

By the Committee on State Administration and Representative Brummer

1                                   A bill to be entitled  
 2           An act relating to procurement of commodities  
 3           and contractual services; amending s. 287.012,  
 4           F.S.; revising definitions; amending s.  
 5           287.042, F.S.; limiting challenges of terms,  
 6           conditions, and specifications of certain  
 7           requests or invitations; including invitations  
 8           to negotiate and requests for quotes within  
 9           provisions relating to competitive processes;  
 10          requiring the Department of Management Services  
 11          to develop certain competitive procurement  
 12          processes procedures; providing additional  
 13          criteria for methods of securing competitive  
 14          sealed bids, responses, quotes, and proposals;  
 15          amending s. 287.057, F.S.; providing for  
 16          procurement by invitation to negotiate and for  
 17          provision by request for a quote under certain  
 18          circumstances; amending ss. 61.1826, 287.022,  
 19          287.058, 394.457, 394.47865, 402.73, 408.045,  
 20          445.024, and 455.2177, F.S.; correcting cross  
 21          references; providing an effective date.

22  
 23 Be It Enacted by the Legislature of the State of Florida:

24  
 25           Section 1. Subsections (15), (16), and (17) of section  
 26 287.012, Florida Statutes, are amended, and subsections (20)  
 27 and (21) are added to said section, to read:

28           287.012 Definitions.--The following definitions shall  
 29 apply in this part:

30           (15) "Request for proposals" means a written  
 31 solicitation for competitive sealed proposals with the title,

1 date, and hour of the public opening designated. A written  
2 solicitation includes a solicitation published or transmitted  
3 by electronic means. The request for proposals is used when  
4 the agency is incapable of specifically defining the scope of  
5 work for which the commodity, group of commodities, or  
6 contractual service is required and when the agency is  
7 requesting that a qualified proposer of ~~offeror propose~~ a  
8 commodity, group of commodities, or contractual service ~~to~~  
9 meet the specifications of the solicitation document. A  
10 request for proposals includes, but is not limited to, general  
11 information, applicable laws and rules, functional or general  
12 specifications, statement of work, proposal instructions, and  
13 evaluation criteria. Requests for proposals shall state the  
14 relative importance of price and any other evaluation  
15 criteria.

16 (16) "Responsive bid" or "responsive proposal" means a  
17 bid or proposal submitted by a responsive, and responsible or  
18 qualified, bidder or proposer ~~offeror~~ which conforms in all  
19 material respects to the invitation to bid or request for  
20 proposals.

21 (17) "Responsive bidder" or "responsive proposer  
22 ~~offeror~~" means a person who has submitted a bid or proposal  
23 which conforms in all material respects to the invitation to  
24 bid or request for proposals.

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

30 (21) "Request for a quote" means a solicitation that  
31 calls for pricing information for purposes of competitively

1 selecting and procuring commodities and contractual services  
2 from qualified or registered vendors.

3 Section 2. Paragraph (d) is added to subsection (2) of  
4 section 287.042, Florida Statutes, paragraphs (b) and (c) of  
5 subsection (4) of said section are amended and paragraph (f)  
6 is added to said subsection, and paragraph (a) of subsection  
7 (5) of said section is amended, to read:

8 287.042 Powers, duties, and functions.--The department  
9 shall have the following powers, duties, and functions:

10 (2)

11 (d) The terms, conditions, and specifications of a  
12 request for proposal, invitation to bid, or invitation to  
13 negotiate, including any provisions governing the methods for  
14 ranking proposals, awarding contracts, reserving rights of  
15 further negotiation, or the modification or amendment of any  
16 contract, are subject to challenge only by filing a protest  
17 within 72 hours after the notice of the terms, conditions, or  
18 specifications as provided in s. 120.57(3)(b).

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

23 (b) Development of procedures for the releasing of  
24 requests for proposals, invitations to bid, invitations to  
25 negotiate, and other competitive acquisitions which procedures  
26 shall include, but are not limited to, notice by publication  
27 in the Florida Administrative Weekly, on Government Services  
28 Direct, or by mail at least 10 days before the date set for  
29 submittal of proposals or bids. The Office of Supplier  
30 Diversity may consult with agencies regarding the development  
31 of bid distribution procedures to ensure that maximum

1 distribution is afforded to certified minority business  
2 enterprises as defined in s. 288.703.

3 (c) Development of procedures for the receipt and  
4 opening of bids, responses, quotes, or proposals by an agency.  
5 Such procedures shall provide the Office of Supplier Diversity  
6 an opportunity to monitor and ensure that the contract award  
7 is consistent with the requirements of s. 287.09451 ~~original~~  
8 ~~request for proposal or invitation to bid, in accordance with~~  
9 ~~s. 287.0945(6), and subject to the review of bid responses~~  
10 ~~within standard timelines.~~

11 (f) Development of procedures to be used by an agency  
12 for issuing invitations to bid, invitations to negotiate,  
13 requests for a proposal, requests for a quote, or other  
14 competitive procurement processes.

15 (5)(a) To prescribe the methods of securing  
16 competitive sealed bids, responses, quotes, and proposals.  
17 Such methods may include, but are not limited to, procedures  
18 for identifying vendors; setting qualifications; evaluating  
19 responses, bids, and proposals; ranking respondents and  
20 proposers; selecting invitees and proposers; and conducting  
21 negotiations, ~~or negotiating and awarding commodity and~~  
22 ~~contractual services contracts, unless otherwise provided by~~  
23 ~~law.~~

24 Section 3. Subsection (2) of section 287.057, Florida  
25 Statutes, is amended, subsections (3) through (22) of said  
26 section are renumbered as subsections (4) through (23),  
27 respectively, a new subsection (3) is added to said section,  
28 and present subsections (3) and (15) of said section are  
29 amended, to read:

30 287.057 Procurement of commodities or contractual  
31 services.--

1           (2) When an agency determines in writing that the use  
2 of competitive sealed bidding is not practicable, commodities  
3 or contractual services shall be procured by competitive  
4 sealed proposals. A request for proposals which includes a  
5 statement of the commodities or contractual services sought  
6 and all contractual terms and conditions applicable to the  
7 procurement of commodities or contractual services, including  
8 the criteria, which shall include, but need not be limited to,  
9 price, to be used in determining acceptability of the proposal  
10 shall be issued. If the agency contemplates renewal of the  
11 commodities or contractual services contract, it shall be so  
12 stated in the request for proposals. The submitted proposal  
13 shall include the price for each year for which the contract  
14 may be renewed. Evaluation of proposals shall include  
15 consideration of the total cost for each year as quoted by the  
16 proposer ~~offeror~~. To assure full understanding of and  
17 responsiveness to the solicitation requirements, discussions  
18 may be conducted with qualified proposers ~~offerors~~. The  
19 proposers ~~offerors~~ shall be accorded fair and equal treatment  
20 prior to the submittal date specified in the request for  
21 proposals with respect to any opportunity for discussion and  
22 revision of proposals. The award shall be made to the  
23 responsible proposer ~~offeror~~ whose proposal is determined in  
24 writing to be the most advantageous to the state, taking into  
25 consideration the price and the other criteria set forth in  
26 the request for proposals. The contract file shall contain  
27 the basis on which the award is made.

28           (3) If the agency determines that the use of an  
29 invitation to bid or a request for a proposal is not  
30 practical, commodities or contractual services may be procured  
31

1 by an invitation to negotiate or provided by a request for a  
2 quote.

3 ~~(4)(3)~~ When the purchase price of commodities or  
4 contractual services exceeds the threshold amount provided in  
5 s. 287.017 for CATEGORY TWO, no purchase of commodities or  
6 contractual services may be made without receiving competitive  
7 sealed bids, or competitive sealed proposals, or responses to  
8 an invitation to negotiate or a request for a quote unless:

9 (a) The agency head determines in writing that an  
10 immediate danger to the public health, safety, or welfare or  
11 other substantial loss to the state requires emergency action.  
12 After the agency head makes such a written determination, the  
13 agency may proceed with the procurement of commodities or  
14 contractual services necessitated by the immediate danger,  
15 without competition. However, such emergency procurement shall  
16 be made with such competition as is practicable under the  
17 circumstances. The agency shall furnish copies of the written  
18 determination certified under oath and any other documents  
19 relating to the emergency action to the department. A copy of  
20 the statement shall be furnished to the Comptroller with the  
21 voucher authorizing payment. The individual purchase of  
22 personal clothing, shelter, or supplies which are needed on an  
23 emergency basis to avoid institutionalization or placement in  
24 a more restrictive setting is an emergency for the purposes of  
25 this paragraph, and the filing with the department of such  
26 statement is not required in such circumstances. In the case  
27 of the emergency purchase of insurance, the period of coverage  
28 of such insurance shall not exceed a period of 30 days, and  
29 all such emergency purchases shall be reported to the  
30 department.

31

1           (b) Purchasing agreements and contracts executed by  
2 the department or by agencies under authority delegated by the  
3 department in writing are excepted from bid requirements.

4           (c) Commodities or contractual services available only  
5 from a single source may be excepted from the bid requirements  
6 if it is determined that such commodities or services are  
7 available only from a single source and such determination is  
8 documented. However, if such contract is for an amount greater  
9 than the threshold amount provided in s. 287.017 for CATEGORY  
10 FOUR, the agency head shall file a certification of conditions  
11 and circumstances with the department and shall obtain the  
12 prior approval of the department. The failure of the  
13 department to approve or disapprove the request of an agency  
14 for prior approval within 21 days after receiving such request  
15 or within 14 days after receiving from the agency additional  
16 materials requested by the department shall constitute prior  
17 approval of the department. To the greatest extent  
18 practicable, but no later than 45 days after authorizing the  
19 exception in writing, the department shall combine  
20 single-source procurement authorizations for identical  
21 information technology resources for which the purchase price  
22 exceeds the threshold amount provided in s. 287.017 for  
23 CATEGORY FOUR, and shall negotiate and execute volume  
24 purchasing agreements for such procurements on behalf of the  
25 agencies.

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

31

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

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

- 16           1. Artistic services.
- 17           2. Academic program reviews.
- 18           3. Lectures by individuals.
- 19           4. Auditing services.
- 20           5. Legal services, including attorney, paralegal,  
21 expert witness, appraisal, or mediator services.
- 22           6. Health services involving examination, diagnosis,  
23 treatment, prevention, medical consultation, or  
24 administration.
- 25           7. Services provided to persons with mental or  
26 physical disabilities by not-for-profit corporations which  
27 have obtained exemptions under the provisions of s. 501(c)(3)  
28 of the United States Internal Revenue Code or when such  
29 services are governed by the provisions of Office of  
30 Management and Budget Circular A-122. However, in acquiring  
31 such services, the agency shall consider the ability of the



1 contractor, past performance, willingness to meet time  
2 requirements, and price.

3 8. Medicaid services delivered to an eligible Medicaid  
4 recipient by a health care provider who has not previously  
5 applied for and received a Medicaid provider number from the  
6 Agency for Health Care Administration. However, this exception  
7 shall be valid for a period not to exceed 90 days after the  
8 date of delivery to the Medicaid recipient and shall not be  
9 renewed by the agency.

10 9. Family placement services.

11 10. Prevention services related to mental health,  
12 including drug abuse prevention programs, child abuse  
13 prevention programs, and shelters for runaways, operated by  
14 not-for-profit corporations. However, in acquiring such  
15 services, the agency shall consider the ability of the  
16 contractor, past performance, willingness to meet time  
17 requirements, and price.

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

20 12. Contracts entered into pursuant to s. 337.11.

21 13. Services or commodities provided by governmental  
22 agencies.

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

27 ~~(16)~~<sup>(15)</sup> For requests for proposals, a selection team  
28 of at least three employees who have experience and knowledge  
29 in the program areas and service requirements for which  
30 contractual services are sought shall be appointed by the  
31 agency head to aid in the evaluation of the proposals and

1 selection of one or more proposers ~~contractors~~ for contracts  
2 of more than the threshold amount provided in s. 287.017 for  
3 CATEGORY FOUR.

4 Section 4. Paragraph (e) of subsection (1) of section  
5 61.1826, Florida Statutes, is amended to read:

6 61.1826 Procurement of services for State Disbursement  
7 Unit and the non-Title IV-D component of the State Case  
8 Registry; contracts and cooperative agreements; penalties;  
9 withholding payment.--

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

16 (e) The potential loss of substantial federal funds  
17 poses a direct and immediate threat to the health, safety, and  
18 welfare of the children and citizens of the state and  
19 constitutes an emergency for purposes of s. 287.057(4)~~(3)~~(a).

20  
21 For these reasons, the Legislature hereby directs the  
22 Department of Revenue, subject to the provisions of subsection  
23 (6), to contract with the Florida Association of Court Clerks  
24 and each depository to perform duties with respect to the  
25 operation and maintenance of a State Disbursement Unit and the  
26 non-Title IV-D component of the State Case Registry as further  
27 provided by this section.

28 Section 5. Subsection (1) of section 287.022, Florida  
29 Statutes, is amended to read:

30 287.022 Purchase of insurance.--

31

1           (1) Insurance, while not a commodity, nevertheless  
2 shall be purchased for all agencies by the department, except  
3 that agencies may purchase title insurance for land  
4 acquisition and may make emergency purchases of insurance  
5 pursuant to s. 287.057(4)~~(3)~~(a). The procedures for purchasing  
6 insurance, whether the purchase is made by the department or  
7 by the agencies, shall be the same as those set forth herein  
8 for the purchase of commodities.

9           Section 6. Subsection (5) of section 287.058, Florida  
10 Statutes, is amended to read:

11           287.058 Contract document.--

12           (5) Unless otherwise provided in the General  
13 Appropriations Act or the substantive bill implementing the  
14 General Appropriations Act, the Comptroller may waive the  
15 requirements of this section for services which are included  
16 in s. 287.057(4)~~(3)~~(f).

17           Section 7. Subsection (3) of section 394.457, Florida  
18 Statutes, is amended to read:

19           394.457 Operation and administration.--

20           (3) POWER TO CONTRACT.--The department may contract to  
21 provide, and be provided with, services and facilities in  
22 order to carry out its responsibilities under this part with  
23 the following agencies: public and private hospitals;  
24 receiving and treatment facilities; clinics; laboratories;  
25 departments, divisions, and other units of state government;  
26 the state colleges and universities; the community colleges;  
27 private colleges and universities; counties, municipalities,  
28 and any other governmental unit, including facilities of the  
29 United States Government; and any other public or private  
30 entity which provides or needs facilities or services. Baker  
31 Act funds for community inpatient, crisis stabilization,

1 short-term residential treatment, and screening services must  
2 be allocated to each county pursuant to the department's  
3 funding allocation methodology. Notwithstanding the provisions  
4 of s. 287.057(4)~~(3)~~(f), contracts for community-based Baker  
5 Act services for inpatient, crisis stabilization, short-term  
6 residential treatment, and screening provided under this part,  
7 other than those with other units of government, to be  
8 provided for the department must be awarded using competitive  
9 sealed bids when the county commission of the county receiving  
10 the services makes a request to the department's district  
11 office by January 15 of the contracting year. The district  
12 shall not enter into a competitively bid contract under this  
13 provision if such action will result in increases of state or  
14 local expenditures for Baker Act services within the district.  
15 Contracts for these Baker Act services using competitive  
16 sealed bids will be effective for 3 years. Services contracted  
17 for by the department may be reimbursed by the state at a rate  
18 up to 100 percent. The department shall adopt rules  
19 establishing minimum standards for such contracted services  
20 and facilities and shall make periodic audits and inspections  
21 to assure that the contracted services are provided and meet  
22 the standards of the department.

23 Section 8. Paragraph (a) of subsection (1) of section  
24 394.47865, Florida Statutes, is amended to read:

25 394.47865 South Florida State Hospital;  
26 privatization.--

27 (1) The Department of Children and Family Services  
28 shall, through a request for proposals, privatize South  
29 Florida State Hospital. The department shall plan to begin  
30 implementation of this privatization initiative by July 1,  
31 1998.

1           (a) Notwithstanding s. 287.057(~~12~~)(13), the department  
2 may enter into agreements, not to exceed 20 years, with a  
3 private provider, a coalition of providers, or another agency  
4 to finance, design, and construct a treatment facility having  
5 up to 350 beds and to operate all aspects of daily operations  
6 within the facility. The department may subcontract any or all  
7 components of this procurement to a statutorily established  
8 state governmental entity that has successfully contracted  
9 with private companies for designing, financing, acquiring,  
10 leasing, constructing, and operating major privatized state  
11 facilities.

12           Section 9. Subsections (1) and (5) of section 402.73,  
13 Florida Statutes, are amended to read:

14           402.73 Contracting and performance standards.--

15           (1) The Department of Children and Family Services  
16 shall establish performance standards for all contracted  
17 client services. Notwithstanding s. 287.057(~~3~~)(4)(f), the  
18 department must competitively procure any contract for client  
19 services when any of the following occurs:

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

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

27           (c) The department has concluded, after reviewing  
28 market prices and available treatment options, that there is  
29 evidence that the department can improve the performance  
30 outcomes produced by its contract resources. At a minimum, the  
31 department shall review market prices and available treatment

1 options biennially. The department shall compile the results  
2 of the biennial review and include the results in its annual  
3 performance report to the Legislature pursuant to chapter  
4 94-249, Laws of Florida. The department shall provide notice  
5 and an opportunity for public comment on its review of market  
6 prices and available treatment options.

7 (5) When it is in the best interest of a defined  
8 segment of its consumer population, the department may  
9 competitively procure and contract for systems of treatment or  
10 service that involve multiple providers, rather than procuring  
11 and contracting for treatment or services separately from each  
12 participating provider. The department must ensure that all  
13 providers that participate in the treatment or service system  
14 meet all applicable statutory, regulatory, service-quality,  
15 and cost-control requirements. If other governmental entities  
16 or units of special purpose government contribute matching  
17 funds to the support of a given system of treatment or  
18 service, the department shall formally request information  
19 from those funding entities in the procurement process and may  
20 take the information received into account in the selection  
21 process. If a local government contributes match to support  
22 the system of treatment or contracted service and if the match  
23 constitutes at least 25 percent of the value of the contract,  
24 the department shall afford the governmental match contributor  
25 an opportunity to name an employee to the selection team  
26 required by s. 287.057(16)(~~15~~). Any employee so named shall  
27 qualify as one of the employees required by s.  
28 287.057(16)(~~15~~). The selection team shall include the named  
29 employee unless the department sets forth in writing the  
30 reason such inclusion would be contrary to the best interests  
31 of the state. No governmental entity or unit of special

1 purpose government may name an employee to the selection team  
2 if it, or any of its political subdivisions, executive  
3 agencies, or special districts, intends to compete for the  
4 contract to be awarded. The governmental funding entity or  
5 match contributor shall comply with any deadlines and  
6 procurement procedures established by the department. The  
7 department may also involve nongovernmental funding entities  
8 in the procurement process when appropriate.

9 Section 10. Subsection (2) of section 408.045, Florida  
10 Statutes, is amended to read:

11 408.045 Certificate of need; competitive sealed  
12 proposals.--

13 (2) The agency shall make a decision regarding the  
14 issuance of the certificate of need in accordance with the  
15 provisions of s. 287.057(16)(~~15~~), rules adopted by the agency  
16 relating to intermediate care facilities for the  
17 developmentally disabled, and the criteria in s. 408.035, as  
18 further defined by rule.

19 Section 11. Paragraph (c) of subsection (5) of section  
20 445.024, Florida Statutes, is amended to read:

21 445.024 Work requirements.--

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

26 (c) Notwithstanding the exemption from the competitive  
27 sealed bid requirements provided in s. 287.057(4)(~~3~~)(f) for  
28 certain contractual services, each contract awarded under this  
29 chapter must be awarded on the basis of a competitive sealed  
30 bid, except for a contract with a governmental entity as  
31 determined by the regional workforce board.

1           Section 12. Paragraph (d) of subsection (2) of section  
2 455.2177, Florida Statutes, is amended to read:

3           455.2177 Monitoring of compliance with continuing  
4 education requirements.--

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

7           (d) Upon the failure of a vendor to meet its  
8 obligations under a contract as provided in paragraph (a), the  
9 department may suspend the contract and enter into an  
10 emergency contract under s. 287.057(4)~~(3)~~.

11           Section 13. This act shall take effect July 1, 2002.

12  
13           \*\*\*\*\*

14           HOUSE SUMMARY

15           Revises procurement of commodities and contractual  
16 services provisions to limit challenges of terms,  
17 conditions, and specifications of requests for proposals  
or invitation to bid or negotiate, include invitations to  
18 negotiate and requests for quotes within provisions  
relating to competitive processes, require the Department  
of Management Services to develop procedures for issuing  
19 invitations to bid or negotiate or requests for a  
proposal or a quote, and provide for procurement by  
20 invitation to negotiate and for provision by request for  
a quote if an invitation to bid or a request for a  
21 proposal is not practical. See bill for details.