program for on-line procurement of commodities and contractual services. To enable the state to promote open competition and to leverage its buying power, ~~executive state~~ agencies shall participate in the on-line procurement program, and eligible users ~~other agencies~~ may participate in the program. Only ~~vendors bidders~~ prequalified as meeting mandatory requirements and qualifications criteria shall be permitted to participate in on-line procurement. The department, in consultation with the State Technology Office, may contract for equipment and services necessary to develop and implement on-line procurement.

(b) ~~The State Technology Office, in consultation with the department, in consultation with the State Technology Office,~~ shall adopt rules, pursuant to ss. 120.536(1) and 120.54, to ~~administer implement~~ the program for on-line procurement. The rules shall include, but not be limited to:

1. Determining the requirements and qualification criteria for pre-qualifying ~~vendors bidders~~.

2. Establishing the procedures for conducting on-line procurement.

3. Establishing the criteria for eligible commodities and contractual services.
4. Establishing the procedures for providing access to on-line procurement.
5. Determining the criteria warranting any exceptions to participation in the on-line procurement program.

(c) ~~The department of Management Services and the State Technology Office~~ may collect fees for the use of the on-line procurement systems. The fees may be imposed on an individual transaction basis or as a fixed percentage of the cost savings generated. At a minimum, the fees must be set in an amount sufficient to cover the projected costs of such services, including administrative and project service costs in accordance with the policies of the ~~department of Management Services and the State Technology Office~~. For the purposes of compensating the provider, the department may authorize the provider to collect and retain a portion of the fees. The providers may withhold the portion retained from the amount of fees to be remitted to the department. The department may negotiate the retainage as a percentage of such fees charged to users, as a flat amount, or as any other method the department deems feasible. All fees and surcharges collected under this paragraph shall be deposited in the Grants and Donation Trust Fund as provided by law.

(24)(a) The State Technology Office shall establish, in consultation with the department, state strategic information technology alliances for the acquisition and use of information technology and related material with prequalified contractors or partners to provide the state with efficient, cost-effective, and advanced information technology.

(b) In consultation with and under contract to the State Technology Office, the state strategic information technology alliances shall design, develop, and deploy projects providing the information technology needed to collect, store, and process the state's data and information, provide connectivity, and integrate and standardize computer networks and information systems of the state.

(c) The partners in the state strategic information technology alliances shall be industry leaders with demonstrated experience in the public and private sectors.

(d) ~~The State Technology Office, in consultation with the department of Management Services,~~ shall adopt rules, pursuant to ss. 120.536(1) and 120.54, to administer ~~implement~~ the state strategic information technology alliances.

Section 16. Section 287.0572, Florida Statutes, is amended to read:

287.0572 Present-value methodology.—

(1) The cost of bids, ~~or proposals, or replies~~ for state contracts that ~~which~~ require the payment of money for more than 1 year and include provisions

for unequal payment streams or unequal time payment periods shall be evaluated using present-value methodology. Each agency, as defined in s. 287.012(1), shall perform the evaluation using the present-value discount rate supplied by the department of ~~Management Services~~. The present-value discount rate shall be the rate for United States Treasury notes and bonds published in the Interest Rates: Money and Capital Markets section of the most recent copy of the Federal Reserve Bulletin published at the time of issuance of the request for proposals, the invitation to negotiate, or the invitation ~~invitations~~ to bid.

(2) The department of ~~Management Services~~ may adopt rules to administer ~~implement the provisions of~~ subsection (1).

Section 17. Subsections (1), (4), and (5) of section 287.058, Florida Statutes, are amended to read:

287.058 Contract document.—

(1) Every procurement of contractual services in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO, except for the providing of health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or the providing of other benefits as required by the provisions of chapter 440, shall be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services, which provisions and conditions shall, where applicable, include, but shall not be limited to:

(a) A provision that bills for fees or other compensation for services or expenses be submitted in detail sufficient for a proper preaudit and postaudit thereof.

(b) A provision that bills for any travel expenses be submitted in accordance with s. 112.061. A state agency may establish rates lower than the maximum provided in s. 112.061.

(c) A provision allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from s. 24(a) of Art. I of the State Constitution and s. 119.07(1).

(d) A provision dividing the contract into units of deliverables, which shall include, but not be limited to, reports, findings, and drafts, that must be received and accepted in writing by the contract manager prior to payment.

(e) A provision specifying the criteria and the final date by which such criteria must be met for completion of the contract.

(f) A provision specifying that the contract may be renewed for a period that may not exceed 3 years or on a yearly basis for a period of up to 2 years after the initial contract or for a period no longer than the term of the original contract, whichever period is longer, specifying the renewal price for

the contractual service as set forth in the bid, proposal, or reply, specifying that costs for the renewal may not be charged, terms under which the cost may change as determined in the invitation to bid or request for proposals, and specifying that renewals shall be contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts pursuant to s. 287.057(5)(a) and (c) may not be renewed.

In lieu of a written agreement, the department may authorize the use of a purchase order for classes of contractual services, if provided the provisions of paragraphs (a)-(f) are included in the purchase order or solicitation, invitation to bid, or request for proposals. The purchase order must shall include, but need not be limited to, an adequate description of the services, the contract period, and the method of payment. In lieu of printing the provisions of paragraphs (a)-(f) in the contract document or purchase order, agencies may incorporate the requirements of paragraphs (a)-(f) by reference.

(4) Every procurement of contractual services of the value of the threshold amount provided in s. 287.017 for CATEGORY TWO or less, except for the providing of health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or the providing of other benefits as required by the provisions of chapter 440, shall be evidenced by a written agreement or purchase order. The written agreement or purchase order must shall contain sufficient detail for a proper audit, must shall be signed by purchasing or contracting personnel acting on behalf of the agency, and may contain the provisions and conditions provided in subsection (1).

(5) Unless otherwise provided in the General Appropriations Act or the substantive bill implementing the General Appropriations Act, the Comptroller may waive the requirements of this section for services which are included in s. 287.057(5)(f) ~~s. 287.057(4)(f)~~.

Section 18. Subsection (2) of section 287.059, Florida Statutes, is amended to read:

287.059 Private attorney services.—

(2) No agency shall contract for private attorney services without the prior written approval of the Attorney General, except that such written approval is not required for private attorney services:

(a) Procured by the Executive Office of the Governor or any department under the exclusive jurisdiction of a single Cabinet officer.

(b) Provided by legal services organizations to indigent clients.

(c) Necessary to represent the state in litigation involving the State Risk Management Trust Fund pursuant to part II of chapter 284.

(d) Procured by the university and college boards of trustees or the state universities and colleges ~~Board of Regents and the universities of the State University System.~~

(e) Procured by community and junior colleges and multicounty special districts.

(f) Procured by the Board of Trustees for the Florida School for the Deaf and the Blind.

Section 19. Subsections (1) and (2) of section 287.0595, Florida Statutes, are amended to read:

287.0595 Pollution response action contracts; department rules.—

(1) The Department of Environmental Protection shall establish, by adopting through the promulgation of administrative rules as provided in chapter 120:

(a) Procedures for determining the qualifications of responsible potential vendors bidders prior to advertisement for and receipt of bids, proposals, or replies for pollution response action contracts, including procedures for the rejection of unqualified vendors bidders. Response actions are those activities described in s. 376.301(37).

(b) Procedures for awarding such contracts to the lowest responsible and responsive vendor qualified bidder as well as procedures to be followed in cases in which the department declares a valid emergency to exist which would necessitate the waiver of the rules governing the awarding of such contracts to the lowest responsible and responsive vendor qualified bidder.

(c) Procedures governing payment of contracts.

(d) Procedures to govern negotiations for contracts, modifications to contract documents, and terms and conditions of contracts.

(2) In adopting rules under this section, the Department of Environmental Protection shall follow the criteria applicable to the department's Department of Management Services contracting to the maximum extent possible, consistent with the goals and purposes of ss. 376.307 and 376.3071.

Section 20. Section 287.073, Florida Statutes, is repealed.

Section 21. Section 287.0731, Florida Statutes, is amended to read:

287.0731 Team for contract negotiations.—Contingent upon funding in the General Appropriations Act, the department of Management Services, in consultation with the State Technology Office, shall establish a permanent team that includes for contract negotiations including a chief negotiator, to specialize in conducting negotiations for the procurement of information technology with an invitation to negotiate.

Section 22. Section 287.0822, Florida Statutes, is amended to read:

287.0822 Beef and pork; prohibition on purchase; bid specifications; penalty.—

(1) Fresh or frozen beef or pork that has not been inspected by the United States Department of Agriculture or by another state's inspection program

which has been approved by the United States Department of Agriculture shall not be purchased, or caused to be purchased, by any agency of the state or of any municipality, political subdivision, school district, or special district for consumption in this state or for distribution for consumption in this state. ~~Solicitations Bid invitations~~ issued by any agency of the state or of any municipality, political subdivision, school district, or special district for the purchase of fresh or frozen beef or pork must specify that only beef or pork inspected and passed by either the United States Department of Agriculture or by another state's inspection program which has been approved by the United States Department of Agriculture will be accepted. The supplier or vendor shall certify on the invoice that the fresh or frozen beef or pork or imported beef or pork supplied is either domestic or complies with this subsection.

(2) All ~~solicitations bid invitations~~ for purchase of fresh or frozen meats of any kind by any agency of the state or of any municipality, political subdivision, school district, or special district using state or local funds shall include the words: " 'All American' and 'Genuine Florida' meats or meat products shall be granted preference as allowed by Section 287.082, Florida Statutes."

(3) Any person who knowingly violates or causes to be violated the provisions of this section shall be personally liable to the affected public agency for any funds spent in violation of the provisions of this section.

Section 23. Section 287.084, Florida Statutes, is amended to read:

287.084 Preference to Florida businesses.—

(1) When an agency, county, municipality, school district, or other political subdivision of the state is required to make purchases of personal property through competitive ~~solicitation bidding~~ and the lowest responsible ~~and responsive bid, proposal, or reply~~ is by a ~~vendor bidder~~ whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, then the agency, county, municipality, school district, or other political subdivision of this state may award a preference to the lowest responsible ~~and responsive vendor bidder~~ having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible ~~and responsive vendor bidder~~ has ~~its his or her~~ principal place of business. However, this section ~~does shall~~ not apply to transportation projects for which federal aid funds are available.

(2) If a ~~solicitation an invitation for bids~~ provides for the granting of such preference as is provided ~~in this section herein~~, any ~~vendor bidder~~ whose principal place of business is outside the State of Florida must accompany any written bid, ~~proposal, or reply~~ documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

Section 24. Section 287.087, Florida Statutes, is amended to read:

287.087 Preference to businesses with drug-free workplace programs.—Whenever two or more bids, proposals, or replies that ~~which~~ are equal with respect to price, quality, and service are received by the state or by any political subdivision for the procurement of commodities or contractual services, a bid, proposal, or reply received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

(1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

(2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

(3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).

(4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted.

(6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

Section 25. Section 287.093, Florida Statutes, is amended to read:

287.093 Minority business enterprises; procurement of personal property and services from funds set aside for such purpose.—Any county, municipality, community college, or district school board may set aside up to 10 percent or more of the total amount of funds allocated for the procurement of personal property and services for the purpose of entering into contracts with minority business enterprises. Such contracts shall be competitively solicited bid only among minority business enterprises. The set-aside shall be used to redress present effects of past discriminatory practices and shall be subject to periodic reassessment to account for changing needs and circumstances.

Section 26. Paragraphs (n) and (o) of subsection (4) and paragraphs (d) and (e) of subsection (5) of section 287.09451, Florida Statutes, are amended to read:

287.09451 Office of Supplier Diversity; powers, duties, and functions.—

(4) The Office of Supplier Diversity shall have the following powers, duties, and functions:

(n)1. To develop procedures to be used by an agency in identifying commodities, contractual services, architectural and engineering services, and construction contracts, except those architectural, engineering, construction, or other related services or contracts subject to the provisions of chapter 339, that could be provided by minority business enterprises. Each agency is encouraged to spend 21 percent of the moneys actually expended for construction contracts, 25 percent of the moneys actually expended for architectural and engineering contracts, 24 percent of the moneys actually expended for commodities, and 50.5 percent of the moneys actually expended for contractual services during the previous fiscal year, except for the state university construction program which shall be based upon public education capital outlay projections for the subsequent fiscal year, and reported to the Legislature pursuant to s. 216.023, for the purpose of entering into contracts with certified minority business enterprises as defined in s. 288.703(2), or approved joint ventures. However, in the event of budget reductions pursuant to s. 216.221, the base amounts may be adjusted to reflect such reductions. The overall spending goal for each industry category shall be subdivided as follows:

a. For construction contracts: 4 percent for black Americans, 6 percent for Hispanic-Americans, and 11 percent for American women.

b. For architectural and engineering contracts: 9 percent for Hispanic-Americans, 1 percent for Asian-Americans, and 15 percent for American women.

c. For commodities: 2 percent for black Americans, 4 percent for Hispanic-Americans, 0.5 percent for Asian-Americans, 0.5 percent for Native Americans, and 17 percent for American women.

d. For contractual services: 6 percent for black Americans, 7 percent for Hispanic-Americans, 1 percent for Asian-Americans, 0.5 percent for Native Americans, and 36 percent for American women.

2. For the purposes of commodities contracts for the purchase of equipment to be used in the construction and maintenance of state transportation facilities involving the Department of Transportation, “minority business enterprise” has the same meaning as provided in s. 288.703. “Minority person” has the same meaning as in s. 288.703(3). In order to ensure that the goals established under this paragraph for contracting with certified minority business enterprises are met, the department, with the assistance of the Office of Supplier Diversity, shall make recommendations to the Legislature on revisions to the goals, based on an updated statistical analysis, at least once every 5 years. Such recommendations shall be based on

statistical data indicating the availability of and disparity in the use of minority businesses contracting with the state. The results of the first updated disparity study must be presented to the Legislature no later than December 1, 1996.

3. In determining the base amounts for assessing compliance with this paragraph, the Office of Supplier Diversity may develop, by rule, guidelines for all agencies to use in establishing such base amounts. These rules must include, but are not limited to, guidelines for calculation of base amounts, a deadline for the agencies to submit base amounts, a deadline for approval of the base amounts by the Office of Supplier Diversity, and procedures for adjusting the base amounts as a result of budget reductions made pursuant to s. 216.221.

4. To determine guidelines for the use of price preferences, weighted preference formulas, or other preferences, as appropriate to the particular industry or trade, to increase the participation of minority businesses in state contracting. These guidelines shall include consideration of:

- a. Size and complexity of the project.
- b. The concentration of transactions with minority business enterprises for the commodity or contractual services in question in prior agency contracting.
- c. The specificity and definition of work allocated to participating minority business enterprises.
- d. The capacity of participating minority business enterprises to complete the tasks identified in the project.
- e. The available pool of minority business enterprises as prime contractors, either alone or as partners in an approved joint venture that serves as the prime contractor.

5. To determine guidelines for use of joint ventures to meet minority business enterprises spending goals. For purposes of this section, "joint venture" means any association of two or more business concerns to carry out a single business enterprise for profit, for which purpose they combine their property, capital, efforts, skills, and knowledge. The guidelines shall allow transactions with joint ventures to be eligible for credit against the minority business enterprise goals of an agency when the contracting joint venture demonstrates that at least one partner to the joint venture is a certified minority business enterprise as defined in s. 288.703, and that such partner is responsible for a clearly defined portion of the work to be performed, and shares in the ownership, control, management, responsibilities, risks, and profits of the joint venture. Such demonstration shall be by verifiable documents and sworn statements and may be reviewed by the Office of Supplier Diversity at or before the time a contract bid, proposal, or reply is submitted. An agency may count toward its minority business enterprise goals a portion of the total dollar amount of a contract equal to the percentage of the ownership and control held by the qualifying certified minority

business partners in the contracting joint venture, so long as the joint venture meets the guidelines adopted by the office.

(o)1. To establish a system to record and measure the use of certified minority business enterprises in state contracting. This system shall maintain information and statistics on certified minority business enterprise participation, awards, dollar volume of expenditures and agency goals, and other appropriate types of information to analyze progress in the access of certified minority business enterprises to state contracts and to monitor agency compliance with this section. Such reporting must include, but is not limited to, the identification of all subcontracts in state contracting by dollar amount and by number of subcontracts and the identification of the utilization of certified minority business enterprises as prime contractors and subcontractors by dollar amounts of contracts and subcontracts, number of contracts and subcontracts, minority status, industry, and any conditions or circumstances that significantly affected the performance of subcontractors. Agencies shall report their compliance with the requirements of this reporting system at least annually and at the request of the office. All agencies shall cooperate with the office in establishing this reporting system. Except in construction contracting, all agencies shall review contracts costing in excess of CATEGORY FOUR as defined in s. 287.017 to determine if such contracts could be divided into smaller contracts to be separately solicited bid and awarded, and shall, when economical, offer such smaller contracts to encourage minority participation.

2. To report agency compliance with the provisions of subparagraph 1. for the preceding fiscal year to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the secretary of the Department of Labor and Employment Security on or before February 1 of each year. The report must contain, at a minimum, the following:

- a. Total expenditures of each agency by industry.
- b. The dollar amount and percentage of contracts awarded to certified minority business enterprises by each state agency.
- c. The dollar amount and percentage of contracts awarded indirectly to certified minority business enterprises as subcontractors by each state agency.
- d. The total dollar amount and percentage of contracts awarded to certified minority business enterprises, whether directly or indirectly, as subcontractors.
- e. A statement and assessment of good faith efforts taken by each state agency.
- f. A status report of agency compliance with subsection (6), as determined by the Minority Business Enterprise Office.

(5)

(d) ~~If Should~~ the proposed procurement ~~proceeds~~ proceed to competitive solicitation bidding, the office is hereby granted standing to protest, pursu-

ant to this section, in a timely manner, any contract award ~~during~~ in competitive ~~solicitation~~ bidding for contractual services and construction contracts that fail to include minority business enterprise participation, if any responsible and responsive vendor ~~responding bidder~~ has demonstrated the ability to achieve any level of participation, or, any contract award for commodities where, a reasonable and economical opportunity to reserve a contract, statewide or district level, for minority participation was not executed or, an agency failed to adopt an applicable preference for minority participation. The bond requirement shall be waived for the office purposes of this subsection.

(e) An agency may presume that a vendor bidder offering no minority participation has not made a good faith effort when other vendors bidders offer minority participation of firms listed as relevant to the agency's purchasing needs in the pertinent locality or statewide to complete the project.

Section 27. Subsection (3) is added to section 287.095, Florida Statutes, to read:

287.095 Department of Corrections; prison industry programs.—

(3) All products offered for purchase to a state agency by the corporation organized under chapter 946 shall be produced in majority part by inmate labor, except for products not made by inmates which products are contractually allied to products made by inmates which are offered by the corporation, provided the value of the products not made by inmates do not exceed 2 percent of the total sales of the corporation in any year.

Section 28. Section 287.121, Florida Statutes, is repealed.

Section 29. Paragraph (g) of subsection (1), subsection (2), and paragraphs (a) and (d) of subsection (3) of section 287.133, Florida Statutes, are amended to read:

287.133 Public entity crime; denial or revocation of the right to transact business with public entities.—

(1) As used in this section:

(g) "Public entity crime" means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

(2)(a) A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; ~~may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work;~~ may

not submit bids, proposals, or replies on leases of real property to a public entity;³ may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity;³ and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following ~~from~~ the date of being placed on the convicted vendor list.

(b) ~~A~~ No public entity may not shall accept any bid, proposal, or reply from, award any contract to, or transact any business in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO with any person or affiliate on the convicted vendor list for a period of 36 months following ~~from~~ the date that person or affiliate was placed on the convicted vendor list unless that person or affiliate has been removed from the list pursuant to paragraph (3)(f). ~~A~~ No public entity that which was transacting business with a person at the time of the commission of a public entity crime resulting which resulted in that person being placed on the convicted vendor list may not shall accept any bid, proposal, or reply from, award any contract to, or transact any business with any other person who is under the same, or substantially the same, control as the person whose name appears on the convicted vendor list so long as that person's name appears on the convicted vendor list.

(3)(a) All invitations to bid ~~as defined by s. 287.012(11)~~, requests for proposals ~~as defined by s. 287.012(15)~~, and invitations to negotiate, as defined in s. 287.012, and any contract document described by s. 287.058 shall contain a statement informing persons of the provisions of paragraph (2)(a).

(d) The department shall maintain a list of the names and addresses of those who have been disqualified from the public contracting and purchasing process under this section. The department shall publish an initial list on January 1, 1990, and shall publish an updated version of the list quarterly thereafter. ~~The initial list and revised quarterly lists shall be electronically posted published in the Florida Administrative Weekly.~~ Notwithstanding this paragraph, a person or affiliate disqualified from the public contracting and purchasing process pursuant to this section shall be disqualified as of the date the final order is entered.

Section 30. Subsection (2) and paragraphs (a) and (c) of subsection (3) of section 287.134, Florida Statutes, are amended to read:

287.134 Discrimination; denial or revocation of the right to transact business with public entities.—

(2)(a) An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity;³ may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work;³ may not submit bids, proposals, or replies on leases of real property to a public entity;³ may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity;³ and may not transact business with any public entity.

(b) ~~A No public entity may not shall~~ accept any bid, proposals, or replies from, award any contract to, or transact any business with any entity or affiliate on the discriminatory vendor list for a period of 36 months following ~~from~~ the date that entity or affiliate was placed on the discriminatory vendor list unless that entity or affiliate has been removed from the list pursuant to paragraph (3)(f). ~~A No public entity that which~~ was transacting business with an entity at the time of the discrimination resulting which resulted in that entity being placed on the discriminatory vendor list may not shall accept any bid, proposal, or reply from, award any contract to, or transact any business with any other entity who is under the same, or substantially the same, control as the entity whose name appears on the discriminatory vendor list so long as that entity's name appears on the discriminatory vendor list.

(3)(a) All invitations to bid, ~~as defined by s. 287.012(11),~~ requests for proposals, ~~as defined by s. 287.012(15),~~ and invitations to negotiate, as defined by s. 287.012, and any written contract document of the state must ~~shall~~ contain a statement informing entities of the provisions of paragraph (2)(a).

(c) The department shall maintain a list of the names and addresses of any entity which has been disqualified from the public contracting and purchasing process under this section. The department shall publish an initial list on January 1, 2001, and shall publish an updated version of the list quarterly thereafter. ~~The initial list and revised quarterly lists shall be electronically posted published in the Florida Administrative Weekly.~~ Notwithstanding this paragraph, an entity or affiliate disqualified from the public contracting and purchasing process pursuant to this section shall be disqualified as of the date the final order is entered.

Section 31. Section 287.1345, Florida Statutes, is amended to read:

287.1345 Surcharge on users of state term contracts; deposit of proceeds collected.—The department of ~~Management Services~~ may impose a surcharge upon users of state term contracts in order to fund the costs, including overhead, of its procurement function. The department may provide for the state term contract vendor to collect the surcharge or directly collect the fee from the public agency or eligible user involved. For the purpose of compensating vendors for expenses incurred in collecting such fees, the department may authorize a vendor to retain a portion of the fees. The vendor may withhold the portion retained from the amount of fees to be remitted to the department. The department may negotiate the retainage as a percentage of such fees charged to users, as a flat amount, or as any other method the department deems feasible. Vendors shall maintain accurate sales summaries for purchases made from state term contracts and shall provide the summaries to the department on a quarterly basis. Any contract remedies relating to the collection of such fees from users through vendors are enforceable, including, but not limited to, liquidated damages, late fees, and the costs of collection, including attorney's fees. The fees collected pursuant to this section shall be deposited into the Grants and Donations Trust Fund of the department and are subject to appropriation as provided by law. The Executive Office of the Governor may exempt transactions from the payment of the surcharge if payment of such surcharge

would cause the state, a political subdivision, or unit of local government to lose federal funds or in other cases where such exemption is in the public interest. The fees collected pursuant to this section and interest income on such fees shall not be deemed to be income of a revenue nature for purposes of chapter 215.

Section 32. Section 373.610, Florida Statutes, is amended to read:

373.610 ~~Defaulting vendors and contractors.~~—The district may suspend a contractor on a temporary or permanent basis from doing work with the district if such contractor has materially breached its contract with the district. The district shall adopt rules to administer the provisions of this section to specify the circumstances and conditions that constitute a materially breached contract and conditions that constitute the period for temporary or permanent suspension and for reinstatement.

Section 33. Section 373.611, Florida Statutes, is amended to read:

373.611 Modification or limitation of remedy.—In order to promote the cost-effective procurement of commodities and contractual services by the water management districts, a district may enter into contracts to limit or alter the measure of damages recoverable from a vendor or contractor by a district when procuring commodities or contractual services, consistent with the provisions contained in s. 672.719.

Section 34. Subsection (3) of section 394.457, Florida Statutes, is amended to read:

394.457 Operation and administration.—

(3) POWER TO CONTRACT.—The department may contract to provide, and be provided with, services and facilities in order to carry out its responsibilities under this part with the following agencies: public and private hospitals; receiving and treatment facilities; clinics; laboratories; departments, divisions, and other units of state government; the state colleges and universities; the community colleges; private colleges and universities; counties, municipalities, and any other governmental unit, including facilities of the United States Government; and any other public or private entity which provides or needs facilities or services. Baker Act funds for community inpatient, crisis stabilization, short-term residential treatment, and screening services must be allocated to each county pursuant to the department's funding allocation methodology. Notwithstanding the provisions of s. 287.057(5)(f) ~~s. 287.057(4)(f)~~, contracts for community-based Baker Act services for inpatient, crisis stabilization, short-term residential treatment, and screening provided under this part, other than those with other units of government, to be provided for the department must be awarded using competitive sealed bids when the county commission of the county receiving the services makes a request to the department's district office by January 15 of the contracting year. The district shall not enter into a competitively bid contract under this provision if such action will result in increases of state or local expenditures for Baker Act services within the district. Contracts for these Baker Act services using competitive sealed bids will be effective for 3 years. Services contracted for by the department may be

reimbursed by the state at a rate up to 100 percent. The department shall adopt rules establishing minimum standards for such contracted services and facilities and shall make periodic audits and inspections to assure that the contracted services are provided and meet the standards of the department.

Section 35. Paragraph (a) of subsection (1) of section 394.47865, Florida Statutes, is amended to read:

394.47865 South Florida State Hospital; privatization.—

(1) The Department of Children and Family Services shall, through a request for proposals, privatize South Florida State Hospital. The department shall plan to begin implementation of this privatization initiative by July 1, 1998.

(a) Notwithstanding ~~s. 287.057(14)~~ s. 287.057(13), the department may enter into agreements, not to exceed 20 years, with a private provider, a coalition of providers, or another agency to finance, design, and construct a treatment facility having up to 350 beds and to operate all aspects of daily operations within the facility. The department may subcontract any or all components of this procurement to a statutorily established state governmental entity that has successfully contracted with private companies for designing, financing, acquiring, leasing, constructing, and operating major privatized state facilities.

Section 36. Subsections (1) and (5) of section 402.73, Florida Statutes, are amended to read:

402.73 Contracting and performance standards.—

(1) The Department of Children and Family Services shall establish performance standards for all contracted client services. Notwithstanding s. 287.057(5)(f) ~~s. 287.057(4)(f)~~, the department must competitively procure any contract for client services when any of the following occurs:

(a) The provider fails to meet appropriate performance standards established by the department after the provider has been given a reasonable opportunity to achieve the established standards.

(b) A new program or service has been authorized and funded by the Legislature and the annual value of the contract for such program or service is \$300,000 or more.

(c) The department has concluded, after reviewing market prices and available treatment options, that there is evidence that the department can improve the performance outcomes produced by its contract resources. At a minimum, the department shall review market prices and available treatment options biennially. The department shall compile the results of the biennial review and include the results in its annual performance report to the Legislature pursuant to chapter 94-249, Laws of Florida. The department shall provide notice and an opportunity for public comment on its review of market prices and available treatment options.

(5) When it is in the best interest of a defined segment of its consumer population, the department may competitively procure and contract for systems of treatment or service that involve multiple providers, rather than procuring and contracting for treatment or services separately from each participating provider. The department must ensure that all providers that participate in the treatment or service system meet all applicable statutory, regulatory, service-quality, and cost-control requirements. If other governmental entities or units of special purpose government contribute matching funds to the support of a given system of treatment or service, the department shall formally request information from those funding entities in the procurement process and may take the information received into account in the selection process. If a local government contributes match to support the system of treatment or contracted service and if the match constitutes at least 25 percent of the value of the contract, the department shall afford the governmental match contributor an opportunity to name an employee as one of the persons to the selection team required by s. 287.057(17) to evaluate or negotiate certain contracts, unless the department sets forth in writing the reason why such inclusion would be contrary to the best interest of the state s. 287.057(15). Any employee so named by the governmental match contributor shall qualify as one of the persons employees required by s. 287.057(17) s. 287.057(15). ~~The selection team shall include the named employee unless the department sets forth in writing the reason such inclusion would be contrary to the best interests of the state.~~ No governmental entity or unit of special purpose government may name an employee as one of the persons required by s. 287.057(17) ~~to the selection team~~ if it, or any of its political subdivisions, executive agencies, or special districts, intends to compete for the contract to be awarded. The governmental funding entity or match contributor shall comply with any deadlines and procurement procedures established by the department. The department may also involve nongovernmental funding entities in the procurement process when appropriate.

Section 37. Subsection (2) of section 408.045, Florida Statutes, is amended to read:

408.045 Certificate of need; competitive sealed proposals.—

(2) The agency shall make a decision regarding the issuance of the certificate of need in accordance with the provisions of s. 287.057(17) ~~s. 287.057(15)~~, rules adopted by the agency relating to intermediate care facilities for the developmentally disabled, and the criteria in s. 408.035, as further defined by rule.

Section 38. Subsection (2) of section 413.033, Florida Statutes, is amended to read:

413.033 Definitions.—As used in ss. 413.032-413.037:

(2) “Other severely handicapped” and “severely handicapped individuals” mean an individual or class of individuals under a physical or mental disability other than blindness, which, according to criteria established by the department ~~commission created in s. 413.034~~, after consultation with

appropriate entities of the state and taking into account the views of nongovernmental entities representing the handicapped, constitutes a substantial handicap to employment and is of such a nature as to prevent the individual under such disability from currently engaging in normal competitive employment.

Section 39. Section 413.035, Florida Statutes, is amended to read:

413.035 Duties and powers of the department ~~commission~~.—

(1) It shall be the duty of the department ~~commission~~ to determine the market price of all products and services offered for sale to the various agencies of the state by any qualified nonprofit agency for the blind or other severely handicapped. The price shall recover for the nonprofit agency the cost of raw materials, labor, overhead, and delivery, but without profit, and shall be revised from time to time in accordance with changing cost factors. The department ~~commission~~ shall make such rules and regulations regarding specifications, time of delivery, and assignment of products and services to be supplied by nonprofit agencies for the blind or by agencies for the other severely handicapped, with priority for assignment of products to agencies for the blind, authorization of a central nonprofit agency to facilitate the allocation of orders among qualified nonprofit agencies for the blind, authorization of a central nonprofit agency to facilitate the allocation of orders among qualified nonprofit agencies for other severely handicapped, and other relevant matters of procedure as shall be necessary to carry out the purposes of this act. The department ~~commission~~ shall authorize the purchase of products and services elsewhere when requisitions cannot reasonably be complied with through the nonprofit agencies for the blind and other severely handicapped.

(2) The department ~~commission~~ shall establish and publish a list of products and services provided by any qualified nonprofit agency for the blind and any nonprofit agency for the other severely handicapped, which the department ~~commission~~ determines are suitable for procurement by agencies of the state pursuant to this act. This procurement list and revision thereof shall be distributed to all purchasing officers of the state and its political subdivisions. All products offered for purchase to a state agency by a qualified nonprofit agency shall have significant value added by blind or severely handicapped persons, as determined by the department.

Section 40. Section 413.036, Florida Statutes, is amended to read:

413.036 Procurement of services by agencies; authority of department ~~commission~~.—

(1) If any agency intends to procure any product or service on the procurement list, that agency shall, in accordance with rules and regulations of the department ~~commission~~, procure such product or service at the price established by the department ~~commission~~ from a qualified nonprofit agency for the blind or for the other severely handicapped if the product or service is available within a reasonable delivery time. This act shall not apply in any case in which products or services are available for procurement from any

agency of the state and procurement therefrom is required under the provision of any law currently in effect. However, this act shall have precedence over any law requiring state agency procurement of products or services from any other nonprofit corporation unless such precedence is waived by the ~~department commission~~ in accordance with its rules.

(2) The provisions of part I of chapter 287 do not apply to any purchase of commodities or contractual services made by any legislative, executive, or judicial agency of the state from a qualified nonprofit agency for the blind or for the other severely handicapped.

(3) If, pursuant to a contract between any legislative, executive, or judicial agency of the state and any private contract vendor, a product or service is required by the Department of Management Services or on behalf of any state agency that is included on the procurement list established by the commission pursuant to s. 413.035(2), the contract must contain the following language:

“IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INSOFAR AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.”

(4) No similar product or service of comparable price and quality found necessary for use by any state agency may be purchased from any source other than the nonprofit agency for the blind or for the severely handicapped if the nonprofit agency certifies that the product is manufactured or supplied by, or the service is provided by, the blind or the severely handicapped and the product or service meets the comparable performance specifications and comparable price and quality requirements as determined by the department or an agency. The purchasing authority of any such state agency may make reasonable determinations of need, price, and quality with reference to products or services available from the nonprofit agency.

Section 41. Section 413.037, Florida Statutes, is amended to read:

413.037 Cooperation with ~~department commission~~ required; duties of state agencies.—

(1) In furtherance of the purposes of this act and in order to contribute to the economy of state government, it is the intent of the Legislature that there be close cooperation between the ~~department commission~~ and any agency of the state from which procurement of products or services is required under the provision of any law currently in effect. The ~~department commission~~ and any such agency of the state are authorized to enter into

such contractual agreements, cooperative working relationships, or other arrangements as may be determined to be necessary for effective coordination and efficient realization of the objectives of this act and any other law requiring procurement of products or services from any agency of the state.

(2) The ~~department commission~~ may secure directly from any agency of the state information necessary to enable it to carry out this act. Upon request of the ~~department chair of the commission~~, the head of the agency shall furnish such information to the department commission.

(3) Space shall be set aside in the State Capitol for the purpose of exhibiting products produced by clients of rehabilitation-oriented agencies of the state.

Section 42. Paragraph (c) of subsection (5) of section 445.024, Florida Statutes, is amended to read:

445.024 Work requirements.—

(5) USE OF CONTRACTS.—Regional workforce boards shall provide work activities, training, and other services, as appropriate, through contracts. In contracting for work activities, training, or services, the following applies:

(c) Notwithstanding the exemption from the competitive sealed bid requirements provided in s. 287.057(5)(f) ~~s. 287.057(4)(f)~~ for certain contractual services, each contract awarded under this chapter must be awarded on the basis of a competitive sealed bid, except for a contract with a governmental entity as determined by the regional workforce board.

Section 43. Paragraph (d) of subsection (2) of section 455.2177, Florida Statutes, is amended to read:

455.2177 Monitoring of compliance with continuing education requirements.—

(2) If the compliance monitoring system required under this section is privatized, the following provisions apply:

(d) Upon the failure of a vendor to meet its obligations under a contract as provided in paragraph (a), the department may suspend the contract and enter into an emergency contract under s. 287.057(5) ~~s. 287.057(4)~~.

Section 44. Section 413.034, Florida Statutes, is repealed.

Section 45. This act shall take effect July 1, 2002.

Approved by the Governor April 29, 2002.

Filed in Office Secretary of State April 29, 2002.