

1 A bill to be entitled
 2 An act relating to increasing competition in procurement
 3 of commodities and contractual services; amending s.
 4 287.001, F.S.; providing additional legislative intent;
 5 amending s. 287.012, F.S.; revising definitions; amending
 6 s. 287.032, F.S.; specifying maximizing competition as an
 7 additional purpose of the Department of Management
 8 Services in purchasing commodities and contractual
 9 services; amending s. 287.057, F.S.; revising provisions
 10 for procurement of commodities or contractual services;
 11 subjecting certain contractual services and commodities to
 12 certain competitive-solicitation requirements; limiting
 13 the term of contracts, including renewals and extensions;
 14 deleting obsolete provisions; amending ss. 287.058,
 15 394.457, 402.7305, and 445.024, F.S.; correcting cross-
 16 references; providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 287.001, Florida Statutes, is amended
 21 to read:

22 287.001 Legislative intent.--The Legislature recognizes
 23 that fair and open competition is a basic tenet of public
 24 procurement; that such competition reduces the appearance and
 25 opportunity for favoritism and inspires public confidence that
 26 contracts are awarded equitably and economically; and that
 27 documentation of the acts taken and effective monitoring
 28 mechanisms are important means of curbing any improprieties and

29 establishing public confidence in the process by which
 30 commodities and contractual services are procured. It is
 31 essential to the effective and ethical procurement of
 32 commodities and contractual services that there be a system of
 33 uniform procedures to be utilized by state agencies in managing
 34 and procuring commodities and contractual services; that
 35 detailed justification of agency decisions in the procurement of
 36 commodities and contractual services be maintained; and that
 37 adherence by the agency and the vendor to specific ethical
 38 considerations be required. It is also the intent of the
 39 Legislature that all future changes to law affecting outsourcing
 40 and procurement of commodities and contractual services be made
 41 in this chapter.

42 Section 2. Subsections (1) and (9) of section 287.012,
 43 Florida Statutes, are amended to read:

44 287.012 Definitions.--As used in this part, the term:

45 (1) "Agency" means any of the various state officers,
 46 departments, boards, commissions, divisions, bureaus, and
 47 councils and any other unit of organization, however designated,
 48 of the executive branch of state government. "Agency" does not
 49 include the university and college boards of trustees or the
 50 state universities and colleges. Notwithstanding the exclusion
 51 of university and college boards of trustees and state
 52 universities and colleges from the definition of the term
 53 "agency," it is the intent of the Legislature that university
 54 and college boards of trustees and state universities and
 55 colleges act in the spirit of chapter 287 and use the provisions

56 of chapter 287 as a guide in purchasing commodities and
 57 services.

58 (9) "Contractual service" means the rendering by a
 59 contractor of its time and effort rather than the furnishing of
 60 specific commodities. The term applies only to those services
 61 rendered by individuals and firms who are independent
 62 contractors, and such services may include, but are not limited
 63 to, evaluations; consultations; maintenance; accounting;
 64 security; management systems; management consulting; educational
 65 training programs; research and development studies or reports
 66 on the findings of consultants engaged thereunder; and
 67 professional, technical, and social services. "Contractual
 68 service" does not include any contract for the furnishing of
 69 labor or materials for the construction, renovation, repair,
 70 modification, or demolition of any facility, building, portion
 71 of building, utility, park, parking lot, or structure or other
 72 improvement to real property entered into pursuant to chapter
 73 255 and rules adopted thereunder. A contract in which an agency,
 74 in exchange for revenue, authorizes a vendor to use governmental
 75 authority or property for the purpose of selling any good or
 76 service to any person shall be considered to be the procurement
 77 of a contractual service and awarded on a competitive basis
 78 based on the purchasing category of such contract, which
 79 category shall be determined by the total revenue estimated to
 80 be received by the contractor under the contract.

81 Section 3. Section 287.032, Florida Statutes, is amended
 82 to read:

83 287.032 Purpose of department.--It shall be the purpose of
84 the department ~~of Management Services~~:

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

88 (2) To provide uniform commodity and contractual service
89 procurement policies, rules, procedures, and forms for use by
90 agencies and eligible users, and to assist agencies with
91 specific procurements or conduct specific procurements on behalf
92 of agencies, in an efficient and cost-effective manner, with
93 optimal competition.

94 (3) To procure and distribute federal surplus tangible
95 personal property allocated to the state by the Federal
96 Government.

97 Section 4. Subsections (5), (14), and (25) of section
98 287.057, Florida Statutes, are amended to read:

99 287.057 Procurement of commodities or contractual
100 services.--

101 (5) When the purchase price of commodities or contractual
102 services exceeds the threshold amount provided in s. 287.017 for
103 CATEGORY TWO, no purchase of commodities or contractual services
104 may be made without receiving competitive sealed bids,
105 competitive sealed proposals, or competitive sealed replies
106 unless:

107 (a) The agency head determines in writing that an
108 immediate danger to the public health, safety, or welfare or
109 other substantial loss to the state requires emergency action.
110 After the agency head makes such a written determination, the

111 agency may proceed with the procurement of commodities or
112 contractual services necessitated by the immediate danger,
113 without receiving competitive sealed bids, competitive sealed
114 proposals, or competitive sealed replies. However, such
115 emergency procurement shall be made by obtaining pricing
116 information from at least two prospective vendors, which must be
117 retained in the contract file, unless the agency determines in
118 writing that the time required to obtain pricing information
119 will increase the immediate danger to the public health, safety,
120 or welfare or other substantial loss to the state. The agency
121 shall furnish copies of all written determinations certified
122 under oath and any other documents relating to the emergency
123 action to the department. A copy of the statement shall be
124 furnished to the Chief Financial Officer with the voucher
125 authorizing payment. The individual purchase of personal
126 clothing, shelter, or supplies which are needed on an emergency
127 basis to avoid institutionalization or placement in a more
128 restrictive setting is an emergency for the purposes of this
129 paragraph, and the filing with the department of such statement
130 is not required in such circumstances. In the case of the
131 emergency purchase of insurance, the period of coverage of such
132 insurance shall not exceed a period of 30 days, and all such
133 emergency purchases shall be reported to the department.

134 (b) The purchase is made by an agency from a state term
135 contract procured, pursuant to this section, by the department
136 or by an agency, after receiving approval from the department,
137 from a contract procured, pursuant to subsection (1), subsection
138 (2), or subsection (3), by another agency.

139 (c) Commodities or contractual services available only
 140 from a single source may be excepted from the competitive-
 141 solicitation requirements. When an agency believes that
 142 commodities or contractual services are available only from a
 143 single source, the agency shall electronically post, in a form
 144 prescribed by the department, a description of the commodities
 145 or contractual services sought for a period of at least 7
 146 business days. The description must include a request that
 147 prospective vendors provide information regarding their ability
 148 to supply the commodities or contractual services described. If
 149 it is determined in writing by the agency, after reviewing any
 150 information received from prospective vendors, that the
 151 commodities or contractual services are available only from a
 152 single source, the agency shall:

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

158 2. Request approval from the department for the single-
 159 source purchase, if the amount of the contract exceeds the
 160 threshold amount provided in s. 287.017 for CATEGORY FOUR. The
 161 agency shall initiate its request for approval in a form
 162 prescribed by the department, which request may be
 163 electronically transmitted. The failure of the department to
 164 approve or disapprove the agency's request for approval within
 165 21 days after receiving such request shall constitute prior
 166 approval of the department. If the department approves the

167 agency's request, the agency shall provide notice of its
 168 intended decision to enter a single-source contract in the
 169 manner specified in s. 120.57(3).

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

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

186 (e)(f) The following contractual services and commodities
 187 are not subject to the competitive-solicitation requirements of
 188 this section:

- 189 1. Artistic services.
- 190 2. Academic program reviews.
- 191 3. Lectures by individuals.
- 192 4. ~~Auditing services.~~

193 4.5- Legal services, including attorney, paralegal, expert
 194 witness, appraisal, or mediator services.

195 ~~6. Health services involving examination, diagnosis,~~
 196 ~~treatment, prevention, medical consultation, or administration.~~

197 ~~7. Services provided to persons with mental or physical~~
 198 ~~disabilities by not-for-profit corporations which have obtained~~
 199 ~~exemptions under the provisions of s. 501(c)(3) of the United~~
 200 ~~States Internal Revenue Code or when such services are governed~~
 201 ~~by the provisions of Office of Management and Budget Circular A-~~
 202 ~~122. However, in acquiring such services, the agency shall~~
 203 ~~consider the ability of the vendor, past performance,~~
 204 ~~willingness to meet time requirements, and price.~~

205 ~~8. Medicaid services delivered to an eligible Medicaid~~
 206 ~~recipient by a health care provider who has not previously~~
 207 ~~applied for and received a Medicaid provider number from the~~
 208 ~~Agency for Health Care Administration. However, this exception~~
 209 ~~shall be valid for a period not to exceed 90 days after the date~~
 210 ~~of delivery to the Medicaid recipient and shall not be renewed~~
 211 ~~by the agency.~~

212 ~~9. Family placement services.~~

213 ~~10. Prevention services related to mental health,~~
 214 ~~including drug abuse prevention programs, child abuse prevention~~
 215 ~~programs, and shelters for runaways, operated by not-for-profit~~
 216 ~~corporations. However, in acquiring such services, the agency~~
 217 ~~shall consider the ability of the vendor, past performance,~~
 218 ~~willingness to meet time requirements, and price.~~

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

221 ~~5.12.~~ Contracts entered into pursuant to s. 337.11.

222 6.13. Services or commodities provided by governmental
 223 agencies.

224 ~~14. Voter education activities of the Department of State~~
 225 ~~or the supervisors of elections funded by Specific Appropriation~~
 226 ~~2871H of the 2004-2005 General Appropriations Act, either~~
 227 ~~individually or in the aggregate or with their respective~~
 228 ~~professional associations. This subparagraph expires July 1,~~
 229 ~~2005.~~

230 7.(g) Continuing education events or programs that are
 231 offered to the general public and for which fees have been
 232 collected that pay all expenses associated with the event or
 233 program ~~are exempt from requirements for competitive~~
 234 ~~solicitation.~~

235 (14)(a) Contracts for commodities or contractual services
 236 may be renewed for a period that may not exceed 3 years ~~or the~~
 237 ~~term of the original contract, whichever period is longer.~~
 238 Renewal of a contract for commodities or contractual services
 239 shall be in writing and shall be subject to the same terms and
 240 conditions set forth in the initial contract. If the commodity
 241 or contractual service is purchased as a result of the
 242 solicitation of bids, proposals, or replies, the price of the
 243 commodity or contractual service to be renewed shall be
 244 specified in the bid, proposal, or reply. A renewal contract may
 245 not include any compensation for costs associated with the
 246 renewal. Renewals shall be contingent upon satisfactory
 247 performance evaluations by the agency and subject to the
 248 availability of funds. Exceptional purchase contracts pursuant
 249 to paragraphs (5)(a) and (c) may not be renewed.

250 (b) The term of a contract shall not exceed 5 years,
 251 including any extensions and renewal periods. ~~Notwithstanding~~
 252 ~~paragraph (a), the Department of Children and Family Services~~
 253 ~~may enter into agreements, not to exceed 20 years, with a~~
 254 ~~private provider to finance, design, and construct a forensic~~
 255 ~~treatment facility, as defined in s. 916.106(8), of at least 200~~
 256 ~~beds and to operate all aspects of daily operations within the~~
 257 ~~forensic treatment facility. The selected contractor is~~
 258 ~~authorized to sponsor the issuance of tax exempt certificates of~~
 259 ~~participation or other securities to finance the project, and~~
 260 ~~the state is authorized to enter into a lease purchase agreement~~
 261 ~~for the forensic treatment facility. This paragraph expires July~~
 262 ~~1, 2006.~~

263 ~~(25) For the 2005-2006 fiscal year only, notwithstanding~~
 264 ~~any specific provision of this chapter or chapter 255 to the~~
 265 ~~contrary, the Department of Management Services is authorized to~~
 266 ~~issue an invitation to negotiate to contract for 384 additional~~
 267 ~~beds for expansion at the Gadsden Correctional Facility to house~~
 268 ~~medium custody female inmates and for 235 additional beds for~~
 269 ~~expansion at the Bay Correctional Facility and 235 additional~~
 270 ~~beds at Moore Haven Correctional Facility to house medium-~~
 271 ~~custody and close-custody inmates. Any such invitation to~~
 272 ~~negotiate shall be limited to modifications of existing~~
 273 ~~contracts between the Department of Management Services and~~
 274 ~~firms currently operating private correctional facilities and~~
 275 ~~shall be for design, financing, acquisition, leasing,~~
 276 ~~construction, and operation of the additional beds. By October~~
 277 ~~1, 2005, and quarterly thereafter, the department shall report~~

278 ~~to the President of the Senate and the Speaker of the House of~~
 279 ~~Representatives on the specific activities completed and~~
 280 ~~remaining to be completed, along with timeframes for each~~
 281 ~~activity, to add the additional beds. Procurement should be~~
 282 ~~completed in a manner that allows sufficient time for the new~~
 283 ~~beds to become operational by July 2007. This subsection expires~~
 284 ~~July 1, 2006.~~

285 Section 5. Subsection (5) of section 287.058, Florida
 286 Statutes, is amended to read:

287 287.058 Contract document.--

288 (5) Unless otherwise provided in the General
 289 Appropriations Act or the substantive bill implementing the
 290 General Appropriations Act, the Chief Financial Officer may
 291 waive the requirements of this section for services which are
 292 included in s. 287.057(5) (e) ~~(f)~~.

293 Section 6. Subsection (3) of section 394.457, Florida
 294 Statutes, is amended to read:

295 394.457 Operation and administration.--

296 (3) POWER TO CONTRACT.--The department may contract to
 297 provide, and be provided with, services and facilities in order
 298 to carry out its responsibilities under this part with the
 299 following agencies: public and private hospitals; receiving and
 300 treatment facilities; clinics; laboratories; departments,
 301 divisions, and other units of state government; the state
 302 colleges and universities; the community colleges; private
 303 colleges and universities; counties, municipalities, and any
 304 other governmental unit, including facilities of the United
 305 States Government; and any other public or private entity which

306 provides or needs facilities or services. Baker Act funds for
 307 community inpatient, crisis stabilization, short-term
 308 residential treatment, and screening services must be allocated
 309 to each county pursuant to the department's funding allocation
 310 methodology. Notwithstanding the provisions of s.
 311 287.057(5)(e)~~(f)~~, contracts for community-based Baker Act
 312 services for inpatient, crisis stabilization, short-term
 313 residential treatment, and screening provided under this part,
 314 other than those with other units of government, to be provided
 315 for the department must be awarded using competitive sealed bids
 316 when the county commission of the county receiving the services
 317 makes a request to the department's district office by January
 318 15 of the contracting year. The district shall not enter into a
 319 competitively bid contract under this provision if such action
 320 will result in increases of state or local expenditures for
 321 Baker Act services within the district. Contracts for these
 322 Baker Act services using competitive sealed bids will be
 323 effective for 3 years. Services contracted for by the department
 324 may be reimbursed by the state at a rate up to 100 percent. The
 325 department shall adopt rules establishing minimum standards for
 326 such contracted services and facilities and shall make periodic
 327 audits and inspections to assure that the contracted services
 328 are provided and meet the standards of the department.

329 Section 7. Paragraph (a) of subsection (2) of section
 330 402.7305, Florida Statutes, is amended to read:

331 402.7305 Department of Children and Family Services;
 332 procurement of contractual services; contract management.--

333 (2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.--

334 (a) Notwithstanding s. 287.057(5)(e)6.~~(f)13.~~, whenever the
 335 department intends to contract with a public postsecondary
 336 institution to provide a service, the department must allow all
 337 public postsecondary institutions in this state that are
 338 accredited by the Southern Association of Colleges and Schools
 339 to bid on the contract. Thereafter, notwithstanding any other
 340 provision to the contrary, if a public postsecondary institution
 341 intends to subcontract for any service awarded in the contract,
 342 the subcontracted service must be procured by competitive
 343 procedures.

344 Section 8. Paragraph (c) of subsection (5) of section
 345 445.024, Florida Statutes, is amended to read:

346 445.024 Work requirements.--

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

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

357 Section 9. This act shall take effect July 1, 2006.