

By Senator Gaetz

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1 A bill to be entitled
2 An act relating to state contracting; amending s.
3 11.45, F.S.; conforming provisions to changes made by
4 the act; amending s. 215.971, F.S.; requiring
5 agreements funded with state or federal financial
6 assistance to include a performance measure for each
7 deliverable, to be reviewed and approved in accordance
8 with rules adopted by the Department of Financial
9 Services, and to have the contracting entity assign a
10 grants manager who is responsible for enforcing
11 performance of the agreement; amending s. 215.985,
12 F.S.; revising provisions relating to the Chief
13 Financial Officer's intergovernmental contract
14 tracking system under the Transparency Florida Act;
15 specifying the entities that are included in the
16 tracking system; requiring that exempt and
17 confidential information be redacted from contracts
18 and procurement documents posted on the system;
19 authorizing the Chief Financial Officer to make
20 available the information posted on the system to the
21 public through a secure website; repealing s.
22 216.0111, F.S., relating to a requirement that state
23 agencies report certain contract information to the
24 Department of Financial Services and transferring that
25 requirement to s. 215.985, F.S.; amending s. 287.032,
26 F.S.; dividing the responsibilities of the Department
27 of Management Services under ch. 287, F.S., with the
28 Department of Financial Services; amending s. 287.042,
29 F.S.; limiting the duties of the Department of

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30 Management Services to the procurement of commodities
31 and contractual services; directing the department to
32 develop a list of interested vendors; deleting
33 provisions requiring that the department perform
34 duties relating to procurement and contracting
35 policies and procedures; creating s. 287.044, F.S.;
36 assigning duties relating to procurement and
37 contracting policies and procedures to the Department
38 of Financial Services; requiring the department to
39 develop a list of vendors not allowed to do business
40 with the state; requiring the department to review and
41 approve contracts in accordance with rules adopted by
42 the department; providing that the department have
43 authority to waive procedures under certain
44 circumstances; providing that the department have
45 flexibility in accomplishing its duties and
46 responsibilities including the use of different
47 contracting methods on a pilot basis; amending s.
48 287.057, F.S.; revising the list of contractual
49 services and commodities that are exempt from
50 competitive solicitation to delete certain services
51 from the exemption; revising provisions prohibiting an
52 agency from dividing a solicitation; authorizing an
53 agency to purchase commodities or services through
54 another agency's contract; amending s. 287.058, F.S.;
55 requiring contracts to include a performance measure
56 for each deliverable; creating s. 287.1312, F.S.;
57 requiring certification of contract managers by the
58 Department of Financial Services for contracts of more

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59 than a certain amount; requiring the training program
60 for the certification to provide training in certain
61 areas; authorizing the department to adopt rules to
62 administer the program; amending s. 287.133, F.S.;
63 revising the definition of "department" to mean the
64 Department of Financial Services rather than the
65 Department of Management Services with respect to
66 provisions governing public entity crimes and
67 placement on the convicted vendor list; amending ss.
68 255.25, 287.012, 402.7305, 427.0135, and 946.515,
69 F.S.; conforming cross-references; providing state
70 policies with regards to procurement and requiring the
71 Chief Financial Officer to conduct a study of current
72 procurement laws pursuant to such policies; requiring
73 that the Chief Financial Officer submit a report to
74 the Legislature and Governor by a certain date on such
75 study; repealing ch. 287, F.S., on a future date;
76 providing an appropriation; providing an effective
77 date.

78
79 WHEREAS, during the 2010-2011 fiscal year, the state spent
80 nearly \$51 billion, or approximately 57 percent, of the state
81 budget on contracts and agreements for goods and services, and

82 WHEREAS, during the same fiscal year, the Department of
83 Financial Services reviewed 364 contract and grant agreements,
84 each valued at \$1 million or more, and found that 26 percent had
85 significant deficiencies in their scope of work, deliverables,
86 or performance standards, and

87 WHEREAS, if this 26 percent error rate applied to the total

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88 contractual amount spent during the fiscal year, approximately
89 \$13 billion in taxpayer dollars was obligated to poorly written
90 contracts, and

91 WHEREAS, the state does not have uniform standards for
92 state contracts which incorporate a comprehensive and precise
93 scope of work, clearly defined deliverables, and minimum
94 performance standards that include financial consequences for
95 failing to deliver goods and services, and

96 WHEREAS, the Legislature believes that there is an acute
97 need to initiate reforms that ensure that the state contracting
98 process reflects the highest ethical and fiscal standards; is
99 clear, consistent, and measurable; and is conducted in the most
100 efficient manner possible while delivering goods and services to
101 state residents, and

102 WHEREAS, the Legislature recognizes that the poor
103 management of a good contract could lead to the waste and misuse
104 of tax dollars, and

105 WHEREAS, the Legislature believes that state residents
106 deserve to receive the goods and services for which they are
107 paying, and

108 WHEREAS, the Legislature also believes that this state is a
109 business-friendly state where people doing business with the
110 state provide goods and services in good faith and deserve to
111 know what is expected of them, and

112 WHEREAS, there remains an acute need to provide greater
113 transparency and accountability in public transactions, and

114 WHEREAS, the Legislature supports additional high-level
115 training and certification of state contract managers,
116 especially as it relates to contracts valued at \$325,000 or

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117 more, and

118 WHEREAS, the Legislature believes that a thorough review of
119 the state's procurement system to evaluate its efficiency and
120 effectiveness has not been performed for many years, and

121 WHEREAS, the Legislature has determined that the Chief
122 Financial Officer should conduct an evaluation of the state
123 procurement process of the executive branch of government, and

124 WHEREAS, the Legislature fully supports promoting the
125 value, integrity, transparency, accountability of, and the
126 public confidence in, the state's procurement and contracting
127 processes, NOW, THEREFORE,

128
129 Be It Enacted by the Legislature of the State of Florida:

130
131 Section 1. Paragraphs (a) and (i) of subsection (7) of
132 section 11.45, Florida Statutes, are amended to read:

133 11.45 Definitions; duties; authorities; reports; rules.-

134 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.-

135 (a) The Auditor General must ~~shall~~ notify the Legislative
136 Auditing Committee of any local governmental entity, district
137 school board, charter school, or charter technical career center
138 that does not comply with the reporting requirements of s.
139 215.985 or s. 218.39.

140 (i) Beginning in 2012, the Auditor General shall annually
141 transmit by July 15, to the President of the Senate, the Speaker
142 of the House of Representatives, and the Department of Financial
143 Services, a list of all school districts, charter schools,
144 charter technical career centers, Florida College System
145 institutions, state universities, and water management districts

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146 that have failed to comply with the transparency requirements of
147 s. 215.985 as identified in the audit reports reviewed pursuant
148 to paragraph (b) and those conducted pursuant to subsection (2).

149 Section 2. Section 215.971, Florida Statutes, is amended to
150 read:

151 215.971 Agreements funded with federal and state
152 assistance.—

153 (1) For an agency agreement that provides state financial
154 assistance to a recipient or subrecipient, as those terms are
155 defined in s. 215.97, or that provides federal financial
156 assistance to a subrecipient, as defined by applicable United
157 States Office of Management and Budget circulars, the agreement
158 must ~~shall~~ include a provision:

159 (a) ~~(1)~~ ~~A provision~~ Specifying a scope of work that clearly
160 establishes the tasks that the recipient or subrecipient is
161 required to perform; and

162 (b) ~~(2)~~ ~~A provision~~ Dividing the agreement into quantifiable
163 units of deliverables which ~~that~~ must be received and accepted
164 in writing by the agency before payment. Each deliverable must
165 be directly related to the scope of work and ~~must~~ specify a
166 performance measure. As used in this paragraph, the term
167 "performance measure" means the required minimum level of
168 service to be performed and the criteria for evaluating the
169 successful completion of each deliverable.

170 (2) Before execution, agreements to be funded with state or
171 federal financial assistance must be submitted for review and
172 approval in accordance with rules adopted by the Department of
173 Financial Services. The review must ensure that the agreement
174 document contains a clear statement of work, quantifiable and

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175 measureable deliverables, performance measures, and financial
176 consequences for nonperformance. An agreement that does not
177 comply with this subsection may be rejected and returned to the
178 submitting agency for revision.

179 (3) For each agreement funded with federal or state
180 assistance, the contracting agency shall designate an employee
181 to function as grant manager who shall be responsible for
182 enforcing performance of the agreement terms and conditions and
183 serve as a liaison with the recipient. A grant manager who is
184 responsible for one or more agreements in excess of the
185 threshold amount provided in s. 287.017 for CATEGORY FIVE must
186 be certified under s. 287.1312. The Chief Financial Officer
187 shall establish and disseminate uniform procedures for payment
188 requests pursuant to s. 17.03(3) to ensure that services are
189 rendered in accordance with the agreement terms before the
190 agency processes an invoice for payment. The procedures must
191 include, but need not be limited to, procedures for monitoring
192 and documenting a recipient's performance, reviewing and
193 documenting all deliverables for which payment is requested by
194 the recipient, and providing written certification by the grant
195 manager of the agency's receipt of goods and services.

196 Section 3. Subsection (16) of section 215.985, Florida
197 Statutes, is amended to read:

198 215.985 Transparency in government spending.—

199 (16) The Chief Financial Officer shall establish a secure,
200 shared, intergovernmental contract tracking ~~provide public~~
201 ~~access to a state contract management system.~~

202 (a) Within 30 calendar days after executing a contract,
203 each state agency as defined in s. 216.011(1), and, effective

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204 October 1, 2013, each local governmental entity and independent
205 special district as defined in s. 218.31, each district school
206 board as described in s. 1001.32, the Board of Governors of the
207 State University System as described in s. 1001.70, and each
208 Florida College System institution board of trustees as
209 described in s. 1001.61 must post the following ~~that provides~~
210 information and documentation relating to that contract on the
211 contract tracking system: ~~contracts procured by governmental~~
212 entities.

- 213 1. The name of the contracting entities;
- 214 2. The procurement method;
- 215 3. The contract beginning and ending dates;
- 216 4. The nature or type of the commodities or services
217 purchased;
- 218 5. Applicable contract unit prices and deliverables;
- 219 6. Total compensation to be paid or received under the
220 contract;
- 221 7. All payments made to the contract vendor to date;
- 222 8. All commodities or services received from the contract
223 vendor to date;
- 224 9. Applicable contract performance measures;
- 225 10. Contract extensions or renewals, if any;
- 226 11. The justification for not using competitive
227 solicitation to procure the contract, including citation to any
228 statutory exemption or exception from competitive solicitation,
229 if applicable;
- 230 12. Electronic copies of the contract and procurement
231 documents, including any provision that may have been redacted
232 to conceal exempt or confidential information; and

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233 13. Any other information regarding the contract or the
234 procurement which may be required by the Department of Financial
235 Services.

236 ~~(a) The data collected in the system must include, but need~~
237 ~~not be limited to, the contracting agency; the procurement~~
238 ~~method; the contract beginning and ending dates; the type of~~
239 ~~commodity or service; the purpose of the commodity or service;~~
240 ~~the compensation to be paid; compliance information, such as~~
241 ~~performance metrics for the service or commodity; contract~~
242 ~~violations; the number of extensions or renewals; and the~~
243 ~~statutory authority for providing the service.~~

244 (b) Within 30 calendar days after a major modification or
245 amendment change to an existing contract, ~~or the execution of a~~
246 ~~new contract, agency procurement staff of the affected state~~
247 ~~governmental entity must shall~~ update the ~~necessary~~ information
248 described in paragraph (a) in the state contract tracking
249 management system. A major modification or amendment change to a
250 contract includes, but is not limited to, a renewal,
251 termination, or extension of the contract, or an amendment to
252 the contract as determined by the Chief Financial Officer.

253 (c) Each entity identified in paragraph (a) must redact, as
254 defined in s. 119.011, any exempt or confidential information,
255 including trade secrets as defined in s. 688.002 or s. 812.081,
256 from the contract or procurement documents before posting an
257 electronic copy of such documents on the contract tracking
258 system.

259 1. If an entity becomes aware that an electronic copy of a
260 contract or procurement document that it posted has not been
261 properly redacted, the entity must replace the electronic copy

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262 of the documents with a redacted copy.

263 2. If a party to a contract, or an authorized
264 representative thereof, discovers that an electronic copy of a
265 contract or procurement document on the system has not been
266 properly redacted, the party or representative may request the
267 entity that posted the document to redact the exempt or
268 confidential information. Upon receipt of a request in
269 compliance with this subparagraph, the entity that posted the
270 document shall redact the exempt or confidential information.

271 a. Such request must be in writing and delivered by mail,
272 facsimile, or electronic transmission, or in person to the
273 entity that posted the information. The request must identify
274 the specific document, the page numbers that include the exempt
275 or confidential information, the information that is exempt or
276 confidential, and the relevant statutory exemption. A fee may
277 not be charged for a redaction made pursuant to such request.

278 b. If necessary, a party to the contract may petition the
279 circuit court for an order directing compliance with this
280 paragraph.

281 3. The Chief Financial Officer, the Department of Financial
282 Services, or any officer, employee, or contractor thereof, is
283 not responsible for redacting exempt or confidential information
284 from an electronic copy of a contract or procurement document
285 posted by another entity on the system, and is not liable for
286 the failure of the entity to redact the exempt or confidential
287 information. The Department of Financial Services may notify the
288 posting entity if it discovers that a document posted on the
289 tracking system contains exempt or confidential information.

290 (d) Pursuant to ss. 119.01 and 119.07, the Chief Financial

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291 Officer may make information posted on the contract tracking
292 system available for viewing and downloading by the public
293 through a secure website. Unless otherwise provided by law,
294 information retrieved electronically pursuant to this paragraph
295 is not admissible in court as an authenticated document.

296 1. The Chief Financial Officer may regulate and prohibit
297 the posting of records that could facilitate identity theft or
298 fraud, such as signatures; compromise or reveal an agency
299 investigation; reveal the identity of undercover personnel;
300 reveal proprietary confidential business information or trade
301 secrets; reveal an individual's medical information; or reveal
302 any other record or information that the Chief Financial Officer
303 believes may jeopardize the health, safety, or welfare of the
304 public. However, such prohibition does not eliminate the duty of
305 an entity to provide a copy of a public record upon request. The
306 Chief Financial Officer shall use appropriate Internet security
307 measures to ensure that no person has the ability to alter or
308 modify records available on the website.

309 2. Records made available on the website, including
310 electronic copies of contracts or procurement documents, may not
311 reveal information made exempt or confidential by law. Notice of
312 the right of an affected party to request redaction of exempt or
313 confidential information pursuant to paragraph (c) must be
314 conspicuously and clearly displayed on the website. This
315 includes, but is not limited to:

- 316 a. Criminal intelligence or criminal investigative
317 information as defined in s. 119.011;
318 b. Surveillance techniques or procedures or personnel;
319 c. The identity of a confidential informant or confidential

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320 source;

321 d. The identify of undercover personnel of a criminal
322 justice agency;

323 e. A security system plan; or

324 f. Trade secret as defined in s. 688.002 or s. 812.081.

325 (e) The posting of information on the contract tracking
326 system or the provision of contract information on a website for
327 public viewing and downloading does not eliminate the duty of an
328 entity to respond to a public record request for such
329 information or to a subpoena for such information.

330 1. A request for a copy of a contract or procurement
331 document or a certified copy of a contract or procurement
332 document shall be made to the entity that is party to the
333 contract and that maintains the original documents. Such request
334 may not be made to the Chief Financial Officer or the Department
335 of Financial Services or any officer, employee, or contractor
336 thereof unless the Chief Financial Officer or the department is
337 a party to the contract.

338 2. A subpoena for a copy of a contract or procurement
339 document or certified copy of a contract or procurement document
340 must be served on the entity that is a party to the contract and
341 that maintains the original documents. The Chief Financial
342 Officer or the Department of Financial Services or any officer,
343 employee, or contractor thereof may not be served a subpoena for
344 those records unless the Chief Financial Officer or the
345 department is a party to the contract.

346 (f) The Department of Financial Services may adopt rules to
347 administer this subsection.

348 Section 4. Section 216.0111, Florida Statutes, is repealed.

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349 Section 5. Section 287.032, Florida Statutes, is amended to
350 read:

351 287.032 Departmental responsibility ~~purpose of department.~~
352 Pursuant to the administration of this chapter:

353 (1) It shall be The responsibility ~~purpose~~ of the
354 Department of Management Services is to:

355 (a)(1) To Promote efficiency, economy, and the conservation
356 of energy and coordinate ~~to effect coordination in~~ the purchase
357 of commodities and contractual services for the state.

358 ~~(2) To provide uniform commodity and contractual service~~
359 ~~procurement policies, rules, procedures, and forms for use by~~
360 ~~agencies and eligible users.~~

361 (b)(3) To Procure and distribute federal surplus tangible
362 personal property allocated to the state by the Federal
363 Government.

364 (2) The responsibility of the Department of Financial
365 Services is to:

366 (a) Provide uniform commodity and contractual service
367 procurement policies, rules, procedures, and forms for use by
368 agencies and eligible users.

369 (b) Monitor agencies with respect to compliance with
370 established policies, rules, and procedures.

371 Section 6. Section 287.042, Florida Statutes, is amended to
372 read:

373 287.042 Powers, duties, and functions of the Department of
374 Management Services.—The department is responsible for the
375 procurement of commodities and contractual services for agencies
376 and has ~~shall have~~ the following powers, duties, and functions:

377 (1)(a) To canvass all sources of supply, establish and

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378 maintain a vendor list, and contract for the purchase, lease, or
379 acquisition, including purchase by installment sales or lease-
380 purchase contracts which may provide for the payment of interest
381 on unpaid portions of the purchase price, of all commodities and
382 contractual services required by an ~~any~~ agency under this
383 chapter. A ~~Any~~ contract providing for deferred payments and the
384 payment of interest is ~~shall be~~ subject to specific rules
385 adopted by the Department of Financial Services.

386 (a) ~~(b)~~ The department shall develop a list of interested
387 vendors to be maintained by classes of commodities and
388 contractual services. The list may not be used to prequalify a
389 vendor or to exclude an interested vendor from bidding. However,
390 a vendor barred by the Chief Financial Officer pursuant to s.
391 287.044(7) may not be included on the list. The department may
392 remove from the ~~its~~ vendor list any source of supply which fails
393 to fulfill any of its duties specified in a contract with the
394 state. The department ~~It~~ may reinstate ~~any~~ such source of supply
395 if the department ~~when it~~ is satisfied that further instances of
396 default will not occur.

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

401 ~~(d) The department shall issue commodity numbers for all~~
402 ~~products of the corporation operating the correctional industry~~
403 ~~program which meet or exceed department specifications.~~

404 (c) ~~(e)~~ The department shall include the products offered by
405 the corporation operating the correctional industry program on
406 any listing prepared by the department which lists state term

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407 contracts executed by the department. The products or services
408 shall be placed on such list in a category based upon
409 specification criteria developed through a joint effort of the
410 department and the corporation and approved by the department.

411 1.~~(f)~~ The corporation may submit products and services to
412 the department for testing, analysis, and review relating to the
413 quality and cost comparability. If, after review and testing,
414 the department approves ~~of~~ the products and services, the
415 department shall give written notice ~~thereof~~ to the corporation.
416 The corporation shall pay a reasonable fee ~~charged~~ for the
417 testing of its products by the Department of Agriculture and
418 Consumer Services.

419 2. The department shall issue a commodity number for all
420 products of the corporation which meet or exceed department
421 specifications.

422 (d)~~(g)~~ The department shall include products and services
423 that are offered by a qualified nonprofit agency for the blind
424 or for the other severely handicapped ~~organized pursuant to~~
425 ~~chapter 413~~ and that have been determined to be suitable for
426 purchase pursuant to s. 413.035 on a ~~any~~ department listing of
427 state term contracts. The products and services shall be placed
428 on such list in a category based upon specification criteria
429 developed by the department in consultation with the ~~qualified~~
430 nonprofit agency.

431 (e)~~(h)~~ The department may collect fees for the use of its
432 electronic information services. The fees may be imposed on an
433 individual transaction basis or as a fixed subscription for a
434 designated period of time. At a minimum, the fees shall be
435 determined in an amount sufficient to cover the department's

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436 projected costs for ~~of~~ the services, including overhead, in
437 accordance with the policies of the department ~~of Management~~
438 ~~Services~~ for computing its administrative assessment. All fees
439 collected under this paragraph shall be deposited in the
440 Operating Trust Fund for disbursement as provided by law.

441 (2) ~~(a)~~ To establish purchasing agreements and procure state
442 term contracts for commodities and contractual services,
443 pursuant to s. 287.057, under which state agencies shall, and
444 eligible users may, make purchases pursuant to s. 287.056.

445 (a) The department may restrict purchases by ~~from some term~~
446 ~~contracts to~~ state agencies from ~~only for these~~ term contracts
447 if ~~where~~ the inclusion of other governmental entities will have
448 an adverse effect on competition or on ~~to these~~ federal
449 facilities located in this state. In such planning or
450 purchasing, the office ~~of Supplier Diversity~~ may monitor to
451 ensure that opportunities are afforded for contracting with
452 minority business enterprises. The department, for state term
453 contracts, and all agencies, for multiyear contractual services
454 or term contracts, shall explore reasonable and economical means
455 to use ~~utilize~~ certified minority business enterprises.
456 Purchases by any county, municipality, private nonprofit
457 community transportation coordinator designated pursuant to
458 chapter 427, ~~while~~ conducting business related solely to the
459 Commission for the Transportation Disadvantaged, or other local
460 public agency under the provisions in the state purchasing
461 contracts, and purchases, from the corporation operating the
462 correctional work programs, of products or services that are
463 subject to paragraph (1) (c) ~~(1) (f)~~, are exempt from the
464 competitive solicitation requirements otherwise applying to

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465 their purchases.

466 (b) As an alternative to ~~any provision in~~ s. 120.57(3)(c),
467 the department may proceed with the competitive solicitation or
468 contract award process of a term contract if ~~when~~ the secretary
469 of the department or his or her designee sets forth in writing
470 particular facts and circumstances that ~~which~~ demonstrate that
471 the delay incident to staying the solicitation or contract award
472 process would be detrimental to the interests of the state. If,
473 after the award of the ~~a~~ contract resulting from a competitive
474 solicitation in which a timely protest was received and in which
475 the state did not prevail, the contract may be canceled and
476 reawarded.

477 (c) Any person who files an action protesting a decision or
478 intended decision pertaining to contracts administered by the
479 department, a water management district, or an agency pursuant
480 to s. 120.57(3)(b) shall, at the same time, also post a bond
481 equal to 1 percent of the estimated contract amount with, and
482 payable to, the department, the water management district, or
483 the agency, as applicable ~~at the time of filing the formal~~
484 ~~written protest a bond payable to the department, the water~~
485 ~~management district, or agency in an amount equal to 1 percent~~
486 ~~of the estimated contract amount.~~ For protests of decisions or
487 intended decisions pertaining to exceptional purchases, the bond
488 must ~~shall be in an amount~~ equal ~~to~~ 1 percent of the estimated
489 contract amount for the exceptional purchase.

490 1. The estimated contract amount shall be based upon the
491 contract price submitted by the protestor or, if no contract
492 price was submitted, the department, water management district,
493 or agency shall estimate the contract amount based on factors,

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494 including, but not limited to, the price of previous or existing
495 contracts for similar commodities or contractual services, the
496 amount appropriated by the Legislature for the contract, or the
497 fair market value of similar commodities or contractual
498 services. The agency shall provide the estimated contract amount
499 to the vendor within 72 hours, excluding Saturdays, Sundays, and
500 state holidays, after the filing of the notice of protest by the
501 vendor. The estimated contract amount is not subject to protest
502 pursuant to s. 120.57(3).

503 2. The bond shall be conditioned upon the payment of all
504 costs and charges that are adjudged against the protestor in the
505 administrative hearing in which the action is brought and in any
506 subsequent appellate court proceeding.

507 3. In lieu of a bond, the department, ~~the~~ water management
508 district, or agency may, ~~in either case,~~ accept a cashier's
509 check, official bank check, or money order in the amount of the
510 bond.

511 4. If, after completion of the administrative hearing
512 process and any appellate court proceedings, the department,
513 water management district, or agency prevails, it shall recover
514 all costs and charges, which must ~~shall~~ be included in the final
515 order or judgment, excluding attorney ~~attorney's~~ fees. ~~This~~
516 ~~section shall not apply to protests filed by the Office of~~
517 ~~Supplier Diversity.~~ Upon payment of such costs and charges by
518 the protestor, the bond, cashier's check, official bank check,
519 or money order shall be returned to the protestor. If, after the
520 completion of the administrative hearing process and any
521 appellate court proceedings, the protestor prevails, the
522 protestor may ~~shall~~ recover from the department, water

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523 management district, or agency all costs and charges that are
524 ~~which shall be~~ included in the final order or judgment,
525 excluding attorney ~~attorney's~~ fees.

526 5. This paragraph does not apply to protests filed by the
527 office.

528 ~~(3) To establish a system of coordinated, uniform~~
529 ~~procurement policies, procedures, and practices to be used by~~
530 ~~agencies in acquiring commodities and contractual services,~~
531 ~~which shall include, but not be limited to:~~

532 ~~(a) Development of a list of interested vendors to be~~
533 ~~maintained by classes of commodities and contractual services.~~
534 ~~This list shall not be used to prequalify vendors or to exclude~~
535 ~~any interested vendor from bidding.~~

536 ~~(b)1. Development of procedures for advertising~~
537 ~~solicitations. These procedures must provide for electronic~~
538 ~~posting of solicitations for at least 10 days before the date~~
539 ~~set for receipt of bids, proposals, or replies, unless the~~
540 ~~department or other agency determines in writing that a shorter~~
541 ~~period of time is necessary to avoid harming the interests of~~
542 ~~the state. The Office of Supplier Diversity may consult with the~~
543 ~~department regarding the development of solicitation~~
544 ~~distribution procedures to ensure that maximum distribution is~~
545 ~~afforded to certified minority business enterprises as defined~~
546 ~~in s. 288.703.~~

547 ~~2. Development of procedures for electronic posting. The~~
548 ~~department shall designate a centralized website on the Internet~~
549 ~~for the department and other agencies to electronically post~~
550 ~~solicitations, decisions or intended decisions, and other~~
551 ~~matters relating to procurement.~~

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552 ~~(c) Development of procedures for the receipt and opening~~
553 ~~of bids, proposals, or replies by an agency. Such procedures~~
554 ~~shall provide the Office of Supplier Diversity an opportunity to~~
555 ~~monitor and ensure that the contract award is consistent with~~
556 ~~the requirements of s. 287.09451.~~

557 ~~(d) Development of procedures to be used by an agency in~~
558 ~~deciding to contract, including, but not limited to, identifying~~
559 ~~and assessing in writing project needs and requirements,~~
560 ~~availability of agency employees, budgetary constraints or~~
561 ~~availability, facility equipment availability, current and~~
562 ~~projected agency workload capabilities, and the ability of any~~
563 ~~other state agency to perform the services.~~

564 ~~(e) Development of procedures to be used by an agency in~~
565 ~~maintaining a contract file for each contract which shall~~
566 ~~include, but not be limited to, all pertinent information~~
567 ~~relating to the contract during the preparatory stages; a copy~~
568 ~~of the solicitation; documentation relating to the solicitation~~
569 ~~process; opening of bids, proposals, or replies; evaluation and~~
570 ~~tabulation of bids, proposals, or replies; and determination and~~
571 ~~notice of award of contract.~~

572 ~~(f) Development of procedures to be used by an agency for~~
573 ~~issuing solicitations that include requirements to describe~~
574 ~~commodities, services, scope of work, and deliverables in a~~
575 ~~manner that promotes competition.~~

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

578 ~~(h) Development of procedures to be used by state agencies~~
579 ~~when procuring information technology commodities and~~
580 ~~contractual services that ensure compliance with public records~~

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581 ~~requirements and records retention and archiving requirements.~~

582 ~~(4) (a) To prescribe the methods of securing competitive~~
583 ~~sealed bids, proposals, and replies. Such methods may include,~~
584 ~~but are not limited to, procedures for identifying vendors;~~
585 ~~setting qualifications; conducting conferences or written~~
586 ~~question and answer periods for purposes of responding to vendor~~
587 ~~questions; evaluating bids, proposals, and replies; ranking and~~
588 ~~selecting vendors; and conducting negotiations.~~

589 ~~(b) To prescribe procedures for procuring information~~
590 ~~technology and information technology consultant services that~~
591 ~~provide for public announcement and qualification, competitive~~
592 ~~solicitations, contract award, and prohibition against~~
593 ~~contingent fees. Such procedures are limited to information~~
594 ~~technology consultant contracts for which the total project~~
595 ~~costs, or planning or study activities, are estimated to exceed~~
596 ~~the threshold amount provided in s. 287.017, for CATEGORY TWO.~~

597 ~~(3) (5) To prescribe specific commodities and quantities to~~
598 ~~be purchased locally.~~

599 ~~(6) (a) To govern the purchase by any agency of any~~
600 ~~commodity or contractual service and to establish standards and~~
601 ~~specifications for any commodity.~~

602 ~~(4) (b) Except for the purchase of insurance, to the~~
603 ~~department may delegate to agencies the authority for the~~
604 ~~procurement of and contracting for commodities or contractual~~
605 ~~services.~~

606 ~~(7) To establish definitions and classes of commodities and~~
607 ~~contractual services. Agencies shall follow the definitions and~~
608 ~~classes of commodities and contractual services established by~~
609 ~~the department in acquiring or purchasing commodities or~~

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610 ~~contractual services. The authority of the department under this~~
611 ~~section shall not be construed to impair or interfere with the~~
612 ~~determination by state agencies of their need for, or their use~~
613 ~~of, services including particular specifications.~~

614 ~~(8) To provide any commodity and contractual service~~
615 ~~purchasing rules to the Chief Financial Officer and all agencies~~
616 ~~through an electronic medium or other means. Agencies may not~~
617 ~~approve any account or request any payment of any account for~~
618 ~~the purchase of any commodity or the procurement of any~~
619 ~~contractual service covered by a purchasing or contractual~~
620 ~~service rule except as authorized therein. The department shall~~
621 ~~furnish copies of rules adopted by the department to any county,~~
622 ~~municipality, or other local public agency requesting them.~~

623 ~~(5)-(9)~~ To require that every agency furnish information
624 relative to its commodity and contractual services purchases and
625 methods of purchasing commodities and contractual services to
626 the department when so requested.

627 ~~(6)-(10)~~ To prepare statistical data concerning the method
628 of procurement, terms, usage, and disposition of commodities and
629 contractual services by agencies. All agencies shall furnish
630 such information for this purpose to the office and to the
631 department, as the department or office may call for, but at
632 least ~~no less frequently than~~ annually, on such forms or in such
633 manner as the department may prescribe.

634 ~~(11) To establish and maintain programs for the purpose of~~
635 ~~disseminating information to government, industry, educational~~
636 ~~institutions, and the general public concerning policies,~~
637 ~~procedures, rules, and forms for the procurement of commodities~~
638 ~~and contractual services.~~

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639 (7)~~(12)~~ Except as otherwise provided in this section
640 ~~herein~~, to adopt rules necessary to carry out the purposes of
641 this section, including the authority to delegate to any agency
642 any and all of the responsibility conferred by this section,
643 retaining to the department any and all authority for
644 supervision thereof. Such purchasing of commodities and
645 procurement of contractual services by state agencies must also
646 ~~shall~~ be in strict accordance with the rules and procedures
647 prescribed by the Department of Financial Services.

648 (8)~~(13)~~ If the department determines in writing that it is
649 in the best interest of the state, to award to multiple
650 suppliers contracts for commodities and contractual services
651 established by the department for use by all agencies. Such
652 awards may be on a statewide or regional basis. If regional
653 contracts are established by the department, multiple supplier
654 awards may be based upon multiple awards for regions. Agencies
655 may award contracts to a responsible and responsive vendor on a
656 statewide or regional basis.

657 (9)~~(14)~~ To procure and distribute federal surplus tangible
658 personal property allocated to the state by the Federal
659 Government.

660 (10)~~(15)~~ To enter into joint agreements with governmental
661 agencies, as defined in s. 163.3164, for the purpose of pooling
662 funds for the purchase of commodities or information technology
663 that can be used by multiple agencies.

664 (a) Each agency that has been appropriated or has existing
665 funds for such purchase, shall, upon contract award by the
666 department, transfer their portion of the funds into the
667 department's Operating Trust Fund for payment by the department.

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668 The funds shall be transferred by the Executive Office of the
669 Governor pursuant to the agency budget amendment request
670 provisions in chapter 216.

671 (b) Agencies that sign the joint agreements are financially
672 obligated for their portion of the agreed-upon funds. If an
673 agency becomes more than 90 days delinquent in paying the funds,
674 the department shall certify to the Chief Financial Officer the
675 amount due, and the Chief Financial Officer shall transfer the
676 amount due to the Operating Trust Fund of the department from
677 any of the agency's available funds. The Chief Financial Officer
678 shall report these transfers and the reasons for the transfers
679 to the Executive Office of the Governor and the legislative
680 appropriations committees.

681 (11)~~(16)~~ To evaluate contracts let by the Federal
682 Government, another state, or a political subdivision for the
683 provision of commodities and contract services, and, if it is
684 determined in writing to be cost-effective and in the best
685 interest of the state, to enter into a written agreement
686 authorizing an agency to make purchases under such contract.

687 (12)~~(17)~~~~(a)~~ To enter into contracts pursuant to chapter 957
688 for the designing, financing, acquiring, leasing, constructing,
689 or operating of private correctional facilities. The department
690 shall enter into such ~~a contract or~~ contracts with one
691 contractor per facility ~~for the designing, acquiring, financing,~~
692 ~~leasing, constructing, and operating of that facility~~ or may, if
693 specifically authorized by the Legislature, separately contract
694 for each of ~~any~~ such services.

695 (a)~~(b)~~ The department shall also ~~To~~ manage and enforce
696 compliance with existing or future contracts entered into

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697 pursuant to chapter 957.

698 (b) The department may not delegate the responsibilities
699 conferred by this subsection.

700 Section 7. Section 287.044, Florida Statutes, is created to
701 read:

702 287.044 Powers, duties, and functions of the Department of
703 Financial Services.—The Department of Financial Services is
704 responsible for establishing and enforcing procurement and
705 contracting policies and procedures for the Department of
706 Management Services and all agencies. The Department of
707 Financial Services has the following powers, duties, and
708 functions:

709 (1) To establish a system of coordinated and uniform
710 procurement policies, procedures, and practices to be used by
711 agencies when acquiring commodities and contractual services,
712 which includes, but is not limited to:

713 (a) The development of procedures to be used by an agency
714 for issuing or advertising solicitations which include
715 requirements for the agency to describe commodities, services,
716 scope of work, and deliverables in a manner that promotes
717 competition.

718 1. Such procedures must provide for electronic posting of
719 solicitations at least 10 days before the date set for receipt
720 of bids, proposals, or replies, unless the agency determines in
721 writing that a shorter period of time is necessary to avoid
722 harming the interests of the state.

723 2. The office may consult with the department regarding the
724 development of solicitation distribution procedures to ensure
725 that maximum distribution is afforded to certified minority

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726 business enterprises as defined in s. 288.703.

727 3. The department shall designate a centralized website on
728 the Internet for the department and other agencies to
729 electronically post solicitations, decisions or intended
730 decisions, and other matters relating to procurement.

731 4. State agencies shall be prepared to provide an
732 explanation to unsuccessful bidders, if requested, of the
733 reasons for which the bidders did not win a bid, in order to
734 improve the bidders' chances for future success and encourage
735 greater competition in the marketplace.

736 (b) The development of procedures to be used by an agency
737 when issuing requests for information and requests for quotes.

738 (c) The development of procedures to be used by state
739 agencies when procuring information technology commodities and
740 contractual services which ensure compliance with public records
741 requirements and records retention and archiving requirements.

742 (d) The development of procedures for the receipt and
743 opening of bids, proposals, or replies by an agency. Such
744 procedures must provide the office an opportunity to monitor and
745 to ensure that the contract award is consistent with the
746 requirements of s. 287.09451.

747 (e) The development of procedures to be used by an agency
748 in deciding to contract, including, but not limited to,
749 identifying and assessing in writing project needs and
750 requirements, availability of agency employees, budgetary
751 availability or constraints, availability of facility equipment,
752 current and projected agency workload capabilities, and the
753 ability of another state agency to perform the services.

754 (f) The development of a methodology to calculate cost

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755 savings or cost avoidance achieved under a contract. Each agency
756 must annually report any action taken and the amount of cost
757 savings or cost avoidance which resulted from using the
758 methodology developed by the department. At a minimum, the
759 methodology should address:

760 1. The assessment of financial consequences for
761 nonperformance.

762 2. Criteria for renegotiating the contract.

763 3. Refinement of the scope of work or deliverables.

764 4. The use of additional competition during the procurement
765 process which results in awarding the contract at a lower price
766 than the previous award.

767 (g) The development of procedures for recording and
768 maintaining support documentation for a cost or price analysis
769 to be performed before the award of a contract in excess of the
770 threshold amount provided in s. 287.017 for CATEGORY FOUR. The
771 cost or price analysis shall be used to validate the
772 reasonableness of bids, proposals, or replies.

773 (h) The development of procedures to be used by state
774 agencies when entering into contracts which ensure standard
775 formats, quantifiable and measurable deliverables, performance
776 measures, and financial consequences for nonperformance.

777 (i) The development of procedures to be used by an agency
778 in maintaining a contract file for each contract which includes,
779 but is not limited to, all pertinent information relating to the
780 contract during the preparatory stages; the solicitation
781 process, including a copy of the solicitation; the opening of
782 bids, proposals, or replies; the evaluation and tabulation of
783 bids, proposals, or replies; and the determination and notice of

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784 contract award.

785 (2) To prescribe the methods of securing competitive sealed
786 bids, proposals, and replies. Such methods may include, but are
787 not limited to, procedures for identifying vendors; setting
788 qualifications; conducting conferences or written question and
789 answer periods for purposes of responding to vendor questions;
790 evaluating bids, proposals, and replies; ranking and selecting
791 vendors; and conducting negotiations.

792 (3) To prescribe procedures for procuring information
793 technology and information technology consultant services which
794 provide for public announcement and qualification, competitive
795 solicitations, the contract award, and a prohibition against
796 contingent fees. Such procedures are limited to information
797 technology consultant contracts for which the total project
798 costs, or planning or study activities, are estimated to exceed
799 the threshold amount provided in s. 287.017 for CATEGORY TWO.

800 (4) To govern the purchase by an agency of any commodity or
801 contractual service and to establish standards and
802 specifications for a commodity. The Chief Financial Officer
803 shall establish definitions and classes of commodities and
804 contractual services which agencies must adhere to in acquiring
805 or purchasing commodities or contractual services. The
806 department's authority under this section may not impair or
807 interfere with an agency's determination of its need for, or use
808 of, services that include particular specifications.

809 (5) To provide to agencies through an electronic medium or
810 other means rules for purchasing commodities and contractual
811 services. Agencies may not approve any account, or request
812 payment of any account, for the purchase of any commodity or the

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813 procurement of any contractual service covered by a purchasing
814 or contractual service rule except as authorized by such rule.
815 The department shall furnish copies of rules adopted by the
816 department to any county, municipality, or other local public
817 agency requesting them.

818 (6) To establish and maintain programs that disseminate
819 information to governmental entities, industry vendors,
820 educational institutions, and the general public concerning
821 policies, procedures, rules, and forms for the procurement of
822 commodities and contractual services.

823 (7) To establish and maintain a list of vendors that are
824 not allowed to do business with the state pursuant to ss.
825 287.132(4) and 287.133. The department may add to the list
826 vendors that are not compliant with federal or state laws, or
827 that the department determines have uncollected accounts that
828 are owed to the state.

829 (8) To review and approve contracts subject to this chapter
830 before the execution of such contracts in accordance with rules
831 adopted by the department. The review must ensure that all
832 contracting laws have been met; that the contract document
833 contains a clear statement of work, quantifiable and measureable
834 deliverables, performance measures, financial consequences for
835 nonperformance, and clear terms and conditions that protect the
836 interests of the state; that documentation is available to
837 support the contract; and that the associated costs of the
838 contract are not unreasonable or inappropriate. A contract that
839 does not comply with this subsection may be rejected and
840 returned to the submitting agency for revision.

841 (a) For contracts in excess of the threshold amount

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842 provided in s. 287.017 for CATEGORY THREE, the review must
843 include, but need not be limited to:

- 844 1. Evidence of advertising the procurement opportunity, if
845 applicable;
- 846 2. The bid, proposal, or reply itself, whether an
847 invitation to bid, request for proposals, or invitation to
848 negotiate, as applicable;
- 849 3. The preprocurement conference questions and answers;
- 850 4. Any additional documentation provided to bidders,
851 proposers, or repliers;
- 852 5. The list of bidders, proposers, or repliers solicited;
- 853 6. The evaluation instrument and process description
854 related to the contract;
- 855 7. The bid tabulation or evaluation record;
- 856 8. Documentation that supports the agency's determination
857 of vendor responsibility;
- 858 9. The successful bid, proposal, or reply in addition to
859 the unsuccessful bids, proposals, or replies;
- 860 10. Documentation that supports the selection of the
861 contractor;
- 862 11. The reasonableness of the price;
- 863 12. Verification that all statutory and regulatory
864 requirements have been met; and
- 865 13. The proposed contract.

866 (b) The department shall verify that a competitive process
867 was used if required by law and that the contract was
868 appropriately awarded on the basis of lowest price or best value
869 to a responsive and reasonable bidder, proposer, or replier. For
870 contracts not competitively awarded, the procurement record

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871 shall be reviewed for restrictive specifications and the
872 agency's justification for the noncompetitive method used in
873 awarding the contract, including justification for the selection
874 of the vendor and the reasonableness of the terms.

875 (c) The department has 90 days to make a final
876 determination regarding approval of a contract. The department
877 and the agency entering into the contract may agree to a longer
878 review period to ensure the thorough consideration of the
879 procurement process and its results.

880 (d) In order to ensure that the parties to the contract are
881 aware that a contract is not effective unless approved by the
882 department, the following language must be included in each
883 state contract or amendment to such contract:

884
885 If this contract, or an amendment to a contract, is
886 valued at or greater than \$65,000 or if the state
887 agrees to give something other than money, which
888 consideration has a value or reasonably estimated
889 value at or greater than \$35,000, the contract or
890 amendment is not valid, effective, or binding upon the
891 state unless the contract or amendment has been
892 approved by the Chief Financial Officer.

893
894 (e) Contracts and grants or grants-type contracts must be
895 treated similarly. Therefore, if a for-profit entity joins the
896 competition for a grant, normal contract rules apply even though
897 they may not be appropriate for a grant procurement.

898 (9) To waive minor deviations from current procedures in
899 order to prevent a delay in awarding an otherwise favorable

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900 contract if a vendor is not adversely affected and current law
901 is not violated. The Chief Financial Officer shall provide
902 recommendations to the Legislature to resolve such deviations,
903 where appropriate, at the next regular legislative session.

904 (10) To have flexibility in accomplishing the intent of
905 this section. If situations arise that current law does not
906 anticipate, the department may work with state agencies to use
907 different contracting methods on a pilot basis for the remainder
908 of the calendar year. The Chief Financial Officer must provide
909 recommendations to the Legislature to resolve such situations,
910 where appropriate, at the next regular legislative session.

911 Section 8. Paragraph (f) of subsection (3), subsection (9),
912 and subsection (14) of section 287.057, Florida Statutes, are
913 amended, and subsection (24) is added to that section, to read:

914 287.057 Procurement of commodities or contractual
915 services.—

916 (3) When the purchase price of commodities or contractual
917 services exceeds the threshold amount provided in s. 287.017 for
918 CATEGORY TWO, no purchase of commodities or contractual services
919 may be made without receiving competitive sealed bids,
920 competitive sealed proposals, or competitive sealed replies
921 unless:

922 (f) The following contractual services and commodities are
923 not subject to the competitive-solicitation requirements of this
924 section:

925 ~~1. Artistic services. For the purposes of this subsection,~~
926 ~~the term "artistic services" does not include advertising or~~
927 ~~typesetting. As used in this subparagraph, the term~~
928 ~~"advertising" means the making of a representation in any form~~

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929 ~~in connection with a trade, business, craft, or profession in~~
930 ~~order to promote the supply of commodities or services by the~~
931 ~~person promoting the commodities or contractual services.~~

932 ~~2. Academic program reviews if the fee for such services~~
933 ~~does not exceed \$50,000.~~

934 ~~3. Lectures by individuals.~~

935 ~~1.4.~~ Legal services, including attorney, paralegal, expert
936 witness, appraisal, or mediator services.

937 ~~2.5.a.~~ Health services involving examination, diagnosis,
938 treatment, prevention, medical consultation, or administration,
939 ~~and,~~

940 ~~b.~~ beginning January 1, 2011, health services, including,
941 but not limited to, substance abuse and mental health services,
942 involving examination, diagnosis, treatment, prevention, or
943 medical consultation, if when such services are offered to
944 eligible individuals participating in a specific program that
945 qualifies multiple providers and uses a standard payment
946 methodology. Reimbursement of administrative costs for providers
947 of services purchased in this manner are ~~shall~~ also ~~be~~ exempt.
948 For purposes of this subparagraph ~~sub-subparagraph~~, the term
949 "providers" means health professionals, health facilities, or
950 organizations that deliver or arrange for the delivery of health
951 services.

952 ~~3.6.~~ Services provided to persons with mental or physical
953 disabilities by not-for-profit corporations that ~~which~~ have
954 obtained exemptions under ~~the provisions of~~ s. 501(c)(3) of the
955 United States Internal Revenue Code or if when such services are
956 governed by the provisions of Office of Management and Budget
957 Circular A-122. However, in acquiring such services, the agency

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958 must ~~shall~~ consider the vendor's ability ~~of the vendor~~, past
959 performance, willingness to meet time requirements, and price.

960 ~~4.7.~~ Medicaid services delivered to an eligible Medicaid
961 recipient, unless the agency is directed otherwise in law.

962 ~~5.8.~~ Family placement services.

963 ~~6.9.~~ Prevention services related to mental health,
964 including drug abuse prevention programs, child abuse prevention
965 programs, and shelters for runaways, operated by not-for-profit
966 corporations. However, in acquiring such services, the agency
967 must ~~shall~~ consider the vendor's ability ~~of the vendor~~, past
968 performance, willingness to meet time requirements, and price.

969 ~~10. Training and education services provided to injured~~
970 ~~employees pursuant to s. 440.491(6).~~

971 ~~7.11.~~ Contracts entered into pursuant to s. 337.11.

972 ~~8.12.~~ Services or commodities provided by governmental
973 agencies.

974 (9) An agency may ~~shall~~ not divide the solicitation of
975 commodities or contractual services so as to avoid the
976 requirements of subsections (1)-(3) and reduce the ability of
977 businesses to openly compete. For the purposes of this
978 subsection, state agencies shall consider all purchases of the
979 same commodity or service during one year to be part of a single
980 purchase.

981 (14) For each contractual services contract, the agency
982 shall designate an employee to function as contract manager who
983 shall be responsible for enforcing performance of the contract
984 terms and conditions and serve as a liaison with the contractor.
985 Each contract manager who is responsible for one or more
986 contracts in excess of the threshold amount provided under s.

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987 287.017 for CATEGORY FIVE ~~TWO~~ must be certified pursuant to s.
988 287.1312 ~~attend training conducted by the Chief Financial~~
989 ~~Officer for accountability in contracts and grant management.~~
990 The Chief Financial Officer shall establish and disseminate
991 uniform procedures pursuant to s. 17.03(3) to ensure that
992 contractual services have been rendered in accordance with the
993 contract terms before the agency processes the invoice for
994 payment. The procedures must ~~shall~~ include, but need not be
995 limited to, procedures for monitoring and documenting contractor
996 performance, reviewing and documenting all deliverables for
997 which payment is requested by vendors, and providing written
998 certification by contract managers of the agency's receipt of
999 goods and services.

1000 (24) An agency may purchase commodities or services through
1001 another agency's existing contract rather than through
1002 competitive competition if the use of such contract is in the
1003 best interest of the state.

1004 Section 9. Paragraph (e) of subsection (1) of section
1005 287.058, Florida Statutes, is amended to read:

1006 287.058 Contract document.—

1007 (1) Every procurement of contractual services in excess of
1008 the threshold amount provided in s. 287.017 for CATEGORY TWO,
1009 except for the providing of health and mental health services or
1010 drugs in the examination, diagnosis, or treatment of sick or
1011 injured state employees or the providing of other benefits as
1012 required by the provisions of chapter 440, shall be evidenced by
1013 a written agreement embodying all provisions and conditions of
1014 the procurement of such services, which shall, where applicable,
1015 include, but not be limited to, a provision:

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1016 (e) Dividing the contract into quantifiable, measurable,
1017 and verifiable units of deliverables which ~~that~~ must be received
1018 and accepted in writing by the contract manager before payment.
1019 Each deliverable must be directly related to the scope of work
1020 and specify a performance measure. As used in this paragraph,
1021 the term "performance measure" means the required minimum level
1022 of service to be performed and criteria for evaluating the
1023 successful completion of each deliverable.

1024
1025 In lieu of a written agreement, the department may authorize the
1026 use of a purchase order for classes of contractual services, if
1027 the provisions of paragraphs (a)-(i) are included in the
1028 purchase order or solicitation. The purchase order must include,
1029 but need not be limited to, an adequate description of the
1030 services, the contract period, and the method of payment. In
1031 lieu of printing the provisions of paragraphs (a)-(i) in the
1032 contract document or purchase order, agencies may incorporate
1033 the requirements of paragraphs (a)-(i) by reference.

1034 Section 10. Section 287.1312, Florida Statutes, is created
1035 to read:

1036 287.1312 Contract manager certification.-

1037 (1) The Department of Financial Services shall establish a
1038 certification program for contract and grant managers. A state
1039 employee may not manage a contract or grant agreement in excess
1040 of the threshold amount provided in s. 287.017 for CATEGORY FIVE
1041 without obtaining a valid certification from the Department of
1042 Financial Services under this section. The program must include
1043 training in the following areas:

1044 (a) Procurement and the development of contracts.

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1045 (b) Development and administration of grant agreements
1046 involving federal and state financial assistance.

1047 (c) Responsibilities of a contract manager in the
1048 management of state contracts and grant agreements.

1049 (d) Federal and state audit and reporting requirements.

1050 (e) Laws and rules relating to procurement and contract
1051 administration.

1052 (f) Any other subject matter that the Chief Financial
1053 Officer determines will promote accountability in contract and
1054 grant management.

1055 (2) The program shall provide for periodic recertification,
1056 as necessary. The Department of Financial Services shall
1057 determine course requirements, maintain information on
1058 certifications, and monitor the performance of contract and
1059 grant managers. As part of such monitoring, the department shall
1060 annually publish the results of agency manager audits and error
1061 rates related to contract and grant management on its website.

1062 (3) The Department of Financial Services may revoke a
1063 manager's certification for incompetence or conduct inconsistent
1064 with the responsibilities of contract or grant management.

1065 (4) The Department of Financial Services shall adopt rules
1066 to administer this section.

1067 Section 11. Paragraph (d) of subsection (1) of section
1068 287.133, Florida Statutes, is amended to read:

1069 287.133 Public entity crime; denial or revocation of the
1070 right to transact business with public entities.—

1071 (1) As used in this section:

1072 (d) "Department" means the Department of Financial
1073 ~~Management~~ Services.

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1074 Section 12. Paragraph (h) of subsection (3) of section
1075 255.25, Florida Statutes, is amended to read:

1076 255.25 Approval required prior to construction or lease of
1077 buildings.—

1078 (3)

1079 (h) ~~The Department of Management Services may,~~ Pursuant to
1080 s. 287.042(2)(a), the department shall procure a term contract
1081 for real estate consulting and brokerage services. A state
1082 agency may not purchase services from the contract unless the
1083 contract has been procured under s. 287.057(1) after March 1,
1084 2007, and contains the following provisions or requirements:

1085 1. Awarded brokers ~~must~~ maintain an office or presence in
1086 the market served. In awarding the contract, preference must be
1087 given to brokers who ~~that~~ are licensed in this state under
1088 chapter 475 and who ~~that~~ have 3 or more years of experience in
1089 the market served. The contract may be made with up to three
1090 tenant brokers in order to serve the marketplace in the north,
1091 central, and south areas of the state.

1092 2. Each contracted tenant broker works ~~shall work~~ under the
1093 direction, supervision, and authority of the state agency,
1094 subject to the rules governing lease procurements.

1095 3. The department provides ~~shall provide~~ training for the
1096 awarded tenant brokers concerning the rules governing the
1097 procurement of leases.

1098 4. Tenant brokers ~~must~~ comply with all applicable
1099 provisions of s. 475.278.

1100 5. Real estate consultants and tenant brokers are ~~shall be~~
1101 compensated by the state agency, subject to the provisions of
1102 the term contract, and such compensation is subject to

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1103 appropriation by the Legislature. A real estate consultant or
1104 tenant broker may not receive compensation directly from a
1105 lessor for services that are rendered under the term contract.
1106 Moneys paid by a lessor to the state agency under a facility
1107 leasing arrangement are not subject to the charges imposed under
1108 s. 215.20. All terms relating to the compensation of the real
1109 estate consultant or tenant broker must ~~shall~~ be specified in
1110 the term contract and may not be supplemented or modified by the
1111 state agency using the contract.

1112 6. The department conducts ~~shall conduct~~ periodic customer-
1113 satisfaction surveys.

1114 7. Each state agency reports ~~shall report~~ the following
1115 information to the department:

1116 a. The number of leases that adhere to the goal of the
1117 workspace-management initiative of 180 square feet per full-time
1118 employee FTE.

1119 b. The quality of space leased and the adequacy of tenant-
1120 improvement funds.

1121 c. The timeliness of lease procurement, measured from the
1122 date of the agency's request to the finalization of the lease.

1123 d. Whether cost-benefit analyses were performed before
1124 execution of the lease in order to ensure that the lease is in
1125 the best interest of the state.

1126 e. The lease costs compared to market rates for similar
1127 types and classifications of space according to the official
1128 classifications of the Building Owners and Managers Association.

1129 Section 13. Subsection (12) of section 287.012, Florida
1130 Statutes, is amended to read:

1131 287.012 Definitions.—As used in this part, the term:

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1132 (12) "Exceptional purchase" means any purchase of
1133 commodities or contractual services excepted by law or rule from
1134 the requirements for competitive solicitation, including, but
1135 not limited to, purchases from a single source; purchases upon
1136 receipt of fewer ~~less~~ than two responsive bids, proposals, or
1137 replies; purchases made by an agency, after receiving approval
1138 from the department, from a contract procured, pursuant to s.
1139 287.057(1), or by another agency; and purchases made without
1140 advertisement in the manner required under ~~by~~ s. 287.044(1)(a)
1141 ~~287.042(3)(b)~~.

1142 Section 14. Paragraph (a) of subsection (2) of section
1143 402.7305, Florida Statutes, is amended to read:

1144 402.7305 Department of Children and Family Services;
1145 procurement of contractual services; contract management.-

1146 (2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.-

1147 (a) Notwithstanding s. 287.057(3)(f)8. ~~287.057(3)(f)12.~~, if
1148 ~~whenever~~ the department intends to contract with a public
1149 postsecondary institution to provide a service, the department
1150 must allow all public postsecondary institutions in this state
1151 which ~~that~~ are accredited by the Southern Association of
1152 Colleges and Schools to bid on the contract. Thereafter,
1153 notwithstanding any other provision of law ~~to the contrary~~, if a
1154 public postsecondary institution intends to subcontract for any
1155 service awarded in the contract, the subcontracted service must
1156 be procured by competitive procedures.

1157 Section 15. Subsection (3) of section 427.0135, Florida
1158 Statutes, is amended to read:

1159 427.0135 Purchasing agencies; duties and responsibilities.-
1160 Each purchasing agency, in carrying out the policies and

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1161 procedures of the commission, shall:

1162 (3) Not procure transportation disadvantaged services
 1163 without initially negotiating with the commission, as provided
 1164 in s. 287.057(3)(f)8. ~~287.057(3)(f)12.~~, or unless otherwise
 1165 authorized by statute. If the purchasing agency, after
 1166 consultation with the commission, determines that it cannot
 1167 reach mutually acceptable contract terms with the commission,
 1168 the purchasing agency may contract for the same transportation
 1169 services provided in a more cost-effective manner and of
 1170 comparable or higher quality and standards. The Medicaid agency
 1171 shall implement this subsection in a manner consistent with s.
 1172 409.908(18) and as otherwise limited or directed by the General
 1173 Appropriations Act.

1174 Section 16. Subsection (2) of section 946.515, Florida
 1175 Statutes, is amended to read:

1176 946.515 Use of goods and services produced in correctional
 1177 work programs.—

1178 (2) A ~~No~~ similar product or service of comparable price and
 1179 quality found necessary for use by any state agency may not be
 1180 purchased from any source other than the corporation if the
 1181 corporation certifies that the product is manufactured by, or
 1182 the service is provided by, inmates and the product or service
 1183 meets the comparable performance specifications and comparable
 1184 price and quality requirements as specified under s.
 1185 287.042(1)(c) ~~287.042(1)(f)~~ or as determined by an individual
 1186 agency as provided in this section. The purchasing authority of
 1187 ~~any~~ such state agency may make reasonable determinations of
 1188 need, price, and quality with reference to products or services
 1189 available from the corporation. In the event of a dispute

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1190 between the corporation and a ~~any~~ purchasing authority based
 1191 upon price or quality under this section or s. 287.042(1)(c)
 1192 ~~287.042(1)(f)~~, either party may request a hearing with the
 1193 Department of Management Services and, if not resolved, ~~either~~
 1194 ~~party~~ may request a proceeding pursuant to ss. 120.569 and
 1195 120.57, which shall be referred to the Division of
 1196 Administrative Hearings within 60 days after such request, to
 1197 resolve any dispute under this section. A ~~No~~ party is not
 1198 entitled to any appeal pursuant to s. 120.68.

1199 Section 17. Procurement review and report.-

1200 (1) It is the policy of this state to promote the effective
 1201 procurement of goods, services, and facilities by and for the
 1202 executive branch of state government through the following:

1203 (a) Establishment of policies, procedures, and practices
 1204 that require the state to procure goods, services, and
 1205 facilities in a timely manner, of requisite quality, and at the
 1206 lowest reasonable cost, using competitive bidding to the maximum
 1207 extent possible.

1208 (b) Improvement in the quality, efficiency, economy, and
 1209 performance of organizations and personnel involved in the
 1210 procurement of goods, services, and facilities by the state.

1211 (c) Elimination of unnecessary, overlapping, or duplication
 1212 of procurement and related activities, such as in contract
 1213 administration.

1214 (d) Elimination of unnecessary or redundant requirements
 1215 placed on contractors or on officials in charge of state
 1216 procurement procedures.

1217 (e) Identification of gaps, omissions, or inconsistencies
 1218 in state laws, rules, and directives relating to state

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1219 procurement which should be brought to the attention of the
1220 Legislature.

1221 (f) Attainment of greater uniformity in and simplification
1222 of procurement procedures, whenever appropriate.

1223 (g) Coordination of the procurement policies and programs
1224 of the various state agencies, whenever possible.

1225 (h) Conformation of procurement policies and programs to
1226 other successfully established state policies and programs,
1227 whenever appropriate.

1228 (i) Minimization of the possible disruptive effects of
1229 state procurement on particular industries, areas, or
1230 occupations.

1231 (j) Improvement of training with respect to, and the
1232 understanding of, the laws and policies of the state relating to
1233 state procurement, not only within state government but on the
1234 part of organizations and individuals doing business with the
1235 state.

1236 (k) Promotion of fair dealing and equitable relationships
1237 among the parties to state contracting.

1238 (l) Promotion of economy, efficiency, and effectiveness in
1239 state procurement organizations, operations, and the uniform
1240 reporting of procurement activities by any means that the Chief
1241 Financial Officer deems beneficial and appropriate.

1242 (m) Special consideration given to the procurement laws,
1243 policies, procedures, practices, organization, staffing,
1244 leadership, and controls of the procurement processes of the
1245 Federal Government and other states.

1246 (n) Promotion of economy, efficiency, and effectiveness in
1247 procurement, contract management, and project management

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1248 operations.

1249 (2) In keeping with the policies expressed in subsection
1250 (1), the Chief Financial Officer shall review and investigate:

1251 (a) All current state laws that govern the state
1252 procurement of goods, services, and facilities;

1253 (b) The procurement policies, rules, procedures, and
1254 practices followed by the state agencies, boards, commissions,
1255 offices, and other instrumentalities of the executive branch of
1256 state government;

1257 (c) The organization and management processes involved in
1258 the state procurement of goods, services, and facilities before
1259 the award of a state procurement contract, during the
1260 solicitation of bids, the evaluation, and the negotiation of a
1261 contract, and subsequent to the award of the contract to
1262 determine the extent to which these organization and management
1263 processes facilitate the legislative policy set forth in this
1264 act; and

1265 (d) Any other areas that the Chief Financial Officer deems
1266 relevant to facilitating the policies expressed in subsection
1267 (1).

1268 (3) In order to accomplish the procurement review directed
1269 by this section, the Chief Financial Officer may:

1270 (a) Acquire information directly from the head of any state
1271 department or agency for the purpose of conducting this review.
1272 All departments and agencies shall cooperate with the Chief
1273 Financial Officer and furnish all information requested to the
1274 extent permitted by law.

1275 (b) Procure the services of experts and consultants.

1276 (c) Contract with private organizations and nonprofit

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1277 institutions to carry out studies and prepare reports to
1278 facilitate the review.

1279 (4) By December 31, 2012, the Chief Financial Officer shall
1280 submit to the Governor, the President of the Senate, and the
1281 Speaker of the House of Representatives a report of findings and
1282 recommendations for changes in statutes, rules, policies,
1283 procedures, and organization necessary to carry out the policies
1284 set forth in this act.

1285 Section 18. The Legislature recognizes the need to reform
1286 the purchasing cycle, from the development of a purchasing
1287 agreement to the payment for goods or services provided to the
1288 state. Therefore, chapter 287, Florida Statutes, is repealed
1289 effective July 30, 2014.

1290 Section 19. (1) For the 2012-2013 fiscal year, the sum of
1291 \$400,000 in nonrecurring funds is appropriated from the
1292 Administrative Trust Fund in the Department of Financial
1293 Services to contract for the Chief Financial Officer's review of
1294 the state's procurement process.

1295 (2) For the 2012-2013 fiscal year, the sum of \$400,000 in
1296 recurring funds from the General Revenue fund and full-time
1297 equivalent positions and associated salary rate of are
1298 appropriated to the Chief Financial Officer for the purpose of
1299 implementing the Chief Financial Officer's expanded contract
1300 auditing responsibilities under this act. Funds remaining
1301 unexpended or unencumbered from this appropriation as of June
1302 30, 2013, shall revert and be reappropriated for the same
1303 purpose in the 2013-2014 fiscal year.

1304 Section 20. This act shall take effect July 1, 2012.