

By the Committee on Fiscal Policy & Resources and
Representative Wallace

1 A bill to be entitled
2 An act relating to competitive solicitation for
3 procurement of commodities, insurance, and
4 contractual services; amending s. 120.57, F.S.;
5 revising and clarifying uniform rules of
6 procedure for certain actions; amending ss.
7 287.001, 287.012, 287.017, 287.022, 287.032,
8 287.042, 287.045, 287.056, 287.057, 287.0572,
9 287.058, 287.0731, 287.0822, 287.084, 287.087,
10 287.093, 287.09451, 287.133, 287.134, and
11 287.1345, F.S.; revising legislative intent and
12 definitions; revising and clarifying purchasing
13 categories and threshold amounts; revising
14 purchase of insurance requirements and
15 procedures; revising purposes, powers, duties,
16 and functions of the Department of Management
17 Services; revising and clarifying requirements
18 and procedures for procurement of products and
19 materials with recycled content; revising and
20 clarifying requirements and procedures for
21 certain purchases from state term contracts
22 procured by the department; revising and
23 clarifying procedures, requirements, and
24 limitations for procurement of commodities or
25 contractual services; revising present-value
26 methodology requirements; clarifying pollution
27 response action contract provisions; revising
28 department rulemaking authority; revising
29 provisions requiring certain teams for contract
30 negotiations; revising provisions relating to
31 purchases of beef and pork and prohibitions on

1 such; providing a penalty; revising and
2 clarifying provisions granting preference to
3 Florida businesses, businesses with drug-free
4 workplace programs, and minority business
5 enterprises; revising the powers, duties, and
6 functions of the Office of Supplier Diversity;
7 revising and clarifying provisions relating to
8 public entity crime and the denial or
9 revocation of the right to transact business
10 with public entities; revising and clarifying
11 provisions relating to discrimination and
12 denial or revocation of the right to transact
13 business with public entities; revising and
14 clarifying provisions imposing a surcharge on
15 users of state term contracts and providing for
16 deposit of proceeds collected; creating s.
17 287.096, F.S.; providing certain production
18 requirements for products offered for purchase
19 to a state agency by certain exempt entities;
20 amending s. 283.33, F.S., to conform; repealing
21 s. 287.073, F.S., relating to procurement of
22 information technology resources; repealing s.
23 287.121, F.S., relating to providing assistance
24 to the Department of Legal Affairs; providing
25 an effective date.

26

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

28

29 Section 1. Subsection (3) of section 120.57, Florida
30 Statutes, is amended to read:

31 120.57 Additional procedures for particular cases.--

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

7 (a) The agency shall post ~~provide~~ notice of its
8 ~~decision or~~ intended decision concerning a ~~bid~~ solicitation or
9 a contract award as follows:

10 1. For a ~~bid~~ solicitation, notice of an ~~a decision or~~
11 intended decision shall be given by United States mail or
12 other express delivery notice, by hand delivery, by posting at
13 the location at which the bids, proposals, or replies were
14 opened, or by electronic posting.

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

22 ~~3. For any other agency decision, notice of a decision~~
23 ~~or intended decision shall be given either by posting the bid~~
24 ~~tabulation at the location where the bids were opened or by~~
25 ~~certified United States mail or other express delivery~~
26 ~~service, return receipt requested.~~

27
28 The notice required by this paragraph shall contain the
29 following statement: "Failure to file a protest within the
30 time prescribed in s. 120.57(3), Florida Statutes, shall
31

1 constitute a waiver of proceedings under chapter 120, Florida
2 Statutes."

3 (b) Any person who is adversely affected by the
4 agency's ~~agency decision or~~ intended decision shall file with
5 the agency a notice of protest in writing within 72 hours
6 after the posting of the ~~bid tabulation or after receipt of~~
7 the notice of a the agency decision, or intended decision and
8 ~~shall file a formal written protest within 10 days after~~
9 ~~filing the notice of protest.~~ With respect to a protest of the
10 terms, conditions, and specifications contained in an
11 invitation to bid, ~~or in~~ a request for proposals, or an
12 invitation to negotiate, including any provisions governing
13 the methods for ranking bids, proposals, or replies, awarding
14 contracts, reserving rights of further negotiation, or the
15 modification or amendment of any contract, the notice of
16 protest shall be filed in writing within 72 hours after the
17 posting of the advertisement ~~receipt~~ of notice of the project
18 plans and specifications ~~or intended project plans and~~
19 ~~specifications~~ in an invitation to bid, a ~~or~~ request for
20 proposals, or an invitation to negotiate. ~~and~~ The formal
21 written protest shall be filed within 10 days after the date
22 the notice of protest is filed. Failure to file a notice of
23 protest or failure to file a formal written protest shall
24 constitute a waiver of proceedings under this chapter. The
25 formal written protest shall state with particularity the
26 facts and law upon which the protest is based. Saturdays,
27 Sundays, and state ~~legal~~ holidays shall be excluded in the
28 computation of the 72-hour time periods provided by this
29 paragraph.

30 (c) Upon receipt of the formal written protest which
31 has been timely filed, the agency shall stop the bid

1 solicitation ~~process~~ or ~~the~~ contract award process until the
2 subject of the protest is resolved by final agency action,
3 unless the agency head sets forth in writing particular facts
4 and circumstances which require the continuance of the ~~bid~~
5 solicitation ~~process~~ or ~~the~~ contract award process without
6 delay in order to avoid an immediate and serious danger to the
7 public health, safety, or welfare.

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

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

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

26 (e) Upon receipt of a formal written protest referred
27 pursuant to this subsection, the director of the division
28 shall expedite the hearing and assign an administrative law
29 judge who shall commence a hearing within 30 days after the
30 receipt of the formal written protest by the division and
31 enter a recommended order within 30 days after the hearing or

1 within 30 days after receipt of the hearing transcript by the
2 administrative law judge, whichever is later. Each party shall
3 be allowed 10 days in which to submit written exceptions to
4 the recommended order. A final order shall be entered by the
5 agency within 30 days of the entry of a recommended order. The
6 provisions of this paragraph may be waived upon stipulation by
7 all parties.

8 (f) In a ~~competitive-procurement~~ protest to an
9 invitation to bid or request for proposal procurement, no
10 submissions made after the bid or proposal opening that amend
11 or supplement ~~amending or supplementing~~ the bid or proposal
12 shall be considered. Unless otherwise provided by statute, the
13 burden of proof shall rest with the party protesting the
14 proposed agency action. In a competitive-procurement protest,
15 other than a rejection of all bids, proposals, or replies, the
16 administrative law judge shall conduct a de novo proceeding to
17 determine whether the agency's proposed action is contrary to
18 the agency's governing statutes, the agency's rules or
19 policies, or the bid or proposal specifications contained in
20 the bid, proposal, or reply. The standard of proof for such
21 proceedings shall be whether the proposed agency action was
22 clearly erroneous, contrary to competition, arbitrary, or
23 capricious. In any protest ~~bid-protest~~ proceeding contesting
24 an ~~intended~~ agency action to reject all bids, proposals, or
25 replies, the standard of review by an administrative law judge
26 shall be whether the agency's intended action is illegal,
27 arbitrary, dishonest, or fraudulent.

28 Section 2. Section 287.001, Florida Statutes, is
29 amended to read:

30 287.001 Legislative intent.--The Legislature
31 recognizes that fair and open competition is a basic tenet of

1 public procurement; that such competition reduces the
2 appearance and opportunity for favoritism and inspires public
3 confidence that contracts are awarded equitably and
4 economically; and that documentation of the acts taken and
5 effective monitoring mechanisms are important means of curbing
6 any improprieties and establishing public confidence in the
7 process by which commodities and contractual services are
8 procured. It is essential to the effective and ethical
9 procurement of commodities and contractual services that there
10 be a system of uniform procedures to be utilized by state
11 agencies in managing and procuring commodities and contractual
12 services; that detailed justification of agency decisions in
13 the procurement of commodities and contractual services be
14 maintained; and that adherence by the agency and the vendor
15 ~~contractor~~ to specific ethical considerations be required.

16 Section 3. Section 287.012, Florida Statutes, is
17 amended to read:

18 287.012 Definitions.--The following definitions shall
19 apply in this part:

20 (1) "Agency" means any of the various state officers,
21 departments, boards, commissions, divisions, bureaus, and
22 councils and any other unit of organization, however
23 designated, of the executive branch of state government.

24 ~~"Agency" does not include the Board of Regents or the State~~
25 ~~University System.~~

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

29 (3) "Artist" means an individual or group of
30 individuals who profess and practice a demonstrated creative
31 talent and skill in the area of music, dance, drama, folk art,

1 creative writing, painting, sculpture, photography, graphic
2 arts, craft arts, industrial design, costume design, fashion
3 design, motion pictures, television, radio, or tape and sound
4 recording or in any other related field.

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

8 (5)(4) "Commodity" means any of the various supplies,
9 materials, goods, merchandise, food, equipment, information
10 technology resources, and other personal property, including a
11 mobile home, trailer, or other portable structure with floor
12 space of less than 5,000 ~~3,000~~ square feet, purchased, leased,
13 or otherwise contracted for by the state and its agencies.

14 "Commodity" also includes interest on deferred-payment
15 commodity contracts approved pursuant to s. 287.063 entered
16 into by an agency for the purchase of other commodities.
17 However, commodities purchased for resale are excluded from
18 this definition. Further, a prescribed drug, medical supply,
19 or device required by a licensed health care provider as a
20 part of providing health services involving examination,
21 diagnosis, treatment, prevention, medical consultation, or
22 administration for clients at the time the service is provided
23 is not considered to be a "commodity." Printing of
24 publications shall be considered a commodity when let upon
25 contract pursuant to s. 283.33, whether purchased for resale
26 or not.

27 (6)(5) "Competitive sealed bids," or "competitive
28 sealed proposals," or "competitive sealed replies" refers to
29 the process of receiving ~~receipt of~~ two or more sealed bids,
30 or proposals, or replies submitted by responsive vendors and
31 qualified bidders or offerors and includes bids, or proposals,

1 or replies transmitted by electronic means in lieu of or in
2 addition to written bids, ~~or proposals,~~ or replies.

3 ~~(7)(6)~~ "Contractor" means a person who contracts to
4 sell commodities or contractual services to an agency.

5 ~~(8)(7)~~ "Contractual service" means the rendering by a
6 ~~vendor contractor~~ of its time and effort rather than the
7 furnishing of specific commodities. The term applies only to
8 those services rendered by individuals and firms who are
9 independent contractors, and such services may include, but
10 are not limited to, evaluations; consultations; maintenance;
11 accounting; security; management systems; management
12 consulting; educational training programs; research and
13 development studies or reports on the findings of consultants
14 engaged thereunder; and professional, technical, and social
15 services. "Contractual service" does not include any contract
16 for the furnishing of labor or materials for the construction,
17 renovation, repair, modification, or demolition of any
18 facility, building, portion of building, utility, park,
19 parking lot, or structure or other improvement to real
20 property entered into pursuant to chapter 255 and rules
21 adopted thereunder.

22 ~~(9)(8)~~ "Department" means the Department of Management
23 Services.

24 ~~(10)~~ "Eligible user" means any person or entity
25 authorized by the department pursuant to rule to purchase from
26 state term contracts or to use the online procurement system.

27 ~~(11)(9)~~ "Exceptional purchase" means any purchase of
28 commodities or contractual services excepted by law or rule
29 from the requirements for competitive solicitations
30 ~~solicitation or acquisition~~, including, but not limited to,
31 purchases from a single source; ~~;~~ purchases upon receipt of

1 less than two responsive bids, ~~or~~ proposals, or replies;
2 purchases without publication of notice in the Florida
3 Administrative Weekly; ~~and~~ exceptions granted by the
4 department for a purchase of commodities from other than a
5 state term contract vendor.

6 (12)~~(10)~~ "Extension" means an increase in the time
7 allowed for the contract period due to circumstances which,
8 without fault of either party, make performance impracticable
9 or impossible, or which prevent a new contract from being
10 executed, with or without a proportional increase in the total
11 dollar amount, with any increase to be based on the method and
12 rate previously established in the contract.

13 (13) "Information technology" has the same meaning as
14 that provided in s. 282.0041.

15 (14)~~(11)~~ "Invitation to bid" means a written
16 solicitation for competitive sealed bids ~~with the title, date,~~
17 ~~and hour of the public bid opening designated and specifically~~
18 ~~defining the commodity, group of commodities, or services for~~
19 ~~which bids are sought. It includes instructions prescribing~~
20 ~~all conditions for bidding and shall be distributed to all~~
21 ~~prospective bidders simultaneously. The invitation to bid is~~
22 used when the agency chooses to ~~is capable of~~ specifically
23 define ~~defining~~ the scope of work for which a contractual
24 service is required or when the agency is capable of
25 establishing precise specifications defining the actual
26 commodity or group of commodities required. A written
27 solicitation includes a solicitation published or transmitted
28 by electronic means.

29 (15) "Invitation to negotiate" means a written
30 solicitation for competitive sealed replies to select one or
31 more vendors with which to commence negotiations for the

1 procurement of commodities or contractual services. The
2 invitation to negotiate is used when the agency determines
3 that negotiations may be necessary for the state to receive
4 the best value. A written solicitation includes a solicitation
5 published or transmitted by electronic means.

6 (16)(12) "Minority business enterprise" has the same
7 meaning as that provided in s. 288.703.

8 (17) "Office" means the Office of Supplier Diversity
9 of the Department of Management Services.

10 ~~(13) "Qualified bidder," "responsible bidder,"~~
11 ~~"qualified offeror," or "responsible offeror" means a person~~
12 ~~who has the capability in all respects to perform fully the~~
13 ~~contract requirements and has the integrity and reliability~~
14 ~~which will ensure good faith performance.~~

15 (18)(14) "Renewal" means contracting with the same
16 vendor contractor for an additional contract period after the
17 initial contract period, only if pursuant to contract terms
18 specifically providing for such renewal.

19 (19) "Request for information" means a written request
20 made by an agency or eligible user to vendors for information
21 about commodities or contractual services. Responses to these
22 requests are not offers and cannot be accepted by the agency
23 or eligible user to form a binding contract.

24 (20)(15) "Request for proposals" means a written
25 solicitation for competitive sealed proposals ~~with the title,~~
26 ~~date, and hour of the public opening designated. A written~~
27 ~~solicitation includes a solicitation published or transmitted~~
28 ~~by electronic means.~~The request for proposals is used when
29 the agency chooses not to ~~is incapable of~~ specifically define
30 defining the scope of work for which the commodity, group of
31 commodities, or contractual service is required and when the

1 agency is requesting that a qualified offeror propose a
2 commodity, group of commodities, or contractual service to
3 meet the specifications of the solicitation document. A
4 written solicitation includes a solicitation published or
5 transmitted by electronic means. ~~A request for proposals~~
6 ~~includes, but is not limited to, general information,~~
7 ~~applicable laws and rules, functional or general~~
8 ~~specifications, statement of work, proposal instructions, and~~
9 ~~evaluation criteria. Requests for proposals shall state the~~
10 ~~relative importance of price and any other evaluation~~
11 ~~criteria.~~

12 (21) "Request for a quote" means an oral or written
13 request for written pricing or services information from a
14 state term contract vendor for commodities and contractual
15 services available on state term contract from that vendor.

16 (22) "Responsible vendor" means a vendor who has the
17 capability in all respects to fully perform the contract
18 requirements and has the integrity and reliability that will
19 ensure good faith performance.

20 (23)~~(16)~~ "Responsive bid," or "responsive proposal,"
21 or "responsive reply" means a bid, or proposal, or reply
22 submitted by a responsive, and responsible vendor or
23 qualified, bidder or offeror which conforms in all material
24 respects to the solicitation invitation to bid or request for
25 proposals.

26 (24)~~(17)~~ "Responsive vendor bidder" or "responsive
27 offeror" means a vendor that person who has submitted a bid,
28 or proposal, or reply which conforms in all material respects
29 to the solicitation invitation to bid or request for
30 proposals.

31

1 (25) "Solicitation" means an invitation to bid, a
2 request for proposals, or an invitation to negotiate.

3 (26) "State term contract" means a term contract that
4 is procured by the department pursuant to s. 287.042 and that
5 is used by agencies and eligible users pursuant to s. 287.056.

6 ~~(27)(18) "Term contract" means an indefinite quantity~~
7 ~~contract wherein a party agrees to furnish commodities or~~
8 ~~contractual services during a defined ~~prescribed~~ period of~~
9 ~~time, the expiration of which concludes the contract.~~

10 ~~(19) "Office" means the Office of Supplier Diversity~~
11 ~~of the Department of Management Services.~~

12 ~~(20) "Invitation to negotiate" means a written~~
13 ~~solicitation that calls for responses to select one or more~~
14 ~~persons or business entities with which to commence~~
15 ~~negotiations for the procurement of commodities or contractual~~
16 ~~services.~~

17 ~~(21) "Request for a quote" means a solicitation that~~
18 ~~calls for pricing information for purposes of competitively~~
19 ~~selecting and procuring commodities and contractual services~~
20 ~~from qualified or registered vendors.~~

21 ~~(22) "Information technology" means equipment,~~
22 ~~hardware, software, firmware, programs, systems, networks,~~
23 ~~infrastructure, media, and related material used to~~
24 ~~automatically, electronically, and wirelessly collect,~~
25 ~~receive, access, transmit, display, store, record, retrieve,~~
26 ~~analyze, evaluate, process, classify, manipulate, manage,~~
27 ~~assimilate, control, communicate, exchange, convert, converge,~~
28 ~~interface, switch, or disseminate information of any kind or~~
29 ~~form.~~

30 Section 4. Subsection (2) of section 287.017, Florida
31 Statutes, is amended to read:

1 287.017 Purchasing categories, threshold amounts;
2 procedures for automatic adjustment by department.--

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

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

10 (b) The procedure for rounding results.

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

13 Section 5. Section 287.022, Florida Statutes, is
14 amended to read:

15 287.022 Purchase of insurance.--

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

24 (2) When an insurer or agent pays a commission or any
25 portion thereof to any person, on insurance purchased under
26 this part, such payment shall be reported to the department in
27 writing and under oath within 30 days thereafter. Any failure
28 to report as required herein shall subject the insurer or
29 agent to the penalties provided in s. 624.15.

30 (3) The department ~~of Management Services~~ and the
31 Division of State Group Insurance shall not prohibit or limit

1 any properly licensed insurer, health maintenance
2 organization, prepaid limited health services organization, or
3 insurance agent from competing for any insurance product or
4 plan purchased, provided, or endorsed by the department or the
5 division on the basis of the compensation arrangement used by
6 the insurer or organization for its agents.

7 Section 6. Section 287.032, Florida Statutes, is
8 amended to read:

9 287.032 Purpose of department.--It shall be the
10 purpose of the Department of Management Services:

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

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

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

22 Section 7. Section 287.042, Florida Statutes, is
23 amended to read:

24 287.042 Powers, duties, and functions.--The department
25 shall have the following powers, duties, and functions:

26 (1)(a) To canvass all sources of supply, establish and
27 maintain a vendor list, and contract for the purchase, lease,
28 or acquisition ~~in any manner~~, including purchase by
29 installment sales or lease-purchase contracts which may
30 provide for the payment of interest on unpaid portions of the
31 purchase price, of all commodities and contractual services

1 required by any agency under this chapter ~~competitive bidding~~
2 ~~or by contractual negotiation~~. Any contract providing for
3 deferred payments and the payment of interest shall be subject
4 to specific rules adopted by the department.

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

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

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

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

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

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

14 (2)(a) To establish plan and coordinate purchases in
15 volume and to negotiate ~~and execute~~ purchasing agreements and
16 procure state term contracts, pursuant to this chapter, for
17 commodities and contractual services under which state
18 agencies shall, and eligible users may, make purchases
19 pursuant to s. 287.056, ~~and under which a federal, county,~~
20 ~~municipality, institutions qualified pursuant to s. 240.605,~~
21 ~~private nonprofit community transportation coordinator~~
22 ~~designated pursuant to chapter 427, while conducting business~~
23 ~~related solely to the Commission for the Transportation~~
24 ~~Disadvantaged, or other local public agency may make~~
25 ~~purchases~~. The department may restrict purchases from some
26 term contracts to state agencies only for those term contracts
27 where the inclusion of other governmental entities will have
28 an adverse effect on competition or to those federal
29 facilities located in this state. In such planning or
30 purchasing the Office of Supplier Diversity may monitor to
31 ensure that opportunities are afforded for contracting with

1 minority business enterprises. The department, for state term
2 contracts, and all agencies, for multiyear contractual
3 services or term contracts, shall explore reasonable and
4 economical means to utilize certified minority business
5 enterprises. Purchases by any county, municipality, private
6 nonprofit community transportation coordinator designated
7 pursuant to chapter 427, while conducting business related
8 solely to the Commission for the Transportation Disadvantaged,
9 or other local public agency under the provisions in the state
10 purchasing contracts, and purchases, from the corporation
11 operating the correctional work programs, of products or
12 services that are subject to paragraph (1)(f), are exempt from
13 the competitive solicitation ~~sealed bid~~ requirements otherwise
14 applying to their purchases.

15 (b) As an alternative to any provision in s.
16 120.57(3)(c), the department may proceed with the competitive
17 ~~bid~~ solicitation or contract award process of a term contract
18 ~~bid~~ when the secretary of the department or his or her
19 designee sets forth in writing particular facts and
20 circumstances which demonstrate that the delay incident to
21 staying the solicitation ~~bid process~~ or contract award process
22 would be detrimental to the interests of the state. After the
23 award of a contract resulting from a competitive solicitation
24 ~~bid~~ in which a timely protest was received and in which the
25 state did not prevail, the contract may be canceled and
26 reawarded ~~to the prevailing party~~.

27 (c) 1. Any person who files an action protesting an ~~a~~
28 ~~decision or~~ intended decision pertaining to contracts
29 administered by the department, a water management district,
30 or an ~~a state~~ agency pursuant to s. 120.57(3)(b) shall post
31 with the department, the water management district, or the

1 state agency at the time of filing the formal written protest
2 a bond payable to the department, the water management
3 district, or the state agency in an amount equal to 1 percent
4 of the department's, the water management district's, or the
5 ~~state~~ agency's estimate of the total volume of the contract.
6 The or \$5,000, whichever is less, which bond shall be
7 conditioned upon the payment of all costs which may be
8 adjudged against him or her in the administrative hearing in
9 which the action is brought and in any subsequent appellate
10 court proceeding. The estimate of the total volume of the
11 contract shall be based on the protesting vendor's price as
12 included in its bid, proposal, or reply or, if the protesting
13 party did not submit a bid, proposal, or reply the agency may
14 estimate the contract amount based on previous or existing
15 contract amounts for similar commodities or services. This
16 estimated amount is not subject to protest.

17 2. For protests of ~~decisions or~~ intended decisions of
18 the department pertaining to agencies' requests for approval
19 of exceptional purchases, the bond shall be in an amount equal
20 to 1 percent of the requesting agency's estimate of the
21 contract amount for the exceptional purchase requested ~~or~~
22 ~~\$5,000, whichever is less.~~ The estimate of the total volume of
23 the contract shall be based on the price submitted by the
24 selected vendor in its bid, proposal, or reply. This estimated
25 amount is not subject to protest.

26 3. In lieu of a bond, the department, the water
27 management district, or ~~state~~ agency may, in either case,
28 accept a cashier's check, ~~or~~ money order, or other official
29 bank check in the amount of the bond. If, after completion of
30 the administrative hearing process and any appellate court
31 proceedings, the department, water management district, or

1 agency prevails, it shall recover all costs and charges which
2 shall be included in the final order or judgment, ~~excluding~~
3 ~~attorney's fees.~~ The prevailing party shall be entitled to
4 recover attorney's fees. This section shall not apply to
5 protests filed by the Office of Supplier Diversity. Upon
6 payment of such costs and charges by the person protesting the
7 award, the bond, cashier's check, ~~or~~ money order, or other
8 official bank check shall be returned to him or her. If the
9 person protesting the award prevails, he or she shall recover
10 from the department, agency, or water management district, all
11 costs and charges which shall be included in the final order
12 of judgment, ~~excluding attorney's fees.~~

13 ~~(d) The terms, conditions, and specifications of a~~
14 ~~request for proposal, request for quote, invitation to bid, or~~
15 ~~invitation to negotiate, including any provisions governing~~
16 ~~the methods for ranking proposals, awarding contracts,~~
17 ~~reserving rights of further negotiation, or the modification~~
18 ~~of amendment of any contract, are subject to challenge only by~~
19 ~~filing a protest within 72 hours after the notice of the~~
20 ~~terms, conditions, or specifications as provided in s.~~
21 ~~120.57(3)(b).~~

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

28 (3)(4) To establish a system of coordinated, uniform
29 procurement policies, procedures, and practices to be used by
30 agencies in acquiring commodities and contractual services,
31 which shall include, but not be limited to:

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

5 (b) Development of procedures for advertising
6 solicitations. ~~Such the releasing of requests for proposals,~~
7 ~~requests for quotes, invitations to bid, invitations to~~
8 ~~negotiate, and other competitive acquisitions which~~ procedures
9 shall include, but are not limited to, notice by publication
10 in the Florida Administrative Weekly, by electronic
11 publication on Government Services Direct, or by mail, by
12 facsimile, or by other means established by rule. Notice shall
13 be given at least 10 days before the date set for submittal of
14 proposals, or bids, or replies, unless the department or
15 agency demonstrates in writing that a shorter period of time
16 is necessary to avoid harming the interests of the state. The
17 Office of Supplier Diversity may consult with the department
18 and agencies regarding the development of solicitation bid
19 distribution procedures to ensure that maximum distribution is
20 afforded to certified minority business enterprises as defined
21 in s. 288.703.

22 (c) Development of procedures for the receipt and
23 opening of bids, ~~responses, quotes, or proposals,~~ or replies
24 by an agency. Such procedures shall provide the Office of
25 Supplier Diversity an opportunity to monitor and ensure that
26 the contract award is consistent with the requirements of s.
27 287.09451.

28 (d) Development of procedures to be used by an agency
29 in deciding to contract, including, but not limited to,
30 identifying and assessing in writing project needs and
31 requirements, availability of agency employees, budgetary

1 constraints or availability, facility equipment availability,
2 current and projected agency workload capabilities, and the
3 ability of any other state agency to perform the services.

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

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

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

21 (4)(5)(a) To prescribe the methods of securing
22 competitive sealed bids, ~~responses, quotes, and proposals, and~~
23 replies. Such methods may include, but are not limited to,
24 procedures for identifying vendors; setting qualifications;
25 conducting conferences or written question and answer periods
26 for purposes of responding to vendor's questions; evaluating
27 responses, bids, and proposals, and replies; ranking
28 ~~respondents and proposers~~; selecting vendors invitees and
29 proposers; and conducting negotiations.

30 (b) To prescribe, in consultation with the State
31 Technology Office, procedures for procuring information

1 technology and information technology consultant services
2 which provide for public announcement and qualification,
3 competitive solicitations, negotiations ~~selection, competitive~~
4 ~~negotiation~~, contract award, and prohibition against
5 contingent fees. Such procedures shall be limited to
6 information technology consultant contracts for which the
7 total project costs, or planning or study activities, are
8 estimated to exceed the threshold amount provided for in s.
9 287.017, for CATEGORY TWO.

10 (5)~~(6)~~ To prescribe specific commodities and
11 quantities to be purchased locally.

12 (6)~~(7)~~(a) To govern the purchase by any agency of any
13 commodity or contractual service and to establish standards
14 and specifications for any commodity.

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

19 (7)~~(8)~~ To establish definitions and classes of
20 commodities and contractual services. Agencies shall follow
21 the definitions and classes of commodities and contractual
22 services established by the department in acquiring or
23 purchasing commodities or contractual services. The authority
24 of the department under this section shall not be construed to
25 impair or interfere with the determination by state agencies
26 of their need for, or their use of, services including
27 particular specifications.

28 (8)~~(9)~~ To provide ~~furnish~~ copies of any commodity and
29 contractual service purchasing rules to the Comptroller and
30 all agencies, through an electronic medium or other means
31 ~~affected thereby~~. The Comptroller shall not approve any

1 account or direct any payment of any account for the purchase
2 of any commodity or the procurement of any contractual service
3 covered by a purchasing or contractual service rule except as
4 authorized therein. The department shall furnish copies of
5 rules adopted by the department to any county, municipality,
6 or other local public agency requesting them.

7 (9)~~(10)~~ To require that every agency furnish
8 information relative to its commodity and contractual services
9 purchases and methods of purchasing commodities and
10 contractual services to the department when so requested.

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

18 (11)~~(12)~~ To establish and maintain programs for the
19 purpose of disseminating information to government, industry,
20 educational institutions, and the general public concerning
21 policies, procedures, rules, and forms for the procurement of
22 commodities and contractual services.

23 (12)~~(13)~~ Except as otherwise provided herein, to adopt
24 rules necessary to carry out the purposes of this section,
25 including the authority to delegate to any state agency any
26 and all of the responsibility conferred by this section,
27 retaining to the department any and all authority for
28 supervision thereof. Such purchasing of commodities and
29 procurement of contractual services by state agencies shall be
30 in strict accordance with the rules and procedures prescribed
31 by the department ~~of Management Services~~.

1 (13)~~(14)~~ If the department determines that it is in
2 the best interest of the state, to award to multiple suppliers
3 contracts for commodities and contractual services established
4 by the department for use by all agencies. Such awards may be
5 on a statewide or regional basis. If regional contracts are
6 established by the department, multiple supplier awards may be
7 based upon multiple awards for regions. Agencies may award
8 contracts to the responsible and ~~lowest-qualified~~ responsive
9 vendor bidder on a statewide or regional basis.

10 (14)~~(15)~~ To procure and distribute ~~state-owned surplus~~
11 ~~tangible personal property and~~ federal surplus tangible
12 personal property allocated to the state by the Federal
13 Government.

14 (15)~~(16)~~(a) To enter into joint agreements with
15 governmental agencies, as defined in s. 163.3164(10), for the
16 purpose of pooling funds for the purchase of commodities or
17 information technology that can be used by multiple agencies.
18 However, the department shall consult with the State
19 Technology Office on joint agreements that involve the
20 purchase of information technology. Agencies entering into
21 joint purchasing agreements with the department or the State
22 Technology Office shall authorize the department or the State
23 Technology Office to contract for such purchases on their
24 behalf.

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

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

12 (16)~~(17)~~(a) To evaluate contracts let by the Federal
13 Government, another state, or a political subdivision for the
14 provision of commodities and contract services, and, when it
15 is determined to be cost-effective and in the best interest of
16 the state, to enter into a written agreement authorizing a
17 ~~state~~ agency to make purchases under a contract approved by
18 the department and let by the Federal Government, another
19 state, or a political subdivision.

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

28 Section 8. Section 287.045, Florida Statutes, is
29 amended to read:

30 287.045 Procurement of products and materials with
31 recycled content.--

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

9 (b) Each ~~state~~ agency shall review and revise its
10 procurement procedures and specifications for the purchase of
11 products and materials to eliminate any procedures and
12 specifications that explicitly discriminate against products
13 and materials with recycled content, except if such procedures
14 and specifications are necessary to protect the public health,
15 safety, and welfare.

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

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

25 (3) As part of the review and revision required in
26 subsection (2), the department and other agencies ~~each agency~~
27 shall review their ~~its~~ procurement provisions and
28 specifications for the purchase of products and materials to
29 determine which products or materials with recycled content
30 could be procured by the department or other agencies and the
31 amount of recycled content that can technologically be

1 contained in such products or materials. The department and
2 other agencies must use the amounts of recycled content and
3 postconsumer recovered material determined by the department
4 in issuing solicitations ~~invitations to bid~~ for contracts for
5 the purchase of such products or materials.

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

16 (5) Upon evaluation of bids, proposals, or replies for
17 every public contract that involves the purchase of products
18 or materials identified in subsection (3), the department or
19 other ~~an~~ agency shall identify the lowest responsible and
20 responsive vendor bidder and other responsible and responsive
21 vendors bidders who have certified that the products or
22 materials contain at least the minimum percentage of recycled
23 content and postconsumer recovered material that is set forth
24 in the solicitation ~~invitation for the bids~~. The department
25 or agency may consider life-cycle costing when evaluating a
26 bid, proposal, or reply on a product that consists of recycled
27 materials. The department shall adopt rules that specify the
28 criteria to be used when considering life-cycle costing in
29 evaluating bids, proposals, and replies. The rules must take
30 into consideration the specified warranty periods for products
31 and the comparative expected service life relative to the cost

1 of the products. In awarding a contract for the purchase of
2 products or materials, the department or other ~~an~~ agency may
3 allow up to a 10-percent price preference to a responsible and
4 responsive vendor bidder who has certified that the products
5 or materials contain at least the minimum percentage of
6 recycled content and postconsumer recovered material and up to
7 an additional 5-percent price preference to a responsible and
8 responsive vendor bidder who has certified that the products
9 or material are made of materials recovered in this state.
10 The amount of the price preference must be commensurate with
11 the certified amounts of recycled material and postconsumer
12 recovered material and materials recycled from products in
13 this state, contained in the product or materials on a sliding
14 scale as established by department rule, which rule shall not
15 become effective prior to November 1, 1994. Reusable
16 materials and products shall be used where economically and
17 technically feasible. If no vendors bidders offer products or
18 materials with measurable life-cycle costing factors or the
19 minimum prescribed recycled and postconsumer content, the
20 contract must be awarded to the lowest qualified responsible
21 and responsive vendor bidder.

22 (6) For the purposes of this section, "recycled
23 content" means materials that have been recycled that are
24 contained in the products or materials to be procured,
25 including, but not limited to, paper, aluminum, steel, glass,
26 plastics, and composted material. The term does not include
27 the virgin component of internally generated scrap that is
28 commonly used in industrial or manufacturing processes or such
29 waste or scrap purchased from another manufacturer who
30 manufactures the same or a closely related product. Recycled
31

1 content printing and fine writing grades of paper shall
2 contain at least 10 percent postconsumer recovered materials.

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

10 (8) The department and other agencies ~~each state~~
11 ~~agency~~ shall review and revise their ~~its~~ procedures and
12 specifications on a continuing basis to encourage the use of
13 products and materials with recycled content and postconsumer
14 recovered material and shall, in developing new procedures and
15 specifications, encourage the use of products and materials
16 with recycled content and postconsumer recovered material.

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

23 (10) An ~~A state~~ agency, or a vendor ~~person~~ contracting
24 with such agency with respect to work performed under
25 contract, must procure products or materials with recycled
26 content if the department determines that those products or
27 materials are available pursuant to subsection (5).

28 Notwithstanding any other provision to the contrary, for the
29 purpose of this section, the term "agency" means any of the
30 various state officers, departments, boards, commissions,
31 divisions, bureaus, and councils and any other unit of

1 organization, however designated, of the executive branch
2 including the Department of the Lottery, the legislative
3 branch, the judicial branch, ~~and the State University and~~
4 College Boards of Trustees, and state universities and
5 colleges ~~System~~. A decision not to procure such items must be
6 based on the department's determination that such procurement
7 is not reasonably available within an acceptable period of
8 time or fails to meet the performance standards set forth in
9 the applicable specifications or fails to meet the performance
10 standards of the agency.

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

20 Section 9. Section 287.056, Florida Statutes, is
21 amended to read:

22 287.056 ~~Agency Purchases from state term agreements~~
23 ~~and contracts~~ procured ~~executed~~ by the department.--

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

29 (2) Agencies may ~~have the option to~~ purchase
30 commodities or contractual services from state term ~~any~~
31 ~~written agreements or contracts~~ procured ~~negotiated and~~

1 ~~executed~~ by the department, pursuant to this chapter, which
2 contain a user surcharge pursuant to s. 287.1345 ~~or such other~~
3 ~~agreements~~ as determined by the department.

4 (3) Agencies and eligible users may use a request for
5 quote to obtain written pricing or service information from a
6 state term contract vendor for commodities or contractual
7 services available on state term contract from that vendor.
8 The purpose of a request for quote shall be to determine
9 whether a price lower than the state term contract price is
10 available. Use of a request for quote shall not constitute an
11 agency decision subject to protest under s. 120.57(3).

12 Section 10. Section 287.057, Florida Statutes, is
13 amended to read:

14 287.057 Procurement of commodities or contractual
15 services.--

16 (1)(a) Unless otherwise authorized by law, all
17 contracts for the purchase of commodities or contractual
18 services in excess of the threshold amount provided in s.
19 287.017 for CATEGORY TWO shall be awarded by competitive
20 sealed bidding. An invitation to bid shall be made available
21 simultaneously to all vendors and issued ~~which~~ shall include a
22 detailed description of the commodities or contractual
23 services sought; the time and date for the receipt ~~submittal~~
24 of bids and of the public opening; and all contractual terms
25 and conditions applicable to the procurement ~~of commodities or~~
26 ~~contractual services~~, including the criteria ~~which shall~~
27 ~~include, but need not be limited to, price,~~ to be used in
28 determining acceptability of the bid. If the agency
29 contemplates renewal of the contract, it shall be so stated in
30 the invitation to bid. The bid shall include the price for
31 each year for which the contract may be renewed. Evaluation of

1 bids shall include consideration of the total cost for each
2 year as submitted ~~quoted~~ by the vendor ~~bidder~~. ~~No~~ Criteria
3 ~~may be used in determining acceptability of the bid that were~~
4 ~~was~~ not set forth in the invitation to bid may not be used in
5 determining responsiveness of the bid.

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

12 (2)(a) When an agency determines in writing that the
13 use of competitive sealed bidding is not practicable,
14 commodities or contractual services shall be procured by
15 competitive sealed proposals. A request for proposals shall
16 be made available simultaneously to all vendors and shall
17 include ~~which includes~~ a statement of the commodities or
18 contractual services sought, the time and date for the receipt
19 of proposals and of the public opening, and all contractual
20 terms and conditions applicable to the procurement ~~of~~
21 ~~commodities or contractual services~~, including the criteria,
22 which shall include, but need not be limited to, price, to be
23 used in determining acceptability of the proposal ~~shall be~~
24 ~~issued.~~ The relative importance of price and other evaluation
25 criteria shall be indicated. If the agency contemplates
26 renewal of the commodities or contractual services contract,
27 it shall be so stated in the request for proposals. The
28 proposal shall include the price for each year for which the
29 contract may be renewed. Evaluation of proposals shall
30 include consideration of the total cost for each year as
31 submitted ~~quoted~~ by the vendor ~~offeror~~. ~~To assure full~~

1 ~~understanding of and responsiveness to the solicitation~~
2 ~~requirements, discussions may be conducted with qualified~~
3 ~~offerors. The offerors shall be accorded fair and equal~~
4 ~~treatment prior to the submittal date specified in the request~~
5 ~~for proposals with respect to any opportunity for discussion~~
6 ~~and revision of proposals.~~

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

14 **(3)(a)** If the ~~an~~ agency determines in writing that the
15 use of an invitation to bid or a request for a proposal will
16 not result in the best value to the state, ~~based on factors~~
17 ~~including, but not limited to, price, quality, design, and~~
18 ~~workmanship,~~ the agency may procure commodities and
19 contractual services by an invitation to negotiate. The
20 agency's written determination shall specify reasons that
21 explain why negotiation may be necessary for the state to
22 achieve the best value. An invitation to negotiate shall be
23 made available to all vendors simultaneously and shall include
24 a statement of the commodities or contractual services sought,
25 the time and date for the receipt of replies and of the public
26 opening, and all terms and conditions applicable to the
27 procurement, including the criteria to be used in determining
28 the responsiveness of the reply.

29 **(b)** The agency shall evaluate and rank responsive
30 replies against all evaluation criteria set forth in the
31 invitation to negotiate, and shall select, based on the

1 ranking, one or more vendors with which to commence
2 negotiations. After negotiations are conducted, the agency
3 shall award the contract to the responsible and responsive
4 vendor that the agency determines in writing will provide the
5 best value to the state. The contract file shall contain
6 documentation supporting the basis on which the award is made.
7 ~~An agency may procure commodities and contractual services by~~
8 ~~a request for a quote from vendors under contract with the~~
9 ~~department.~~

10 (4) Prior to the award of contract, an agency may
11 conduct a conference or written question and answer period.
12 The vendors shall be accorded fair and equal treatment with
13 respect to any opportunity for discussion and revision of
14 bids, proposals, or replies.

15 (5) If an agency determines, prior to the time
16 established for the receipt of bids, proposals, or replies,
17 that it is necessary to change the requirements or any term or
18 condition contained in a solicitation, the agency shall amend
19 the solicitation and shall make the amendments available
20 simultaneously to all vendors. When amending a solicitation,
21 the agency shall consider whether the time established for the
22 submission of bids, proposals, or replies should be extended in
23 order to provide prospective vendors with sufficient time to
24 consider the amendment in submitting or modifying their bids,
25 proposals, or replies. Notice of amendments to a solicitation
26 shall be provided by publication in Florida Administrative
27 Weekly or by electronic publication, mail, facsimile, or other
28 means established by rule. All solicitations shall specify the
29 manner in which notice of amendments will be provided.

30 (6)~~(4)~~ When the purchase price of commodities or
31 contractual services exceeds the threshold amount provided in

1 s. 287.017 for CATEGORY TWO, no purchase of commodities or
2 contractual services may be made without receiving competitive
3 sealed bids, ~~competitive sealed~~ proposals, or replies
4 ~~responses to an invitation to negotiate or a request for a~~
5 ~~quote~~ unless:

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

30 (b) The purchase is made by an agency from a state
31 term contract procured pursuant to this chapter ~~Purchasing~~

1 ~~agreements and contracts executed~~ by the department or by
2 agencies under authority delegated in writing by the
3 department ~~in writing are excepted from bid requirements.~~
4 (c) The commodities or contractual services are
5 available only from a single source. For contracts may be
6 ~~excepted from the bid requirements if it is determined that~~
7 ~~such commodities or services are available only from a single~~
8 ~~source and such determination is documented. However, if such~~
9 ~~contract is for an amount greater than the threshold amount~~
10 ~~provided in s. 287.017 for CATEGORY FOUR, the agency shall~~
11 obtain department approval before entering into the contract.
12 The agency shall initiate the request for approval in a form
13 prescribed by the department, which may be electronic. The
14 department shall provide by rule for centralized electronic
15 posting of all such requests for not less than 7 days, during
16 which period potential competitors may review the proposed
17 procurement and assess whether market conditions justify
18 proceeding with a single source. An interested competitor
19 objecting to the procurement shall file a notice of protest
20 with the agency within 10 days after the request is first
21 posted. If a protest is filed, award of the contract shall be
22 stayed until the protest is resolved, subject to s.
23 120.57(3)(c). If no protest is filed, the department shall
24 respond to the agency's request for approval within 14 days
25 after expiration of the protest period.~~head shall file a~~
26 ~~certification of conditions and circumstances with the~~
27 ~~department and shall obtain the prior approval of the~~
28 ~~department. The failure of the department to approve or~~
29 ~~disapprove the request of an agency for prior approval within~~
30 ~~21 days after receiving such request or within 14 days after~~
31 ~~receiving from the agency additional materials requested by~~

1 ~~the department shall constitute prior approval of the~~
2 ~~department. To the greatest extent practicable, but no later~~
3 ~~than 45 days after authorizing the exception in writing, the~~
4 ~~department shall combine single source procurement~~
5 ~~authorizations for identical information technology resources~~
6 ~~for which the purchase price exceeds the threshold amount~~
7 ~~provided in s. 287.017 for CATEGORY FOUR, and shall negotiate~~
8 ~~and execute volume purchasing agreements for such procurements~~
9 ~~on behalf of the agencies.~~

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

15 (e) Prescriptive assistive devices for the purpose of
16 medical, developmental, or vocational rehabilitation of
17 clients are excepted from competitive solicitation ~~sealed bid~~
18 ~~and competitive sealed proposal~~ requirements and shall be
19 procured pursuant to an established fee schedule or by any
20 other method which ensures the best price for the state,
21 taking into consideration the needs of the client.

22 Prescriptive assistive devices include, but are not limited
23 to, prosthetics, orthotics, and wheelchairs. For purchases
24 made pursuant to this paragraph, state agencies shall annually
25 file with the department a description of the purchases and
26 methods of procurement.

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

- 30 1. Artistic services.
- 31 2. Academic program reviews.

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

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

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

4 13. Services or commodities provided by governmental
5 agencies.

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

11 ~~(7)(5)~~ If less than two responsive bids, or proposals,
12 or replies for commodity or contractual services purchases are
13 received, the department or the agency may negotiate on the
14 best terms and conditions. The department or agency shall
15 document the reasons that such action is in the best interest
16 of the state in lieu of resoliciting competitive sealed bids,
17 ~~or proposals, or replies~~. The agency shall report all such
18 actions to the department on a quarterly basis, in a manner
19 and form prescribed by the department.

20 ~~(8)(6)~~ Upon issuance of any solicitation ~~invitation to~~
21 ~~bid or request for proposals~~, an agency shall, upon request by
22 the department, forward to the department one copy of each
23 solicitation ~~invitation to bid or request for proposals~~ for
24 all commodity and contractual services purchases in excess of
25 the threshold amount provided in s. 287.017 for CATEGORY TWO.
26 An agency shall also, upon request, furnish a copy of all
27 competitive solicitation ~~sealed bid or competitive sealed~~
28 ~~proposal~~ tabulations. The Office of Supplier Diversity may
29 also request from the agencies any information submitted to
30 the department pursuant to this subsection.

31

1 (9)~~(7)~~(a) In order to strive to meet the minority
2 business enterprise procurement goals set forth in s.
3 287.09451, an agency may reserve any contract for competitive
4 solicitation ~~sealed bidding~~ only among certified minority
5 business enterprises. Agencies shall review all their
6 contracts each fiscal year and shall determine which contracts
7 may be reserved for solicitation ~~bidding~~ only among certified
8 minority business enterprises. This reservation may only be
9 used when it is determined, by reasonable and objective means,
10 before the solicitation ~~invitation to bid~~ that there are
11 capable, qualified certified minority business enterprises
12 available to submit a bid, proposal, or reply on a contract to
13 provide for effective competition. The Office of Supplier
14 Diversity shall consult with any agency in reaching such
15 determination when deemed appropriate.

16 (b) Before a contract may be reserved for solicitation
17 ~~bidding~~ only among ~~by~~ certified minority business enterprises,
18 the agency head must find that such a reservation is in the
19 best interests of the state. All determinations shall be
20 subject to s. 287.09451(5). Once a decision has been made to
21 reserve a contract, but before sealed bids, proposals, or
22 replies are requested, the agency shall estimate what it
23 expects the amount of the contract to be, based on the nature
24 of the services or commodities involved and their value under
25 prevailing market conditions. If all the sealed bids,
26 proposals, or replies received are over this estimate, the
27 agency may reject the bids, proposals, or replies and request
28 new ones from certified minority business enterprises, or the
29 agency may reject the bids, proposals, or replies and reopen
30 the bidding to all eligible vendors ~~qualified bidders~~.

31

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

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

11 ~~(10)(8)~~ An agency may reserve any contract for
12 competitive solicitation ~~sealed bidding~~ only among qualified
13 vendors ~~bidders~~ who agree to use ~~utilize~~ certified minority
14 business enterprises as subcontractors or subvendors. The
15 percentage of funds, in terms of gross contract amount and
16 revenues, which must be expended with the certified minority
17 business enterprise subcontractors and subvendors shall be
18 determined by the agency before such contracts may be
19 reserved. In order to bid on a contract so reserved, the
20 vendor ~~qualified bidder~~ shall identify those certified
21 minority business enterprises which will be utilized as
22 subcontractors or subvendors by sworn statement. At the time
23 of performance or project completion, the contractor shall
24 report by sworn statement the payments and completion of work
25 for all certified minority business enterprises used in the
26 contract.

27 ~~(11)(9)~~ An agency shall not divide the procurement of
28 commodities or contractual services so as to avoid the
29 requirements of subsections (1)-~~(6)~~, ~~(2)~~, and ~~(3)~~.

30 ~~(12)(10)~~ A contract for commodities or contractual
31 services may be awarded without competition if state or

1 federal law prescribes with whom the agency must contract or
2 if the rate of payment is established during the
3 appropriations process.

4 (13)~~(11)~~ If two equal responses to a solicitation ~~an~~
5 ~~invitation to bid~~ or a request for quote proposals are
6 received and one response is from a certified minority
7 business enterprise, the agency shall enter into a contract
8 with the certified minority business enterprise.

9 (14)~~(12)~~ Extension of a contract for contractual
10 services shall be in writing for a period not to exceed 6
11 months and shall be subject to the same terms and conditions
12 set forth in the initial contract. There shall be only one
13 extension of a contract unless the failure to meet the
14 criteria set forth in the contract for completion of the
15 contract is due to events beyond the control of the
16 contractor.

17 (15)~~(13)~~ Except for those contracts initially procured
18 pursuant to paragraph~~(6)~~~~(3)~~(a) or paragraph~~(6)~~~~(3)~~(c),
19 contracts for commodities or contractual services may be
20 renewed upon mutual written agreement, provided the period of
21 renewal shall not exceed the longer of 3 years or the original
22 contract term ~~on a yearly basis for no more than 2 years or~~
23 ~~for a period no longer than the term of the original contract,~~
24 ~~whichever period is longer.~~ Renewal of a contract for
25 ~~commodities or contractual services shall be in writing and~~
26 shall be subject to the same terms and conditions set forth in
27 the original ~~initial~~ contract. ~~If the commodity or~~
28 ~~contractual service is purchased as a result of the~~
29 ~~solicitation of bids or proposals, the cost of any~~
30 ~~contemplated renewals shall be included in the invitation to~~
31 ~~bid or request for proposals.~~ If the original contract

1 resulted from a competitive solicitation, the renewal contract
2 shall not include compensation for any costs associated with
3 the renewal. Renewals shall be contingent upon satisfactory
4 performance evaluations by the agency. Exceptional purchase
5 contracts pursuant to s. 287.057(6)(a) and (c) may not be
6 renewed.

7 (16)~~(14)~~ For each contractual services contract, the
8 agency shall designate an employee to function as contract
9 manager who shall be responsible for enforcing performance of
10 the contract terms and conditions and serve as a liaison with
11 the contractor. The agency shall establish procedures to
12 ensure that contractual services have been rendered in
13 accordance with the contract terms prior to processing the
14 invoice for payment.

15 (17)~~(15)~~ Each agency shall designate at least one
16 employee who shall serve as a contract administrator
17 responsible for maintaining a contract file and financial
18 information on all contractual services contracts and who
19 shall serve as a liaison with the contract managers and the
20 department.

21 (18)~~(16)~~ For requests for proposals and invitations to
22 negotiate, a selection teams team of at least three employees
23 who have experience and knowledge in the program areas and
24 service requirements for which contractual services are sought
25 shall be appointed by the agency head to aid in the selection
26 of contractors for contracts of more than the threshold amount
27 provided in s. 287.017 for CATEGORY FOUR.

28 (19)~~(17)~~ No person who receives a contract which has
29 not been procured pursuant to subsection (1), subsection (2),
30 or subsection (3) to perform a feasibility study of the
31 potential implementation of a subsequent contract,

1 participating in the drafting of a solicitation ~~an invitation~~
2 ~~to bid or request for proposals~~, or developing a program for
3 future implementation shall be eligible to contract with the
4 agency for any other contracts dealing with that specific
5 subject matter; nor shall any firm in which such person has
6 any interest be eligible to receive such contract. However,
7 this prohibition shall not prevent a vendor who replies to a
8 request for information from being eligible to contract with
9 an agency.

10 (20)~~(18)~~ Each agency shall establish a review and
11 approval process for all contractual services contracts
12 costing more than the threshold amount provided for in s.
13 287.017 for CATEGORY THREE which shall include, but not be
14 limited to, program, financial, and legal review and approval.
15 Such reviews and approvals shall be obtained before the
16 contract is executed.

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

20 (21)~~(20)~~ In any procurement that is accomplished
21 without competition, the individuals taking part in the
22 development or selection of criteria for evaluation, the
23 evaluation process, and the award process shall attest in
24 writing that they are independent of, and have no conflict of
25 interest in, the entities evaluated and selected.

26 (22)~~(21)~~ Nothing in this section shall affect the
27 validity or effect of any contract in existence on October 1,
28 1990.

29 (23)~~(22)~~ An agency may contract for services with any
30 independent, nonprofit college or university which is located
31 within the state and is accredited by the Southern Association

1 of Colleges and Schools, on the same basis as it may contract
2 with any ~~institution in the~~ state university and college
3 System.

4 (24)~~(23)~~(a) The department, in consultation with the
5 State Technology Office, shall develop a program for on-line
6 procurement of commodities and contractual services. To enable
7 the state to promote open competition and to leverage its
8 buying power, executive state agencies shall participate in
9 the on-line procurement program, and eligible users ~~other~~
10 ~~agencies~~ may participate in the program. Only vendors ~~bidders~~
11 prequalified as meeting mandatory requirements and
12 qualifications criteria shall be permitted to participate in
13 on-line procurement. The department, in consultation with the
14 State Technology Office, may contract for equipment and
15 services necessary to develop and implement on-line
16 procurement.

17 (b) The ~~State Technology Office, in consultation with~~
18 ~~the~~ department, in consultation with the State Technology
19 Office, shall adopt rules, pursuant to ss. 120.536(1) and
20 120.54, to implement the program for on-line procurement. The
21 rules shall include, but not be limited to:

22 1. Determining the requirements and qualification
23 criteria for prequalifying vendors ~~bidders~~.

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

26 3. Establishing the criteria for eligible commodities
27 and contractual services.

28 4. Establishing the procedures for providing access to
29 on-line procurement.

30 5. Determining the criteria warranting any exceptions
31 to participation in the on-line procurement program.

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

20 (25)~~(24)~~(a) The State Technology Office shall
21 establish, in consultation with the department, state
22 strategic information technology alliances for the acquisition
23 and use of information technology and related material with
24 prequalified contractors or partners to provide the state with
25 efficient, cost-effective, and advanced information
26 technology.

27 (b) In consultation with and under contract to the
28 State Technology Office, the state strategic information
29 technology alliances shall design, develop, and deploy
30 projects providing the information technology needed to
31 collect, store, and process the state's data and information,

1 provide connectivity, and integrate and standardize computer
2 networks and information systems of the state.

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

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

10 Section 11. Section 287.0572, Florida Statutes, is
11 amended to read:

12 287.0572 Present-value methodology.--

13 (1) The cost of bids, or proposals, or replies for
14 state contracts which ~~require the payment of money for more~~
15 ~~than 1 year and~~ include provisions for unequal payment streams
16 or unequal time payment periods shall be evaluated using
17 present-value methodology. Each agency, as defined in s.
18 287.012(1), shall perform the evaluation using the
19 present-value discount rate supplied by the department ~~of~~
20 ~~Management Services~~. The present-value discount rate shall be
21 the rate for United States Treasury notes and bonds published
22 in the Interest Rates: Money and Capital Markets section of
23 the most recent copy of the Federal Reserve Bulletin published
24 at the time of issuance of the request for proposals,
25 invitation to negotiate, or the invitation ~~invitations~~ to bid.

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

28 Section 12. Section 287.058, Florida Statutes, is
29 amended to read:

30 287.058 Contract document.--

31

1 (1) Every procurement of contractual services in
2 excess of the threshold amount provided in s. 287.017 for
3 CATEGORY TWO, except for the providing of health and mental
4 health services or drugs in the examination, diagnosis, or
5 treatment of sick or injured state employees or the providing
6 of other benefits as required by the provisions of chapter
7 440, shall be evidenced by a written agreement embodying all
8 provisions and conditions of the procurement of such services,
9 which provisions and conditions shall, where applicable,
10 include, but shall not be limited to:

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

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

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

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

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

30 (f) A provision specifying that the contract may be
31 renewed upon mutual written agreement, provided the period of

1 renewal shall not exceed the longer of 3 years or the original
2 contract term, except for those contracts initially procured
3 pursuant to s. 287.057(6)(a) or (c). Renewal of a contract
4 shall be subject to the same terms and conditions set forth in
5 the original contract. Renewals shall be contingent upon
6 satisfactory performance evaluations by the agency.~~7~~
7 ~~provision specifying that the contract may be renewed on a~~
8 ~~yearly basis for a period of up to 2 years after the initial~~
9 ~~contract or for a period no longer than the term of the~~
10 ~~original contract, whichever period is longer, specifying the~~
11 ~~terms under which the cost may change as determined in the~~
12 ~~invitation to bid or request for proposals, and specifying~~
13 ~~that renewals shall be contingent upon satisfactory~~
14 ~~performance evaluations by the agency and subject to the~~
15 ~~availability of funds.~~

16
17 In lieu of a written agreement, the department may authorize
18 the use of a purchase order for classes of contractual
19 services, provided the provisions of paragraphs (a)-(f) are
20 included in the purchase order or solicitation, ~~invitation to~~
21 ~~bid, or request for proposals~~. The purchase order shall
22 include, but need not be limited to, an adequate description
23 of the services, the contract period, and the method of
24 payment. In lieu of printing the provisions of paragraphs
25 (a)-(e)~~(f)~~ in the contract document or purchase order,
26 agencies may incorporate the requirements of paragraphs
27 (a)-(e)~~(f)~~ by reference.

28 (2) The written agreement shall be signed by the
29 agency head and the contractor prior to the rendering of any
30 contractual service the value of which is in excess of the
31 threshold amount provided in s. 287.017 for CATEGORY TWO,

1 | except in the case of a valid emergency as certified by the
2 | agency head. The certification of an emergency shall be
3 | prepared within 30 days after the contractor begins rendering
4 | the service and shall state the particular facts and
5 | circumstances which precluded the execution of the written
6 | agreement prior to the rendering of the service. If the
7 | agency fails to have the contract signed by the agency head
8 | and the contractor prior to rendering the contractual service,
9 | and if an emergency does not exist, the agency head shall, no
10 | later than 30 days after the contractor begins rendering the
11 | service, certify the specific conditions and circumstances to
12 | the department as well as describe actions taken to prevent
13 | recurrence of such noncompliance. The agency head may delegate
14 | the certification only to other senior management agency
15 | personnel. A copy of the certification shall be furnished to
16 | the Comptroller with the voucher authorizing payment. The
17 | department shall report repeated instances of noncompliance by
18 | an agency to the Auditor General. Nothing in this subsection
19 | shall be deemed to authorize additional compensation
20 | prohibited by s. 215.425. The procurement of contractual
21 | services shall not be divided so as to avoid the provisions of
22 | this section.

23 | (3) Notwithstanding the provisions of subsections (1)
24 | and (2), in those cases in which state agencies are unable to
25 | procure a written agreement for the providing of health and
26 | mental health services or drugs in the examination, diagnosis,
27 | or treatment of sick or injured persons in the care or custody
28 | of a state agency, those services and drugs may be obtained by
29 | purchase order. The purchase order shall contain sufficient
30 | detail for a proper audit and shall be signed by purchasing or
31 | contracting personnel acting on behalf of the agency.

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

13 (5) Unless otherwise provided in the General
14 Appropriations Act or the substantive bill implementing the
15 General Appropriations Act, the Comptroller may waive the
16 requirements of this section for services which are included
17 in s. 287.057~~(6)(4)~~(f).

18 Section 13. Paragraph (d) of subsection (2) of section
19 287.059, Florida Statutes, is amended to read:

20 287.059 Private attorney services.--

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

25 (d) Procured by the College Board of Trustees or state
26 ~~Regents and the universities and colleges of the State~~
27 ~~University System.~~

28 Section 14. Section 287.0731, Florida Statutes, is
29 amended to read:

30 287.0731 Team for contract negotiations.--Contingent
31 upon funding in the General Appropriations Act, the department

1 ~~of Management Services~~, in consultation with the State
2 Technology Office, shall establish a permanent team that
3 includes for contract negotiations including a chief
4 negotiator, ~~to specialize in conducting negotiations for the~~
5 procurement of information technology resources.

6 Section 15. Section 287.0822, Florida Statutes, is
7 amended to read:

8 287.0822 Beef and pork; prohibition on purchase; bid
9 specifications; penalty.--

10 (1) Fresh or frozen beef or pork that has not been
11 inspected by the United States Department of Agriculture or by
12 another state's inspection program which has been approved by
13 the United States Department of Agriculture shall not be
14 purchased, or caused to be purchased, by any agency of the
15 state or of any municipality, political subdivision, school
16 district, or special district for consumption in this state or
17 for distribution for consumption in this state. Solicitations
18 ~~Bid invitations~~ issued by any agency of the state or of any
19 municipality, political subdivision, school district, or
20 special district for the purchase of fresh or frozen beef or
21 pork must specify that only beef or pork inspected and passed
22 by either the United States Department of Agriculture or by
23 another state's inspection program which has been approved by
24 the United States Department of Agriculture will be accepted.
25 The supplier or vendor shall certify on the invoice that the
26 fresh or frozen beef or pork or imported beef or pork supplied
27 is either domestic or complies with this subsection.

28 (2) All solicitations ~~bid invitations~~ for purchase of
29 fresh or frozen meats of any kind by any agency of the state
30 or of any municipality, political subdivision, school
31 district, or special district using state or local funds shall

1 include the words: " 'All American' and 'Genuine Florida'
2 meats or meat products shall be granted preference as allowed
3 by Section 287.082, Florida Statutes."

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

8 Section 16. Section 287.084, Florida Statutes, is
9 amended to read:

10 287.084 Preference to Florida businesses.--

11 (1) When an agency, county, municipality, school
12 district, or other political subdivision of the state is
13 required to make purchases of personal property through
14 competitive solicitation ~~bidding~~ and the lowest responsible
15 and responsive bid, proposal, or reply is by a vendor ~~bidder~~
16 whose principal place of business is in a state or political
17 subdivision thereof which grants a preference for the purchase
18 of such personal property to a person whose principal place of
19 business is in such state, then the agency, county,
20 municipality, school district, or other political subdivision
21 of this state may award a preference to the lowest responsible
22 and responsive vendor ~~bidder~~ having a principal place of
23 business within this state, which preference is equal to the
24 preference granted by the state or political subdivision
25 thereof in which the lowest responsible and responsive vendor
26 ~~bidder~~ has his or her principal place of business. However,
27 this section shall not apply to transportation projects for
28 which federal aid funds are available.

29 (2) If a solicitation ~~an invitation for bids~~ provides
30 for the granting of such preference as is provided herein, any
31 vendor ~~bidder~~ whose principal place of business is outside the

1 State of Florida must accompany any written bid, proposal, or
2 reply documents with a written opinion of an attorney at law
3 licensed to practice law in that foreign state, as to the
4 preferences, if any or none, granted by the law of that state
5 to its own business entities whose principal places of
6 business are in that foreign state in the letting of any or
7 all public contracts.

8 Section 17. Section 287.087, Florida Statutes, is
9 amended to read:

10 287.087 Preference to businesses with drug-free
11 workplace programs.--Whenever two or more bids, proposals, or
12 replies which are equal with respect to price, quality, and
13 service are received by the state or by any political
14 subdivision for the procurement of commodities or contractual
15 services, a bid, proposal, or reply received from a business
16 that certifies that it has implemented a drug-free workplace
17 program shall be given preference in the award process. In
18 order to have a drug-free workplace program, a business shall:

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

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

30
31

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

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

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

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

19 Section 18. Section 287.093, Florida Statutes, is
20 amended to read:

21 287.093 Minority business enterprises; procurement of
22 personal property and services from funds set aside for such
23 purpose.--Any county, municipality, community college, or
24 district school board may set aside up to 10 percent or more
25 of the total amount of funds allocated for the procurement of
26 personal property and services for the purpose of entering
27 into contracts with minority business enterprises. Such
28 contracts shall be competitively solicited ~~bid~~ only among
29 minority business enterprises. The set-aside shall be used to
30 redress present effects of past discriminatory practices and
31

1 shall be subject to periodic reassessment to account for
2 changing needs and circumstances.

3 Section 19. Paragraphs (n) and (o) of subsection (4)
4 and paragraphs (d) and (e) of subsection (5) of section
5 287.09451, Florida Statutes, are amended to read:

6 287.09451 Office of Supplier Diversity; powers,
7 duties, and functions.--

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

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

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

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

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

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

15 2. For the purposes of commodities contracts for the
16 purchase of equipment to be used in the construction and
17 maintenance of state transportation facilities involving the
18 Department of Transportation, "minority business enterprise"
19 has the same meaning as provided in s. 288.703. "Minority
20 person" has the same meaning as in s. 288.703(3). In order to
21 ensure that the goals established under this paragraph for
22 contracting with certified minority business enterprises are
23 met, the department, with the assistance of the Office of
24 Supplier Diversity, shall make recommendations to the
25 Legislature on revisions to the goals, based on an updated
26 statistical analysis, at least once every 5 years. Such
27 recommendations shall be based on statistical data indicating
28 the availability of and disparity in the use of minority
29 businesses contracting with the state. The results of the
30 first updated disparity study must be presented to the
31 Legislature no later than December 1, 1996.

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

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

17 a. Size and complexity of the project.

18 b. The concentration of transactions with minority
19 business enterprises for the commodity or contractual services
20 in question in prior agency contracting.

21 c. The specificity and definition of work allocated to
22 participating minority business enterprises.

23 d. The capacity of participating minority business
24 enterprises to complete the tasks identified in the project.

25 e. The available pool of minority business enterprises
26 as prime contractors, either alone or as partners in an
27 approved joint venture that serves as the prime contractor.

28 5. To determine guidelines for use of joint ventures
29 to meet minority business enterprises spending goals. For
30 purposes of this section, "joint venture" means any
31 association of two or more business concerns to carry out a

1 single business enterprise for profit, for which purpose they
2 combine their property, capital, efforts, skills, and
3 knowledge. The guidelines shall allow transactions with joint
4 ventures to be eligible for credit against the minority
5 business enterprise goals of an agency when the contracting
6 joint venture demonstrates that at least one partner to the
7 joint venture is a certified minority business enterprise as
8 defined in s. 288.703, and that such partner is responsible
9 for a clearly defined portion of the work to be performed, and
10 shares in the ownership, control, management,
11 responsibilities, risks, and profits of the joint venture.
12 Such demonstration shall be by verifiable documents and sworn
13 statements and may be reviewed by the Office of Supplier
14 Diversity at or before the time a contract bid, proposal, or
15 reply is submitted. An agency may count toward its minority
16 business enterprise goals a portion of the total dollar amount
17 of a contract equal to the percentage of the ownership and
18 control held by the qualifying certified minority business
19 partners in the contracting joint venture, so long as the
20 joint venture meets the guidelines adopted by the office.

21 (o)1. To establish a system to record and measure the
22 use of certified minority business enterprises in state
23 contracting. This system shall maintain information and
24 statistics on certified minority business enterprise
25 participation, awards, dollar volume of expenditures and
26 agency goals, and other appropriate types of information to
27 analyze progress in the access of certified minority business
28 enterprises to state contracts and to monitor agency
29 compliance with this section. Such reporting must include, but
30 is not limited to, the identification of all subcontracts in
31 state contracting by dollar amount and by number of

1 subcontracts and the identification of the utilization of
2 certified minority business enterprises as prime contractors
3 and subcontractors by dollar amounts of contracts and
4 subcontracts, number of contracts and subcontracts, minority
5 status, industry, and any conditions or circumstances that
6 significantly affected the performance of subcontractors.
7 Agencies shall report their compliance with the requirements
8 of this reporting system at least annually and at the request
9 of the office. All agencies shall cooperate with the office in
10 establishing this reporting system. Except in construction
11 contracting, all agencies shall review contracts costing in
12 excess of CATEGORY FOUR as defined in s. 287.017 to determine
13 if such contracts could be divided into smaller contracts to
14 be separately solicited ~~bid~~ and awarded, and shall, when
15 economical, offer such smaller contracts to encourage minority
16 participation.

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

24 a. Total expenditures of each agency by industry.

25 b. The dollar amount and percentage of contracts
26 awarded to certified minority business enterprises by each
27 state agency.

28 c. The dollar amount and percentage of contracts
29 awarded indirectly to certified minority business enterprises
30 as subcontractors by each state agency.

31

1 d. The total dollar amount and percentage of contracts
2 awarded to certified minority business enterprises, whether
3 directly or indirectly, as subcontractors.

4 e. A statement and assessment of good faith efforts
5 taken by each state agency.

6 f. A status report of agency compliance with
7 subsection (6), as determined by the Minority Business
8 Enterprise Office.

9 (5)

10 (d) Should the proposed procurement proceed to
11 competitive solicitation ~~bidding~~, the office is hereby granted
12 standing to protest, pursuant to this section, in a timely
13 manner, any contract award during ~~in~~ competitive solicitation
14 ~~bidding~~ for contractual services and construction contracts
15 that fail to include minority business enterprise
16 participation, if any responsible and responsive vendor
17 ~~responding bidder~~ has demonstrated the ability to achieve any
18 level of participation, or, any contract award for commodities
19 where, a reasonable and economical opportunity to reserve a
20 contract, statewide or district level, for minority
21 participation was not executed or, an agency failed to adopt
22 an applicable preference for minority participation. The bond
23 requirement shall be waived for the office purposes of this
24 subsection.

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

31

1 Section 20. Section 287.096, Florida Statutes, is
2 created to read:

3 287.096 Thresholds for exempt programs.--All products
4 offered for purchase to a state agency by an entity exempt
5 from this chapter pursuant to s. 287.095, s. 413.036, or s.
6 946.515, shall be produced in majority part by inmate labor
7 pursuant to chapter 946, or by blind or severely handicapped
8 persons pursuant to ss. 413.032-413.037.

9 Section 21. Paragraph (g) of subsection (1),
10 subsection (2), and paragraph (a) of subsection (3) of section
11 287.133, Florida Statutes, is amended to read:

12 287.133 Public entity crime; denial or revocation of
13 the right to transact business with public entities.--

14 (1) As used in this section:

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

25 (2)(a) A person or affiliate who has been placed on
26 the convicted vendor list following a conviction for a public
27 entity crime may not submit a bid, proposal, or reply on a
28 contract to provide any goods or services to a public entity,
29 may not submit a bid, proposal, or reply on a contract with a
30 public entity for the construction or repair of a public
31 building or public work, may not submit bids, proposals, or

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

8 (b) No public entity shall accept any bid, proposal,
9 or reply from, award any contract to, or transact any business
10 in excess of the threshold amount provided in s. 287.017 for
11 CATEGORY TWO with any person or affiliate on the convicted
12 vendor list for a period of 36 months from the date that
13 person or affiliate was placed on the convicted vendor list
14 unless that person or affiliate has been removed from the list
15 pursuant to paragraph (3)(f). No public entity which was
16 transacting business with a person at the time of the
17 commission of a public entity crime which resulted in that
18 person being placed on the convicted vendor list shall accept
19 any bid, proposal, or reply from, award any contract to, or
20 transact any business with any other person who is under the
21 same, or substantially the same, control as the person whose
22 name appears on the convicted vendor list so long as that
23 person's name appears on the convicted vendor list.

24 (3)(a) All invitations to bid ~~as defined by s.~~
25 ~~287.012(11)~~, requests for proposals, and invitations to
26 negotiate, all as defined in ~~by~~ s. 287.012(15), and any
27 contract document of the state ~~described by s. 287.058~~ shall
28 contain a statement informing persons of the provisions of
29 paragraph (2)(a).

30
31

1 Section 22. Subsection (2) and paragraphs (a) and (c)
2 of subsection (3) of section 287.134, Florida Statutes, are
3 amended to read:

4 287.134 Discrimination; denial or revocation of the
5 right to transact business with public entities.--

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

17 (b) No public entity shall accept any bid, proposal,
18 or reply from, award any contract to, or transact any business
19 with any entity or affiliate on the discriminatory vendor list
20 for a period of 36 months from the date that entity or
21 affiliate was placed on the discriminatory vendor list unless
22 that entity or affiliate has been removed from the list
23 pursuant to paragraph (3)(f). No public entity which was
24 transacting business with an entity at the time of the
25 discrimination which resulted in that entity being placed on
26 the discriminatory vendor list shall accept any bid, proposal,
27 or reply from, award any contract to, or transact any business
28 with any other entity who is under the same, or substantially
29 the same, control as the entity whose name appears on the
30 discriminatory vendor list so long as that entity's name
31 appears on the discriminatory vendor list.

1 (3)(a) All invitations to bid, ~~as defined by s.~~
2 ~~287.012(11)~~, requests for proposals, and invitations to
3 negotiate, all as defined by s. 287.012 ~~as defined by s.~~
4 ~~287.012(15)~~, and any written contract document of the state
5 shall contain a statement informing entities of the provisions
6 of paragraph (2)(a).

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

19 Section 23. Section 287.1345, Florida Statutes, is
20 amended to read:

21 287.1345 Surcharge on users of state term contracts;
22 deposit of proceeds collected.--~~The department of Management~~
23 ~~Services~~ may impose a surcharge upon users of state term
24 contracts in order to fund the costs, including overhead, of
25 its procurement function. The department may provide for the
26 state term contract vendor to collect the surcharge or
27 directly collect the fee from the public agency or eligible
28 user involved. For the purpose of compensating vendors for
29 expenses incurred in collecting such fees, the department may
30 authorize a vendor to retain a portion of the fees. The
31 vendor may withhold the portion retained from the amount of

1 fees to be remitted to the department. The department may
2 establish ~~negotiate~~ the retainage as a percentage of such fees
3 charged to users, as a flat amount, or as any other method the
4 department deems feasible. Vendors shall maintain accurate
5 sales summaries for purchases made from state term contracts
6 and shall provide the summaries to the department on a
7 quarterly basis. Any contract remedies relating to the
8 collection of such fees from users through vendors are
9 enforceable, including, but not limited to, liquidated
10 damages, late fees, and the costs of collection, including
11 attorney's fees. The fees collected pursuant to this section
12 shall be deposited into the Grants and Donations Trust Fund of
13 the department and are subject to appropriation as provided by
14 law. The Executive Office of the Governor may exempt
15 transactions from the payment of the surcharge if payment of
16 such surcharge would cause the state, a political subdivision,
17 or unit of local government to lose federal funds or in other
18 cases where such exemption is in the public interest. The
19 fees collected pursuant to this section and interest income on
20 such fees shall not be deemed to be income of a revenue nature
21 for purposes of chapter 215.

22 Section 24. Subsection (1) of section 283.33, Florida
23 Statutes, is amended to read:

24 283.33 Printing of publications; lowest bidder
25 awards.--

26 (1) Publications may be printed and prepared in-house,
27 by another agency or the Legislature, or purchased on bid,
28 whichever is more economical and practicable as determined by
29 the agency. An agency may contract for binding separately
30 when more economical or practicable, whether or not the
31 remainder of the printing is done in-house. A bidder may

