

1 A bill to be entitled
2 An act relating to procurement contracting; providing a
3 popular name; amending s. 20.22, F.S.; creating the
4 Division of Procurement in the Department of Management
5 Services; establishing bureaus within the division;
6 amending s. 273.05, F.S.; requiring the division to adopt
7 rules and guidelines for certification and disposition of
8 surplus property; amending s. 287.001, F.S.; providing
9 additional legislative intent; amending s. 287.012, F.S.;
10 revising definitions; amending ss. 287.017, 287.022,
11 287.025, 287.045, 287.055, 287.0572, 287.058, 287.0731,
12 287.083, 287.0834, 287.131, and 287.134, F.S., to conform;
13 applying procurement provisions of the department to the
14 division; correcting a cross reference; creating s.
15 287.0265, F.S.; providing definitions; creating the Center
16 for Outsourcing within the division for certain purposes;
17 establishing a board to oversee agency outsourcing;
18 specifying board members; providing criteria; providing
19 responsibilities of the center and board; specifying
20 requirements for a state outsourcing review process;
21 requiring agencies to submit certain information to the
22 center; amending s. 287.032, F.S.; specifying purposes of
23 the division; amending s. 287.042, F.S.; specifying
24 powers, duties, and functions of the division; amending s.
25 287.056, F.S.; revising requirements for purchases from
26 purchasing agreements and state term contracts; amending
27 s. 287.057, F.S.; revising provisions for procurement of
28 commodities or contractual services; creating s. 287.0571,

29 F.S.; requiring the division to design, implement, and
30 operate on on-line procurement subsystem; authorizing the
31 division to contract for equipment and services; requiring
32 the division to adopt rules; requiring agencies to use the
33 subsystem; authorizing other eligible users to use the
34 subsystem; creating s. 287.05712, F.S.; requiring the
35 division to maintain a list of vendors with the on-line
36 procurement subsystem; requiring vendors to register;
37 requiring the division to maintain a statewide contractor
38 performance system for certain purposes; requiring the
39 division to adopt rules; requiring the division to use the
40 subsystem for certain enforcement purposes; creating s.
41 287.0578, F.S.; authorizing use of certain contracts;
42 prohibiting certain contracts; amending s. 287.1345, F.S.;
43 authorizing the division to collect fees for using an on-
44 line procurement subsystem; specifying fee requirements
45 and limitations; revising provisions to conform; creating
46 s. 287.135, F.S.; requiring the division to maintain a
47 suspended vendor list; specifying list requirements;
48 authorizing the division to reinstate suspended vendors
49 under certain circumstances; specifying prohibited
50 activities by suspended vendors; prohibiting public
51 entities from engaging in certain activities with
52 suspended vendors; requiring competitive solicitations and
53 contract documents to contain an information statement;
54 providing definitions; requiring the division to adopt
55 rules to implement contract default procedures; providing
56 requirements; amending s. 282.005, F.S.; revising

57 legislative findings and intent; amending s. 946.515,
 58 F.S.; correcting a cross reference; requiring the division
 59 to submit a report to the Legislature; providing
 60 requirements; providing an appropriation and authorizing
 61 positions for the division; providing an effective date.

62

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

64

65 Section 1. Popular name.--This act may be cited as the
 66 "2005 Efficiency in Procurement and Contracting Act."

67 Section 2. Paragraph (i) is added to subsection (2) of
 68 section 20.22, Florida Statutes, to read:

69 20.22 Department of Management Services.--There is created
 70 a Department of Management Services.

71 (2) The following divisions and programs within the
 72 Department of Management Services are established:

73 (i) Division of Procurement.

74 1. Bureau of General Procurement.

75 2. Bureau of Information Technology Procurement.

76 3. Bureau of Policy, Procedure, Management Information
 77 Systems, and Professional Development.

78 4. Bureau of Major Acquisitions.

79 5. Center for Outsourcing.

80 Section 3. Subsection (4) of section 273.05, Florida
 81 Statutes, is amended to read:

82 273.05 Surplus property.--

83 (4) The Division of Procurement of the Department of
 84 Management Services ~~Each custodian~~ shall adopt ~~promulgate~~ rules

85 or guidelines regarding the certification of surplus property
86 and the disposition of such property.

87 Section 4. Section 287.001, Florida Statutes, is amended
88 to read:

89 287.001 Legislative intent.--The Legislature recognizes
90 that fair and open competition is a basic tenet of public
91 procurement; that such competition reduces the appearance and
92 opportunity for favoritism and inspires public confidence that
93 contracts are awarded equitably and economically; and that
94 documentation of the acts taken and effective monitoring
95 mechanisms are important means of curbing any improprieties and
96 establishing public confidence in the process by which
97 commodities and contractual services are procured. It is
98 essential to the effective and ethical procurement of
99 commodities and contractual services that there be a system of
100 uniform procedures to be utilized by state agencies in managing
101 and procuring commodities and contractual services; that
102 detailed justification of agency decisions in the procurement of
103 commodities and contractual services be maintained; and that
104 adherence by the agency and the vendor to specific ethical
105 considerations be required. It is also the intent of the
106 Legislature that all future changes to law affecting outsourcing
107 and procurement of commodities and contractual services be made
108 in this chapter.

109 Section 5. Subsections (1) and (9) of section 287.012,
110 Florida Statutes, are amended, subsections (11) through (28) of
111 said section are renumbered as subsections (12) through (29),
112 respectively, a new subsection (11) is added to said section,

113 present subsections (11), (12), (13), and (27) of said section
 114 are amended, and subsection (30) is added to said section, to
 115 read:

116 287.012 Definitions.--As used in this part, the term:

117 (1) "Agency" means any of the various state officers,
 118 departments, boards, commissions, divisions, bureaus, and
 119 councils and any other unit of organization, however designated,
 120 of the executive branch of state government. ~~"Agency" does not~~
 121 ~~include the university and college boards of trustees or the~~
 122 ~~state universities and colleges.~~

123 (9) "Contractual service" means the rendering by a
 124 contractor of its time and effort rather than the furnishing of
 125 specific commodities. The term applies only to those services
 126 rendered by individuals and firms who are independent
 127 contractors, and such services may include, but are not limited
 128 to, evaluations; consultations; maintenance; accounting;
 129 security; management systems; management consulting; educational
 130 training programs; research and development studies or reports
 131 on the findings of consultants engaged thereunder; and
 132 professional, technical, and social services. "Contractual
 133 service" does not include any contract for the furnishing of
 134 labor or materials for the construction, renovation, repair,
 135 modification, or demolition of any facility, building, portion
 136 of building, utility, park, parking lot, or structure or other
 137 improvement to real property entered into pursuant to chapter
 138 255 and rules adopted thereunder. A contract in which an agency,
 139 in exchange for revenue, authorizes a vendor to use governmental
 140 authority or property for the purpose of selling any good or

141 service to any person shall be considered to be the procurement
 142 of a contractual service and the purchasing category of such
 143 contract shall be determined by the total revenue estimated to
 144 be received by the contractor under the contract.

145 (11) "Division" means the Division of Procurement of the
 146 Department of Management Services.

147 (12)~~(11)~~ "Electronic posting" or "electronically post"
 148 means the posting of solicitations, agency decisions or intended
 149 decisions, or other matters relating to procurement on a
 150 centralized Internet website designated by the division
 151 ~~department~~ for this purpose.

152 (13)~~(12)~~ "Eligible user" means any person or entity
 153 authorized by the division ~~department~~ pursuant to rule to
 154 purchase from state term contracts or to use the on-line
 155 procurement system.

156 (14)~~(13)~~ "Exceptional purchase" means any purchase of
 157 commodities or contractual services excepted by law or rule from
 158 the requirements for competitive solicitation, including, but
 159 not limited to, purchases from a single source; purchases upon
 160 receipt of less than two responsive bids, proposals, or replies;
 161 purchases made by an agency, after receiving approval from the
 162 division ~~department~~, from a contract procured, pursuant to s.
 163 287.057(1), (2), or (3), by another agency; and purchases made
 164 without advertisement in the manner required by s.
 165 287.042 (5)~~(3)(b)~~.

166 (28)~~(27)~~ "State term contract" means a term contract that
 167 is competitively procured by the division ~~department~~ pursuant to

168 s. 287.057 and that is used by agencies and eligible users
 169 pursuant to s. 287.056.

170 (30) "Vendor" means a person who desires to become a
 171 contractor or otherwise sell commodities or contractual services
 172 to an agency.

173 Section 6. Section 287.017, Florida Statutes, is amended
 174 to read:

175 287.017 Purchasing categories, threshold amounts;
 176 procedures for automatic adjustment by division ~~department~~---

177 (1) The following purchasing categories are hereby
 178 created:

- 179 (a) CATEGORY ONE: \$15,000.
- 180 (b) CATEGORY TWO: \$25,000.
- 181 (c) CATEGORY THREE: \$50,000.
- 182 (d) CATEGORY FOUR: \$150,000.
- 183 (e) CATEGORY FIVE: \$250,000.

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

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

191 (b) The procedure for rounding results.

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

194 Section 7. Section 287.022, Florida Statutes, is amended
 195 to read:

196 287.022 Purchase of insurance.--

197 (1) Insurance, while not a commodity, nevertheless shall
 198 be purchased for all agencies by the division ~~department~~, except
 199 that agencies may purchase title insurance for land acquisition
 200 and may make emergency purchases of insurance pursuant to s.
 201 287.057(5)(a). The procedures for purchasing insurance, whether
 202 the purchase is made by the division ~~department~~ or by the
 203 agencies, shall be the same as those set forth herein for the
 204 purchase of commodities.

205 (2) When an insurer or agent pays a commission or any
 206 portion thereof to any person, on insurance purchased under this
 207 part, such payment shall be reported to the division ~~department~~
 208 in writing and under oath within 30 days thereafter. Any failure
 209 to report as required herein shall subject the insurer or agent
 210 to the penalties provided in s. 624.15.

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

219 Section 8. Subsection (4) of section 287.025, Florida
 220 Statutes, is amended to read:

221 287.025 Prohibition against certain insurance coverage on
 222 specified state property or insurable subjects.--

223 (4) No primary insurance contracts shall be purchased on
 224 any property or insurable subjects when the same is loaned to,
 225 leased by, or intended to be leased by, the state or its
 226 departments, divisions, bureaus, commissions, or agencies unless
 227 such coverage is required by the terms of the lease agreement
 228 and unless the insurance coverages required by the provisions of
 229 the lease are approved in writing by the division ~~Department of~~
 230 ~~Management Services~~.

231 Section 9. Section 287.0265, Florida Statutes, is created
 232 to read:

233 287.0265 Center for Outsourcing.--

234 (1) For the purposes of this section:

235 (a) "Board" means the board of the center.

236 (b) "Center" means the Center for Outsourcing created
 237 within the division.

238 (2) The Center for Outsourcing is created in the division
 239 to establish and promote best business practices in outsourcing
 240 in order to improve the delivery of services to citizens by
 241 agencies under the control of the Governor. Cabinet agencies are
 242 encouraged, but shall not be required, to comply with this
 243 section. The secretary of the Department of Management Services
 244 or his or her designee shall serve as the head of the center.
 245 The Bureau of Major Procurements shall provide detailed support
 246 to the center.

247 (3) A board is established within the center to oversee
 248 agency outsourcing. The secretary of the Department of
 249 Management Services shall serve as chair of the board. The
 250 Governor shall appoint four other agency heads to serve on the

251 board, who shall serve at the pleasure of the Governor. No
252 member of the board shall be disqualified from participating in
253 board review of an outsourcing solely because the member's
254 agency is involved in the outsourcing. The members of the board
255 may not delegate their membership to a subordinate.

256 (4) The center shall:

257 (a) Create a centralized process for initiating,
258 reviewing, and evaluating agency outsourcings. The center and
259 any agency may initiate outsourcings.

260 (b) Develop standards, processes, templates, and
261 guidelines for use by agencies during the outsourcing process.

262 (c) Assist agencies in developing and updating business
263 cases.

264 (d) Submit to the Governor, the President of the Senate,
265 and the Speaker of the House of Representatives by September 15
266 annually, a list of potential outsourcing initiatives identified
267 by agencies and the center.

268 (e) Have rulemaking authority to implement any of the
269 provisions herein.

270 (5) The board shall:

271 (a) Oversee the center.

272 (b) Implement a process for review and approval of the
273 business aspects of a proposed new or renewal of outsourcing at
274 specific points in the process.

275 (c) Oversee the implementation of outsourcings after
276 contract execution, including, but not limited to, change
277 management, contract management, and performance measurement.

278 (6) The process for review of state outsourcings shall
 279 require:

280 (a) Board review at the conclusion of important stages in
 281 the outsourcing process for those outsourcings subject to review
 282 by rule.

283 (b) The center, at the board's direction, to furnish to
 284 the President of the Senate and the Speaker of the House of
 285 Representatives all documents at each of the important stages in
 286 the outsourcing process, together with the board's certification
 287 that the requirements of this section, the center, and the board
 288 have been met.

289 (7) Agencies shall submit to the center all information,
 290 documents, or other materials required by center or board policy
 291 or this chapter.

292 Section 10. Section 287.032, Florida Statutes, is amended
 293 to read:

294 287.032 Purpose of division ~~department~~.--It shall be the
 295 purpose of the division ~~Department of Management Services~~:

296 (1) To promote maximum competition, efficiency, economy,
 297 and the conservation of energy in, and to effect coordination
 298 of, ~~in~~ the purchase of commodities and contractual services for
 299 the state.

300 (2) To provide uniform commodity and contractual service
 301 procurement policies, rules, procedures, and forms for use by
 302 agencies and eligible users, and to assist agencies with
 303 specific procurements or conduct specific procurements on behalf
 304 of agencies, in an efficient and cost-effective manner, with
 305 maximum competition.

306 (3) To procure and distribute federal surplus tangible
 307 personal property allocated to the state by the Federal
 308 Government.

309 Section 11. Section 287.042, Florida Statutes, is amended
 310 to read:

311 287.042 Powers, duties, and functions.--The division
 312 ~~department~~ shall have the following powers, duties, and
 313 functions:

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

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

328 ~~(b)(e)~~ In order to promote cost-effective procurement of
 329 commodities and contractual services, the division ~~department~~ or
 330 an agency may enter into contracts that limit the liability of a
 331 vendor consistent with s. 672.719.

332 ~~(2)(a)(d)~~ The division ~~department~~ shall issue commodity
 333 numbers for all products of the corporation operating the

334 correctional industry program which meet or exceed division
335 ~~department~~ specifications.

336 ~~(b)(e)~~ The division ~~department~~ shall include the products
337 offered by the corporation on any listing prepared by the
338 division ~~department~~ which lists state term contracts executed by
339 the division ~~department~~. The products or services shall be
340 placed on such list in a category based upon specification
341 criteria developed through a joint effort of the division
342 ~~department~~ and the corporation and approved by the division
343 ~~department~~.

344 ~~(c)(f)~~ The corporation may submit products and services to
345 the division ~~department~~ for testing, analysis, and review
346 relating to the quality and cost comparability. If, after review
347 and testing, the division ~~department~~ approves of the products
348 and services, the division ~~department~~ shall give written notice
349 thereof to the corporation. The corporation shall pay a
350 reasonable fee charged for testing its products by the
351 Department of Agriculture and Consumer Services.

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

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

372 (4)(2)(a) To establish purchasing agreements and procure
 373 state term contracts for commodities and contractual services,
 374 pursuant to s. 287.057, under which state agencies shall, and
 375 eligible users may, make purchases pursuant to s. 287.056. The
 376 division ~~department~~ may restrict purchases from some term
 377 contracts to state agencies only for those term contracts where
 378 the inclusion of other governmental entities will have an
 379 adverse effect on competition or to those federal facilities
 380 located in this state. In such planning or purchasing the Office
 381 of Supplier Diversity may monitor to ensure that opportunities
 382 are afforded for contracting with minority business enterprises.
 383 The division ~~department~~, for state term contracts, and all
 384 agencies, for multiyear contractual services or term contracts,
 385 shall explore reasonable and economical means to utilize
 386 certified minority business enterprises. Purchases by any
 387 county, municipality, private nonprofit community transportation
 388 coordinator designated pursuant to chapter 427, while conducting

389 business related solely to the Commission for the Transportation
 390 Disadvantaged, or other local public agency under the provisions
 391 in the state purchasing contracts, and purchases, from the
 392 corporation operating the correctional work programs, of
 393 products or services that are subject to paragraph (2)(c)
 394 ~~(1)(f)~~, are exempt from the competitive solicitation
 395 requirements otherwise applying to their purchases.

396 (b) As an alternative to any provision in s. 120.57(3)(c),
 397 the division ~~department~~ may proceed with the competitive
 398 solicitation or contract award process of a term contract when
 399 the secretary of the division ~~department~~ or his or her designee
 400 sets forth in writing particular facts and circumstances which
 401 demonstrate that the delay incident to staying the solicitation
 402 or contract award process would be detrimental to the interests
 403 of the state. After the award of a contract resulting from a
 404 competitive solicitation in which a timely protest was received
 405 and in which the state did not prevail, the contract may be
 406 canceled and reawarded.

407 (c) Any person who files an action protesting a decision
 408 or intended decision pertaining to contracts administered by the
 409 division ~~department~~, a water management district, or an agency
 410 pursuant to s. 120.57(3)(b) shall post with the division
 411 ~~department~~, the water management district, or the agency at the
 412 time of filing the formal written protest a bond payable to the
 413 division ~~department~~, the water management district, or agency in
 414 an amount equal to 1 percent of the estimated contract amount.
 415 For protests of decisions or intended decisions pertaining to
 416 exceptional purchases, the bond shall be in an amount equal to 1

417 percent of the estimated contract amount for the exceptional
418 purchase. The estimated contract amount shall be based upon the
419 contract price submitted by the protestor or, if no contract
420 price was submitted, the division ~~department~~, water management
421 district, or agency shall estimate the contract amount based on
422 factors including, but not limited to, the price of previous or
423 existing contracts for similar commodities or contractual
424 services, the amount appropriated by the Legislature for the
425 contract, or the fair market value of similar commodities or
426 contractual services. The agency shall provide the estimated
427 contract amount to the vendor within 72 hours, excluding
428 Saturdays, Sundays, and state holidays, after the filing of the
429 notice of protest by the vendor. The estimated contract amount
430 is not subject to protest pursuant to s. 120.57(3). The bond
431 shall be conditioned upon the payment of all costs and charges
432 that are adjudged against the protestor in the administrative
433 hearing in which the action is brought and in any subsequent
434 appellate court proceeding. In lieu of a bond, the division
435 ~~department~~, the water management district, or agency may, in
436 either case, accept a cashier's check, official bank check, or
437 money order in the amount of the bond. If, after completion of
438 the administrative hearing process and any appellate court
439 proceedings, the division ~~department~~, water management district,
440 or agency prevails, it shall recover all costs and charges which
441 shall be included in the final order or judgment, excluding
442 attorney's fees. This section shall not apply to protests filed
443 by the Office of Supplier Diversity. Upon payment of such costs
444 and charges by the protestor, the bond, cashier's check,

445 official bank check, or money order shall be returned to the
446 protestor. If, after the completion of the administrative
447 hearing process and any appellate court proceedings, the
448 protestor prevails, the protestor shall recover from the
449 division ~~department~~, water management district, or agency all
450 costs and charges which shall be included in the final order or
451 judgment, excluding attorney's fees.

452 ~~(5)(3)~~ To establish a system of coordinated, uniform
453 procurement policies, procedures, and practices to be used by
454 agencies in acquiring commodities and contractual services,
455 which shall include, but not be limited to:

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

460 ~~(a)(b)1.~~ Development of procedures for advertising
461 solicitations. These procedures must provide for electronic
462 posting of solicitations for at least 10 days before the date
463 set for receipt of bids, proposals, or replies, unless the
464 division ~~department~~ or other agency determines in writing that a
465 shorter period of time is necessary to avoid harming the
466 interests of the state. The Office of Supplier Diversity may
467 consult with the division ~~department~~ regarding the development
468 of solicitation distribution procedures to ensure that maximum
469 distribution is afforded to certified minority business
470 enterprises as defined in s. 288.703.

471 ~~(b)2.~~ Development of procedures for electronic posting.
472 The division ~~department~~ shall designate a centralized website on

473 the Internet for the division ~~department~~ and other agencies to
 474 electronically post solicitations, decisions or intended
 475 decisions, and other matters relating to procurement. ~~From July~~
 476 ~~1, 2002, until July 1, 2003, the department shall publish a~~
 477 ~~notice in each edition of the Florida Administrative Weekly~~
 478 ~~which indicates the specific URL or Internet address for the~~
 479 ~~centralized website.~~

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

485 (d) Development of procedures to be used by an agency in
 486 deciding to contract, including, but not limited to, identifying
 487 and assessing in writing project needs and requirements,
 488 availability of agency employees, budgetary constraints or
 489 availability, facility equipment availability, current and
 490 projected agency workload capabilities, and the ability of any
 491 other state agency to perform the services.

492 (e) Development of procedures to be used by an agency in
 493 managing its contracts. These procedures shall include a
 494 requirement that agencies maintain ~~maintaining~~ a contract file
 495 for each contract which shall include, but not be limited to,
 496 all pertinent information relating to the contract during the
 497 preparatory stages; a copy of the solicitation; documentation
 498 relating to the solicitation process; opening of bids,
 499 proposals, or replies; evaluation and tabulation of bids,

500 proposals, or replies; and determination and notice of award of
 501 contract.

502 (f) Development of procedures to be used by an agency for
 503 issuing solicitations that include requirements to describe
 504 commodities, services, scope of work, and deliverables in a
 505 manner that promotes competition.

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

508 (6)~~(4)~~(a) To prescribe the methods of securing competitive
 509 sealed bids, proposals, and replies. Such methods may include,
 510 but are not limited to, procedures for identifying vendors;
 511 setting qualifications; conducting conferences or written
 512 question and answer periods for purposes of responding to vendor
 513 questions; evaluating bids, proposals, and replies; ranking and
 514 selecting vendors; and conducting negotiations.

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

525 (7)~~(5)~~ To prescribe specific commodities and quantities to
 526 be purchased locally.

527 ~~(8)(6)~~(a) To govern the purchase by any agency of any
528 commodity or contractual service and to establish standards and
529 specifications for any commodity. Except as provided in this
530 section, the division may delegate to agencies the authority for
531 the procurement of commodities or contractual services.

532 (b) ~~Except for the purchase of insurance,~~ The division
533 ~~department~~ may not delegate to agencies the authority to procure
534 insurance for the procurement of and contracting for commodities
535 or contractual services.

536 (c) If an agency is procuring a commodity or contractual
537 service that is costly, extremely complex, or otherwise
538 extraordinary, the division shall assist the agency with the
539 procurement. This assistance may include, but is not limited to,
540 developing and updating business cases and solicitation
541 documents, supporting contract negotiations, offering contract
542 drafting assistance, changing management, measuring performance,
543 and managing contracts.

544 (d) The division shall adopt rules providing the criteria
545 determining which projects require division assistance. At a
546 minimum, such rules shall provide that the division shall
547 participate in all procurements having a total estimated cost of
548 \$5 million or greater and that the division may assist with
549 procurements having a total estimated cost below \$5 million.

550 ~~(9)(7)~~ To establish definitions and classes of commodities
551 and contractual services. Agencies shall follow the definitions
552 and classes of commodities and contractual services established
553 by the division ~~department~~ in acquiring or purchasing
554 commodities or contractual services. The authority of the

555 division ~~department~~ under this section shall not be construed to
 556 impair or interfere with the determination by state agencies of
 557 their need for, or their use of, services including particular
 558 specifications.

559 (10) To govern the sale, transfer, trade, or other
 560 disposal of surplus property and supplies belonging to the
 561 state.

562 (11) To provide for the professional development of
 563 procurement personnel, including, but not limited to,
 564 establishing a training and certification program for
 565 procurement officers, procurement managers, negotiators,
 566 evaluators, contract managers, and contract administrators and
 567 recommending minimum qualifications and salary.

568 (12) To review or request reviews of selected agency
 569 procurements or procurement organizations to monitor compliance
 570 with division rules and state law.

571 (13)~~(8)~~ To provide any commodity and contractual service
 572 purchasing rules to the Chief Financial Officer and all agencies
 573 through an electronic medium or other means. Agencies may not
 574 approve any account or request any payment of any account for
 575 the purchase of any commodity or the procurement of any
 576 contractual service covered by a purchasing or contractual
 577 service rule except as authorized therein. The division
 578 ~~department~~ shall furnish copies of rules adopted by the division
 579 ~~department~~ to any county, municipality, or other local public
 580 agency requesting them.

581 (14)~~(9)~~ To require that every agency furnish information
 582 relative to its commodity and contractual services purchases and

583 methods of purchasing commodities and contractual services to
584 the division ~~department~~ when so requested.

585 (15)(a)(10) To require agencies to electronically maintain
586 statistical data for each acquisition as prescribed by the
587 division.

588 (b) To prepare statistical data concerning the method of
589 procurement, terms, usage, and disposition of commodities and
590 contractual services by agencies. All agencies shall furnish
591 such information for this purpose to the office and to the
592 division department, as the division department or office may
593 call for, but no less frequently than annually, on such forms or
594 in such manner as the division department may prescribe. The
595 division shall electronically maintain contract information,
596 including, at a minimum, vendor names, total contract dollar
597 amounts, whether the contract is competitive or noncompetitive,
598 the amount of small business, minority business, and work
599 awarded and performed in this state or outside this state.
600 Reports including this information shall be provided to the
601 President of the Senate and the Speaker of the House of
602 Representatives by January 31 and July 31 of each year at a
603 minimum for contracts executed during the previous 6 months.

604 (16)(11) To establish and maintain programs for the
605 purpose of disseminating information to government, industry,
606 educational institutions, and the general public concerning
607 policies, procedures, rules, and forms for the procurement of
608 commodities and contractual services.

609 (17)(12) Except as otherwise provided herein, to adopt
610 rules necessary to carry out the purposes of this section,

611 including the authority to delegate to any agency any and all of
 612 the responsibility conferred by this section, retaining to the
 613 division ~~department~~ any and all authority for supervision
 614 thereof. Such purchasing of commodities and procurement of
 615 contractual services by state agencies shall be in strict
 616 accordance with the rules and procedures prescribed by the
 617 division ~~department~~.

618 ~~(18)(13)~~ If the division ~~department~~ determines in writing
 619 that it is in the best interest of the state, to award to
 620 multiple suppliers contracts for commodities and contractual
 621 services established by the division ~~department~~ for use by all
 622 agencies. Such awards may be on a statewide or regional basis.
 623 If regional contracts are established by the division
 624 ~~department~~, multiple supplier awards may be based upon multiple
 625 awards for regions. Agencies may award contracts to a
 626 responsible and responsive vendor on a statewide or regional
 627 basis.

628 ~~(19)(14)~~ To procure and distribute federal surplus
 629 tangible personal property allocated to the state by the Federal
 630 Government.

631 ~~(20)(15)~~(a) To enter into joint agreements with
 632 governmental agencies, as defined in s. 163.3164(10), for the
 633 purpose of pooling funds for the purchase of commodities or
 634 information technology that can be used by multiple agencies.
 635 ~~However, the department shall consult with the State Technology~~
 636 ~~Office on joint agreements that involve the purchase of~~
 637 ~~information technology.~~ Agencies entering into joint purchasing
 638 agreements with the division ~~department~~ ~~or the State Technology~~

639 ~~Office~~ shall authorize the division ~~department or the State~~
 640 ~~Technology Office~~ to contract for such purchases on their
 641 behalf.

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

649 (c) Agencies that sign such joint agreements are
 650 financially obligated for their portion of the agreed-upon
 651 funds. If any agency becomes more than 90 days delinquent in
 652 paying such funds, the division ~~department~~ shall certify to the
 653 Chief Financial Officer the amount due, and the Chief Financial
 654 Officer shall transfer the amount due to the Grants and
 655 Donations Trust Fund of the division ~~department~~ from any of the
 656 agency's available funds. The Chief Financial Officer shall
 657 report all such transfers and the reasons for such transfers to
 658 the Executive Office of the Governor and the legislative
 659 appropriations committees.

660 ~~(21)(16)~~(a) To evaluate contracts let by the Federal
 661 Government, another state, or a political subdivision for the
 662 provision of commodities and contract services, and, when it is
 663 determined in writing to be cost-effective and in the best
 664 interest of the state, to enter into a written agreement
 665 authorizing an agency to make purchases under a contract

666 approved by the division ~~department~~ and let by the Federal
 667 Government, another state, or a political subdivision.

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

676 ~~(22)(17)~~(a) To enter into contracts pursuant to chapter
 677 957, and to acquire the contractual rights and assume the
 678 contractual obligations of the Correctional Privatization
 679 Commission in contracts previously entered into pursuant to
 680 chapter 957, for the designing, financing, acquiring, leasing,
 681 constructing, or operating of private correctional facilities.
 682 The division ~~department~~ shall enter into a contract or contracts
 683 with one contractor per facility for the designing, acquiring,
 684 financing, leasing, constructing, and operating of that facility
 685 or may, if specifically authorized by the Legislature,
 686 separately contract for any such services.

687 (b) To manage and enforce compliance with existing or
 688 future contracts entered into pursuant to chapter 957.

689
 690 The division ~~department~~ may not delegate the responsibilities
 691 conferred by this subsection.

692 Section 12. Section 287.045, Florida Statutes, is amended
 693 to read:

694 287.045 Procurement of products and materials with
695 recycled content.--

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

704 (b) Each agency shall review and revise its procurement
705 procedures and specifications for the purchase of products and
706 materials to eliminate any procedures and specifications that
707 explicitly discriminate against products and materials with
708 recycled content, except if such procedures and specifications
709 are necessary to protect the public health, safety, and welfare.

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

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

718 (3) As part of the review and revision required in
719 subsection (2), the division ~~department~~ and each agency shall
720 review its procurement provisions and specifications for the
721 purchase of products and materials to determine which products

722 or materials with recycled content could be procured by the
723 division ~~department~~ or ~~other~~ agencies and the amount of recycled
724 content that can technologically be contained in such products
725 or materials. The division ~~department~~ and ~~other~~ agencies must
726 use the amounts of recycled content and postconsumer recovered
727 material determined by the division ~~department~~ in issuing
728 solicitations for contracts for the purchase of such products or
729 materials.

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

739 (5) Upon evaluation of bids, proposals, or replies for
740 every public contract that involves the purchase of products or
741 materials identified in subsection (3), the division ~~department~~
742 or ~~other~~ agency shall identify the lowest responsible and
743 responsive vendor and other responsible and responsive vendors
744 who have certified that the products or materials contain at
745 least the minimum percentage of recycled content and
746 postconsumer recovered material that is set forth in the
747 solicitation. The division ~~department~~ or agency may consider
748 life-cycle costing when evaluating a bid, proposal, or reply on
749 a product that consists of recycled materials. The division

750 ~~department~~ shall adopt rules that specify the criteria to be
 751 used when considering life-cycle costing in evaluating bids,
 752 proposals, or replies. The rules must take into consideration
 753 the specified warranty periods for products and the comparative
 754 expected service life relative to the cost of the products. In
 755 awarding a contract for the purchase of products or materials,
 756 the division ~~department~~ or ~~other~~ agency may allow up to a 10-
 757 percent price preference to a responsible and responsive vendor
 758 who has certified that the products or materials contain at
 759 least the minimum percentage of recycled content and
 760 postconsumer recovered material and up to an additional 5-
 761 percent price preference to a responsible and responsive vendor
 762 who has certified that the products or material are made of
 763 materials recovered in this state. The amount of the price
 764 preference must be commensurate with the certified amounts of
 765 recycled material and postconsumer recovered material and
 766 materials recycled from products in this state, contained in the
 767 product or materials on a sliding scale as established by
 768 division ~~department~~ rule, which rule shall not become effective
 769 prior to November 1, 1994. Reusable materials and products shall
 770 be used where economically and technically feasible. If no
 771 vendors offer products or materials with measurable life-cycle
 772 costing factors or the minimum prescribed recycled and
 773 postconsumer content, the contract must be awarded to the lowest
 774 qualified responsible and responsive vendor.

775 (6) For the purposes of this section, the term "recycled
 776 content" means materials that have been recycled that are
 777 contained in the products or materials to be procured,

778 including, but not limited to, paper, aluminum, steel, glass,
779 plastics, and composted material. The term does not include the
780 virgin component of internally generated scrap that is commonly
781 used in industrial or manufacturing processes or such waste or
782 scrap purchased from another manufacturer who manufactures the
783 same or a closely related product. Recycled content printing and
784 fine writing grades of paper shall contain at least 10 percent
785 postconsumer recovered materials.

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

793 (8) The division ~~department~~ and each agency shall review
794 and revise its procedures and specifications on a continuing
795 basis to encourage the use of products and materials with
796 recycled content and postconsumer recovered material and shall,
797 in developing new procedures and specifications, encourage the
798 use of products and materials with recycled content and
799 postconsumer recovered material.

800 (9) ~~After November 1, 1994,~~ The division ~~department~~ may
801 discontinue contracting for products or materials the recycled
802 content of which does not meet the requirements of subsection
803 (3) if it determines that products or materials meeting those
804 requirements are available at a cost not to exceed an additional
805 10 percent of comparable virgin products.

806 (10) An agency, or a contractor ~~vendor~~ contracting with
 807 such agency with respect to work performed under contract, must
 808 procure products or materials with recycled content if the
 809 division ~~department~~ determines that those products or materials
 810 are available pursuant to subsection (5). Notwithstanding any
 811 other provision to the contrary, for the purpose of this
 812 section, the term "agency" means any of the various state
 813 officers, departments, boards, commissions, divisions, bureaus,
 814 and councils and any other unit of organization, however
 815 designated, of the executive branch including the Department of
 816 the Lottery, the legislative branch, the judicial branch, the
 817 university and college boards of trustees, and the state
 818 universities and colleges. A decision not to procure such items
 819 must be based on the division's ~~department's~~ determination that
 820 such procurement is not reasonably available within an
 821 acceptable period of time or fails to meet the performance
 822 standards set forth in the applicable specifications or fails to
 823 meet the performance standards of the agency.

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

833 Section 13. Subsections (7), (8), and (9) of section
 834 287.055, Florida Statutes, are amended to read:

835 287.055 Acquisition of professional architectural,
 836 engineering, landscape architectural, or surveying and mapping
 837 services; definitions; procedures; contingent fees prohibited;
 838 penalties.--

839 (7) AUTHORITY OF THE DIVISION OF PROCUREMENT OF THE
 840 DEPARTMENT OF MANAGEMENT SERVICES.--Notwithstanding any other
 841 provision of this section, the division ~~Department of Management~~
 842 ~~Services~~ shall be the unit ~~agency~~ of state government which is
 843 solely and exclusively authorized and empowered to administer
 844 and perform the functions described in subsections (3), (4), and
 845 (5) respecting all projects for which the funds necessary to
 846 complete same are appropriated to the Department of Management
 847 Services, irrespective of whether such projects are intended for
 848 the use and benefit of the division ~~Department of Management~~
 849 ~~Services~~ or any other agency of government. However, nothing
 850 herein shall be construed to be in derogation of any authority
 851 conferred on the division ~~Department of Management Services~~ by
 852 other express provisions of law. Additionally, any agency of
 853 government may, with the approval of the division ~~Department of~~
 854 ~~Management Services~~, delegate to the division ~~Department of~~
 855 ~~Management Services~~ authority to administer and perform the
 856 functions described in subsections (3), (4), and (5). Under the
 857 terms of the delegation, the agency may reserve its right to
 858 accept or reject a proposed contract.

859 (8) STATE ASSISTANCE TO LOCAL AGENCIES.--On any
 860 professional service contract for which the fee is over \$25,000,

861 the Department of Transportation or the division ~~Department of~~
 862 ~~Management Services~~ shall provide, upon request by a
 863 municipality, political subdivision, school board, or school
 864 district, and upon reimbursement of the costs involved,
 865 assistance in selecting consultants and in negotiating
 866 consultant contracts.

867 (9) APPLICABILITY TO DESIGN-BUILD CONTRACTS.--

868 (a) Except as provided in this subsection, this section is
 869 not applicable to the procurement of design-build contracts by
 870 any agency, and the agency must award design-build contracts in
 871 accordance with the procurement laws, rules, and ordinances
 872 applicable to the agency.

873 (b) The design criteria package must be prepared and
 874 sealed by a design criteria professional employed by or retained
 875 by the agency. If the agency elects to enter into a professional
 876 services contract for the preparation of the design criteria
 877 package, then the design criteria professional must be selected
 878 and contracted with under the requirements of subsections (4)
 879 and (5). A design criteria professional who has been selected to
 880 prepare the design criteria package is not eligible to render
 881 services under a design-build contract executed pursuant to the
 882 design criteria package.

883 (c) Except as otherwise provided in s. 337.11(7), the
 884 division ~~Department of Management Services~~ shall adopt rules for
 885 the award of design-build contracts to be followed by state
 886 agencies. Each other agency must adopt rules or ordinances for
 887 the award of design-build contracts. Municipalities, political
 888 subdivisions, school districts, and school boards shall award

889 design-build contracts by the use of a competitive proposal
890 selection process as described in this subsection, or by the use
891 of a qualifications-based selection process pursuant to
892 subsections (3), (4), and (5) for entering into a contract
893 whereby the selected firm will subsequently establish a
894 guaranteed maximum price and guaranteed completion date. If the
895 procuring agency elects the option of qualifications-based
896 selection, during the selection of the design-build firm the
897 procuring agency shall employ or retain a licensed design
898 professional appropriate to the project to serve as the agency's
899 representative. Procedures for the use of a competitive proposal
900 selection process must include as a minimum the following:

- 901 1. The preparation of a design criteria package for the
902 design and construction of the public construction project.
- 903 2. The qualification and selection of no fewer than three
904 design-build firms as the most qualified, based on the
905 qualifications, availability, and past work of the firms,
906 including the partners or members thereof.
- 907 3. The criteria, procedures, and standards for the
908 evaluation of design-build contract proposals or bids, based on
909 price, technical, and design aspects of the public construction
910 project, weighted for the project.
- 911 4. The solicitation of competitive proposals, pursuant to
912 a design criteria package, from those qualified design-build
913 firms and the evaluation of the responses or bids submitted by
914 those firms based on the evaluation criteria and procedures
915 established prior to the solicitation of competitive proposals.

916 5. For consultation with the employed or retained design
 917 criteria professional concerning the evaluation of the responses
 918 or bids submitted by the design-build firms, the supervision or
 919 approval by the agency of the detailed working drawings of the
 920 project; and for evaluation of the compliance of the project
 921 construction with the design criteria package by the design
 922 criteria professional.

923 6. In the case of public emergencies, for the agency head
 924 to declare an emergency and authorize negotiations with the best
 925 qualified design-build firm available at that time.

926 Section 14. Subsections (1) and (2) of section 287.056,
 927 Florida Statutes, are amended to read:

928 287.056 Purchases from purchasing agreements and state
 929 term contracts.--

930 (1) ~~Agencies shall, and Eligible users may, purchase~~
 931 ~~commodities and contractual services~~ from purchasing agreements
 932 established and state term contracts procured, pursuant to s.
 933 ~~287.057~~, by the division ~~department~~.

934 (2) Unless otherwise authorized by division rule, agencies
 935 shall ~~may have the option to purchase commodities or contractual~~
 936 ~~services~~ from state term contracts to satisfy agency demand for
 937 commodities and contractual services available on those
 938 contracts. Other eligible users may purchase from such contracts
 939 ~~procured, pursuant to s. 287.057, by the department which~~
 940 ~~contain a user surcharge pursuant to s. 287.1345 as determined~~
 941 ~~by the department.~~

942 Section 15. Subsections (5), (6), (7), (16), (17), (23),
 943 and (24) of section 287.057, Florida Statutes, are amended to
 944 read:

945 287.057 Procurement of commodities or contractual
 946 services.--

947 (5) When the purchase price of commodities or contractual
 948 services exceeds the threshold amount provided in s. 287.017 for
 949 CATEGORY TWO, no purchase of commodities or contractual services
 950 may be made without receiving competitive sealed bids,
 951 competitive sealed proposals, or competitive sealed replies
 952 unless:

953 (a) The agency head determines in writing that an
 954 immediate danger to the public health, safety, or welfare or
 955 other substantial loss to the state requires emergency action.
 956 After the agency head makes such a written determination, the
 957 agency may proceed with the procurement of commodities or
 958 contractual services necessitated by the immediate danger,
 959 without receiving competitive sealed bids, competitive sealed
 960 proposals, or competitive sealed replies. However, such
 961 emergency procurement shall be made by obtaining pricing
 962 information from at least two prospective vendors, which must be
 963 retained in the contract file, unless the agency determines in
 964 writing that the time required to obtain pricing information
 965 will increase the immediate danger to the public health, safety,
 966 or welfare or other substantial loss to the state. The agency
 967 shall furnish copies of all written determinations certified
 968 under oath and any other documents relating to the emergency
 969 action to the division ~~department~~. A copy of the statement shall

970 be furnished to the Chief Financial Officer with the voucher
 971 authorizing payment. The individual purchase of personal
 972 clothing, shelter, or supplies which are needed on an emergency
 973 basis to avoid institutionalization or placement in a more
 974 restrictive setting is an emergency for the purposes of this
 975 paragraph, and the filing with the division ~~department~~ of such
 976 statement is not required in such circumstances. In the case of
 977 the emergency purchase of insurance, the period of coverage of
 978 such insurance shall not exceed a period of 30 days, and all
 979 such emergency purchases shall be reported to the division
 980 ~~department~~.

981 (b) The purchase is made by an agency from a state term
 982 contract procured, pursuant to this section, by the division
 983 ~~department~~ or by an agency, after receiving approval from the
 984 division ~~department~~, from a contract procured, pursuant to
 985 subsection (1), subsection (2), or subsection (3), by another
 986 agency.

987 (c) Commodities or contractual services available only
 988 from a single source may be excepted from the competitive-
 989 solicitation requirements. When an agency believes that
 990 commodities or contractual services are available only from a
 991 single source, the agency shall electronically post, in a form
 992 prescribed by the division, a description of the commodities or
 993 contractual services sought for a period of at least 7 business
 994 days. The description must include a request that prospective
 995 vendors provide information regarding their ability to supply
 996 the commodities or contractual services described. If it is
 997 determined in writing by the agency, after reviewing any

998 information received from prospective vendors, that the
 999 commodities or contractual services are available only from a
 1000 single source, the agency shall:

1001 1. Provide notice, in a form prescribed by the division,
 1002 of its intended decision to enter a single-source purchase
 1003 contract in the manner specified in s. 120.57(3), if the amount
 1004 of the contract does not exceed the threshold amount provided in
 1005 s. 287.017 for CATEGORY FOUR.

1006 2. Request approval from the division ~~department~~ for the
 1007 single-source purchase, if the amount of the contract exceeds
 1008 the threshold amount provided in s. 287.017 for CATEGORY FOUR.
 1009 The agency shall initiate its request for approval in a form
 1010 prescribed by the division ~~department~~, which request may be
 1011 electronically transmitted. The failure of the division
 1012 ~~department~~ to approve or disapprove the agency's request for
 1013 approval within 21 days after receiving such request shall
 1014 constitute prior approval of the division ~~department~~. If the
 1015 division ~~department~~ approves the agency's request, the agency
 1016 shall provide notice of its intended decision to enter a single-
 1017 source contract in the manner specified in s. 120.57(3).

1018 (d) When it is in the best interest of the state, the
 1019 secretary of the department or his or her designee may authorize
 1020 the division ~~Support Program~~ to purchase insurance by
 1021 negotiation, but such purchase shall be made only under
 1022 conditions most favorable to the public interest.

1023 ~~(e) Prescriptive assistive devices for the purpose of~~
 1024 ~~medical, developmental, or vocational rehabilitation of clients~~
 1025 ~~are excepted from competitive solicitation requirements and~~

1026 ~~shall be procured pursuant to an established fee schedule or by~~
 1027 ~~any other method which ensures the best price for the state,~~
 1028 ~~taking into consideration the needs of the client. Prescriptive~~
 1029 ~~assistive devices include, but are not limited to, prosthetics,~~
 1030 ~~orthotics, and wheelchairs. For purchases made pursuant to this~~
 1031 ~~paragraph, state agencies shall annually file with the~~
 1032 ~~department a description of the purchases and methods of~~
 1033 ~~procurement.~~

1034 (e)~~(f)~~ The following contractual services and commodities
 1035 are not subject to the competitive-solicitation requirements of
 1036 this section:

- 1037 1. Artistic services.
- 1038 2. Academic program reviews.
- 1039 3. Lectures by individuals.
- 1040 4. ~~Auditing services.~~
- 1041 5. ~~Legal services, including attorney, paralegal, expert~~
 1042 ~~witness, appraisal, or mediator services.~~
- 1043 6. ~~Health services involving examination, diagnosis,~~
 1044 ~~treatment, prevention, medical consultation, or administration.~~
- 1045 7. ~~Services provided to persons with mental or physical~~
 1046 ~~disabilities by not-for-profit corporations which have obtained~~
 1047 ~~exemptions under the provisions of s. 501(c)(3) of the United~~
 1048 ~~States Internal Revenue Code or when such services are governed~~
 1049 ~~by the provisions of Office of Management and Budget Circular A-~~
 1050 ~~122. However, in acquiring such services, the agency shall~~
 1051 ~~consider the ability of the vendor, past performance,~~
 1052 ~~willingness to meet time requirements, and price.~~

1053 ~~8. Medicaid services delivered to an eligible Medicaid~~
 1054 ~~recipient by a health care provider who has not previously~~
 1055 ~~applied for and received a Medicaid provider number from the~~
 1056 ~~Agency for Health Care Administration. However, this exception~~
 1057 ~~shall be valid for a period not to exceed 90 days after the date~~
 1058 ~~of delivery to the Medicaid recipient and shall not be renewed~~
 1059 ~~by the agency.~~

1060 ~~9. Family placement services.~~

1061 ~~10. Prevention services related to mental health,~~
 1062 ~~including drug abuse prevention programs, child abuse prevention~~
 1063 ~~programs, and shelters for runaways, operated by not-for-profit~~
 1064 ~~corporations. However, in acquiring such services, the agency~~
 1065 ~~shall consider the ability of the vendor, past performance,~~
 1066 ~~willingness to meet time requirements, and price.~~

1067 ~~11. Training and education services provided to injured~~
 1068 ~~employees pursuant to s. 440.491(6).~~

1069 ~~4.12.~~ Contracts entered into pursuant to s. 337.11.

1070 ~~5.13.~~ Services or commodities provided by governmental
 1071 agencies.

1072 ~~6.14.~~ Voter education activities of the Department of
 1073 State or the supervisors of elections funded by Specific
 1074 Appropriation 2871H of the 2004-2005 General Appropriations Act,
 1075 either individually or in the aggregate or with their respective
 1076 professional associations. This subparagraph expires July 1,
 1077 2005.

1078 ~~(f)(g)~~ Continuing education events or programs that are
 1079 offered to the general public and for which fees have been
 1080 collected that pay all expenses associated with the event or

1081 program are exempt from requirements for competitive
 1082 solicitation.

1083 (6) If less than two responsive bids, proposals, or
 1084 replies for commodity or contractual services purchases are
 1085 received, the division, department, or other agency may
 1086 negotiate on the best terms and conditions. The division,
 1087 department, or other agency shall document the reasons that such
 1088 action is in the best interest of the state in lieu of
 1089 resoliciting competitive sealed bids, proposals, or replies.
 1090 Each agency shall report all such actions to the division
 1091 ~~department~~ on a quarterly basis, in a manner and form prescribed
 1092 by the division ~~department~~.

1093 (7) Upon issuance of any solicitation, an agency shall,
 1094 upon request by the division ~~department~~, forward to the division
 1095 ~~department~~ one copy of each solicitation for all commodity and
 1096 contractual services purchases in excess of the threshold amount
 1097 provided in s. 287.017 for CATEGORY TWO. An agency shall also,
 1098 upon request, furnish a copy of all competitive-solicitation
 1099 tabulations. The Office of Supplier Diversity may also request
 1100 from the agencies any information submitted to the division
 1101 ~~department~~ pursuant to this subsection.

1102 (16) Each agency shall designate at least one employee who
 1103 shall serve as a contract administrator responsible for
 1104 maintaining a contract file and financial information on all
 1105 contractual services contracts and who shall serve as a liaison
 1106 with the contract managers and the division ~~department~~.

1107 (17) For a contract in excess of the threshold amount
 1108 provided in s. 287.017 for CATEGORY FOUR, the agency head shall
 1109 appoint:

1110 (a) At least three persons to evaluate proposals and
 1111 replies who collectively have experience and knowledge in the
 1112 program areas and service requirements for which commodities or
 1113 contractual services are sought.

1114 (b) At least three persons to conduct negotiations during
 1115 a competitive sealed reply procurement who collectively have
 1116 experience and knowledge in negotiating contracts, contract
 1117 procurement, and the program areas and service requirements for
 1118 which commodities or contractual services are sought. When the
 1119 contract is in excess of \$1 million, at least one of the persons
 1120 conducting negotiations shall be a certified negotiator as
 1121 established by rule. If the agency does not have an employee who
 1122 has the requisite certification, the division shall appoint a
 1123 certified negotiator to participate in the negotiations on
 1124 behalf of the agency.

1125 (c) For each division or agency procurement with a total
 1126 estimated cost of \$5 million and above, and other procurements
 1127 as determined by the division, the division shall establish a
 1128 source evaluation and negotiation team with appropriate
 1129 expertise consisting of individuals from the procurement,
 1130 programmatic, legal, and clerical disciplines, and such other
 1131 disciplines as needed. Each team shall be chaired by a
 1132 programmatic representative.

1133 ~~(23)(a) The department, in consultation with the State~~
 1134 ~~Technology Office and the Comptroller, shall develop a program~~

1135 ~~for on-line procurement of commodities and contractual services.~~
 1136 ~~To enable the state to promote open competition and to leverage~~
 1137 ~~its buying power, agencies shall participate in the on-line~~
 1138 ~~procurement program, and eligible users may participate in the~~
 1139 ~~program. Only vendors prequalified as meeting mandatory~~
 1140 ~~requirements and qualifications criteria shall be permitted to~~
 1141 ~~participate in on-line procurement. The department, in~~
 1142 ~~consultation with the State Technology Office, may contract for~~
 1143 ~~equipment and services necessary to develop and implement on-~~
 1144 ~~line procurement.~~

1145 ~~(b) The department, in consultation with the State~~
 1146 ~~Technology Office, shall adopt rules, pursuant to ss. 120.536(1)~~
 1147 ~~and 120.54, to administer the program for on-line procurement.~~
 1148 ~~The rules shall include, but not be limited to:~~

1149 ~~1. Determining the requirements and qualification criteria~~
 1150 ~~for prequalifying vendors.~~

1151 ~~2. Establishing the procedures for conducting on-line~~
 1152 ~~procurement.~~

1153 ~~3. Establishing the criteria for eligible commodities and~~
 1154 ~~contractual services.~~

1155 ~~4. Establishing the procedures for providing access to on-~~
 1156 ~~line procurement.~~

1157 ~~5. Determining the criteria warranting any exceptions to~~
 1158 ~~participation in the on-line procurement program.~~

1159 ~~(c) The department may collect fees for the use of the on-~~
 1160 ~~line procurement systems. The fees may be imposed on an~~
 1161 ~~individual transaction basis or as a fixed percentage of the~~
 1162 ~~cost savings generated. At a minimum, the fees must be set in an~~

1163 ~~amount sufficient to cover the projected costs of such services,~~
1164 ~~including administrative and project service costs in accordance~~
1165 ~~with the policies of the department. For the purposes of~~
1166 ~~compensating the provider, the department may authorize the~~
1167 ~~provider to collect and retain a portion of the fees. The~~
1168 ~~providers may withhold the portion retained from the amount of~~
1169 ~~fees to be remitted to the department. The department may~~
1170 ~~negotiate the retainage as a percentage of such fees charged to~~
1171 ~~users, as a flat amount, or as any other method the department~~
1172 ~~deems feasible. All fees and surcharges collected under this~~
1173 ~~paragraph shall be deposited in the Grants and Donation Trust~~
1174 ~~Fund as provided by law.~~

1175 (23)~~(24)~~(a) The division ~~State Technology Office~~ shall
1176 establish, ~~in consultation with the department,~~ state strategic
1177 information technology alliances for the acquisition and use of
1178 information technology and related material with prequalified
1179 contractors or partners to provide the state with efficient,
1180 cost-effective, and advanced information technology.

1181 (b) In consultation with and under contract to the
1182 division ~~State Technology Office~~, the state strategic
1183 information technology alliances shall design, develop, and
1184 deploy projects providing the information technology needed to
1185 collect, store, and process the state's data and information,
1186 provide connectivity, and integrate and standardize computer
1187 networks and information systems of the state.

1188 (c) The partners in the state strategic information
1189 technology alliances shall be industry leaders with demonstrated
1190 experience in the public and private sectors.

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1191 (d) The division ~~State Technology Office, in consultation~~
1192 ~~with the department,~~ shall adopt rules, pursuant to ss.
1193 120.536(1) and 120.54, to administer the state strategic
1194 information technology alliances.

1195 Section 16. Section 287.0571, Florida Statutes, is created
1196 to read:

1197 287.0571 On-line procurement subsystem; usage by agencies
1198 and other eligible users.--

1199 (1) In discharging its obligation to provide the
1200 purchasing subsystem of the Florida Financial Management
1201 Information System outlined in ss. 215.90-215.96, the division,
1202 in consultation with the Chief Financial Officer, shall design,
1203 implement, and operate an on-line procurement subsystem. The
1204 division may contract for equipment and services necessary to
1205 develop and implement the subsystem. The division shall adopt
1206 rules pursuant to ss. 120.536(1) and 120.54 to administer the
1207 subsystem.

1208 (2) To enable the state to promote open competition and to
1209 leverage its buying power, agencies shall use the subsystem. On
1210 terms negotiated with the division, other eligible users may
1211 also use features of the subsystem.

1212 Section 17. Section 287.05712, Florida Statutes, is
1213 created to read:

1214 287.05712 Vendor registration; performance monitoring;
1215 certain vendors prohibited from participating in
1216 solicitations.--

1217 (1) The division shall maintain a list of interested
1218 vendors within the on-line procurement subsystem. Vendors shall

1219 be required to register and have the ability to express their
 1220 interest in contracting for any category of commodities or
 1221 services. Failure to express a particular interest at the time
 1222 of initial registration shall not prohibit a registered vendor
 1223 from responding to a solicitation for the particular commodity
 1224 or service.

1225 (2) Within the on-line procurement subsystem, the division
 1226 shall maintain a statewide contractor performance system in
 1227 order to provide uniform monitoring and rating of contractors
 1228 across all agencies. The division shall adopt rules pursuant to
 1229 ss. 120.536(1) and 120.54 to implement the contractor
 1230 performance system.

1231 (3) The division shall use the on-line procurement
 1232 subsystem to enforce the convicted vendor list maintained
 1233 pursuant to s. 287.133(3)(d) and the suspended vendor list
 1234 maintained pursuant to s. 287.135(1).

1235 Section 18. Section 287.0572, Florida Statutes, is amended
 1236 to read:

1237 287.0572 Present-value methodology.--

1238 (1) The cost of bids, proposals, or replies for state
 1239 contracts that include provisions for unequal payment streams or
 1240 unequal time payment periods shall be evaluated using present-
 1241 value methodology. Each agency, as defined in s. 287.012(1),
 1242 shall perform the evaluation using the present-value discount
 1243 rate supplied by the division ~~department~~. The present-value
 1244 discount rate shall be the rate for United States Treasury notes
 1245 and bonds published in the Interest Rates: Money and Capital
 1246 Markets section of the most recent copy of the Federal Reserve

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1247 Bulletin published at the time of issuance of the request for
1248 proposals, the invitation to negotiate, or the invitation to
1249 bid.

1250 (2) The division ~~department~~ may adopt rules to administer
1251 subsection (1).

1252 Section 19. Section 287.0578, Florida Statutes, is created
1253 to read:

1254 287.0578 Types of contracts.--Subject to the limitations
1255 of this chapter, any type of contract which will promote the
1256 best interests of the state may be used, such as firm-fixed-
1257 price, cost-reimbursement, and incentive. The use of a cost-
1258 plus-a-percentage-of-cost contract is prohibited.

1259 Section 20. Subsections (1), (2), and (5) of section
1260 287.058, Florida Statutes, are amended to read:

1261 287.058 Contract document.--

1262 (1) Every procurement of contractual services in excess of
1263 the threshold amount provided in s. 287.017 for CATEGORY TWO,
1264 except for the providing of health and mental health services or
1265 drugs in the examination, diagnosis, or treatment of sick or
1266 injured state employees or the providing of other benefits as
1267 required by the provisions of chapter 440, shall be evidenced by
1268 a written agreement embodying all provisions and conditions of
1269 the procurement of such services, which provisions and
1270 conditions shall, where applicable, include, but shall not be
1271 limited to:

1272 (a) A provision that bills for fees or other compensation
1273 for services or expenses be submitted in detail sufficient for a
1274 proper preaudit and postaudit thereof.

1275 (b) A provision that bills for any travel expenses be
 1276 submitted in accordance with s. 112.061. A state agency may
 1277 establish rates lower than the maximum provided in s. 112.061.

1278 (c) A provision allowing unilateral cancellation by the
 1279 agency for refusal by the contractor to allow public access to
 1280 all documents, papers, letters, or other material made or
 1281 received by the contractor in conjunction with the contract,
 1282 unless the records are exempt from s. 24(a) of Art. I of the
 1283 State Constitution and s. 119.07(1).

1284 (d) A provision dividing the contract into units of
 1285 deliverables, which shall include, but not be limited to,
 1286 reports, findings, and drafts, that must be received and
 1287 accepted in writing by the contract manager prior to payment.

1288 (e) A provision specifying the criteria and the final date
 1289 by which such criteria must be met for completion of the
 1290 contract.

1291 (f) A provision specifying that the contract may be
 1292 renewed for a period that may not exceed 3 years or the term of
 1293 the original contract, whichever period is longer, specifying
 1294 the renewal price for the contractual service as set forth in
 1295 the bid, proposal, or reply, specifying that costs for the
 1296 renewal may not be charged, and specifying that renewals shall
 1297 be contingent upon satisfactory performance evaluations by the
 1298 agency and subject to the availability of funds. Exceptional
 1299 purchase contracts pursuant to s. 287.057(5)(a) and (c) may not
 1300 be renewed.

1301

1302 In lieu of a written agreement, the division ~~department~~ may
 1303 authorize the use of a purchase order for classes of contractual
 1304 services, if the provisions of paragraphs (a)-(f) are included
 1305 in the purchase order or solicitation. The purchase order must
 1306 include, but need not be limited to, an adequate description of
 1307 the services, the contract period, and the method of payment. In
 1308 lieu of printing the provisions of paragraphs (a)-(f) in the
 1309 contract document or purchase order, agencies may incorporate
 1310 the requirements of paragraphs (a)-(f) by reference.

1311 (2) The written agreement shall be signed by the agency
 1312 head and the contractor prior to the rendering of any
 1313 contractual service the value of which is in excess of the
 1314 threshold amount provided in s. 287.017 for CATEGORY TWO, except
 1315 in the case of a valid emergency as certified by the agency
 1316 head. The certification of an emergency shall be prepared within
 1317 30 days after the contractor begins rendering the service and
 1318 shall state the particular facts and circumstances which
 1319 precluded the execution of the written agreement prior to the
 1320 rendering of the service. If the agency fails to have the
 1321 contract signed by the agency head and the contractor prior to
 1322 rendering the contractual service, and if an emergency does not
 1323 exist, the agency head shall, no later than 30 days after the
 1324 contractor begins rendering the service, certify the specific
 1325 conditions and circumstances to the division ~~department~~ as well
 1326 as describe actions taken to prevent recurrence of such
 1327 noncompliance. The agency head may delegate the certification
 1328 only to other senior management agency personnel. A copy of the
 1329 certification shall be furnished to the Chief Financial Officer

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1330 with the voucher authorizing payment. The division ~~department~~
 1331 shall report repeated instances of noncompliance by an agency to
 1332 the Auditor General. Nothing in this subsection shall be deemed
 1333 to authorize additional compensation prohibited by s. 215.425.
 1334 The procurement of contractual services shall not be divided so
 1335 as to avoid the provisions of this section.

1336 (5) Unless otherwise provided in the General
 1337 Appropriations Act or the substantive bill implementing the
 1338 General Appropriations Act, the Chief Financial Officer may
 1339 waive the requirements of this section for services which are
 1340 included in s. 287.057(5) (e) ~~(f)~~.

1341 Section 21. Section 287.0731, Florida Statutes, is amended
 1342 to read:

1343 287.0731 Team for contract negotiations.--Contingent upon
 1344 funding in the General Appropriations Act, the division
 1345 ~~department~~ shall establish a team that includes a chief
 1346 negotiator to specialize in conducting negotiations for the
 1347 procurement of information technology with an invitation to
 1348 negotiate.

1349 Section 22. Section 287.083, Florida Statutes, is amended
 1350 to read:

1351 287.083 Purchase of commodities.--

1352 (1) It shall be the policy of the state for the division
 1353 ~~Department of Management Services~~ to consider the life-cycle
 1354 cost of commodities purchased by the state, when applicable and
 1355 feasible as determined by the division ~~department~~.

1356 (2) Definitions.--For the purpose of this section:

1357 (a) "Major energy-consuming product" means any article so
 1358 designated by the division ~~department~~.

1359 (b) "Energy-efficiency standard" means a performance
 1360 standard which prescribes the relationship of the energy use of
 1361 a product to its useful output of services.

1362 (3)(a) The division ~~department~~ is authorized to establish
 1363 by rule energy-efficiency standards for major energy-consuming
 1364 products.

1365 (b) When federal energy-efficiency standards exist, the
 1366 division ~~department~~ shall, when feasible, adopt standards at
 1367 least as stringent as the federal standards.

1368 (4) When energy-efficiency standards are established,
 1369 life-cycle costs shall be used by the division ~~department~~ in
 1370 contracting for major energy-consuming products.

1371 (5) In determining the life-cycle cost, the division
 1372 ~~department~~ may consider the acquisition cost of the product; the
 1373 energy consumption and the projected cost of energy over the
 1374 useful life of the product; and the anticipated trade-in,
 1375 resale, or salvage value of the product.

1376 Section 23. Section 287.0834, Florida Statutes, is amended
 1377 to read:

1378 287.0834 Motor vehicles; energy-saving equipment and
 1379 additives.--Each motor vehicle purchased by the state and each
 1380 motor vehicle leased by the state for a period in excess of 1
 1381 year shall use devices, equipment, and additives that have been
 1382 certified as energy-saving and approved for use by the United
 1383 States Environmental Protection Agency and that have been

1384 determined to be cost-effective by the division ~~Department of~~
 1385 ~~Management Services~~.

1386 Section 24. Section 287.131, Florida Statutes, is amended
 1387 to read:

1388 287.131 Assistance of Department of Financial
 1389 Services.--The Department of Financial Services shall provide
 1390 the division ~~Department of Management Services~~ with technical
 1391 assistance in all matters pertaining to the purchase of
 1392 insurance for all agencies, and shall make surveys of the
 1393 insurance needs of the state and all departments thereof,
 1394 including the benefits, if any, of self-insurance.

1395 Section 25. Paragraph (c) of subsection (1) and subsection
 1396 (3) of section 287.134, Florida Statutes, are amended to read:

1397 287.134 Discrimination; denial or revocation of the right
 1398 to transact business with public entities.--

1399 (1) As used in this section:

1400 (c) "Discriminatory vendor list" means the list required
 1401 to be kept by the division ~~department~~ pursuant to paragraph
 1402 (3)(d).

1403 (3)(a) All invitations to bid, requests for proposals, and
 1404 invitations to negotiate, as defined by s. 287.012, and any
 1405 written contract document of the state must contain a statement
 1406 informing entities of the provisions of paragraph (2)(a).

1407 (b) An entity must notify the division ~~department~~ within
 1408 30 days after a final determination of discrimination. Any
 1409 public entity which receives information that an entity has
 1410 discriminated shall transmit that information to the division
 1411 ~~department~~ in writing within 10 days. Before entering into any

1412 contract with the state, all entities shall disclose to the
 1413 division ~~department~~ whether they have been found liable, in a
 1414 state circuit court or federal court, for violation of any state
 1415 or federal law prohibiting discrimination based on race, gender,
 1416 national origin, disability, or religion.

1417 (c) The division ~~department~~ shall maintain a list of the
 1418 names and addresses of any entity which has been disqualified
 1419 from the public contracting and purchasing process under this
 1420 section. The division ~~department~~ shall publish an initial list
 1421 on January 1, 2001, and shall publish an updated version of the
 1422 list quarterly thereafter. The revised quarterly lists shall be
 1423 electronically posted. Notwithstanding this paragraph, an entity
 1424 or affiliate disqualified from the public contracting and
 1425 purchasing process pursuant to this section shall be
 1426 disqualified as of the date the final order is entered.

1427 (d)1. Upon receiving reasonable information from any
 1428 source that an entity has discriminated, the division ~~department~~
 1429 shall investigate the information and determine whether good
 1430 cause exists to place that entity or an affiliate of that entity
 1431 on the discriminatory vendor list. If good cause exists, the
 1432 division ~~department~~ shall notify the entity or affiliate in
 1433 writing of its intent to place the name of that entity or
 1434 affiliate on the discriminatory vendor list, and of the entity's
 1435 or affiliate's right to a hearing, the procedure that must be
 1436 followed, and the applicable time requirements. If the entity or
 1437 affiliate does not request a hearing, the division ~~department~~
 1438 shall enter a final order placing the name of the entity or
 1439 affiliate on the discriminatory vendor list. No entity or

1440 affiliate may be placed on the discriminatory vendor list
 1441 without receiving an individual notice of intent from the
 1442 division ~~department~~.

1443 2. Within 21 days after receipt of the notice of intent,
 1444 the entity or affiliate may file a petition for a formal hearing
 1445 pursuant to ss. 120.569 and 120.57(1) to determine whether it is
 1446 in the public interest for that entity or affiliate to be placed
 1447 on the discriminatory vendor list. An entity or affiliate may
 1448 not file a petition for an informal hearing under s. 120.57(2).
 1449 The procedures of chapter 120 shall apply to any formal hearing
 1450 under this section except where they are in conflict with the
 1451 following provisions:

1452 a. The petition shall be filed with the division
 1453 ~~department~~. The division ~~department~~ shall be a party to the
 1454 proceeding for all purposes.

1455 b. Within 5 days after the filing of the petition, the
 1456 division ~~department~~ shall notify the Division of Administrative
 1457 Hearings of the request for a formal hearing. The director of
 1458 the Division of Administrative Hearings shall, within 5 days
 1459 after receipt of notice from the division ~~department~~, assign an
 1460 administrative law judge to preside over the proceeding. The
 1461 administrative law judge, upon request by a party, may
 1462 consolidate related proceedings.

1463 c. The administrative law judge shall conduct the formal
 1464 hearing within 30 days after being assigned, unless otherwise
 1465 stipulated by the parties.

1466 d. Within 30 days after the formal hearing or receipt of
 1467 the hearing transcript, whichever is later, the administrative

1468 law judge shall enter a final order, which shall consist of
 1469 findings of fact, conclusions of law, interpretation of agency
 1470 rules, and any other information required by law or rule to be
 1471 contained in the final order. Such final order shall place or
 1472 not place the entity or affiliate on the discriminatory vendor
 1473 list.

1474 e. The final order of the administrative law judge shall
 1475 be final agency action for purposes of s. 120.68.

1476 f. At any time after the filing of the petition, informal
 1477 disposition may be made pursuant to s. 120.57(4). In that event,
 1478 the administrative law judge shall enter a final order adopting
 1479 the stipulation, agreed settlement, or consent order.

1480 3. It shall not be in the public interest to place an
 1481 entity or affiliate on the discriminatory vendor list if:

1482 a. Discrimination did not occur;

1483 b. The discrimination was committed by an employee of the
 1484 entity or affiliate other than senior management; or

1485 c. The member of senior management responsible for the
 1486 discrimination is no longer an employee of the entity or
 1487 affiliate.

1488 4. In determining whether it is in the public interest to
 1489 place an entity or affiliate on the discriminatory vendor list,
 1490 the administrative law judge shall consider the following
 1491 factors:

1492 a. The nature and details of the discrimination.

1493 b. The degree of culpability of the entity or affiliate
 1494 proposed to be placed on the discriminatory vendor list.

1495 c. The prompt or voluntary payment of any damages or
 1496 penalty as a result of the discrimination.

1497 d. Prior or future self-policing by the entity or
 1498 affiliate to prevent discrimination.

1499 e. Compliance by the entity or affiliate with the
 1500 notification provisions of paragraph (b).

1501 f. The needs of public entities for additional competition
 1502 in the procurement of goods and services in their respective
 1503 markets.

1504 g. Mitigation based upon any demonstration of good
 1505 citizenship by the entity or affiliate.

1506 5. In any proceeding under this section, the division
 1507 ~~department~~ shall be required to prove by clear and convincing
 1508 evidence that it is in the public interest for the entity to
 1509 which the division ~~department~~ has given notice under this
 1510 section to be placed on the discriminatory vendor list. Proof of
 1511 discrimination by the entity or a person or entity which is an
 1512 affiliate of such entity shall constitute a prima facie case
 1513 that it is in the public interest for the entity or affiliate to
 1514 which the division ~~department~~ has given notice to be put on the
 1515 discriminatory vendor list. Status as an affiliate must be
 1516 proven by clear and convincing evidence.

1517 6. Any entity or affiliate which has been notified by the
 1518 division ~~department~~ of the division's ~~department's~~ intent to
 1519 place the entity's or affiliate's name on the discriminatory
 1520 vendor list may offer evidence on any relevant issue. Upon
 1521 establishment of a prima facie case that it is in the public
 1522 interest for the entity or affiliate to which the division

1523 ~~department~~ has given notice to be put on the discriminatory
 1524 vendor list, that entity or affiliate may prove by a
 1525 preponderance of the evidence that it would not be in the public
 1526 interest to put such entity on the discriminatory vendor list,
 1527 based upon evidence addressing the factors in subparagraphs 3.
 1528 and 4.

1529 (e)1. An entity on the discriminatory vendor list may
 1530 petition for removal from the list no sooner than 6 months from
 1531 the date a final order is entered disqualifying that entity from
 1532 the public purchasing and contracting process pursuant to this
 1533 section. The petition shall be filed with the division
 1534 ~~department~~ and the proceeding shall be conducted pursuant to the
 1535 procedures and requirements of this subsection.

1536 2. An entity may be removed from the discriminatory vendor
 1537 list subject to such terms and conditions as may be prescribed
 1538 by the administrative law judge upon a determination that
 1539 removal is in the public interest. In determining whether
 1540 removal would be in the public interest, the administrative law
 1541 judge shall give consideration to any relevant factors,
 1542 including, but not limited to, the factors identified in
 1543 subparagraphs 3. and 4.

1544 3. If a petition for removal is denied, the entity or
 1545 affiliate may not petition for another hearing on removal for a
 1546 period of 9 months after the date of denial. The division
 1547 ~~department~~ may petition for removal prior to the expiration of
 1548 such period if, in the division's ~~department's~~ discretion, the
 1549 division ~~department~~ determines that removal would be in the
 1550 public interest.

1551 Section 26. Section 287.1345, Florida Statutes, is amended
 1552 to read:

1553 287.1345 Fees for use of on-line procurement subsystem;
 1554 ~~Surcharge on users of state term contracts;~~ deposit of proceeds
 1555 collected; consequences of failure to pay fees.--

1556 (1) The division may collect fees for the use of the on-
 1557 line procurement subsystem. The fees may be imposed on an
 1558 individual transaction basis or as a fixed percentage of the
 1559 cost savings generated. At a minimum, the fees must be set in an
 1560 amount sufficient to cover the projected costs of such services,
 1561 including administrative and project service costs in accordance
 1562 with the policies of the division. To compensate a private
 1563 provider of services related to the subsystem ~~The department may~~
 1564 ~~impose a surcharge upon users of state term contracts in order~~
 1565 ~~to fund the costs, including overhead, of its procurement~~
 1566 ~~function. The department may provide for the state term contract~~
 1567 ~~vendor to collect the surcharge or directly collect the fee from~~
 1568 ~~the public agency or eligible user involved. For the purpose of~~
 1569 ~~compensating vendors for expenses incurred in collecting such~~
 1570 ~~fees, the~~ division ~~department~~ may authorize a vendor to collect
 1571 and retain a portion of the fees. The provider ~~vendor~~ may
 1572 withhold the portion retained from the amount of fees to be
 1573 remitted to the division ~~department~~. The division ~~department~~ may
 1574 negotiate the retainage as a percentage of such fees charged to
 1575 users, as a flat amount, or as any other method the division
 1576 ~~department~~ deems feasible.

1577 (2) Contractors ~~Vendors~~ shall maintain accurate sales
 1578 summaries for purchases made from state term contracts by

1579 eligible users, and for other purchases made by agencies, and
 1580 shall provide the summaries to the division in the form and
 1581 frequency specified by rule ~~department on a quarterly basis.~~

1582 (3) Any contract remedies relating to the collection of
 1583 such fees from users through contractors ~~vendors~~ are
 1584 enforceable, including, but not limited to, liquidated damages,
 1585 late fees, and the costs of collection, including attorney's
 1586 fees. The fees collected pursuant to this section shall be
 1587 deposited into the Grants and Donations Trust Fund of the
 1588 department and are subject to appropriation as provided by law.
 1589 The Executive Office of the Governor may exempt transactions
 1590 from the payment of the fees ~~surcharge~~ if payment of such fees
 1591 ~~surcharge~~ would cause the state, a political subdivision, or
 1592 unit of local government to lose federal funds or in other cases
 1593 where such exemption is in the public interest. The fees
 1594 collected pursuant to this section and interest income on such
 1595 fees shall not be deemed to be income of a revenue nature for
 1596 purposes of chapter 215.

1597 Section 27. Section 287.135, Florida Statutes, is created
 1598 to read:

1599 287.135 Suspended vendor list; suspension of right to
 1600 transact business with public entities.--

1601 (1) The division shall maintain a suspended vendor list.
 1602 The list shall include any vendor that:

1603 (a) Fails to fulfill any of its duties specified in a
 1604 contract with any governmental entity, including the obligation
 1605 to pay fees required by s. 287.1345;

1606 (b) Fails to maintain a minimum acceptable rating on the
 1607 contractor performance system maintained by the division
 1608 pursuant to s. 287.042(2); or

1609 (c) Has otherwise been found by the division to be a
 1610 nonresponsible source.

1611 (2) The division may reinstate a suspended vendor when the
 1612 division is satisfied that further instances of default will not
 1613 occur.

1614 (3)(a) A vendor on the suspended vendor list may not:

1615 1. Submit a response to a solicitation by a public entity
 1616 to provide any goods or services;

1617 2. Submit a response to a solicitation by a public entity
 1618 for the construction or repair of a public building or public
 1619 work;

1620 3. Contract for leases of real property to a public
 1621 entity;

1622 4. Be awarded or perform work as a contractor, supplier,
 1623 subcontractor, or consultant under a contract with any public
 1624 entity; or

1625 5. Transact business with any public entity for a period
 1626 of 36 months following the date of being placed on the suspended
 1627 vendor list.

1628 (b) A public entity may not accept a response to a
 1629 solicitation from, award any contract to, or transact any
 1630 business with any vendor on the suspended vendor list for a
 1631 period of 36 months following the date that vendor was placed on
 1632 the suspended vendor list unless that vendor has subsequently

1633 petitioned for removal and been removed from the list by the
 1634 division.

1635 (4) All competitive solicitations and any contract
 1636 document described by s. 287.058 shall contain a statement
 1637 informing persons of the provisions of paragraph (3)(a).

1638 (5) For purposes of this section, the following
 1639 definitions apply:

1640 (a) "Public entity" means this state, any of its
 1641 departments or agencies, or any political subdivision.

1642 (b) "Vendor" means any person, including affiliates, doing
 1643 business with the state or wishing to do business with the
 1644 state.

1645 1. For purposes of this paragraph, the term "person" means
 1646 any natural person or any entity organized under the laws of any
 1647 state or of the United States with the legal power to enter into
 1648 a binding contract and which bids or applies to bid on contracts
 1649 let by a public entity, or which otherwise transacts or applies
 1650 to transact business with a public entity. The term "person"
 1651 also includes those officers, directors, executives, partners,
 1652 shareholders, employees, members, and agents who are active in
 1653 management of an entity.

1654 2. For purposes of this paragraph, the term "affiliate"
 1655 means:

1656 a. A predecessor or successor of the person on the
 1657 suspended vendor list.

1658 b. Any entity under the control of any natural person
 1659 active in the management of the entity on the suspended vendor
 1660 list.

1661 c. Those officers, directors, executives, partners,
1662 shareholders, employees, members, and agents who are active in
1663 the management of an affiliate. The ownership by one person of
1664 shares constituting a controlling interest in another person, or
1665 a pooling of equipment or income among persons when not for fair
1666 market value under an arms length agreement, shall be prima
1667 facie evidence that one person controls another person.

1668 d. A person who knowingly enters into a joint venture with
1669 a person who has been placed on the suspended vendor list during
1670 the preceding 36 months.

1671 (6) The division shall adopt rules to implement contract
1672 default procedures to be followed by agencies which shall
1673 include, at a minimum:

1674 (a) Reasonable notice to the vendor.

1675 (b) An opportunity for the vendor to cure the default
1676 within a reasonable time.

1677 (c) If no cure is forthcoming or if the cure is
1678 inadequate, the agency's authorization to formally find the
1679 vendor in default.

1680 (d) If the contractor is formally found in default,
1681 authorization for the agency to reprocure and contractor's
1682 liability for reprocurement costs.

1683 (e) Authorization for the agency to find the contractor
1684 nonresponsible during future solicitations until such time as
1685 the agency is reimbursed for previous reprocurement costs and is
1686 satisfied that further instances of default will not occur.

1687 (f) Authorization for the division to place the contractor
 1688 on the suspended vendor list maintained pursuant to this
 1689 section.

1690 (g) A provision that the vendor shall be suspended as of
 1691 the date the final order is entered.

1692 (h) The contractor's administrative remedies and
 1693 provisions for early removal from the suspended vendor list.

1694 Section 28. Subsections (3), (5), and (7) of section
 1695 282.005, Florida Statutes, are amended to read:

1696 282.005 Legislative findings and intent.--The Legislature
 1697 finds that:

1698 (3) An office must be created to provide support and
 1699 guidance to enhance the state's use and management of
 1700 information technology and to design, ~~procure~~, and deploy, on
 1701 behalf of the state, information technology.

1702 (5) The State Technology Office has primary responsibility
 1703 and accountability for the planning, budgeting, ~~acquisition~~,
 1704 development, implementation, use, and management of information
 1705 technology within the state. The State Technology Office shall
 1706 use the state's information technology in the best interest of
 1707 the state as a whole and shall contribute to and make use of
 1708 shared data and related resources whenever appropriate. Each
 1709 agency head has primary responsibility and accountability for
 1710 setting agency priorities, identifying business needs, and
 1711 determining agency services and programs to be developed as
 1712 provided by law. The State Technology Office, through service
 1713 level agreements with each agency, shall provide the information
 1714 technology needed for the agency to accomplish its mission.

1715 (7) The state, through the State Technology Office, shall
 1716 provide, by whatever means is most cost-effective and efficient,
 1717 ~~the information technology,~~ enterprise resource planning and
 1718 management, and enterprise resource management infrastructure
 1719 needed to collect, store, and process the state's data and
 1720 information, provide connectivity, and facilitate the exchange
 1721 of data and information among both public and private parties.

1722 Section 29. Subsection (2) of section 946.515, Florida
 1723 Statutes, is amended to read:

1724 946.515 Use of goods and services produced in correctional
 1725 work programs.--

1726 (2) No similar product or service of comparable price and
 1727 quality found necessary for use by any state agency may be
 1728 purchased from any source other than the corporation if the
 1729 corporation certifies that the product is manufactured by, or
 1730 the service is provided by, inmates and the product or service
 1731 meets the comparable performance specifications and comparable
 1732 price and quality requirements as specified under s.

1733 287.042 (2)(c) ~~(1)(f)~~ or as determined by an individual agency as
 1734 provided in this section. The purchasing authority of any such
 1735 state agency may make reasonable determinations of need, price,
 1736 and quality with reference to products or services available
 1737 from the corporation. In the event of a dispute between the
 1738 corporation and any purchasing authority based upon price or
 1739 quality under this section or s. 287.042 (2)(c) ~~(1)(f)~~, either
 1740 party may request a hearing with the Department of Management
 1741 Services and if not resolved, either party may request a
 1742 proceeding pursuant to ss. 120.569 and 120.57, which shall be

1743 referred to the Division of Administrative Hearings within 60
 1744 days after such request, to resolve any dispute under this
 1745 section. No party is entitled to any appeal pursuant to s.
 1746 120.68.

1747 Section 30. In order to promote the attraction, retention,
 1748 and professional development of skilled procurement
 1749 professionals, the Division of Procurement of the Department of
 1750 Management Services shall submit a report to the President of
 1751 the Senate and the Speaker of the House of Representative by
 1752 February 1, 2006, describing the market for procurement
 1753 professionals and their availability, benchmarking the skills
 1754 required, professional development opportunities and
 1755 certification, and salaries paid by the state compared to other
 1756 public and private sector employers and providing
 1757 recommendations for enhancing the state's ability to attract and
 1758 retain skilled procurement professionals.

1759 Section 31. Beginning in fiscal year 2005-2006, 21 full-
 1760 time equivalent positions are authorized and \$4 million is
 1761 appropriated from General Revenue to fund the costs of the
 1762 increased responsibilities of the Division of Procurement in the
 1763 Department of Management Services as provided in this act.

1764 Section 32. This act shall take effect July 1, 2005.