

By Senator Bennett

21-1105-04

1 A bill to be entitled
2 An act relating to the procurement of personal
3 property and services by governmental entities;
4 amending s. 255.0525, F.S.; providing for the
5 electronic advertisement of the solicitation of
6 bids, proposals, or replies for certain
7 construction projects; repealing ss. 283.30,
8 283.31, 283.32, 283.33, 283.34, 283.35, 283.43,
9 283.55, and 283.56, F.S., relating to public
10 printing; transferring and renumbering s.
11 283.425, F.S., relating to acceptance of
12 printing contracts; transferring and
13 renumbering s. 283.58, F.S., relating to agency
14 agreements with vendors for private publication
15 of public information materials; amending s.
16 287.012, F.S.; revising definitions; amending
17 s. 287.017, F.S.; providing for procurement
18 categories and threshold amounts; providing
19 various methodologies to be used to value the
20 contract in order to determine a procurement
21 category; requiring the agency to develop an
22 alternative methodology; amending s. 287.022,
23 F.S., relating to the purchase of insurance;
24 conforming a cross-reference; amending s.
25 287.025, F.S.; deleting certain items for which
26 a primary contract of insurance is prohibited;
27 amending s. 287.042, F.S.; revising the powers
28 and duties of the Department of Management
29 Services relating to the purchase of
30 commodities and contractual services for the
31 state; providing for procedures for conducting

1 reverse auctions; repealing s. 287.045(11),
2 F.S.; deleting a requirement for the department
3 to report its expenditures on and use of
4 recycled materials to the Governor and
5 Legislature; amending s. 287.056, F.S.;
6 authorizing the department to adopt rules that
7 exempt agencies purchasing commodities and
8 contractual services from certain purchasing
9 agreements under certain conditions; amending
10 s. 287.057, F.S.; providing for the purchase of
11 commodities or contractual services that do not
12 exceed a certain amount; requiring the
13 department to adopt rules; providing that
14 sealed bids, responses, or bids are not applied
15 when a certain purchasing method is used;
16 providing that services or commodities provided
17 by certain agencies, colleges, and universities
18 are not subject to competitive-solicitation
19 requirements; deleting an agency's reporting
20 requirement when it receives fewer than a
21 certain number of responsive bids, proposals,
22 or replies for commodity or contractual
23 services; requiring a certified negotiator to
24 conduct negotiations during a competitive
25 sealed reply procurement when the contract is
26 in excess of a certain dollar amount; deleting
27 a provision authorizing an agency to contract
28 for services with any independent nonprofit
29 college or university on the same basis that it
30 would contract with a state college or
31 university; deleting a provision limiting the

1 vendors authorized to participate in on-line
2 procurement; creating s. 287.0575, F.S.;
3 requiring a bidder or offeror to make cost or
4 pricing data available prior to the award of a
5 contract under certain circumstances; requiring
6 the bidder or offeror to submit cost or pricing
7 data within a certain amount of time; requiring
8 a contract or contract modification, in which
9 certified cost or pricing is required, to
10 contain a provision regarding price
11 adjustments; defining the term "cost or pricing
12 data"; amending s. 287.0943, F.S.; requiring
13 the Office of Supplier Diversity within the
14 department to maintain a directory of certain
15 local governmental jurisdictions or
16 organizations; providing that a minority
17 business enterprise certification may be
18 challenged by the office; deleting provisions
19 providing for a Minority Business Certification
20 Task Force; requiring the office to certify
21 minority business enterprises; revising
22 requirements for certification as a minority
23 business enterprise; providing for the transfer
24 of ownership or permanent change in the
25 management of a certified minority business
26 enterprise; deleting a provision requiring that
27 the certification criteria be included in a
28 statewide and interlocal agreement; authorizing
29 the Auditor General to review the criteria by
30 which a minority business enterprise was
31 certified; providing that a minority business

1 enterprise may not reapply for certification
2 for a certain time after being denied
3 certification; authorizing the office to revoke
4 the certification of a firm that is doing
5 business as a certified minority business
6 enterprise under certain conditions; deleting
7 provisions regarding the duties of an executor
8 to a statewide and interlocal agreement;
9 repealing s. 287.09431, F.S., relating to the
10 statewide and interlocal agreement on
11 certification of business concerns for the
12 status of a minority business enterprise;
13 amending s. 287.09451, F.S.; conforming
14 provisions to changes made by the act; revising
15 the period of certification as a minority
16 business enterprise; repealing s. 287.1345,
17 F.S., relating to the surcharge on users of
18 state term contracts; amending s. 287.16, F.S.;
19 revising the duties, powers, and
20 responsibilities of the department relating to
21 state-owned or state-leased aircraft,
22 watercraft, and motor vehicles; amending s.
23 287.161, F.S.; providing that state-leased
24 aircraft are included in the executive aircraft
25 pool within the department; deleting the
26 provision that state employees traveling on a
27 space-available basis may not be charged more
28 than the vehicle mileage allowance; providing
29 legislative intent relating to the executive
30 aircraft pool; amending ss. 287.17, 288.703,
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1 946.515 F.S.; conforming provisions to changes
2 made by the act; providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Subsections (1), (2), and (3) of section
7 255.0525, Florida Statutes, are amended to read:

8 255.0525 Advertising for competitive bids or
9 proposals.--

10 (1) The solicitation of competitive bids,or
11 proposals, or replies for any state construction project in
12 excess of \$200,000 shall be electronically posted, as defined
13 in s. 287.012(11), on a centralized Internet website
14 designated by the Department of Management Services for this
15 purpose that is projected to cost more than \$200,000 shall be
16 publicly advertised once in the Florida Administrative Weekly
17 at least 30 ~~21~~ days prior to the established bid opening. For
18 state construction projects that are projected to cost more
19 than \$500,000, the advertisement shall be published in the
20 Florida Administrative Weekly at least 30 days prior to the
21 established bid opening and at least once in a newspaper of
22 general circulation in the county where the project is located
23 at least 30 days prior to the established bid opening and at
24 least 5 days prior to any scheduled prebid conference.The
25 bids,or proposals, or replies shall be received and opened
26 publicly at the location, date, and time established in the
27 solicitation ~~bid or proposal~~ advertisement. In cases of
28 emergency, the Secretary of Management Services may alter the
29 procedures required in this section in any manner that is
30 reasonable under the emergency circumstances. From July 1,
31 2004, to July 1, 2005, the Department of Management Services

1 shall publish a notice in each edition of the Florida
2 Administrative Weekly which indicates the specific URL or
3 Internet address for the centralized website. Any agency may
4 place a legal advertisement in an applicable local publication
5 referencing the centralized website.

6 (2) The solicitation of competitive bids,~~or~~
7 proposals, or replies for any county, municipality, or other
8 political subdivision construction project that is projected
9 to cost more than \$200,000 shall be publicly advertised at
10 least once in a newspaper of general circulation in the county
11 where the project is located at least 21 days prior to the
12 established bid opening and at least 5 days prior to any
13 scheduled prebid conference. The solicitation of ~~competitive~~
14 ~~bids or proposals~~ for any county, municipality, or other
15 political subdivision construction project that is projected
16 to cost more than \$500,000 shall be publicly advertised at
17 least once in a newspaper of general circulation in the county
18 where the project is located at least 30 days prior to the
19 established bid opening and at least 5 days prior to any
20 scheduled prebid conference. Alternatively, a solicitation may
21 be electronically posted as provided in subsection (1) if the
22 address for the centralized website is also advertised at
23 least once each week in a newspaper of general circulation in
24 the county from July 1, 2004, to July 1, 2005. Bids,~~or~~
25 proposals, or replies shall be received and opened at the
26 location, date, and time established in the solicitation bid
27 ~~or proposal advertisement~~. In cases of emergency, the
28 procedures required in this section may be altered by the
29 local governmental entity in any manner that is reasonable
30 under the emergency circumstances.

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1 (3) If the location, date, or time of the bid opening
2 changes, written or electronic notice of the change must be
3 given, as soon as practicable after the change is made, to all
4 persons who are registered to receive any addenda to the plans
5 and specifications.

6 Section 2. Sections 283.30, 283.31, 283.32, 283.33,
7 283.34, 283.35, 283.43, 283.55, and 283.56, Florida Statutes,
8 are repealed.

9 Section 3. Section 283.425, Florida Statutes, is
10 transferred and renumbered as section 287.0583, Florida
11 Statutes, to read:

12 287.0583 ~~283.425~~ Acceptance for printing; penalty for
13 defective printing.--No printing may be accepted as in
14 compliance with the contract when the printing is not of the
15 grade of workmanship which is usually employed by professional
16 printers on printing of such class, or when the printing is
17 not of the full quantity or acceptable quality for which it
18 has been contracted. If immediate necessity and lack of time
19 to procure printing elsewhere compel the use of defective
20 printing furnished by a contractor, it shall be accepted
21 without approval, and one-half of the contract price thereon
22 shall be deducted as liquidated damages for breach of
23 contract. The agency which contracted for printing shall
24 notify the contractor within a reasonable time after delivery
25 of said printing as to acceptance or nonacceptance, and such
26 reasonable time shall be specified in the contract. The
27 contract shall also provide that a contractor has a reasonable
28 time to correct any defects if delivery is made by a date
29 specified in the contract, unless such a provision is not
30 practicable because of time constraints.

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1 Section 4. Section 283.58, Florida Statutes, is
2 transferred and renumbered as section 287.0584, Florida
3 Statutes, to read:

4 287.0584 ~~283.58~~ Agency agreements with vendors for
5 private publication of public information materials; free
6 distribution to public.--

7 (1) An agency may enter into agreements to secure the
8 private publication of public information brochures,
9 pamphlets, audiotapes, videotapes, and related materials for
10 distribution without charge to the public and, in furtherance
11 thereof, is authorized to:

12 (a) Enter into agreements with private vendors for the
13 publication or production of such public information
14 materials, by which the costs of publication or production
15 will be borne in whole or in part by the vendor or the vendor
16 agrees to provide additional compensation in return for the
17 right of the vendor to select, sell, and place advertising
18 that publicizes products or services related to and harmonious
19 with the subject matter of the publication.

20 (b) Retain the right, by agreement, to approve all
21 elements of any advertising placed in such public information
22 materials, including the form and content thereof.

23 (2) Any public information materials produced pursuant
24 to this section and containing advertising of any kind must
25 include a statement providing that the inclusion of
26 advertising in such material does not constitute an
27 endorsement by the state or the agency of the products or
28 services so advertised.

29 Section 5. Section 287.012, Florida Statutes, is
30 amended to read:

31 287.012 Definitions.--As used in this part, the term:

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

5 "Agency" does not include the university and college boards of
6 trustees or the state universities and colleges.

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

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

17 (4) "Best value" means the highest overall value to
18 the state based on objective factors that include, but are not
19 limited to, consideration ~~price~~, quality, design, and
20 workmanship.

21 (5) "Commodity" means any of the various supplies,
22 materials, goods, merchandise, food, equipment, information
23 technology, printing of publications, forms, and related
24 materials, and other personal property, including a mobile
25 home, trailer, or other portable structure with floor space of
26 less than 5,000 square feet, purchased, leased, or otherwise
27 contracted for by the state and its agencies. "Commodity"
28 also includes interest on deferred-payment commodity contracts
29 approved pursuant to s. 287.063 entered into by an agency for
30 the purchase of other commodities. However, ~~commodities~~
31 ~~purchased for resale are excluded from this definition.~~

1 ~~Further,~~ a prescribed drug, medical supply, or device required
2 by a licensed health care provider as a part of providing
3 health services involving examination, diagnosis, treatment,
4 prevention, medical consultation, or administration for
5 clients at the time the service is provided is not considered
6 to be a "commodity." The provisions of s. 946.515(4) do not
7 apply to purchases of printing. ~~Printing of publications shall~~
8 ~~be considered a commodity when let upon contract pursuant to~~
9 ~~s. 283.33, whether purchased for resale or not.~~

10 (6) "Competitive sealed bids," "competitive sealed
11 proposals," or "competitive sealed replies" means the process
12 of receiving two or more sealed bids, proposals, or replies
13 submitted by responsive vendors and includes bids, proposals,
14 or replies transmitted by electronic means in lieu of or in
15 addition to written bids, proposals, or replies.

16 (7) "Competitive solicitation" or "solicitation" means
17 an invitation to bid, a request for proposals, ~~or an~~
18 invitation to negotiate, or a reverse auction.

19 (8) "Consideration" means something of value provided
20 by an agency to a vendor, and may include, but is not limited
21 to, one or more of the following;

22 (a) State funds; or

23 (b) The granting to a vendor of a right or privilege

24 to:

25 1. Act on behalf of the state;

26 2. Use the state's assets or resources;

27 3. Use revenue or shared savings generated by the

28 contractual arrangement;

29 4. Use taxes or licenses; or

30 5. Collect or use fees.

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1 ~~(9)~~(8) "Contractor" or "vendor" means a person who
2 contracts or otherwise arranges to sell commodities or
3 contractual services to an agency or the public on behalf of
4 or in cooperation with the agency.

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

24 ~~(11)~~(10) "Department" means the Department of
25 Management Services.

26 ~~(12)~~(11) "Electronic posting" or "electronically post"
27 means the posting of solicitations, agency decisions or
28 intended decisions, or other matters relating to procurement
29 on a centralized Internet website designated by the department
30 for this purpose.

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1 ~~(13)~~(12) "Eligible user" means any person or entity
2 authorized by the department pursuant to rule to purchase from
3 state term contracts or to use the on-line procurement system.

4 ~~(14)~~(13) "Exceptional purchase" means any procurement
5 ~~purchase~~ of commodities or contractual services excepted by
6 law or rule from the requirements for competitive
7 solicitation, including, but not limited to, purchases from a
8 single source; purchases upon receipt of less than two
9 responsive bids, proposals, or replies; purchases made by an
10 agency, after receiving approval from the department, from a
11 contract procured, pursuant to s. 287.057(1), (2), or (3), by
12 another agency; and purchases made without advertisement in
13 the manner required by s. 287.042(3)(a)~~s. 287.042(3)(b)~~. The
14 term "exceptional purchase" does not include purchases listed
15 in s. 287.0574(7)(e) and (f) as exempt from competitive
16 procurement.

17 ~~(15)~~(14) "Extension" means an increase in the time
18 allowed for the contract period due to circumstances which,
19 without fault of either party, make performance impracticable
20 or impossible, or which prevent a new contract from being
21 executed, with or without a proportional increase in the total
22 dollar amount, with any increase to be based on the method and
23 rate previously established in the contract.

24 ~~(16)~~(15) "Information technology" has the meaning
25 ascribed in s. 282.0041.

26 ~~(17)~~(16) "Invitation to bid" means a written
27 solicitation for competitive sealed bids. The invitation to
28 bid is used when the agency is capable of specifically
29 defining the scope of work for which a contractual service is
30 required or when the agency is capable of establishing precise
31 specifications defining the actual commodity or group of

1 commodities required. A written solicitation includes a
2 solicitation that is electronically posted.

3 (18)~~(17)~~ "Invitation to negotiate" means a written
4 solicitation for competitive sealed replies to select one or
5 more vendors with which to commence negotiations for the
6 procurement of commodities or contractual services. The
7 invitation to negotiate is used when the agency determines
8 that negotiations may be necessary for the state to receive
9 the best value. A written solicitation includes a solicitation
10 that is electronically posted.

11 (19)~~(18)~~ "Minority business enterprise" has the
12 meaning ascribed in s. 288.703.

13 (20)~~(19)~~ "Office" means the Office of Supplier
14 Diversity of the Department of Management Services.

15 (21) "Procurement" with respect to commodities or
16 contractual services means the process wherein an agency
17 provides consideration to a vendor in exchange for the
18 vendor's provision of commodities or contractual services to
19 the agency or to the public on behalf of or in cooperation
20 with the agency.

21 (22)~~(20)~~ "Renewal" means contracting with the same
22 contractor for an additional contract period after the initial
23 contract period, only if pursuant to contract terms
24 specifically providing for such renewal.

25 (23)~~(21)~~ "Request for information" means a written
26 request made by an agency to vendors for information
27 concerning commodities or contractual services. Responses to
28 these requests are not offers and may not be accepted by the
29 agency to form a binding contract.

30 (24)~~(22)~~ "Request for proposals" means a written
31 solicitation for competitive sealed proposals. The request for

1 proposals is used when it is not practicable for the agency to
2 specifically define the scope of work for which the commodity,
3 group of commodities, or contractual service is required and
4 when the agency is requesting that a responsible vendor
5 propose a commodity, group of commodities, or contractual
6 service to meet the specifications of the solicitation
7 document. A written solicitation includes a solicitation that
8 is electronically posted.

9 ~~(25)(23)~~ "Request for a quote" means an oral or
10 written request for written pricing or services information
11 from a state term contract vendor for commodities or
12 contractual services available on a state term contract from
13 that vendor.

14 ~~(26)(24)~~ "Responsible vendor" means a vendor who has
15 the capability in all respects to fully perform the contract
16 requirements and the integrity and reliability that will
17 assure good faith performance.

18 ~~(27)(25)~~ "Responsive bid," "responsive proposal," or
19 "responsive reply" means a bid, or proposal, or reply
20 submitted by a responsive and responsible vendor that conforms
21 in all material respects to the solicitation.

22 ~~(28)(26)~~ "Responsive vendor" means a vendor that has
23 submitted a bid, proposal, or reply that conforms in all
24 material respects to the solicitation.

25 (29) "Reverse auction" means a purchasing process in
26 which vendors compete to provide commodities or contractual
27 services at the lowest selling price in an open and
28 interactive environment wherein vendors may submit pricing
29 multiple times during a specified time period.

30 ~~(30)(27)~~ "State term contract" means a term contract
31 that is competitively procured by the department pursuant to

1 s. 287.057 and that is used by agencies and eligible users
2 pursuant to s. 287.056.

3 (31)~~(28)~~ "Term contract" means an indefinite quantity
4 contract to furnish commodities or contractual services during
5 a defined period.

6 (32) "Written" or "in writing" means the product of
7 any method of forming characters on paper, other materials, or
8 viewable screens which can be read, retrieved, and reproduced,
9 including information that is electronically transmitted and
10 stored.

11 Section 6. Section 287.017, Florida Statutes, is
12 amended to read:

13 287.017 Procurement ~~Purchasing~~ categories, ~~threshold~~
14 ~~amounts; procedures for automatic adjustment by department.--~~

15 (1)(a) The following procurement ~~purchasing~~ categories
16 and corresponding threshold amounts are ~~hereby~~ created:

17 1.(a) CATEGORY ONE: \$15,000.

18 2.(b) CATEGORY TWO: \$25,000.

19 3.(c) CATEGORY THREE: \$50,000.

20 4.(d) CATEGORY FOUR: \$150,000.

21 5.(e) CATEGORY FIVE: \$250,000.

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

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

30 2.(b) The procedure for rounding results.

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

3 (2)(a) The following methodologies shall be used to
4 value the contract or arrangement to determine the appropriate
5 procurement category in subsection (1) for any procurement of
6 commodities or contractual services:

7 1. If state funds are the exclusive consideration to
8 be provided by an agency, the procurement category shall be
9 based upon the estimated total of state funds to be expended
10 by the agency over the term of the contract; or

11 2. If state funds are not the exclusive consideration
12 to be provided by an agency, the procurement category shall be
13 based upon the greater of the following totals:

14 a. The sum of estimated gross revenues or shared
15 savings to be generated for the state and contractor over the
16 term of the contract added to the sum of state moneys, if any,
17 to be expended by the agency over the term of the contract; or

18 b. The estimated costs avoided by the state over the
19 term of the contract.

20 (b) If none of the methodologies set forth in
21 paragraph (a) are applicable to a procurement of commodities
22 or contractual services, the agency shall develop an
23 alternative methodology to determine the appropriate
24 procurement category. Prior to proceeding with such a
25 procurement, the methodology developed by the agency must be
26 approved in writing by the agency head and the head of the
27 department.

28 Section 7. Subsection (1) of section 287.022, Florida
29 Statutes, is amended to read:

30 287.022 Purchase of insurance.--
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1 (1) Insurance, while not a commodity, nevertheless
2 shall be purchased for all agencies by the department, except
3 that agencies may purchase title insurance for land
4 acquisition and may make emergency purchases of insurance
5 under s. 287.057(7)(a)~~pursuant to s. 287.057(5)(a)~~. The
6 procedures for purchasing insurance, whether the purchase is
7 made by the department or by the agencies, shall be the same
8 as those set forth herein for the purchase of commodities.

9 Section 8. Subsections (1) and (2) of section 287.025,
10 Florida Statutes, are amended to read:

11 287.025 Prohibition against certain insurance coverage
12 on specified state property or insurable subjects.--

13 (1) A ~~No~~ primary contract of insurance may not ~~shall~~
14 be purchased on insurable subjects or property titled in the
15 name of the state or its departments, divisions, bureaus,
16 commissions, or agencies with respect to any of the following
17 properties, coverages, or insurable subjects:

18 (a) Physical damage insurance on motor vehicles which
19 are licensed for use on the public highways of this state. For
20 the purpose of this chapter, the term "physical damage
21 insurance" means coverage against collision, upset or
22 overturn, fire, theft, combined additional coverage, or
23 comprehensive;

24 (b) Physical damage insurance on watercraft and
25 related equipment;

26 (c) Loss of rental income on any buildings unless the
27 buildings are financed in whole or in part by revenue bonds or
28 certificates the terms of which require such coverage or
29 unless otherwise authorized by law;

30 (d) Miscellaneous equipment which is subject to a
31 transportation feature and subject to ordinarily being covered

1 by an inland marine insurance floater. The term
2 "miscellaneous equipment" does not include boilers and
3 machinery or nuclear equipment;

4 ~~(e) Museum collections, artifacts, relics, or fine~~
5 ~~arts;~~

6 (e)~~(f)~~ Hull coverage on aircraft;

7 (f)~~(g)~~ Glass insurance;

8 (g)~~(h)~~ Coverage for loss against vandalism or
9 malicious mischief unless these perils are included within an
10 all-risks-of-physical-loss form; and

11 (h)~~(i)~~ Insurance against loss or damage to livestock
12 and services of a veterinary for such animals.

13 (2) Excess insurance may be purchased to cover loss
14 for physical damage on the above-described properties or risk
15 if the aggregate exposure at any one location or actual cash
16 value of any one item exceeds the sum of \$10,000. However, no
17 excess insurance shall be purchased on any items listed in
18 paragraphs (1)(c), (f)~~(e)~~, (g), and (h)~~and (i)~~, regardless
19 of value or risk.

20 Section 9. Subsections (1), (2), (3), (4), and (16) of
21 section 287.042, Florida Statutes, are amended to read:

22 287.042 Powers, duties, and functions.--The department
23 shall have the following powers, duties, and functions:

24 (1)(a) To canvass all sources of supply, establish and
25 maintain a vendor list to be maintained by classes of
26 commodities and contractual services, and contract for the
27 purchase, lease, or acquisition, including purchase by
28 installment sales or lease-purchase contracts which may
29 provide for the payment of interest on unpaid portions of the
30 purchase price, of all commodities and contractual services
31 required by any agency under this chapter. Any contract

1 providing for deferred payments and the payment of interest
2 shall be subject to specific rules adopted by the department.

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

8 (c) With regard to the corporation operating the
9 correctional industry program provided for in s. 946.502, the
10 department:

11 1. Shall issue commodity numbers for all products of
12 the corporation operating the correctional industry program
13 which meet or exceed department specifications;~~In order to~~
14 ~~promote cost-effective procurement of commodities and~~
15 ~~contractual services, the department or an agency may enter~~
16 ~~into contracts that limit the liability of a vendor consistent~~
17 ~~with s. 672.719.~~

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

22 2.(e) The department Shall include the products
23 offered by the corporation on any listing prepared by the
24 department which lists state term contracts executed by the
25 department. The products offered by the corporation and listed
26 by the department may be listed on a state term contract or
27 listed as an exception to the state term contract as
28 determined by the department.The products or services shall
29 be placed on such list in a category based upon specification
30 criteria developed through a joint effort of the department
31 and the corporation and approved by the department; and.

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

9 ~~(d)(g)~~ The department shall include products and
10 services that are offered by a qualified nonprofit agency for
11 persons with disabilities ~~the blind or for the other severely~~
12 ~~handicapped~~ organized under ~~pursuant to~~ chapter 413 and that
13 have been determined to be suitable for purchase pursuant to
14 s. 413.035 on any department listing of state term contracts.
15 The products and services shall be placed on such list in a
16 category based upon specification criteria developed by the
17 department in consultation with the qualified nonprofit
18 agency. The products offered by a qualified nonprofit agency
19 for persons with disabilities and listed by the department may
20 be listed on a state term contract or listed as an exception
21 to the state term contract as determined by the department.

22 ~~(h)~~ ~~The department may collect fees for the use of its~~
23 ~~electronic information services. The fees may be imposed on an~~
24 ~~individual transaction basis or as a fixed subscription for a~~
25 ~~designated period of time. At a minimum, the fees shall be~~
26 ~~determined in an amount sufficient to cover the department's~~
27 ~~projected costs of such services, including overhead in~~
28 ~~accordance with the policies of the Department of Management~~
29 ~~Services for computing its administrative assessment. All~~
30 ~~fees collected pursuant to this paragraph shall be deposited~~
31

1 ~~in the Grants and Donations Trust Fund for disbursement as~~
2 ~~provided by law.~~

3 (2)(a) To establish purchasing agreements and procure
4 state term contracts for commodities and contractual services,
5 pursuant to s. 287.057, under which state agencies shall, and
6 eligible users may, make purchases pursuant to s. 287.056. The
7 department may restrict purchases from some term contracts to
8 state agencies only for those term contracts where the
9 inclusion of other governmental entities will have an adverse
10 effect on competition or to those federal facilities located
11 in this state. In such planning or purchasing the Office of
12 Supplier Diversity may monitor to ensure that opportunities
13 are afforded for contracting with minority business
14 enterprises. The department, for state term contracts, and all
15 agencies, for multiyear contractual services or term
16 contracts, shall explore reasonable and economical means to
17 utilize certified minority business enterprises. Purchases by
18 any county, municipality, private nonprofit community
19 transportation coordinator designated pursuant to chapter 427,
20 while conducting business related solely to the Commission for
21 the Transportation Disadvantaged, or other local public agency
22 under the provisions in the state purchasing contracts, and
23 purchases, from the corporation operating the correctional
24 work programs, of products or services that are subject to
25 subparagraph (c)3.~~paragraph (1)(f)~~, are exempt from the
26 competitive solicitation requirements otherwise applying to
27 their purchases.

28 (b) As an alternative to any provision in s.
29 120.57(3)(c), the department or agency may proceed with the
30 competitive solicitation or contract award process of a term
31 contract when the secretary of the department or his or her

1 designee sets forth in writing particular facts and
2 circumstances which demonstrate that the delay incident to
3 staying the solicitation or contract award process would be
4 detrimental to the interests of the state. After the award of
5 a contract resulting from a competitive solicitation in which
6 a timely protest was received and in which the state did not
7 prevail, the contract may be canceled and reawarded.

8 (c) Any person who files an action protesting a
9 decision or intended decision pertaining to contracts
10 administered by the department, a water management district,
11 or an agency pursuant to s. 120.57(3)(b) shall post with the
12 department, the water management district, or the agency at
13 the time of filing the formal written protest a bond payable
14 to the department, the water management district, or agency in
15 an amount equal to 1 percent of the estimated contract amount.
16 For protests of decisions or intended decisions pertaining to
17 exceptional purchases, the bond shall be in an amount equal to
18 1 percent of the estimated contract amount for the exceptional
19 purchase. The estimated contract amount shall be based upon
20 the contract price submitted by the protestor or, if no
21 contract price was submitted, the department, water management
22 district, or agency shall estimate the contract amount based
23 on factors including, but not limited to, the price of
24 previous or existing contracts for similar commodities or
25 contractual services, the amount appropriated by the
26 Legislature for the contract, or the fair market value of
27 similar commodities or contractual services. The agency shall
28 provide the estimated contract amount to the vendor within 72
29 hours, excluding Saturdays, Sundays, and state holidays, after
30 the filing of the notice of protest by the vendor. The
31 estimated contract amount is not subject to protest pursuant

1 to s. 120.57(3). The bond shall be conditioned upon the
2 payment of all costs and charges that are adjudged against the
3 protestor in the administrative hearing in which the action is
4 brought and in any subsequent appellate court proceeding. In
5 lieu of a bond, the department, the water management district,
6 or agency may, in either case, accept a cashier's check,
7 official bank check, or money order in the amount of the bond.
8 If, after completion of the administrative hearing process and
9 any appellate court proceedings, the department, water
10 management district, or agency prevails, it shall recover all
11 costs and charges which shall be included in the final order
12 or judgment, excluding attorney's fees. This section shall not
13 apply to protests filed by the Office of Supplier Diversity.
14 Upon payment of such costs and charges by the protestor, the
15 bond, cashier's check, official bank check, or money order
16 shall be returned to the protestor. If, after the completion
17 of the administrative hearing process and any appellate court
18 proceedings, the protestor prevails, the protestor shall
19 recover from the department, water management district, or
20 agency all costs and charges which shall be included in the
21 final order or judgment, excluding attorney's fees.

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

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

30 (a)(b)1. Development of procedures for advertising
31 solicitations. These procedures must provide for electronic

1 posting of solicitations for at least 10 days before the date
2 set for receipt of bids, proposals, or replies, unless the
3 department or other agency determines in writing that a
4 shorter period of time is necessary to avoid harming the
5 interests of the state. The Office of Supplier Diversity may
6 consult with the department regarding the development of
7 solicitation distribution procedures to ensure that maximum
8 distribution is afforded to certified minority business
9 enterprises as defined in s. 288.703.

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

19 **(b)**~~(c)~~ Development of procedures for the receipt and
20 opening of bids, proposals, ~~or replies, or the conduct of~~
21 reverse auctions by an agency. Such procedures shall provide
22 the Office of Supplier Diversity an opportunity to monitor and
23 ensure that the contract award is consistent with the
24 requirements of s. 287.09451.

25 **(c)**~~(d)~~ Development of procedures to be used by an
26 agency in deciding to contract, including, but not limited to,
27 identifying and assessing in writing project needs and
28 requirements, availability of agency employees, budgetary
29 constraints or availability, facility equipment availability,
30 current and projected agency workload capabilities, and the
31 ability of any other state agency to perform the services.

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

9 (e)~~(f)~~ Development of procedures to be used by an
10 agency for issuing solicitations that include requirements to
11 describe commodities, services, scope of work, and
12 deliverables in a manner that promotes competition.

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

16 (4)(a) To prescribe the methods of securing responses
17 to competitive solicitations ~~sealed bids, proposals, and~~
18 ~~replies~~. Such methods may include, but are not limited to,
19 procedures for identifying vendors; setting qualifications;
20 conducting conferences or written question and answer periods
21 for purposes of responding to vendor questions; evaluating
22 bids, proposals, and replies; ranking and selecting vendors;
23 and conducting negotiations.

24 (b) To prescribe, in consultation with the State
25 Technology Office, procedures for procuring information
26 technology and information technology consultant services
27 which provide for public announcement and qualification,
28 competitive solicitations, contract award, and prohibition
29 against contingent fees. Such procedures shall be limited to
30 information technology consultant contracts for which the
31 total project costs, or planning or study activities, are

1 estimated to exceed the threshold amount provided for in s.
2 287.017, for CATEGORY TWO.

3
4 In order to promote cost-effective procurement of commodities
5 and contractual services, the department or an agency may
6 enter into a contract consistent with s. 672.719 which limits
7 the liability of a vendor.

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

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

25 Section 10. Subsection (11) of section 287.045,
26 Florida Statutes, is repealed.

27 Section 11. Section 287.056, Florida Statutes, is
28 amended to read:

29 287.056 Purchases from purchasing agreements and state
30 term contracts.--

31

1 (1) Agencies shall, and eligible users may, purchase
2 commodities and contractual services from purchasing
3 agreements established and state term contracts procured,
4 under pursuant to s. 287.057, by the department. The
5 department may adopt rules under ss. 120.536(1) and 120.54
6 which exempt agencies from this requirement when commodities
7 and contractual services available from such purchasing
8 agreements and state term contracts cannot meet agency needs.

9 ~~(2) Agencies may have the option to purchase~~
10 ~~commodities or contractual services from state term contracts~~
11 ~~procured, pursuant to s. 287.057, by the department which~~
12 ~~contain a user surcharge pursuant to s. 287.1345 as determined~~
13 ~~by the department.~~

14 (2)(3) Agencies and eligible users may use a request
15 for quote to obtain written pricing or services information
16 from a state term contract vendor for commodities or
17 contractual services available on state term contract from
18 that vendor. The purpose of a request for quote is to
19 determine whether a price, term, or condition more favorable
20 to the agency or eligible user than that provided in the state
21 term contract is available. Use of a request for quote does
22 not constitute a decision or intended decision that is subject
23 to protest under s. 120.57(3).

24 Section 12. Section 287.057, Florida Statutes, is
25 amended to read:

26 287.057 Procurement of commodities or contractual
27 services.--

28 (1) In order to obtain the best value to the state,
29 the department shall adopt rules under ss. 120.536(1) and
30 120.54, which prescribe the methods for the procurement of
31

1 commodities or contractual services that do not exceed the
2 threshold amount provided in s. 287.017 for CATEGORY TWO.

3 (2)~~(1)~~(a) Unless otherwise authorized by law, all
4 contracts for the procurement ~~purchase~~ of commodities or
5 contractual services in excess of the threshold amount
6 provided in s. 287.017 for CATEGORY TWO shall be awarded by
7 competitive sealed bidding. An invitation to bid shall be made
8 available simultaneously to all vendors and must include a
9 detailed description of the commodities or contractual
10 services sought; the time and date for the receipt of bids and
11 of the public opening; and all contractual terms and
12 conditions applicable to the procurement, including the
13 criteria to be used in determining acceptability of the bid.
14 If the agency contemplates renewal of the contract, that fact
15 must be stated in the invitation to bid. The bid shall
16 include the price for each year for which the contract may be
17 renewed. Evaluation of bids shall include consideration of the
18 total cost for each year as submitted by the vendor. Criteria
19 that were not set forth in the invitation to bid may not be
20 used in determining acceptability of the bid.

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

26 (3)~~(2)~~(a) If an agency determines in writing that the
27 use of an invitation to bid is not practicable, commodities or
28 contractual services shall be procured by competitive sealed
29 proposals. A request for proposals shall be made available
30 simultaneously to all vendors, and must include a statement of
31 the commodities or contractual services sought; the time and

1 date for the receipt of proposals and of the public opening;
2 and all contractual terms and conditions applicable to the
3 procurement, including the criteria, which shall include, but
4 need not be limited to, consideration price, to be used in
5 determining acceptability of the proposal. The relative
6 importance of consideration price and other evaluation
7 criteria shall be indicated. If the agency contemplates
8 renewal of the commodities or contractual services contract,
9 that fact must be stated in the request for proposals. The
10 proposal shall include the consideration required price for
11 each year for which the contract may be renewed. Evaluation
12 of proposals shall take into account ~~include consideration of~~
13 the total cost for each year as submitted by the vendor.

14 (b) The contract shall be awarded to the responsible
15 and responsive vendor whose proposal is determined in writing
16 to result in the best value ~~be the most advantageous~~ to the
17 state, taking into account ~~consideration~~ the price and the
18 other criteria set forth in the request for proposals. The
19 contract file shall contain documentation supporting the basis
20 on which the award is made.

21 ~~(4)(3)~~(a) If the agency determines in writing that the
22 use of an invitation to bid or a request for proposals may
23 ~~will~~ not result in the best value to the state, the agency may
24 procure commodities and contractual services by competitive
25 sealed replies. The agency's written determination must
26 specify reasons that explain why negotiation may be necessary
27 in order for the state to achieve the best value and must be
28 approved in writing by the agency head or his or her designee
29 prior to the advertisement of an invitation to negotiate. An
30 invitation to negotiate shall be made available to all vendors
31 simultaneously and must include a statement of the commodities

1 or contractual services sought; the time and date for the
2 receipt of replies and of the public opening; and all terms
3 and conditions applicable to the procurement, including the
4 criteria to be used in determining the acceptability of the
5 reply. If the agency contemplates renewal of the contract,
6 that fact must be stated in the invitation to negotiate. The
7 reply shall include the consideration ~~price~~ for each year for
8 which the contract may be renewed.

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

22 (5) The provisions of this section requiring the use
23 of sealed bids, sealed responses, or sealed replies does not
24 apply if it is determined that a reverse auction is the
25 appropriate purchasing method.

26 (6)~~(4)~~ Prior to the time for receipt of bids,
27 proposals, or replies, an agency may conduct a conference or
28 written question and answer period for purposes of assuring
29 the vendor's full understanding of the solicitation
30 requirements. The vendors shall be accorded fair and equal
31 treatment.

1 ~~(7)(5)~~ A contract for the procurement ~~when the~~
2 ~~purchase price~~ of commodities or contractual services which
3 exceeds the threshold amount provided in s. 287.017 for
4 CATEGORY TWO, ~~no purchase of commodities or contractual~~
5 ~~services~~ may not be made without receiving competitive sealed
6 bids, competitive sealed proposals, or competitive sealed
7 replies unless:

8 (a) The agency head determines in writing that an
9 immediate danger to the public health, safety, or welfare or
10 other substantial loss to the state requires emergency action.
11 After the agency head makes such a written determination, the
12 agency may proceed with the procurement of commodities or
13 contractual services necessitated by the immediate danger,
14 without receiving competitive sealed bids, competitive sealed
15 proposals, or competitive sealed replies. However, such
16 emergency procurement shall be made by obtaining ~~pricing~~
17 information regarding consideration from at least two
18 prospective vendors, which must be retained in the contract
19 file, unless the agency determines in writing that the time
20 required to obtain ~~pricing~~ information regarding consideration
21 will increase the immediate danger to the public health,
22 safety, or welfare or other substantial loss to the state. The
23 agency shall furnish copies of all written determinations
24 certified under oath and any other documents relating to the
25 emergency action to the department. A copy of the statement
26 shall be furnished to the Chief Financial Officer with the
27 voucher authorizing payment. The individual procurement
28 ~~purchase~~ of personal clothing, shelter, or supplies which are
29 needed on an emergency basis to avoid institutionalization or
30 placement in a more restrictive setting is an emergency for
31 the purposes of this paragraph, and the filing with the

1 department of such statement is not required in such
2 circumstances. In the case of the emergency procurement
3 ~~purchase~~ of insurance, the period of coverage of such
4 insurance shall not exceed a period of 30 days, and all such
5 emergency procurements ~~purchases~~ shall be reported to the
6 department.

7 (b) The procurement ~~purchase~~ is made by an agency from
8 a state term contract procured, pursuant to this section, by
9 the department or by an agency, after receiving approval from
10 the department, from a contract procured, ~~pursuant to~~
11 ~~subsection (1), subsection (2), or subsection (3),~~ by another
12 agency, the Federal Government, another state, a political
13 subdivision including one in another state, or a purchasing
14 organization or cooperative formed by such governmental
15 entities, and approved by the department in accordance with s.
16 287.042(16)(a).

17 (c) Commodities or contractual services available only
18 from a single source may be excepted from the
19 competitive-solicitation requirements. When an agency believes
20 that commodities or contractual services are available only
21 from a single source, the agency shall electronically post a
22 description in a form prescribed by the department of the
23 commodities or contractual services sought for a period of at
24 least 7 business days. The description must include a request
25 that prospective vendors provide information regarding their
26 ability to supply the commodities or contractual services
27 described. If it is determined in writing by the agency, after
28 reviewing any information received from prospective vendors,
29 that the commodities or contractual services are available
30 only from a single source, the agency shall:

31

1 1. Provide notice in a form prescribed by the
2 department of its intended decision to enter a single-source
3 procurement ~~purchase~~ contract in the manner specified in s.
4 120.57(3), if the value amount of the contract does not exceed
5 the threshold amount provided in s. 287.017 for CATEGORY FOUR.

6 2. Request approval from the department for the
7 single-source procurement ~~purchase~~, if the value amount of the
8 contract exceeds the threshold amount provided in s. 287.017
9 for CATEGORY FOUR. The agency shall initiate its request for
10 approval in a form prescribed by the department, which request
11 may be electronically transmitted. The failure of the
12 department to approve or disapprove the agency's request for
13 approval within 21 days after receiving such request shall
14 constitute prior approval of the department. If the department
15 approves the agency's request, the agency shall provide notice
16 of its intended decision to enter a single-source contract in
17 the manner specified in s. 120.57(3).

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

23 (e) Prescriptive assistive devices for the purpose of
24 medical, developmental, or vocational rehabilitation of
25 clients are excepted from competitive-solicitation
26 requirements and shall be procured pursuant to an established
27 fee schedule or by any other method which ensures the best
28 price for the state, taking into consideration the needs of
29 the client. Prescriptive assistive devices include, but are
30 not limited to, prosthetics, orthotics, and wheelchairs. For
31 procurements ~~purchases~~ made pursuant to this paragraph, state

1 agencies shall annually file with the department a description
2 of the procurements ~~purchases~~ and methods of procurement.

3 (f) The following contractual services and commodities
4 are not subject to the competitive-solicitation requirements
5 of this section:

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

1 10. Prevention services related to mental health,
2 including drug abuse prevention programs, child abuse
3 prevention programs, and shelters for runaways, operated by
4 not-for-profit corporations. However, in acquiring such
5 services, the agency shall consider the ability of the vendor,
6 past performance, willingness to meet time requirements, and
7 consideration price.

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

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

11 13. Services or commodities provided by governmental
12 agencies as well as state universities and colleges,
13 independent nonprofit colleges, or universities located within
14 the state and accredited by the Southern Association of
15 Colleges and Schools, the Federal Government or any
16 department, commission, agency, or other instrumentality
17 thereof, and other states and their agencies.

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

23 ~~(8)(6)~~ If less than two responsive bids, proposals, or
24 replies for commodity or contractual services procurements
25 ~~purchases~~ are received, the department or other agency may
26 negotiate on the best terms and conditions. The department or
27 other agency shall document the reasons that such action is in
28 the best interest of the state in lieu of resoliciting
29 competitive sealed bids, proposals, or replies. ~~Each agency~~
30 ~~shall report all such actions to the department on a quarterly~~
31 ~~basis, in a manner and form prescribed by the department.~~

1 (9)~~(7)~~ Upon issuance of any solicitation, an agency
2 shall, upon request by the department, forward to the
3 department one copy of each solicitation for all commodity and
4 contractual services procurements valued ~~purchases~~ in excess
5 of the threshold amount provided in s. 287.017 for CATEGORY
6 TWO. An agency shall also, upon request, furnish a copy of all
7 competitive-solicitation tabulations. The Office of Supplier
8 Diversity may also request from the agencies any information
9 submitted to the department pursuant to this subsection.

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

25 (b) Before a contract may be reserved for solicitation
26 only among certified minority business enterprises, the agency
27 head must find that such a reservation is in the best
28 interests of the state. All determinations shall be subject to
29 s. 287.09451(5). Once a decision has been made to reserve a
30 contract, but before sealed bids, proposals, or replies are
31 requested, the agency shall estimate what it expects the value

1 ~~amount~~ of the contract to be under s. 287.017, based on the
2 nature of the services or commodities involved and their value
3 under prevailing market conditions. If all the sealed bids,
4 proposals, or replies received are over this estimate, the
5 agency may reject the bids, proposals, or replies and request
6 new ones from certified minority business enterprises, or the
7 agency may reject the bids, proposals, or replies and reopen
8 the bidding to all eligible vendors.

9 (c) All agencies shall consider the use of price
10 preferences of up to 10 percent, weighted preference formulas,
11 or other preferences for vendors as determined appropriate
12 pursuant to guidelines established in accordance with s.
13 287.09451(4) to increase the participation of minority
14 business enterprises.

15 (d) All agencies shall avoid any undue concentration
16 of contracts or procurements ~~purchases~~ in categories of
17 commodities or contractual services in order to meet the
18 minority business enterprise procurement ~~purchasing~~ goals in
19 s. 287.09451.

20 (11)~~(9)~~ An agency may reserve any contract for
21 competitive solicitation only among vendors who agree to use
22 certified minority business enterprises as subcontractors or
23 subvendors. The percentage of funds, in terms of gross
24 contract amount and revenues, which must be expended with the
25 certified minority business enterprise subcontractors and
26 subvendors shall be determined by the agency before such
27 contracts may be reserved. In order to bid on a contract so
28 reserved, the vendor shall identify those certified minority
29 business enterprises which will be utilized as subcontractors
30 or subvendors by sworn statement. At the time of performance
31 or project completion, the contractor shall report by sworn

1 statement the payments and completion of work for all
2 certified minority business enterprises used in the contract.

3 (12)~~(10)~~ An agency shall not divide the procurement of
4 commodities or contractual services so as to avoid the
5 requirements of subsections (1) through (6)~~(5)~~.

6 (13)~~(11)~~ A contract for commodities or contractual
7 services may be awarded without competition if state or
8 federal law prescribes with whom the agency must contract or
9 if the rate of payment is established during the
10 appropriations process.

11 (14)~~(12)~~ If two equal responses to a solicitation or a
12 request for quote are received and one response is from a
13 certified minority business enterprise, the agency shall enter
14 into a contract with the certified minority business
15 enterprise.

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

24 (16)~~(14)~~ Contracts for commodities or contractual
25 services may be renewed for a period that may not exceed 3
26 years or the term of the original contract, whichever period
27 is longer. Renewal of a contract for commodities or
28 contractual services shall be in writing and shall be subject
29 to the same terms and conditions set forth in the initial
30 contract. If the commodity or contractual service is procured
31 ~~purchased~~ as a result of the solicitation of bids, proposals,

1 or replies, the consideration required for ~~price of~~ the
2 commodity or contractual service to be renewed shall be
3 specified in the bid, proposal, or reply. A renewal contract
4 may not include any compensation for costs associated with the
5 renewal. Renewals shall be contingent upon satisfactory
6 performance evaluations by the agency and subject to the
7 availability of funds. Exceptional procurement purchase
8 contracts pursuant to paragraphs (7)(a) ~~s. 287.057(5)(a)~~ and
9 (c) may not be renewed.

10 (17) ~~(15)~~ For each contractual services contract, the
11 agency shall designate an employee to function as contract
12 manager who shall be responsible for enforcing performance of
13 the contract terms and conditions and serve as a liaison with
14 the contractor. The agency shall establish procedures to
15 ensure that contractual services have been rendered in
16 accordance with the contract terms prior to processing the
17 invoice for payment.

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

24 (19) ~~(17)~~ For a contract in excess of the threshold
25 amount provided in s. 287.017 for CATEGORY FOUR, the agency
26 head shall appoint:

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

31

1 (b) At least three persons to conduct negotiations
2 during a competitive sealed reply procurement who collectively
3 have experience and knowledge in negotiating contracts,
4 contract procurement, and the program areas and service
5 requirements for which commodities or contractual services are
6 sought. When the contract is in excess of \$1 million, at least
7 one of the persons conducting negotiations must be a certified
8 negotiator as established by the department. The department
9 shall, by rule, establish the experience, knowledge, and
10 training required to be a certified negotiator. If the agency
11 does not have an employee who has the requisite certification,
12 the department shall appoint a certified negotiator to
13 participate in the negotiations on behalf of the agency.

14 ~~(20)(18)~~ A person who receives a contract that has not
15 been procured pursuant to subsections (1) through (5) to
16 perform a feasibility study of the potential implementation of
17 a subsequent contract, who participates in the drafting of a
18 solicitation or who develops a program for future
19 implementation, is not eligible to contract or subcontract,
20 either directly or indirectly,with the agency for any other
21 contracts dealing with that specific subject matter, and any
22 firm in which such person has any interest is not eligible to
23 receive such contract or subcontract. However, this
24 prohibition does not prevent a vendor who responds to a
25 request for information from being eligible to contract with
26 an agency.

27 ~~(21)(19)~~ Each agency shall establish a review and
28 approval process for all contractual services contracts valued
29 at costing more than the threshold amount provided for in s.
30 287.017 for CATEGORY THREE which shall include, but not be
31 limited to, program, financial, and legal review and approval.

1 Such reviews and approvals shall be obtained before the
2 contract is executed.

3 (22)~~(20)~~ In any procurement that is of greater value
4 ~~costs more~~ than the threshold amount provided for in s.
5 287.017 for CATEGORY TWO and is accomplished without
6 competition, the individuals taking part in the development or
7 selection of criteria for evaluation, the evaluation process,
8 and the award process shall attest in writing that they are
9 independent of, and have no conflict of interest in, the
10 entities evaluated and selected.

11 (23)~~(21)~~ Nothing in this section shall affect the
12 validity or effect of any contract in existence on October 1,
13 1990.

14 ~~(22) An agency may contract for services with any~~
15 ~~independent, nonprofit college or university which is located~~
16 ~~within the state and is accredited by the Southern Association~~
17 ~~of Colleges and Schools, on the same basis as it may contract~~
18 ~~with any state university and college.~~

19 (24)~~(23)~~(a) The department, in consultation with the
20 State Technology Office and the Comptroller, shall develop a
21 program for on-line procurement of commodities and contractual
22 services. To enable the state to promote open competition and
23 to leverage its buying power, agencies shall participate in
24 the on-line procurement program, and eligible users may
25 participate in the program. ~~Only vendors prequalified as~~
26 ~~meeting mandatory requirements and qualifications criteria~~
27 ~~shall be permitted to participate in on-line procurement.~~The
28 department, in consultation with the State Technology Office,
29 may contract for equipment and services necessary to develop
30 and implement on-line procurement.

31

1 (b) The department, in consultation with the State
2 Technology Office, shall adopt rules, pursuant to ss.
3 120.536(1) and 120.54, to administer the program for on-line
4 procurement. The rules shall include, but not be limited to:

5 1. Determining the requirements and qualification
6 criteria for prequalifying vendors.

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

9 ~~3. Establishing the criteria for eligible commodities~~
10 ~~and contractual services.~~

11 3.4. Establishing the procedures for providing access
12 to on-line procurement.

13 4.5. Determining the criteria warranting any
14 exceptions to participation in the on-line procurement
15 program.

16 (c) The department may collect fees for the use of the
17 on-line procurement systems. The fees may be imposed on an
18 individual transaction basis or as a fixed percentage of the
19 cost savings generated. At a minimum, the fees must be set in
20 an amount sufficient to cover the projected costs of such
21 services, including administrative and project service costs
22 in accordance with the policies of the department. For the
23 purposes of compensating the provider, the department may
24 authorize the provider to collect and retain a portion of the
25 fees. The providers may withhold the portion retained from the
26 amount of fees to be remitted to the department. The
27 department may negotiate the retainage as a percentage of such
28 fees charged to users, as a flat amount, or as any other
29 method the department deems feasible. All fees and surcharges
30 remitted to the department ~~collected~~ under this paragraph

31

1 shall be deposited in the Grants and Donation Trust Fund as
2 provided by law.

3 (25)~~(24)~~(a) The State Technology Office shall
4 establish, in consultation with the department, state
5 strategic information technology alliances for the acquisition
6 and use of information technology and related material with
7 prequalified contractors or partners to provide the state with
8 efficient, cost-effective, and advanced information
9 technology.

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

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

20 (d) The State Technology Office, in consultation with
21 the department, shall adopt rules, pursuant to ss. 120.536(1)
22 and 120.54, to administer the state strategic information
23 technology alliances.

24 Section 13. Section 287.0575, Florida Statutes, is
25 created to read:

26 287.0575 Cost or pricing data; truth-in-negotiation
27 certificate.--

28 (1) The head of the procuring agency shall require
29 bidders or offerors to make cost or pricing data available
30 prior to the award of a contract if the price is not:

31 (a) Based on adequate price competition;

1 (b) Based on established catalogue or market prices;

2 or

3 (c) Set by law or rule; and

4

5 the price or cost of the contract exceeds \$1 million or the
6 threshold amount established by rule. This includes instances
7 when a modification to a contract causes the price or cost of
8 the contract to exceed \$1 million or the threshold amount
9 established by rule.

10 (2) Notwithstanding subsection (1), the head of the
11 procuring agency may require the bidder or offeror to submit
12 cost or pricing data if the head of the procuring agency
13 determines that such data are necessary for the evaluation by
14 the agency of the reasonableness of the price of the contract
15 or modification to a contract. In any case in which the head
16 of the procuring agency requires such data to be submitted
17 under this subsection, the head of the procuring agency shall
18 justify in writing the reason for such requirement.

19 (3) A person required as a bidder or offeror to submit
20 cost or pricing data under this section shall submit the
21 requested data within 10 calendar days after the request,
22 unless an extension is granted in writing by the head of the
23 procuring agency, and shall execute a sworn
24 truth-in-negotiation certificate stating that, to the best of
25 the person's knowledge and belief, the cost or pricing data
26 submitted are accurate, complete, and current.

27 (4) For a contract or contract modification under
28 which certified cost or pricing data is required, the written
29 requirement must be submitted to the bidder, offeror, or
30 contractor by the head of the procuring agency and must
31 contain a provision that the price of the contract to the

1 state, including profit or fee, shall be adjusted to exclude
2 any significant sums by which the agency determines the
3 contract price was increased due to inaccurate, incomplete, or
4 noncurrent cost or pricing data. All such contract adjustments
5 must be made within 1 year following the end of the contract.

6 (5) As used in this section the term "cost or pricing
7 data" means all facts that, as of the date of the agreement on
8 the price of a contract, the price of contract modification,
9 or another date agreed upon between the parties, a prudent
10 buyer or seller would reasonably expect to affect price
11 negotiations significantly. Such term does not include
12 information that is judgmental, but does include the factual
13 information from which a judgment was derived. This data is
14 considered to be trade secret information as defined in s.
15 812.081.

16 Section 14. Section 287.0943, Florida Statutes, is
17 amended to read:

18 287.0943 Certification of minority business
19 enterprises.--

20 (1) A business certified by any local governmental
21 jurisdiction or organization shall be accepted by the
22 Department of Management Services, Office of Supplier
23 Diversity, as a certified minority business enterprise for
24 purposes of doing business with state government when the
25 Office of Supplier Diversity determines that the state's
26 minority business enterprise certification criteria are
27 applied in the ~~total~~ certification process of the local
28 governmental jurisdiction or organization.

29 (a) The office shall maintain a directory of local
30 governmental jurisdictions or organizations whose criteria for
31 certification as a minority business enterprise meet the

1 state's criteria for certification as a minority business
2 enterprise. The directory shall be made available to the
3 public.

4 (b) Certification as a minority business enterprise
5 may be challenged by the office if the local governmental
6 jurisdiction or organization that issued the certification
7 fails to adhere to its state-approved certification criteria
8 or to its rules and procedures.

9 (c) A local governmental jurisdiction or organization
10 whose minority business enterprise program receives three or
11 more challenges to its certification decisions, shall be
12 subject to a review by the office to determine whether the
13 entity has the capacity to conduct investigations of minority
14 business enterprises seeking certification under the
15 designated criteria. If the office determines that the local
16 governmental jurisdiction or organization does not have the
17 capacity to conduct such investigations, the office shall
18 remove the local governmental jurisdiction or organizations
19 from the directory provided for in paragraph (a) and may not
20 accept businesses certified by the local governmental
21 jurisdiction or organization as certified minority business
22 enterprises for purposes of doing business with the state.

23 (2)(a) The Office of Supplier Diversity shall certify
24 minority business enterprises in accordance with the laws of
25 this state and shall recertify such minority business
26 enterprises at least every 2 years.~~The office is hereby~~
27 ~~directed to convene a "Minority Business Certification Task~~
28 ~~Force." The task force shall meet as often as necessary, but~~
29 ~~no less frequently than annually.~~

30 ~~(b) The task force shall be regionally balanced and~~
31 ~~comprised of officials representing the department, counties,~~

1 ~~municipalities, school boards, special districts, and other~~
2 ~~political subdivisions of the state who administer programs to~~
3 ~~assist minority businesses in procurement or development in~~
4 ~~government-sponsored programs. The following organizations may~~
5 ~~appoint two members each of the task force who fit the~~
6 ~~description above:~~

- 7 ~~1. The Florida League of Cities, Inc.~~
- 8 ~~2. The Florida Association of Counties.~~
- 9 ~~3. The Florida School Boards Association, Inc.~~
- 10 ~~4. The Association of Special Districts.~~
- 11 ~~5. The Florida Association of Minority Business~~
12 ~~Enterprise Officials.~~
- 13 ~~6. The Florida Association of Government Purchasing~~
14 ~~Officials.~~

15
16 ~~In addition, the Office of Supplier Diversity shall appoint~~
17 ~~seven members consisting of three representatives of minority~~
18 ~~business enterprises, one of whom should be a woman business~~
19 ~~owner, two officials of the office, and two at-large members~~
20 ~~to ensure balance. The chairperson of the Legislative~~
21 ~~Committee on Intergovernmental Relations or a designee shall~~
22 ~~be a member of the task force, ex officio. A quorum shall~~
23 ~~consist of one-third of the current members, and the task~~
24 ~~force may take action by majority vote. Any vacancy may only~~
25 ~~be filled by the organization or agency originally authorized~~
26 ~~to appoint the position.~~

27 ~~(c) The purpose of the task force will be to propose~~
28 ~~uniform criteria and procedures by which participating~~
29 ~~entities and organizations can qualify businesses to~~
30 ~~participate in procurement or contracting programs as~~
31

1 ~~certified minority business enterprises in accordance with the~~
2 ~~certification criteria established by law.~~

3 ~~(d) A final list of the criteria and procedures~~
4 ~~proposed by the task force shall be considered by the~~
5 ~~secretary. The task force may seek technical assistance from~~
6 ~~qualified providers of technical, business, and managerial~~
7 ~~expertise to ensure the reliability of the certification~~
8 ~~criteria developed.~~

9 ~~(b)(e) The state's certification criteria for minority~~
10 ~~business enterprises in assessing the status of ownership and~~
11 ~~control, certification criteria shall, at a minimum:~~

12 1. Require that the business be a small business, as
13 defined in s. 288.703(1), of which at least 51 percent is
14 owned and controlled by a minority person as defined in s.
15 288.703(3).

16 2.1. Require link ownership by a minority person which
17 is linked, as defined in s. 288.703(3), or as dictated by the
18 legal obligations of a certifying organization, to day-to-day
19 control and financial risk by the qualifying minority owner,
20 and to demonstrated expertise or licensure of a minority owner
21 in any trade or profession that the minority business
22 enterprise will offer to the state when certified. Businesses
23 must comply with all state licensing requirements prior to
24 becoming certified as a minority business enterprise.

25 3.2. Require, if present ownership was obtained by
26 transfer, that ~~require~~ the minority person on whom eligibility
27 is based ~~to~~ must have owned at least 51 percent of the
28 applicant firm for a minimum of 2 years, when any previous
29 majority ownership interest in the firm was by a nonminority
30 who is or was a relative, former employer, or current employer
31 of the minority person on whom eligibility is based. This

1 requirement shall not apply to minority persons who are
2 otherwise eligible who take a 51-percent-or-greater interest
3 in a firm that requires professional licensure to operate and
4 who will be the qualifying licenseholder for the firm when
5 certified. A transfer made within a related immediate family
6 group from a nonminority person to a minority person in order
7 to establish ownership by a minority person shall be deemed to
8 have been made solely for purposes of satisfying certification
9 criteria and shall render such ownership invalid for purposes
10 of qualifying for such certification if the combined total net
11 asset value of all members of such family group exceeds \$1
12 million. For purposes of this subparagraph, the term "related
13 immediate family group" means one or more children under 16
14 years of age and a parent of such children or the spouse of
15 such parent residing in the same house or living unit.

16 4.3. Require that prospective certified minority
17 business enterprises be currently performing or seeking to
18 perform a useful business function. A "useful business
19 function" is defined as a business function which results in
20 the provision of materials, supplies, equipment, or services
21 to customers. Acting as a conduit to transfer funds to a
22 nonminority business does not constitute a useful business
23 function unless it is done so in a normal industry practice.
24 As used in this section, the term "acting as a conduit" means,
25 in part, not acting as a regular dealer by making sales of
26 material, goods, or supplies from items bought, kept in stock,
27 and regularly sold to the public in the usual course of
28 business. Brokers, manufacturer's representatives, sales
29 representatives, and nonstocking distributors are considered
30 as conduits that do not perform a useful business function,
31 unless normal industry practice dictates.

1 (c) A transfer of ownership or permanent change in the
2 management and daily operations of a certified minority
3 business enterprise which may affect certification must be
4 reported to the original certifying jurisdiction or
5 organization and to the office within 14 days after the
6 transfer or change takes place. If a transfer of ownership
7 occurs, the transferee seeking to do business with the state
8 as a certified minority business enterprise shall report the
9 change in ownership. If a permanent change in the management
10 and daily operations occurs, an owner seeking to do business
11 with the state as a certified minority business enterprise
12 shall report such change to the office. Any person who
13 violates this paragraph commits a misdemeanor of the first
14 degree, punishable as provided in s. 775.082 or s. 775.083.

15 ~~(f) When a business receives payments or awards~~
16 ~~exceeding \$100,000 in one fiscal year, a review of its~~
17 ~~certification status or an audit will be conducted within 2~~
18 ~~years. In addition, random reviews or audits will be~~
19 ~~conducted as deemed appropriate by the Office of Supplier~~
20 ~~Diversity.~~

21 ~~(g) The certification criteria approved by the task~~
22 ~~force and adopted by the Department of Management Services~~
23 ~~shall be included in a statewide and interlocal agreement as~~
24 ~~defined in s. 287.09431 and, in accordance with s. 163.01,~~
25 ~~shall be executed according to the terms included therein.~~

26 (3)(h) The certification procedures shall ~~should~~ allow
27 an applicant seeking certification to designate ~~on the~~
28 ~~application form the~~ information the applicant considers to be
29 proprietary, confidential business information. As used in
30 this paragraph, "proprietary, confidential business
31 information" includes, but is not limited to, any information

1 that would be exempt from public inspection pursuant to the
2 provisions of s. 119.07(3); trade secrets; internal auditing
3 controls and reports; contract costs; or other information the
4 disclosure of which would injure the affected party in the
5 marketplace or otherwise violate s. 286.041. The executor in
6 receipt of the application shall issue written and final
7 notice of any information for which noninspection is requested
8 but not provided for by law.

9 (4) When a certified minority business receives
10 payments or awards exceeding \$100,000 in 1 fiscal year, a
11 review of its certification status or an audit shall be
12 conducted within 2 years. In addition, random reviews or
13 audits shall be conducted as deemed appropriate by the Office
14 of Supplier Diversity.

15 (5) To deter fraud in the program, the Auditor General
16 may review the criteria by which a business became certified
17 as a certified minority business enterprise.

18 (6) A minority business enterprise that is denied
19 certification or recertification based on failure to meet the
20 state's certification criteria may not reapply for
21 certification or recertification until at least 6 months after
22 the date of the notice of the denial of certification or
23 recertification.

24 ~~(i) A business that is certified under the provisions~~
25 ~~of the statewide and interlocal agreement shall be deemed a~~
26 ~~certified minority enterprise in all jurisdictions or~~
27 ~~organizations where the agreement is in effect, and that~~
28 ~~business is deemed available to do business as such within any~~
29 ~~such jurisdiction or with any such organization statewide. All~~
30 ~~state agencies must accept minority business enterprises~~
31 ~~certified in accordance with the statewide and interlocal~~

1 ~~agreement of s. 287.09431, and that business shall also be~~
2 ~~deemed a "certified minority business enterprise" as defined~~
3 ~~in s. 288.703. However, any governmental jurisdiction or~~
4 ~~organization that administers a minority business purchasing~~
5 ~~program may reserve the right to establish further~~
6 ~~certification procedures necessary to comply with federal law.~~

7 ~~(j) The statewide and interlocal agreement shall be~~
8 ~~guided by the terms and conditions found therein and may be~~
9 ~~amended at any meeting of the task force and subsequently~~
10 ~~adopted by the secretary of the Department of Management~~
11 ~~Services. The amended agreement must be enacted, initialed,~~
12 ~~and legally executed by at least two-thirds of the certifying~~
13 ~~entities party to the existing agreement and adopted by the~~
14 ~~state as originally executed in order to bind the certifying~~
15 ~~entity.~~

16 ~~(k) The task force shall meet for the first time no~~
17 ~~later than 45 days after the effective date of this act.~~

18 ~~(3)(a) The office shall review and evaluate the~~
19 ~~certification programs and procedures of all prospective~~
20 ~~executors of the statewide and interlocal agreement to~~
21 ~~determine if their programs exhibit the capacity to meet the~~
22 ~~standards of the agreement.~~

23 ~~(b) The evaluations shall, at a minimum, consider: the~~
24 ~~certifying entity's capacity to conduct investigations of~~
25 ~~applicants seeking certification under the designated~~
26 ~~criteria; the ability of the certifying entity to collect the~~
27 ~~requisite data and to establish adequate protocol to store and~~
28 ~~exchange said information among the executors of the agreement~~
29 ~~and to provide adequate security to prevent unauthorized~~
30 ~~access to information gathered during the certification~~
31 ~~process; and the degree to which any legal obligations or~~

1 ~~supplemental requirements unique to the certifying entity~~
2 ~~exceed the capacity of that entity to conduct certifications.~~

3 ~~(c) Any firms certified by organizations or~~
4 ~~governmental entities determined not to meet the state~~
5 ~~certification criteria shall not be eligible to participate as~~
6 ~~certified minority business enterprises in the minority~~
7 ~~business assistance programs of the state. For a period of 1~~
8 ~~year from the effective date of this legislation, the executor~~
9 ~~of the statewide and interlocal agreement may elect to accept~~
10 ~~only minority business enterprises certified pursuant to~~
11 ~~criteria in place at the time the agreement was signed. After~~
12 ~~the 1-year period, either party may elect to withdraw from the~~
13 ~~agreement without further notice.~~

14 ~~(d) Any organizations or governmental entities~~
15 ~~determined by the office not to meet the standards of the~~
16 ~~agreement shall not be eligible to execute the statewide and~~
17 ~~interlocal agreement as a participating organization until~~
18 ~~approved by the office.~~

19 ~~(e) Any participating program receiving three or more~~
20 ~~challenges to its certification decisions pursuant to~~
21 ~~subsection (4) from other organizations that are executors to~~
22 ~~the statewide and interlocal agreement, shall be subject to a~~
23 ~~review by the office, as provided in paragraphs (a) and (b),~~
24 ~~of the organization's capacity to perform under such agreement~~
25 ~~and in accordance with the core criteria established by the~~
26 ~~task force. The office shall submit a report to the secretary~~
27 ~~of the Department of Management Services regarding the results~~
28 ~~of the review.~~

29 ~~(f) The office shall maintain a directory of all~~
30 ~~executors of the statewide and interlocal agreement. The~~
31 ~~directory should be communicated to the general public.~~

1 ~~(4) A certification may be challenged by any executor~~
2 ~~to the statewide and interlocal agreement upon the grounds of~~
3 ~~failure by the certifying organization to adhere to the~~
4 ~~adopted criteria or to the certifying organization's rules and~~
5 ~~procedures, or on the grounds of a misrepresentation or fraud~~
6 ~~by the certified minority business enterprise. The challenge~~
7 ~~shall proceed according to procedures specified in the~~
8 ~~agreement.~~

9 ~~(5)(a) The secretary of the Department of Management~~
10 ~~Services shall execute the statewide and interlocal agreement~~
11 ~~established under s. 287.09431 on behalf of the state. The~~
12 ~~office shall certify minority business enterprises in~~
13 ~~accordance with the laws of this state and, by affidavit,~~
14 ~~shall recertify such minority business enterprises not less~~
15 ~~than once each year.~~

16 ~~(b) The office shall contract with parties to the~~
17 ~~statewide and interlocal agreement to perform onsite visits~~
18 ~~associated with state certifications.~~

19 (7)(a)~~(6)(a)~~ The office shall maintain up-to-date
20 records of all certified minority business enterprises, as
21 defined in s. 288.703, and of applications for certification
22 that were denied and shall make this list available to all
23 agencies. The office shall, for statistical purposes, collect
24 and track subgroupings of gender and nationality status for
25 each certified minority business enterprise. Agency spending
26 shall also be tracked for these subgroups. The records may
27 include information about minority business enterprises that
28 provide legal services, auditing services, and health
29 services. Agencies shall use this list in efforts to meet the
30 minority business enterprise procurement goals set forth in s.
31 287.09451.

1 (b) The office shall establish and administer a
2 computerized data bank to carry out the requirements of
3 paragraph (a), to be available to all executors of the
4 statewide and interlocal agreement. Data maintained in the
5 data bank shall be sufficient to allow each executor to
6 reasonably monitor certifications it has issued.

7 (8)~~(7)~~ The office shall identify minority business
8 enterprises eligible for certification in all areas of state
9 services and commodities purchasing. The office may contract
10 with a private firm or other agency, if necessary, in seeking
11 to identify minority business enterprises for certification.
12 Agencies may request the office to identify certifiable
13 minority business enterprises that are in the business of
14 providing a given service or commodity; the office shall
15 respond to such requests and seek out such certifiable
16 minority business enterprises.

17 (9)~~(8)~~ The office shall adopt rules necessary to
18 implement this section.

19 (10)~~(9)~~ State agencies shall comply with this act
20 except to the extent that the requirements of this act are in
21 conflict with federal law.

22 ~~(10) Any transfer of ownership or permanent change in
23 the management and daily operations of a certified minority
24 business enterprise which may affect certification must be
25 reported to the original certifying jurisdiction or entity and
26 to the office within 14 days of the transfer or change taking
27 place. In the event of a transfer of ownership, the transferee
28 seeking to do business with the state as a certified minority
29 business enterprise is responsible for such reporting. In the
30 event of a permanent change in the management and daily
31 operations, owners seeking to do business with the state as a~~

1 ~~certified minority business enterprise are responsible for~~
2 ~~reporting such change to the office. Any person violating the~~
3 ~~provisions of this subsection shall be guilty of a misdemeanor~~
4 ~~of the first degree, punishable as provided in s. 775.082 or~~
5 ~~s. 775.083.~~

6 ~~(11) To deter fraud in the program, the Auditor~~
7 ~~General may review the criteria by which a business became~~
8 ~~certified as a certified minority business enterprise.~~

9 ~~(11)(12) The Office of Supplier Diversity~~ Any executor
10 ~~of the statewide and interlocal agreement may revoke the~~
11 ~~certification or recertification of a firm doing business as a~~
12 ~~certified minority business enterprise if the minority~~
13 ~~business enterprise no longer meets ~~does not meet~~ the~~
14 ~~requirements of the jurisdiction or organization ~~or certifying~~~~
15 ~~entity that certified or recertified the firm as a certified~~
16 ~~minority business enterprise, or the requirements of~~
17 ~~subsection (2), s. 288.703, and any rule of the office or the~~
18 ~~Department of Management Services or if the business acquired~~
19 ~~certification or recertification by means of falsely~~
20 ~~representing any entity as a minority business enterprise for~~
21 ~~purposes of qualifying for certification or recertification.~~

22 ~~(12)(13) Unless permanently revoked, a certified~~
23 ~~minority business enterprise for which certification or~~
24 ~~recertification has been revoked may not apply or reapply for~~
25 ~~certification or recertification for a minimum of 36 months~~
26 ~~after the date of the notice of revocation.~~

27 ~~(14)(a) Except for certification decisions issued by~~
28 ~~the Office of Supplier Diversity, an executor to the statewide~~
29 ~~and interlocal agreement shall, in accordance with its rules~~
30 ~~and procedures.~~

31

1 ~~1. Give reasonable notice to affected persons or~~
2 ~~parties of its decision to deny certification based on failure~~
3 ~~to meet eligibility requirements of the statewide and~~
4 ~~interlocal agreement of s. 287.09431, together with a summary~~
5 ~~of the grounds therefor.~~

6 ~~2. Give affected persons or parties an opportunity, at~~
7 ~~a convenient time and place, to present to the agency written~~
8 ~~or oral evidence in opposition to the action or of the~~
9 ~~executor's refusal to act.~~

10 ~~3. Give a written explanation of any subsequent~~
11 ~~decision of the executor overruling the objections.~~

12 ~~(b) An applicant that is denied minority business~~
13 ~~enterprise certification based on failure to meet eligibility~~
14 ~~requirements of the statewide and interlocal agreement~~
15 ~~pursuant to s. 287.09431 may not reapply for certification or~~
16 ~~recertification until at least 6 months after the date of the~~
17 ~~notice of the denial of certification or recertification.~~

18 ~~(15) The office shall adopt rules in compliance with~~
19 ~~this part.~~

20 Section 15. Section 287.09431, Florida Statutes, is
21 repealed.

22 Section 16. Paragraphs (h), (m), (n), and (o) of
23 subsection (4) of section 287.09451, Florida Statutes, are
24 amended to read:

25 287.09451 Office of Supplier Diversity; powers,
26 duties, and functions.--

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

29 (h) To develop procedures to investigate complaints
30 against minority business enterprises or contractors alleged
31 to violate any provision related to this section or s.

1 287.0943, that may include visits to worksites or business
2 premises, and to refer all information on businesses suspected
3 of misrepresenting minority status to the Department of
4 Management Services for investigation. When an investigation
5 is completed and there is reason to believe that a violation
6 has occurred, the Department of Management Services ~~Labor and~~
7 ~~Employment Security~~ shall refer the matter to the office of
8 the Attorney General, Department of Legal Affairs, for
9 prosecution.

10 (m) To certify minority business enterprises, as
11 defined in s. 288.703, and as specified in ss. 287.0943 and
12 287.09431, and shall recertify such minority businesses not
13 less than once every 2 years ~~a year~~. ~~Minority business~~
14 ~~enterprises must be recertified annually by affidavit.~~

15 (n)1. To develop procedures to be used by an agency in
16 identifying commodities, contractual services, architectural
17 and engineering services, and construction contracts, except
18 those architectural, engineering, construction, or other
19 related services or contracts subject to the provisions of
20 chapter 339, that could be provided by minority business
21 enterprises. Each agency is encouraged to spend 21 percent of
22 the moneys actually expended for construction contracts, 25
23 percent of the moneys actually expended for architectural and
24 engineering contracts, 24 percent of the moneys actually
25 expended for commodities, and 50.5 percent of the moneys
26 actually expended for contractual services during the previous
27 fiscal year, except for the state university construction
28 program which shall be based upon public education capital
29 outlay projections for the subsequent fiscal year, and
30 reported to the Legislature pursuant to s. 216.023, for the
31 purpose of entering into contracts with certified minority

1 business enterprises as defined in s. 288.703(2), or approved
2 joint ventures. However, in the event of budget reductions
3 pursuant to s. 216.221, the base amounts may be adjusted to
4 reflect such reductions. The overall spending goal for each
5 industry category shall be subdivided as follows:

6 a. For construction contracts: 4 percent for Black
7 Americans, 6 percent for Hispanic-Americans, and 11 percent
8 for Caucasian American women.

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

12 c. For commodities: 2 percent for Black Americans, 4
13 percent for Hispanic-Americans, 0.5 percent for
14 Asian-Americans, 0.5 percent for Native Americans, and 17
15 percent for Caucasian American women.

16 d. For contractual services: 6 percent for Black
17 Americans, 7 percent for Hispanic-Americans, 1 percent for
18 Asian-Americans, 0.5 percent for Native Americans, and 36
19 percent for Caucasian American women.

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

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

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

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

22 a. Size and complexity of the project.

23 b. The concentration of transactions with minority
24 business enterprises for the commodity or contractual services
25 in question in prior agency contracting.

26 c. The specificity and definition of work allocated to
27 participating minority business enterprises.

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

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

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

28 (o)1. To establish a system to record and measure the
29 use of certified minority business enterprises in state
30 contracting. This system shall maintain information and
31 statistics on certified minority business enterprise

1 participation, awards, dollar volume of expenditures and
2 agency goals, and other appropriate types of information to
3 analyze progress in the access of certified minority business
4 enterprises to state contracts and to monitor agency
5 compliance with this section. Such reporting must include, but
6 is not limited to, the identification of all subcontracts in
7 state contracting by dollar amount and by number of
8 subcontracts and the identification of the utilization of
9 certified minority business enterprises as prime contractors
10 and subcontractors by dollar amounts of contracts and
11 subcontracts, number of contracts and subcontracts, minority
12 status, industry, and any conditions or circumstances that
13 significantly affected the performance of subcontractors.
14 Agencies shall report their compliance with the requirements
15 of this reporting system at least annually and at the request
16 of the office. All agencies shall cooperate with the office in
17 establishing this reporting system. Except in construction
18 contracting, all agencies shall review contracts costing in
19 excess of CATEGORY FOUR as defined in s. 287.017 to determine
20 if such contracts could be divided into smaller contracts to
21 be separately solicited and awarded, and shall, when
22 economical, offer such smaller contracts to encourage minority
23 participation.

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

31 a. Total expenditures of each agency by industry.

1 b. The dollar amount and percentage of contracts
2 awarded to certified minority business enterprises by each
3 state agency.

4 c. The dollar amount and percentage of contracts
5 awarded indirectly to certified minority business enterprises
6 as subcontractors by each state agency.

7 d. The total dollar amount and percentage of contracts
8 awarded to certified minority business enterprises, whether
9 directly or indirectly, as subcontractors.

10 e. A statement and assessment of good faith efforts
11 taken by each state agency.

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

15 Section 17. Section 287.1345, Florida Statutes, is
16 repealed.

17 Section 18. Subsection (2) of section 287.16, Florida
18 Statutes, is amended to read:

19 287.16 Powers and duties of department.--The
20 Department of Management Services shall have the following
21 powers, duties, and responsibilities:

22 (2) To establish and operate central facilities for
23 the acquisition, disposal, operation, ~~maintenance, repair,~~
24 ~~storage,~~ supervision, control, and regulation of all
25 state-owned or state-leased aircraft, watercraft, and motor
26 vehicles and to operate any state facilities for those
27 purposes. Acquisition may be by purchase, lease, loan, or in
28 any other legal manner. The department may contract for the
29 maintenance and repair of motor vehicles.

30 Section 19. Subsections (1), (2), and (3) of section
31 287.161, Florida Statutes, are amended to read:

1 287.161 Executive aircraft pool; assignment of
2 aircraft; charge for transportation.--

3 (1) There is created within the Department of
4 Management Services an executive aircraft pool consisting of
5 state-owned or state-leased aircraft for the purpose of
6 furnishing executive air travel. Such aircraft shall not be a
7 model in excess of a two-engine jet. Aircraft included in the
8 executive aircraft pool may not be specifically assigned to
9 any department or agency on any basis.

10 (2) The Department of Management Services shall charge
11 all persons receiving transportation from the executive
12 aircraft pool a rate not less than the mileage allowance fixed
13 by the Legislature for the use of privately owned vehicles.

14 ~~However, state employees traveling on a space-available basis~~
15 ~~may not be charged more than the vehicle mileage allowance.~~

16 (3) Fees collected for persons traveling by aircraft
17 in the executive aircraft pool shall be deposited into the
18 Bureau of Aircraft Trust Fund and shall be expended for fuel,
19 maintenance, or other costs incurred to operate the aircraft
20 management activities of the department. It is the intent of
21 the Legislature that the executive aircraft pool be operated
22 on a full-cost-recovery basis, less available funds in
23 ~~accordance with rules adopted pursuant to s. 287.16.~~

24 Section 20. Subsection (5) of section 287.17, Florida
25 Statutes, is amended to read:

26 287.17 Limitation on use of motor vehicles and
27 aircraft.--

28 (5) Each state agency's head shall, by December 31 of
29 each year, ~~2000~~, conduct a review of motor vehicle utilization
30 with oversight from the agency's inspector general. This
31 review shall consist of two parts. The first part of the

1 review shall determine the number of miles that each assigned
2 motor vehicle has been driven on official state business in
3 the past fiscal year. Commuting mileage shall be excluded from
4 calculating vehicle use. The purpose of this review is to
5 determine whether employees with assigned motor vehicles are
6 driving the vehicles a sufficient number of miles to warrant
7 continued vehicle assignment. The second part of the review
8 shall identify employees who have driven personal vehicles
9 extensively on state business in the past fiscal year. The
10 purpose of this review is to determine whether it would be
11 cost-effective to provide state motor vehicles to such
12 employees. In making this determination, the inspector general
13 shall use the break-even mileage criteria developed by the
14 Department of Management Services. A copy of the review shall
15 be presented to the Department of Management Services Office
16 ~~of Program Policy Analysis and Government Accountability.~~

17 Section 21. Paragraph (e) of subsection (3) of section
18 288.703, Florida Statutes, is amended to read:

19 288.703 Definitions.--As used in this act, the
20 following words and terms shall have the following meanings
21 unless the content shall indicate another meaning or intent:

22 (3) "Minority person" means a lawful, permanent
23 resident of Florida who is:

24 (e) A Caucasian ~~An~~ American woman.

25 Section 22. Subsection (2) of section 946.515, Florida
26 Statutes, is amended to read:

27 946.515 Use of goods and services produced in
28 correctional work programs.--

29 (2) A ~~No~~ similar product or service of comparable
30 price and quality found necessary for use by any state agency
31 may not be purchased from any source other than the

1 corporation if the corporation certifies that the product is
2 manufactured by, or the service is provided by, inmates and
3 the product or service meets the comparable performance
4 specifications and comparable price and quality requirements
5 as specified under s. 287.042(1)(c)3.~~s. 287.042(1)(f)~~ or as
6 determined by an individual agency as provided in this
7 section. The purchasing authority of any such state agency may
8 make reasonable determinations of need, price, and quality
9 with reference to products or services available from the
10 corporation. In the event of a dispute between the corporation
11 and any purchasing authority based upon price or quality under
12 this section or s. 287.042(1)(c)3.~~s. 287.042(1)(f)~~, either
13 party may request a hearing with the Department of Management
14 Services and if not resolved, either party may request a
15 proceeding pursuant to ss. 120.569 and 120.57, which shall be
16 referred to the Division of Administrative Hearings within 60
17 days after such request, to resolve any dispute under this
18 section. No party is entitled to any appeal pursuant to s.
19 120.68.

20 Section 23. This act shall take effect upon becoming a
21 law.
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SENATE SUMMARY

Provides for the electronic advertisement of the solicitation of bids, proposals, or replies for certain construction projects. Repeals provisions of ch. 283, F.S., relating to public printing. Provides that a vendor's anticipated revenue be included in the purchasing categories. Revises the powers and duties of the Department of Management Services relating to the purchase of commodities and contractual services for the state. Provides for the purchase of commodities or contractual services that do not exceed a certain amount. Deletes an agency's reporting requirement when it receives less than a certain number of responsive bids, proposals, or replies for commodity or contractual services. Deletes the provision that only certain vendors can participate in on-line procurement. Provides criteria for a printing contract. Provides a penalty for defective printing. Authorizes an agency to enter into an agreement with a vendor for private publication of public information materials. Provides that a minority business enterprise certification may be challenged by the Office of Supplier Diversity within the department. Deletes the Minority Business Certification Task Force. Requires the office to certify minority business enterprises. Revises requirements for certification of a minority business enterprise. Authorizes the office to revoke the certification of a firm that is doing business as a certified minority business enterprise under certain conditions. Repeals the statewide and interlocal agreement on certification of business concerns for the status of a minority business enterprise. Repeals the surcharge of users of state term contracts. Revises the duties, powers, and responsibilities of the department relating to state-owned or state-leased aircraft, watercraft, and motor vehicles. Provides that state-leased aircraft are included in the executive aircraft pool within the department. (See bill for details.)