

1 A bill to be entitled
2 An act relating to the procurement of commodities and
3 contractual services; amending s. 215.971, F.S.;
4 providing additional information that must be included
5 in an agency agreement that provides state financial
6 assistance to a recipient or subrecipient; requiring
7 each state agency to designate an employee to function
8 as a grant manager for purposes of the agreement;
9 requiring training for certain grant managers;
10 requiring the Chief Financial Officer to establish and
11 disseminate uniform procedures for grant management;
12 requiring the grant manager to report certain
13 information; requiring the Chief Financial Officer to
14 perform audits of executed grant agreements; amending
15 s. 215.985, F.S.; requiring the Chief Financial
16 Officer to establish and maintain a secure contract
17 tracking system; providing requirements for the
18 system; requiring state agencies to post certain
19 information on the contract tracking system within a
20 specified timeframe; specifying information that must
21 be posted on the contract tracking system; providing
22 that records posted on the system may not contain
23 confidential or exempt information; requiring state
24 agencies to redact confidential or exempt information
25 prior to posting records on the system; providing a
26 process for a party to the contract to request
27 redaction of confidential or exempt information;
28 providing notice requirements; providing that posting

29 | of information on the contract tracking system does
30 | not supersede the duty of a state agency to respond to
31 | a public record request; providing that a subpoena for
32 | certain contract information must be served on the
33 | state agency that is party to the contract;
34 | authorizing the Chief Financial Officer to adopt
35 | rules; defining the term "state agency"; authorizing
36 | the judicial branch, Department of Legal Affairs,
37 | Department of Agriculture and Consumer Services, and
38 | Department of Financial Services to elect to comply
39 | with the posting requirements; renaming chapter 287,
40 | F.S.; amending s. 287.012, F.S.; providing and
41 | revising definitions; amending s. 287.042, F.S.;
42 | revising powers, duties, and functions of the
43 | Department of Management Services; eliminating a duty
44 | of the department to maintain a vendor list; providing
45 | an additional circumstance under which the department
46 | may proceed with a competitive solicitation or
47 | contract award process of a term contract as an
48 | alternative to the stay of such process pursuant to a
49 | formal written protest under the Administrative
50 | Procedure Act; authorizing the department to lead or
51 | enter into joint agreements with governmental entities
52 | for the purchase of commodities or contractual
53 | services that can be used by multiple agencies;
54 | amending s. 287.056, F.S.; eliminating provisions
55 | requiring certain inclusions in agency agreements;
56 | amending s. 287.057, F.S.; providing that contracts

57 | awarded pursuant to an invitation to bid shall be
58 | awarded to the responsible and responsive vendor that
59 | submits the lowest responsive bid; revising exceptions
60 | to the requirement that the purchase of specified
61 | commodities or contractual services be made only as a
62 | result of receiving competitive sealed bids,
63 | competitive sealed proposals, or competitive sealed
64 | replies; revising contractual services and commodities
65 | that are not subject to competitive solicitation
66 | requirements by virtue of being available only from a
67 | single source; providing that a contract for
68 | commodities or contractual services may be awarded
69 | without competition if the recipient of funds is
70 | established during the appropriations process;
71 | revising provisions relating to extension of a
72 | contract for commodities or contractual services;
73 | authorizing an agency to negotiate better pricing upon
74 | renewal of a contract; providing training requirements
75 | for contract managers responsible for contracts in
76 | excess of a specified threshold amount; providing
77 | contract manager certification for contract managers
78 | responsible for contracts in excess of a specified
79 | threshold amount; providing that the Department of
80 | Management Services is responsible for establishing
81 | and disseminating the requirements for certification
82 | of a contract manager; providing that training will be
83 | conducted jointly by the Department of Management
84 | Services and the Department of Financial Services;

85 providing training guidelines and requirements;
86 requiring the department, in consultation with the
87 Chief Financial Officer to maintain a program for
88 online procurement of commodities and contractual
89 services; amending s. 287.0571, F.S.; revising
90 nonapplicability of a business case to outsource;
91 amending s. 287.058, F.S.; defining the term
92 "performance measure"; revising references within
93 provisions relating to purchase orders used in lieu of
94 written agreements for classes of contractual
95 services; revising terminology; amending s. 287.076,
96 F.S.; providing that Project Management Professionals
97 training for personnel involved in managing
98 outsourcings and negotiations is subject to annual
99 appropriations; creating s. 287.136, F.S.; requiring
100 the Chief Financial Officer to perform audits of
101 executed contracts; creating reporting requirements;
102 amending ss. 16.0155, 283.33, 394.457, 402.7305,
103 409.9132, 427.0135, 445.024, 627.311, 627.351,
104 765.5155, and 893.055, F.S.; conforming cross-
105 references; providing effective dates.

106
107 Be It Enacted by the Legislature of the State of Florida:

108
109 Section 1. Section 215.971, Florida Statutes, is amended
110 to read:

111 215.971 Agreements funded with federal and state
112 assistance.—

113 (1) For an agency agreement that provides state financial
114 assistance to a recipient or subrecipient, as those terms are
115 defined in s. 215.97, or that provides federal financial
116 assistance to a subrecipient, as defined by applicable United
117 States Office of Management and Budget circulars, the agreement
118 must ~~shall~~ include the following:

119 (a) ~~(1)~~ A provision specifying a scope of work that clearly
120 establishes the tasks that the recipient or subrecipient is
121 required to perform. ~~;~~ ~~and~~

122 (b) ~~(2)~~ A provision dividing the agreement into
123 quantifiable units of deliverables that must be received and
124 accepted in writing by the agency before payment. Each
125 deliverable must be directly related to the scope of work and
126 ~~must~~ specify the required minimum level of service to be
127 performed and the criteria for evaluating the successful
128 completion of each deliverable.

129 (c) A provision specifying the financial consequences that
130 apply if the recipient or subrecipient fails to perform the
131 minimum level of service required by the agreement. The
132 provision can be excluded from the agreement only if financial
133 consequences are prohibited by the federal agency awarding the
134 grant. Funds refunded to a state agency from a recipient or
135 subrecipient for failure to perform as required under the
136 agreement may be expended only in direct support of the program
137 from which the agreement originated.

138 (d) A provision specifying that a recipient or
139 subrecipient of federal or state financial assistance may expend

140 funds only for allowable costs resulting from obligations
141 incurred during the specified agreement period.

142 (e) A provision specifying that any balance of unobligated
143 funds which has been advanced or paid must be refunded to the
144 state agency.

145 (f) A provision specifying that any funds paid in excess
146 of the amount to which the recipient or subrecipient is entitled
147 under the terms and conditions of the agreement must be refunded
148 to the state agency.

149 (g) Any additional information required pursuant to s.
150 215.97.

151 (2) For each agreement funded with federal or state
152 financial assistance, the state agency shall designate an
153 employee to function as a grant manager who shall be responsible
154 for enforcing performance of the agreement's terms and
155 conditions and who shall serve as a liaison with the recipient
156 or subrecipient.

157 (a) Each grant manager who is responsible for agreements
158 in excess of the threshold amount for CATEGORY TWO under s.
159 287.017 must complete the training and become a certified
160 contract manager as provided under s. 287.057(14).

161 (b) The Chief Financial Officer shall establish and
162 disseminate uniform procedures for grant management pursuant to
163 s. 17.03(3) to ensure that services have been rendered in
164 accordance with agreement terms before the agency processes an
165 invoice for payment. The procedures must include, but need not
166 be limited to, procedures for monitoring and documenting
167 recipient or subrecipient performance, reviewing and documenting

168 all deliverables for which payment is requested by the recipient
169 or subrecipient, and providing written certification by the
170 grant manager of the agency's receipt of goods and services.

171 (c) The grant manager shall reconcile and verify all funds
172 received against all funds expended during the grant agreement
173 period and produce a final reconciliation report. The final
174 report must identify any funds paid in excess of the
175 expenditures incurred by the recipient or subrecipient.

176 (3) After the execution of a grant agreement, the Chief
177 Financial Officer shall perform audits of the executed state and
178 federal grant agreement documents and grant manager's records in
179 order to ensure that adequate internal controls are in place for
180 complying with the terms and conditions of such agreements and
181 for validation and receipt of goods and services.

182 (a) At the conclusion of the audit, the Chief Financial
183 Officer's designee shall discuss the audit and potential
184 findings with the official whose office is subject to audit. The
185 final audit report shall be submitted to the agency head.

186 (b) Within 30 days after the receipt of the final audit
187 report, the agency head shall submit to the Chief Financial
188 Officer or designee, his or her written statement of explanation
189 or rebuttal concerning findings requiring corrective action,
190 including corrective action to be taken to preclude a
191 recurrence.

192 Section 2. Subsection (16) of section 215.985, Florida
193 Statutes, is amended to read:

194 215.985 Transparency in government spending.—

195 (16) The Chief Financial Officer shall establish and
 196 maintain a secure, contract tracking ~~provide public access to a~~
 197 ~~state contract management~~ system available for viewing and
 198 downloading by the public through a secure website. The Chief
 199 Financial Officer shall use appropriate Internet security
 200 measures to ensure that no person has the ability to alter or
 201 modify records available on the website ~~that provides~~
 202 ~~information and documentation relating to contracts procured by~~
 203 ~~governmental entities.~~

204 (a) Within 30 calendar days after executing a contract,
 205 each state agency must post the following information relating
 206 to that contract on the contract tracking system:

- 207 1. The names of the contracting entities;
- 208 2. The procurement method;
- 209 3. The contract beginning and ending dates;
- 210 4. The nature or type of the commodities or services
 211 purchased;
- 212 5. Applicable contract unit prices and deliverables;
- 213 6. Total compensation to be paid or received under the
 214 contract;
- 215 7. All payments made to the contractor to date;
- 216 8. Applicable contract performance measures; and
- 217 9. Electronic copies of the contract that have been
 218 redacted to exclude confidential or exempt information ~~The data~~
 219 ~~collected in the system must include, but need not be limited~~
 220 ~~to, the contracting agency; the procurement method; the contract~~
 221 ~~beginning and ending dates; the type of commodity or service;~~
 222 ~~the purpose of the commodity or service; the compensation to be~~

223 ~~paid; compliance information, such as performance metrics for~~
224 ~~the service or commodity; contract violations; the number of~~
225 ~~extensions or renewals; and the statutory authority for~~
226 ~~providing the service.~~

227 (b) Within 30 days after an amendment ~~a major change~~ to an
228 existing contract, ~~or the execution of a new contract,~~ agency
229 ~~procurement staff of the~~ state agency that is a party to the
230 contract must ~~affected state governmental entity shall~~ update
231 the ~~necessary~~ information described in paragraph (a) in the
232 state contract tracking management system. An amendment ~~A major~~
233 ~~change~~ to a contract includes, but is not limited to, a renewal,
234 termination, or extension of the contract or any modification ~~an~~
235 ~~amendment~~ to the terms of the contract.

236 (c) By January 1, 2014, each state agency must post to the
237 contract tracking system the information required in paragraph
238 (a) for each existing contract that was executed more than 30
239 calendar days prior to July 1, 2013.

240 (d)1. Records made available on the contract tracking
241 system may not reveal information made confidential or exempt by
242 law.

243 2. Each state agency that is a party to a contract must
244 redact any confidential or exempt information from the contract
245 before posting an electronic copy on the contract tracking
246 system. If a state agency that is a party to the contract
247 becomes aware that an electronic copy of a contract has been
248 posted that has not been properly redacted, such state agency
249 must immediately notify the Chief Financial Officer and must
250 immediately remove the contract from the contract tracking

251 system. Within seven business days, the state agency must post a
252 properly redacted copy of the contract on the contract tracking
253 system.

254 3.a. If a party to a contract, or an authorized
255 representative thereof, discovers that an electronic copy of a
256 contract has been posted to the contract tracking system that
257 has not been properly redacted, the party or representative may
258 request the state agency that is a party to the contract to
259 redact the confidential or exempt information. Upon receipt of
260 the request, such state agency shall redact the confidential or
261 exempt information.

262 b. A request to redact confidential or exempt information
263 must be made in writing and delivered by mail, facsimile, or
264 electronic transmission, or in person to the state agency that
265 is a party to the contract. The request must identify the
266 specific document, the page numbers that include the
267 confidential or exempt information, the information that is
268 confidential or exempt, and the applicable statutory exemption.
269 A fee may not be charged for a redaction made pursuant to such
270 request.

271 4. The contract tracking system must display a notice of
272 the right of an affected party to request redaction of
273 confidential or exempt information contained on the system.

274 5.a. The Chief Financial Officer, the Department of
275 Financial Services, or any officer, employee, or contractor
276 thereof, is not responsible for redacting confidential or exempt
277 information from an electronic copy of a contract posted by
278 another state agency on the system.

279 b. The Chief Financial Officer, the Department of
280 Financial Services, or any officer, employee, or contractor
281 thereof, is not liable for the failure of a state agency to
282 redact the confidential or exempt information.

283 (e)1. The posting of information on the contract tracking
284 system or the provision of contract information on a website for
285 public viewing and downloading does not supersede the duty of a
286 state agency to respond to a public record request for such
287 information or to a subpoena for such information.

288 2. A request for a copy of a contract or certified copy of
289 a contract shall be made to the state agency that is party to
290 the contract. Such request may not be made to the Chief
291 Financial Officer or the Department of Financial Services or any
292 officer, employee, or contractor thereof, unless the Chief
293 Financial Officer or the department is a party to the contract.

294 3. A subpoena for a copy of a contract or certified copy
295 of a contract must be served on the state agency that is a party
296 to the contract and that maintains the original documents. The
297 Chief Financial Officer or the Department of Financial Services
298 or any officer, employee, or contractor thereof may not be
299 served a subpoena for those records unless the Chief Financial
300 Officer or the department is a party to the contract.

301 (f) The Chief Financial Officer may adopt rules to
302 administer this subsection.

303 (g) For purposes of this subsection, the term "state
304 agency" means a state agency as defined in s. 216.011, excluding
305 the judicial branch, the Department of Legal Affairs, the
306 Department of Agriculture and Consumer Services, and the

307 Department of Financial Services. However, the judicial branch,
308 the Department of Legal Affairs, the Department of Agriculture
309 and Consumer Services, and the Department of Financial Services
310 may elect to comply with the provisions of this subsection in
311 whole or in part.

312 Section 3. Chapter 287, Florida Statutes, is renamed as
313 "Procurement of Commodities and Contractual Services."

314 Section 4. Subsections (4), (5), (10), and (13) through
315 (28) of section 287.012, Florida Statutes, are amended to read:

316 287.012 Definitions.—As used in this part, the term:

317 (4) "Best value" means the highest overall value to the
318 state based on ~~objective~~ factors that include, but are not
319 limited to, price, quality, design, and workmanship.

320 (5) "Commodity" means any of the various supplies,
321 materials, goods, merchandise, food, equipment, information
322 technology, and other personal property, including a mobile
323 home, trailer, or other portable structure with floor space of
324 less than 5,000 square feet, purchased, leased, or otherwise
325 contracted for by the state and its agencies. "Commodity" also
326 includes interest on deferred-payment commodity contracts
327 approved pursuant to s. 287.063 entered into by an agency for
328 the purchase of other commodities. However, commodities
329 purchased for resale are excluded from this definition. Printing
330 of publications shall be considered a commodity when procured
331 ~~let upon contract~~ pursuant to s. 283.33, whether purchased for
332 resale or not.

333 (10) "Electronic posting" or "electronically post" means
334 the noticing of solicitations, agency decisions or intended

335 decisions, or other matters relating to procurement, on a
 336 centralized Internet website designated by the department for
 337 this purpose, in the manner and form required by s.
 338 120.57(3) (a).

339 (13) "Extension" means an increase in the time allowed for
 340 the contract period ~~due to circumstances which, without fault of~~
 341 ~~either party, make performance impracticable or impossible, or~~
 342 ~~which prevent a new contract from being executed, with or~~
 343 ~~without a proportional increase in the total dollar amount, with~~
 344 ~~any increase to be based on the method and rate previously~~
 345 ~~established in the contract.~~

346 (14) "Governmental entity" means a political subdivision
 347 or agency of this state or of any state of the United States,
 348 including, but not limited to, state government, county, city,
 349 school district, nonprofit public university or college, single-
 350 purpose or multipurpose special district, single-purpose or
 351 multipurpose public authority, metropolitan or consolidated
 352 government, separate legal entity or administrative entity, or
 353 any agency of the Federal Government.

354 ~~(15)~~(14) "Information technology" has the meaning ascribed
 355 in s. 282.0041.

356 ~~(16)~~(15) "Invitation to bid" means a written or
 357 electronically posted solicitation for competitive sealed bids.

358 ~~(17)~~(16) "Invitation to negotiate" means a written or
 359 electronically posted solicitation for competitive sealed
 360 replies to select one or more vendors with which to commence
 361 negotiations for the procurement of commodities or contractual
 362 services.

363 (18)~~(17)~~ "Minority business enterprise" has the meaning
364 ascribed in s. 288.703.

365 (19)~~(18)~~ "Office" means the Office of Supplier Diversity
366 of the Department of Management Services.

367 (20)~~(19)~~ "Outsource" means the process of contracting with
368 a vendor to provide a service as defined in s. 216.011(1)(f), in
369 whole or in part, or an activity as defined in s.
370 216.011(1)(rr), while a state agency retains the responsibility
371 and accountability for the service or activity and there is a
372 transfer of management responsibility for the delivery of
373 resources and the performance of those resources.

374 (21)~~(20)~~ "Renewal" means contracting with the same
375 contractor for an additional contract period after the initial
376 contract period, only if pursuant to contract terms specifically
377 providing for such renewal.

378 (22)~~(21)~~ "Request for information" means a written or
379 electronically posted request made by an agency to vendors for
380 information concerning commodities or contractual services.
381 Responses to these requests are not offers and may not be
382 accepted by the agency to form a binding contract.

383 (23)~~(22)~~ "Request for proposals" means a written or
384 electronically posted solicitation for competitive sealed
385 proposals.

386 (24)~~(23)~~ "Request for a quote" means an electronic, oral
387 or written request for written pricing or services information
388 from a state term contract vendor for commodities or contractual
389 services available on a state term contract from that vendor.

390 (25)~~(24)~~ "Responsible vendor" means a vendor who has the
 391 capability in all respects to fully perform the contract
 392 requirements and the integrity and reliability that will assure
 393 good faith performance.

394 (26)~~(25)~~ "Responsive bid," "responsive proposal," or
 395 "responsive reply" means a bid, or proposal, or reply submitted
 396 by a responsive and responsible vendor that conforms in all
 397 material respects to the solicitation.

398 (27)~~(26)~~ "Responsive vendor" means a vendor that has
 399 submitted a bid, proposal, or reply that conforms in all
 400 material respects to the solicitation.

401 (28)~~(27)~~ "State term contract" means a term contract that
 402 is competitively procured by the department pursuant to s.
 403 287.057 and that is used by agencies and eligible users pursuant
 404 to s. 287.056.

405 (29)~~(28)~~ "Term contract" means an indefinite quantity
 406 contract to furnish commodities or contractual services during a
 407 defined period.

408 Section 5. Paragraph (a) of subsection (1), paragraph (b)
 409 of subsection (2), and subsections (8) and (15) of section
 410 287.042, Florida Statutes, are amended to read:

411 287.042 Powers, duties, and functions.—The department
 412 shall have the following powers, duties, and functions:

413 (1) (a) To canvass all sources of supply, ~~establish and~~
 414 ~~maintain a vendor list,~~ and contract for the purchase, lease, or
 415 acquisition, including purchase by installment sales or lease-
 416 purchase contracts which may provide for the payment of interest
 417 on unpaid portions of the purchase price, of all commodities and

418 contractual services required by any agency under this chapter.
419 Any contract providing for deferred payments and the payment of
420 interest shall be subject to specific rules adopted by the
421 department.

422 (2)

423 (b) As an alternative to any provision in s. 120.57(3)(c),
424 the department may proceed with the competitive solicitation or
425 contract award process of a term contract in the following
426 circumstances:

427 1. When the Secretary of Management Services ~~the~~
428 ~~department~~ or his or her designee sets forth in writing
429 particular facts and circumstances that ~~which~~ demonstrate that
430 the delay incident to staying the solicitation or contract award
431 process would be detrimental to the interests of the state.
432 After the award of a contract resulting from a competitive
433 solicitation in which a timely protest was received and in which
434 the state did not prevail, the contract may be canceled and
435 reawarded.

436 2. When a vendor protests a notice of intent to award a
437 contract to multiple vendors, the intended award may proceed
438 unless the protesting vendor submits to the department in
439 writing particular facts and circumstances that demonstrate a
440 reasonable basis for protesting the award to the other vendor or
441 vendors. The Secretary of Management Services or his or her
442 designee shall determine in writing whether the vendor has
443 demonstrated a sufficient basis for stay of the intended award.
444 If the vendor prevails in the protest, the vendor shall be added

445 to the contract with the same terms and conditions as the other
446 awarded vendors.

447 (8) To provide any commodity and contractual service
448 purchasing rules to the Chief Financial Officer and all agencies
449 electronically or through ~~an electronic medium or~~ other means.
450 Agencies may not approve any account or request any payment of
451 any account for the purchase of any commodity or the procurement
452 of any contractual service covered by a purchasing or
453 contractual service rule except as authorized therein. The
454 department shall furnish copies of rules adopted by the
455 department to any county, municipality, or other local public
456 agency requesting them.

457 (15) To lead or enter into joint agreements with
458 governmental entities ~~agencies, as defined in s. 163.3164, for~~
459 ~~the purpose of pooling funds~~ for the purchase of commodities or
460 contractual services ~~information technology~~ that can be used by
461 multiple agencies.

462 (a) Each agency that has been appropriated or has existing
463 funds for such purchase, shall, upon contract award by the
464 department, transfer their portion of the funds into the
465 department's Operating Trust Fund for payment by the department.
466 The funds shall be transferred by the Executive Office of the
467 Governor pursuant to the agency budget amendment request
468 provisions in chapter 216.

469 (b) Agencies that sign the joint agreements are
470 financially obligated for their portion of the agreed-upon
471 funds. If an agency becomes more than 90 days delinquent in
472 paying the funds, the department shall certify to the Chief

473 Financial Officer the amount due, and the Chief Financial
474 Officer shall transfer the amount due to the Operating Trust
475 Fund of the department from any of the agency's available funds.
476 The Chief Financial Officer shall report these transfers and the
477 reasons for the transfers to the Executive Office of the
478 Governor and the legislative appropriations committees.

479 Section 6. Subsection (1) of section 287.056, Florida
480 Statutes, is amended to read:

481 287.056 Purchases from purchasing agreements and state
482 term contracts.—

483 (1) Agencies shall, and eligible users may, purchase
484 commodities and contractual services from purchasing agreements
485 established and state term contracts procured, pursuant to s.
486 287.057, by the department. ~~Each agency agreement made under
487 this subsection shall include:~~

488 ~~(a) A provision specifying a scope of work that clearly
489 establishes all tasks that the contractor is required to
490 perform.~~

491 ~~(b) A provision dividing the contract into quantifiable,
492 measurable, and verifiable units of deliverables that must be
493 received and accepted in writing by the contract manager before
494 payment. Each deliverable must be directly related to the scope
495 of work and specify the required minimum level of service to be
496 performed and the criteria for evaluating the successful
497 completion of each deliverable.~~

498 Section 7. Paragraph (a) of subsection (1) and subsections
499 (3), (10), (12), (13), (16), and (22) of section 287.057,
500 Florida Statutes, are amended to read:

501 287.057 Procurement of commodities or contractual
502 services.—

503 (1) The competitive solicitation processes authorized in
504 this section shall be used for procurement of commodities or
505 contractual services in excess of the threshold amount provided
506 for CATEGORY TWO in s. 287.017. Any competitive solicitation
507 shall be made available simultaneously to all vendors, must
508 include the time and date for the receipt of bids, proposals, or
509 replies and of the public opening, and must include all
510 contractual terms and conditions applicable to the procurement,
511 including the criteria to be used in determining acceptability
512 and relative merit of the bid, proposal, or reply.

513 (a) Invitation to bid.—The invitation to bid shall be used
514 when the agency is capable of specifically defining the scope of
515 work for which a contractual service is required or when the
516 agency is capable of establishing precise specifications
517 defining the actual commodity or group of commodities required.

518 1. All invitations to bid must include:

519 a. A detailed description of the commodities or
520 contractual services sought; and

521 b. If the agency contemplates renewal of the contract, a
522 statement to that effect.

523 2. Bids submitted in response to an invitation to bid in
524 which the agency contemplates renewal of the contract must
525 include the price for each year for which the contract may be
526 renewed.

527 3. Evaluation of bids shall include consideration of the
528 total cost for each year of the contract, including renewal
529 years, as submitted by the vendor.

530 4. The contract shall be awarded to the responsible and
531 responsive vendor that submits the lowest responsive bid.

532 (3) When the purchase price of commodities or contractual
533 services exceeds the threshold amount provided in s. 287.017 for
534 CATEGORY TWO, no purchase of commodities or contractual services
535 may be made without receiving competitive sealed bids,
536 competitive sealed proposals, or competitive sealed replies
537 unless:

538 (a) The agency head determines in writing that an
539 immediate danger to the public health, safety, or welfare or
540 other substantial loss to the state requires emergency action.
541 After the agency head signs ~~makes such~~ a written determination,
542 the agency may proceed with the procurement of commodities or
543 contractual services necessitated by the immediate danger,
544 without receiving competitive sealed bids, competitive sealed
545 proposals, or competitive sealed replies. However, such
546 emergency procurement shall be made by obtaining pricing
547 information from at least two prospective vendors, which must be
548 retained in the contract file, unless the agency determines in
549 writing that the time required to obtain pricing information
550 will increase the immediate danger to the public health, safety,
551 or welfare or other substantial loss to the state. The agency
552 shall furnish copies of all written determinations ~~certified~~
553 ~~under oath~~ and any other documents relating to the emergency
554 action to the department. A copy of the written statement shall

555 | be furnished to the Chief Financial Officer with the voucher
556 | authorizing payment. The individual purchase of personal
557 | clothing, shelter, or supplies which are needed on an emergency
558 | basis to avoid institutionalization or placement in a more
559 | restrictive setting is an emergency for the purposes of this
560 | paragraph, and the filing with the department of such statement
561 | is not required in such circumstances. In the case of the
562 | emergency purchase of insurance, the period of coverage of such
563 | insurance shall not exceed a period of 30 days, and all such
564 | emergency purchases shall be reported to the department.

565 | (b) The purchase is made by an agency from a state term
566 | contract ~~procured~~, pursuant to this section, by the department
567 | or by an agency, after receiving approval from the department,
568 | from a contract procured, pursuant to subsection (1), by another
569 | agency.

570 | (c) Commodities or contractual services available only
571 | from a single source may be excepted from the competitive-
572 | solicitation requirements. When an agency believes that
573 | commodities or contractual services are available only from a
574 | single source, the agency shall electronically post a
575 | description of the commodities or contractual services sought
576 | for a period of at least ~~7~~ business days. The description must
577 | include a request that prospective vendors provide information
578 | regarding their ability to supply the commodities or contractual
579 | services described. If it is determined in writing by the
580 | agency, after reviewing any information received from
581 | prospective vendors, that the commodities or contractual

582 services are available only from a single source, the agency
583 shall:

584 ~~1. provide notice of its intended decision to enter a~~
585 ~~single-source purchase contract in the manner specified in s.~~
586 ~~120.57(3), if the amount of the contract does not exceed the~~
587 ~~threshold amount provided in s. 287.017 for CATEGORY FOUR.~~

588 ~~2. Request approval from the department for the single-~~
589 ~~source purchase, if the amount of the contract exceeds the~~
590 ~~threshold amount provided in s. 287.017 for CATEGORY FOUR. The~~
591 ~~agency shall initiate its request for approval in a form~~
592 ~~prescribed by the department, which request may be~~
593 ~~electronically transmitted. The failure of the department to~~
594 ~~approve or disapprove the agency's request for approval within~~
595 ~~21 days after receiving such request shall constitute prior~~
596 ~~approval of the department. If the department approves the~~
597 ~~agency's request, the agency shall provide notice of its~~
598 ~~intended decision to enter a single-source contract in the~~
599 ~~manner specified in s. 120.57(3).~~

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

605 (d)(e) Prescriptive assistive devices for the purpose of
606 medical, developmental, or vocational rehabilitation of clients
607 are excepted from competitive-solicitation requirements and
608 shall be procured pursuant to an established fee schedule or by
609 any other method which ensures the best price for the state,

610 taking into consideration the needs of the client. Prescriptive
 611 assistive devices include, but are not limited to, prosthetics,
 612 orthotics, and wheelchairs. For purchases made pursuant to this
 613 paragraph, state agencies shall annually file with the
 614 department a description of the purchases and methods of
 615 procurement.

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

619 1. Artistic services. For the purposes of this subsection,
 620 the term "artistic services" does not include advertising or
 621 typesetting. As used in this subparagraph, the term
 622 "advertising" means the making of a representation in any form
 623 in connection with a trade, business, craft, or profession in
 624 order to promote the supply of commodities or services by the
 625 person promoting the commodities or contractual services.

626 2. Academic program reviews if the fee for such services
 627 does not exceed \$50,000.

628 3. Lectures by individuals.

629 4. Legal services, including attorney, paralegal, expert
 630 witness, appraisal, or mediator services.

631 5.a. Health services involving examination, diagnosis,
 632 treatment, prevention, medical consultation, or administration.

633 b. Beginning January 1, 2011, health services, including,
 634 but not limited to, substance abuse and mental health services,
 635 involving examination, diagnosis, treatment, prevention, or
 636 medical consultation, when such services are offered to eligible
 637 individuals participating in a specific program that qualifies

638 multiple providers and uses a standard payment methodology.
639 Reimbursement of administrative costs for providers of services
640 purchased in this manner shall also be exempt. For purposes of
641 this sub-subparagraph, "providers" means health professionals,
642 health facilities, or organizations that deliver or arrange for
643 the delivery of health services.

644 6. Services provided to persons with mental or physical
645 disabilities by not-for-profit corporations which have obtained
646 exemptions under the provisions of s. 501(c)(3) of the United
647 States Internal Revenue Code or when such services are governed
648 by the provisions of Office of Management and Budget Circular A-
649 122. However, in acquiring such services, the agency shall
650 consider the ability of the vendor, past performance,
651 willingness to meet time requirements, and price.

652 7. Medicaid services delivered to an eligible Medicaid
653 recipient unless the agency is directed otherwise in law.

654 8. Family placement services.

655 9. Prevention services related to mental health, including
656 drug abuse prevention programs, child abuse prevention programs,
657 and shelters for runaways, operated by not-for-profit
658 corporations. However, in acquiring such services, the agency
659 shall consider the ability of the vendor, past performance,
660 willingness to meet time requirements, and price.

661 10. Training and education services provided to injured
662 employees pursuant to s. 440.491(6).

663 11. Contracts entered into pursuant to s. 337.11.

664 12. Services or commodities provided by governmental
665 entities ~~agencies~~.

666 13. Statewide public service announcement programs
667 provided by a Florida statewide nonprofit corporation under s.
668 501(c)(6) of the Internal Revenue Code, with a guaranteed
669 documented match of at least \$3 to \$1.

670 ~~(f)(g)~~ Continuing education events or programs that are
671 offered to the general public and for which fees have been
672 collected that pay all expenses associated with the event or
673 program are exempt from requirements for competitive
674 solicitation.

675 (10) A contract for commodities or contractual services
676 may be awarded without competition if state or federal law
677 prescribes with whom the agency must contract or if the rate of
678 payment or the recipient of the funds is established during the
679 appropriations process.

680 (12) Extension of a contract for commodities or
681 contractual services shall be in writing for a period not to
682 exceed 6 months and shall be subject to the same terms and
683 conditions set forth in the initial contract and any written
684 amendments signed by the parties. There shall be only one
685 extension of a contract unless the failure to meet the criteria
686 set forth in the contract for completion of the contract is due
687 to events beyond the control of the contractor.

688 (13) Contracts for commodities or contractual services may
689 be renewed for a period that may not exceed 3 years or the term
690 of the original contract, whichever period is longer. Renewal of
691 a contract for commodities or contractual services shall be in
692 writing and shall be subject to the same terms and conditions
693 set forth in the initial contract and any written amendments

694 signed by the parties. If the commodity or contractual service
695 is purchased as a result of the solicitation of bids, proposals,
696 or replies, the price of the commodity or contractual service to
697 be renewed shall be specified in the bid, proposal, or reply,
698 except that an agency may negotiate lower pricing. A renewal
699 contract may not include any compensation for costs associated
700 with the renewal. Renewals shall be contingent upon satisfactory
701 performance evaluations by the agency and subject to the
702 availability of funds. Exceptional purchase contracts pursuant
703 to paragraphs (3) (a) and (c) may not be renewed. With the
704 exception of subsection (10)~~(12)~~, if a contract amendment
705 results in a longer contract term or increased payments, a state
706 agency may not renew or amend a contract for the outsourcing of
707 a service or activity that has an original term value exceeding
708 the sum of \$10 million before submitting a written report
709 concerning contract performance to the Governor, the President
710 of the Senate, and the Speaker of the House of Representatives
711 at least 90 days before execution of the renewal or amendment.

712 (16) For a contract in excess of the threshold amount
713 provided in s. 287.017 for CATEGORY FOUR, the agency head shall
714 appoint:

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

719 (b) At least three persons to conduct negotiations during
720 a competitive sealed reply procurement who collectively have
721 experience and knowledge in negotiating contracts, contract

722 procurement, and the program areas and service requirements for
723 which commodities or contractual services are sought.

724 (c) When the value of a contract is in excess of \$1
725 million in any fiscal year, at least one of the persons
726 conducting negotiations must be certified as a contract
727 negotiator based upon rules adopted by the Department of
728 Management Services in order to ensure that certified contract
729 negotiators are knowledgeable about effective negotiation
730 strategies, capable of successfully implementing those
731 strategies, and involved appropriately in the procurement
732 process. At a minimum, the rules must address the qualifications
733 required for certification, the method of certification, and the
734 procedure for involving the certified negotiator. If the value
735 of a contract is in excess of \$10 million in any fiscal year, at
736 least one of the persons conducting negotiations must be a
737 Project Management Professional, as certified by the Project
738 Management Institute.

739 (22) The department, in consultation with the Chief
740 Financial Officer ~~Agency for Enterprise Information Technology~~
741 ~~and the Comptroller~~, shall maintain ~~develop~~ a program for online
742 procurement of commodities and contractual services. To enable
743 the state to promote open competition and to leverage its buying
744 power, agencies shall participate in the online procurement
745 program, and eligible users may participate in the program. Only
746 vendors prequalified as meeting mandatory requirements and
747 qualifications criteria may participate in online procurement.

748 (a) The department, ~~in consultation with the agency,~~ may
749 contract for equipment and services necessary to develop and
750 implement online procurement.

751 (b) The department, ~~in consultation with the agency,~~ shall
752 adopt rules, pursuant to ss. 120.536(1) and 120.54, to
753 administer the program for online procurement. The rules shall
754 include, but not be limited to:

755 1. Determining the requirements and qualification criteria
756 for prequalifying vendors.

757 2. Establishing the procedures for conducting online
758 procurement.

759 3. Establishing the criteria for eligible commodities and
760 contractual services.

761 4. Establishing the procedures for providing access to
762 online procurement.

763 5. Determining the criteria warranting any exceptions to
764 participation in the online procurement program.

765 (c) The department may impose and shall collect all fees
766 for the use of the online procurement systems.

767 1. The fees may be imposed on an individual transaction
768 basis or as a fixed percentage of the cost savings generated. At
769 a minimum, the fees must be set in an amount sufficient to cover
770 the projected costs of the services, including administrative
771 and project service costs in accordance with the policies of the
772 department.

773 2. If the department contracts with a provider for online
774 procurement, the department, pursuant to appropriation, shall
775 compensate the provider from the fees after the department has

776 satisfied all ongoing costs. The provider shall report
777 transaction data to the department each month so that the
778 department may determine the amount due and payable to the
779 department from each vendor.

780 3. All fees that are due and payable to the state on a
781 transactional basis or as a fixed percentage of the cost savings
782 generated are subject to s. 215.31 and must be remitted within
783 40 days after receipt of payment for which the fees are due. For
784 fees that are not remitted within 40 days, the vendor shall pay
785 interest at the rate established under s. 55.03(1) on the unpaid
786 balance from the expiration of the 40-day period until the fees
787 are remitted.

788 4. All fees and surcharges collected under this paragraph
789 shall be deposited in the Operating Trust Fund as provided by
790 law.

791 Section 8. Effective December 1, 2014, subsection (14) of
792 section 287.057, Florida Statutes, is amended to read:

793 287.057 Procurement of commodities or contractual
794 services.—

795 (14) (a) For each contractual services contract, the agency
796 shall designate an employee to function as contract manager who
797 is ~~shall be~~ responsible for enforcing performance of the
798 contract terms and conditions and serve as a liaison with the
799 contractor.

800 (b) Each contract manager who is responsible for contracts
801 in excess of the threshold amount for CATEGORY TWO must, at a
802 minimum, complete ~~attend~~ training conducted by the Chief
803 Financial Officer for accountability in contracts and grant

804 management. The Chief Financial Officer shall establish and
805 disseminate uniform procedures pursuant to s. 17.03(3) to ensure
806 that contractual services have been rendered in accordance with
807 the contract terms before the agency processes the invoice for
808 payment. The procedures shall include, but need not be limited
809 to, procedures for monitoring and documenting contractor
810 performance, reviewing and documenting all deliverables for
811 which payment is requested by vendors, and providing written
812 certification by contract managers of the agency's receipt of
813 goods and services.

814 (c) Each contract manager who is responsible for contracts
815 in excess of \$100,000 annually must complete training in
816 contract management and become a certified contract manager. The
817 department is responsible for establishing and disseminating the
818 requirements for certification, which include completing the
819 training conducted by the Chief Financial Officer for
820 accountability in contracts and grant management. Training and
821 certification must be coordinated by the department and the
822 training must be conducted jointly by the department and the
823 Department of Financial Services. Training must promote best
824 practices and procedures related to negotiating, managing, and
825 ensuring accountability in agency contracts and grant
826 agreements, which must include the use of case studies based
827 upon previous audits, contracts, and grant agreements.

828 Section 9. Paragraph (a) of subsection (3) of section
829 287.0571, Florida Statutes, is amended to read:

830 287.0571 Business case to outsource; applicability.—

831 (3) This section does not apply to:

832 (a) A procurement of commodities and contractual services
833 listed in s. 287.057(3)(d) and (e) and (21) ~~287.057(3)(e), (f),~~
834 ~~and (g) and (21)~~.

835 Section 10. Subsections (1) and (2) of section 287.058,
836 Florida Statutes, are amended to read:

837 287.058 Contract document.—

838 (1) Every procurement of contractual services in excess of
839 the threshold amount provided in s. 287.017 for CATEGORY TWO,
840 except for the providing of health and mental health services or
841 drugs in the examination, diagnosis, or treatment of sick or
842 injured state employees or the providing of other benefits as
843 required by the provisions of chapter 440, shall be evidenced by
844 a written agreement embodying all provisions and conditions of
845 the procurement of such services, which shall, where applicable,
846 include, but not be limited to, a provision:

847 (a) That bills for fees or other compensation for services
848 or expenses be submitted in detail sufficient for a proper
849 preaudit and postaudit thereof.

850 (b) That bills for any travel expenses be submitted in
851 accordance with s. 112.061. A state agency may establish rates
852 lower than the maximum provided in s. 112.061.

853 (c) Allowing unilateral cancellation by the agency for
854 refusal by the contractor to allow public access to all
855 documents, papers, letters, or other material made or received
856 by the contractor in conjunction with the contract, unless the
857 records are exempt from s. 24(a) of Art. I of the State
858 Constitution and s. 119.07(1).

859 (d) Specifying a scope of work that clearly establishes
860 all tasks the contractor is required to perform.

861 (e) Dividing the contract into quantifiable, measurable,
862 and verifiable units of deliverables that must be received and
863 accepted in writing by the contract manager before payment. Each
864 deliverable must be directly related to the scope of work and
865 specify a performance measure. As used in this paragraph,
866 performance measure means the required minimum acceptable level
867 of service to be performed and criteria for evaluating the
868 successful completion of each deliverable.

869 (f) Specifying the criteria and the final date by which
870 such criteria must be met for completion of the contract.

871 (g) Specifying that the contract may be renewed for a
872 period that may not exceed 3 years or the term of the original
873 contract, whichever period is longer, specifying the renewal
874 price for the contractual service as set forth in the bid,
875 proposal, or reply, specifying that costs for the renewal may
876 not be charged, and specifying that renewals shall be contingent
877 upon satisfactory performance evaluations by the agency and
878 subject to the availability of funds. Exceptional purchase
879 contracts pursuant to s. 287.057(3)(a) and (c) may not be
880 renewed.

881 (h) Specifying the financial consequences that the agency
882 must apply if the contractor fails to perform in accordance with
883 the contract.

884 (i) Addressing the property rights of any intellectual
885 property related to the contract and the specific rights of the
886 state regarding the intellectual property if the contractor

887 fails to provide the services or is no longer providing
 888 services.

889
 890 In lieu of a written agreement, the agency ~~department~~ may
 891 authorize the use of a purchase order for classes of contractual
 892 services, if the provisions of paragraphs (a)-(i) are included
 893 in the purchase order or solicitation. The purchase order must
 894 include, but need not be limited to, an adequate description of
 895 the services, the contract period, and the method of payment. In
 896 lieu of printing the provisions of paragraphs (a)-(c) and (g)
 897 ~~(a)-(i)~~ in the contract document or purchase order, agencies may
 898 incorporate the requirements of paragraphs (a)-(c) and (g) ~~(a)-~~
 899 ~~(i)~~ by reference.

900 (2) The written agreement shall be signed by the agency
 901 head or designee and the contractor before ~~prior to~~ the
 902 rendering of any contractual service the value of which is in
 903 excess of the threshold amount provided in s. 287.017 for
 904 CATEGORY TWO, except in the case of a valid emergency as
 905 certified by the agency head. The written statement
 906 ~~certification~~ of an emergency shall be prepared within 30 days
 907 after the contractor begins rendering the service and shall
 908 state the particular facts and circumstances which precluded the
 909 execution of the written agreement before ~~prior to~~ the rendering
 910 of the service. If the agency fails to have the contract signed
 911 by the agency head or designee and the contractor before ~~prior~~
 912 ~~to~~ rendering the contractual service, and if an emergency does
 913 not exist, the agency head shall, within ~~no later than~~ 30 days
 914 after the contractor begins rendering the service, certify the

915 specific conditions and circumstances to the department as well
 916 as describe actions taken to prevent recurrence of such
 917 noncompliance. The agency head may delegate the written
 918 statement ~~certification~~ only to other senior management agency
 919 personnel. A copy of the written statement ~~certification~~ shall
 920 be furnished to the Chief Financial Officer with the voucher
 921 authorizing payment. The department shall report repeated
 922 instances of noncompliance by an agency to the Auditor General.
 923 Nothing in this subsection shall be deemed to authorize
 924 additional compensation prohibited by s. 215.425. The
 925 procurement of contractual services shall not be divided so as
 926 to avoid the provisions of this section.

927 Section 11. Section 287.076, Florida Statutes, is amended
 928 to read:

929 287.076 Project Management Professionals training for
 930 personnel involved in managing outsourcings and negotiations;
 931 funding.—The Department of Management Services may implement a
 932 program to train state agency employees who are involved in
 933 managing outsourcings as Project Management Professionals, as
 934 certified by the Project Management Institute. Subject to annual
 935 appropriations, For the 2006-2007 fiscal year, the sum of
 936 \$500,000 in recurring funds from the General Revenue Fund is
 937 ~~appropriated to the Department of Management Services to~~
 938 ~~implement this program.~~ the Department of Management Services,
 939 in consultation with entities subject to this act, shall
 940 identify personnel to participate in this training based on
 941 requested need and ensure that each agency is represented. The

942 Department of Management Services may remit payment for this
 943 training on behalf of all participating personnel.

944 Section 12. Section 287.136, F.S., is created to read:
 945 287.136 Audit of executed contract documents.-

946 (1) After the execution of a contract, the Chief Financial
 947 Officer shall perform audits of the executed contract documents
 948 and contract manager's records to ensure that adequate internal
 949 controls are in place for complying with the terms and
 950 conditions of the contract and for the validation and receipt of
 951 goods and services.

952 (2) At the conclusion of the audit, the Chief Financial
 953 Officer's designee shall discuss the audit and potential
 954 findings with the official whose office is subject to audit. The
 955 final audit report shall be submitted to the agency head.

956 (3) Within 30 days after the receipt of the final audit
 957 report, the agency head shall submit to the Chief Financial
 958 Officer or designee, his or her written statement of explanation
 959 or rebuttal concerning findings requiring corrective action,
 960 including corrective action to be taken to preclude a
 961 recurrence.

962 Section 13. Subsection (3) of section 16.0155, Florida
 963 Statutes, is amended to read:

964 16.0155 Contingency fee agreements.-

965 (3) If the Attorney General makes the determination
 966 described in subsection (2), notwithstanding the exemption
 967 provided in s. 287.057(3)(e) ~~287.057(3)(f)~~, the Attorney General
 968 shall request proposals from private attorneys to represent the
 969 department on a contingency-fee basis, unless the Attorney

970 General determines in writing that requesting proposals is not
 971 feasible under the circumstances. The written determination does
 972 not constitute a final agency action subject to review pursuant
 973 to ss. 120.569 and 120.57. For purposes of this subsection only,
 974 the department is exempt from the requirements of s. 120.57(3),
 975 and neither the request for proposals nor the contract award is
 976 subject to challenge pursuant to ss. 120.569 and 120.57.

977 Section 14. Subsection (1) of section 283.33, Florida
 978 Statutes, is amended to read:

979 283.33 Printing of publications; lowest bidder awards.—

980 (1) Publications may be printed and prepared in-house, by
 981 another agency or the Legislature, or purchased on bid,
 982 whichever is more economical and practicable as determined by
 983 the agency. An agency may contract for binding separately when
 984 more economical or practicable, whether or not the remainder of
 985 the printing is done in-house. A vendor may subcontract for
 986 binding and still be considered a responsible vendor,
 987 notwithstanding s. 287.012(25) ~~287.012(24)~~.

988 Section 15. Subsection (3) of section 394.457, Florida
 989 Statutes, is amended to read:

990 394.457 Operation and administration.—

991 (3) POWER TO CONTRACT.—The department may contract to
 992 provide, and be provided with, services and facilities in order
 993 to carry out its responsibilities under this part with the
 994 following agencies: public and private hospitals; receiving and
 995 treatment facilities; clinics; laboratories; departments,
 996 divisions, and other units of state government; the state
 997 colleges and universities; the community colleges; private

CS/CS/HB 1309

2013

998 colleges and universities; counties, municipalities, and any
999 other governmental unit, including facilities of the United
1000 States Government; and any other public or private entity which
1001 provides or needs facilities or services. Baker Act funds for
1002 community inpatient, crisis stabilization, short-term
1003 residential treatment, and screening services must be allocated
1004 to each county pursuant to the department's funding allocation
1005 methodology. Notwithstanding the provisions of s. 287.057(3)(e)
1006 ~~287.057(3)(f)~~, contracts for community-based Baker Act services
1007 for inpatient, crisis stabilization, short-term residential
1008 treatment, and screening provided under this part, other than
1009 those with other units of government, to be provided for the
1010 department must be awarded using competitive sealed bids when
1011 the county commission of the county receiving the services makes
1012 a request to the department's district office by January 15 of
1013 the contracting year. The district shall not enter into a
1014 competitively bid contract under this provision if such action
1015 will result in increases of state or local expenditures for
1016 Baker Act services within the district. Contracts for these
1017 Baker Act services using competitive sealed bids will be
1018 effective for 3 years. The department shall adopt rules
1019 establishing minimum standards for such contracted services and
1020 facilities and shall make periodic audits and inspections to
1021 assure that the contracted services are provided and meet the
1022 standards of the department.

1023 Section 16. Paragraph (a) of subsection (2) of section
1024 402.7305, Florida Statutes, is amended to read:

1025 402.7305 Department of Children and Family Services;
 1026 procurement of contractual services; contract management.-

1027 (2) PROCUREMENT OF COMMODITIES AND CONTRACTUAL SERVICES.-

1028 (a) Notwithstanding s. 287.057(3)(e)12. ~~287.057(3)(f)12.~~,
 1029 whenever the department intends to contract with a public
 1030 postsecondary institution to provide a service, the department
 1031 must allow all public postsecondary institutions in this state
 1032 that are accredited by the Southern Association of Colleges and
 1033 Schools to bid on the contract. Thereafter, notwithstanding any
 1034 other provision to the contrary, if a public postsecondary
 1035 institution intends to subcontract for any service awarded in
 1036 the contract, the subcontracted service must be procured by
 1037 competitive procedures.

1038 Section 17. Section 409.9132, Florida Statutes, is amended
 1039 to read:

1040 409.9132 Pilot project to monitor home health services.-
 1041 The Agency for Health Care Administration shall expand the home
 1042 health agency monitoring pilot project in Miami-Dade County on a
 1043 statewide basis effective July 1, 2012, except in counties in
 1044 which the program will not be cost-effective, as determined by
 1045 the agency. The agency shall contract with a vendor to verify
 1046 the utilization and delivery of home health services and provide
 1047 an electronic billing interface for home health services. The
 1048 contract must require the creation of a program to submit claims
 1049 electronically for the delivery of home health services. The
 1050 program must verify telephonically visits for the delivery of
 1051 home health services using voice biometrics. The agency may seek
 1052 amendments to the Medicaid state plan and waivers of federal

1053 laws, as necessary, to implement or expand the pilot project.
 1054 Notwithstanding s. 287.057(3)(e) ~~287.057(3)(f)~~, the agency must
 1055 award the contract through the competitive solicitation process
 1056 and may use the current contract to expand the home health
 1057 agency monitoring pilot project to include additional counties
 1058 as authorized under this section.

1059 Section 18. Subsection (3) of section 427.0135, Florida
 1060 Statutes, is amended to read:

1061 427.0135 Purchasing agencies; duties and
 1062 responsibilities.—Each purchasing agency, in carrying out the
 1063 policies and procedures of the commission, shall:

1064 (3) Not procure transportation disadvantaged services
 1065 without initially negotiating with the commission, as provided
 1066 in s. 287.057(3)(e)12. ~~287.057(3)(f)12.~~, or unless otherwise
 1067 authorized by statute. If the purchasing agency, after
 1068 consultation with the commission, determines that it cannot
 1069 reach mutually acceptable contract terms with the commission,
 1070 the purchasing agency may contract for the same transportation
 1071 services provided in a more cost-effective manner and of
 1072 comparable or higher quality and standards. The Medicaid agency
 1073 shall implement this subsection in a manner consistent with s.
 1074 409.908(18) and as otherwise limited or directed by the General
 1075 Appropriations Act.

1076 Section 19. Paragraph (c) of subsection (5) of section
 1077 445.024, Florida Statutes, is amended to read:

1078 445.024 Work requirements.—

1079 (5) USE OF CONTRACTS.—Regional workforce boards shall
 1080 provide work activities, training, and other services, as

1081 appropriate, through contracts. In contracting for work
 1082 activities, training, or services, the following applies:

1083 (c) Notwithstanding the exemption from the competitive
 1084 sealed bid requirements provided in s. 287.057(3)(e)
 1085 ~~287.057(3)(f)~~ for certain contractual services, each contract
 1086 awarded under this chapter must be awarded on the basis of a
 1087 competitive sealed bid, except for a contract with a
 1088 governmental entity as determined by the regional workforce
 1089 board.

1090 Section 20. Paragraph (c) of subsection (5) of section
 1091 627.311, Florida Statutes, is amended to read:

1092 627.311 Joint underwriters and joint reinsurers; public
 1093 records and public meetings exemptions.—

1094 (5)

1095 (c) The operation of the plan shall be governed by a plan
 1096 of operation that is prepared at the direction of the board of
 1097 governors and approved by order of the office. The plan is
 1098 subject to continuous review by the office. The office may, by
 1099 order, withdraw approval of all or part of a plan if the office
 1100 determines that conditions have changed since approval was
 1101 granted and that the purposes of the plan require changes in the
 1102 plan. The plan of operation shall:

1103 1. Authorize the board to engage in the activities
 1104 necessary to implement this subsection, including, but not
 1105 limited to, borrowing money.

1106 2. Develop criteria for eligibility for coverage by the
 1107 plan, including, but not limited to, documented rejection by at
 1108 least two insurers which reasonably assures that insureds

1109 covered under the plan are unable to acquire coverage in the
1110 voluntary market.

1111 3. Require notice from the agent to the insured at the
1112 time of the application for coverage that the application is for
1113 coverage with the plan and that coverage may be available
1114 through an insurer, group self-insurers' fund, commercial self-
1115 insurance fund, or assessable mutual insurer through another
1116 agent at a lower cost.

1117 4. Establish programs to encourage insurers to provide
1118 coverage to applicants of the plan in the voluntary market and
1119 to insureds of the plan, including, but not limited to:

1120 a. Establishing procedures for an insurer to use in
1121 notifying the plan of the insurer's desire to provide coverage
1122 to applicants to the plan or existing insureds of the plan and
1123 in describing the types of risks in which the insurer is
1124 interested. The description of the desired risks must be on a
1125 form developed by the plan.

1126 b. Developing forms and procedures that provide an insurer
1127 with the information necessary to determine whether the insurer
1128 wants to write particular applicants to the plan or insureds of
1129 the plan.

1130 c. Developing procedures for notice to the plan and the
1131 applicant to the plan or insured of the plan that an insurer
1132 will insure the applicant or the insured of the plan, and notice
1133 of the cost of the coverage offered; and developing procedures
1134 for the selection of an insuring entity by the applicant or
1135 insured of the plan.

1136 d. Provide for a market-assistance plan to assist in the
1137 placement of employers. All applications for coverage in the
1138 plan received 45 days before the effective date for coverage
1139 shall be processed through the market-assistance plan. A market-
1140 assistance plan specifically designed to serve the needs of
1141 small, good policyholders as defined by the board must be
1142 reviewed and updated periodically.

1143 5. Provide for policy and claims services to the insureds
1144 of the plan of the nature and quality provided for insureds in
1145 the voluntary market.

1146 6. Provide for the review of applications for coverage
1147 with the plan for reasonableness and accuracy, using any
1148 available historic information regarding the insured.

1149 7. Provide for procedures for auditing insureds of the
1150 plan which are based on reasonable business judgment and are
1151 designed to maximize the likelihood that the plan will collect
1152 the appropriate premiums.

1153 8. Authorize the plan to terminate the coverage of and
1154 refuse future coverage for any insured that submits a fraudulent
1155 application to the plan or provides fraudulent or grossly
1156 erroneous records to the plan or to any service provider of the
1157 plan in conjunction with the activities of the plan.

1158 9. Establish service standards for agents who submit
1159 business to the plan.

1160 10. Establish criteria and procedures to prohibit any
1161 agent who does not adhere to the established service standards
1162 from placing business with the plan or receiving, directly or
1163 indirectly, any commissions for business placed with the plan.

1164 11. Provide for the establishment of reasonable safety
 1165 programs for all insureds in the plan. All insureds of the plan
 1166 must participate in the safety program.

1167 12. Authorize the plan to terminate the coverage of and
 1168 refuse future coverage to any insured who fails to pay premiums
 1169 or surcharges when due; who, at the time of application, is
 1170 delinquent in payments of workers' compensation or employer's
 1171 liability insurance premiums or surcharges owed to an insurer,
 1172 group self-insurers' fund, commercial self-insurance fund, or
 1173 assessable mutual insurer licensed to write such coverage in
 1174 this state; or who refuses to substantially comply with any
 1175 safety programs recommended by the plan.

1176 13. Authorize the board of governors to provide the goods
 1177 and services required by the plan through staff employed by the
 1178 plan, through reasonably compensated service providers who
 1179 contract with the plan to provide services as specified by the
 1180 board of governors, or through a combination of employees and
 1181 service providers.

1182 a. Purchases that equal or exceed \$2,500 but are less than
 1183 or equal to \$25,000, shall be made by receipt of written quotes,
 1184 telephone quotes, or informal bids, whenever practical. The
 1185 procurement of goods or services valued over \$25,000 is subject
 1186 to competitive solicitation, except in situations in which the
 1187 goods or services are provided by a sole source or are deemed an
 1188 emergency purchase, or the services are exempted from
 1189 competitive-solicitation requirements under s. 287.057(3)(e)
 1190 ~~287.057(3)(f)~~. Justification for the sole-sourcing or emergency

1191 procurement must be documented. Contracts for goods or services
 1192 valued at or over \$100,000 are subject to board approval.

1193 b. The board shall determine whether it is more cost-
 1194 effective and in the best interests of the plan to use legal
 1195 services provided by in-house attorneys employed by the plan
 1196 rather than contracting with outside counsel. In making such
 1197 determination, the board shall document its findings and shall
 1198 consider the expertise needed; whether time commitments exceed
 1199 in-house staff resources; whether local representation is
 1200 needed; the travel, lodging, and other costs associated with in-
 1201 house representation; and such other factors that the board
 1202 determines are relevant.

1203 14. Provide for service standards for service providers,
 1204 methods of determining adherence to those service standards,
 1205 incentives and disincentives for service, and procedures for
 1206 terminating contracts for service providers that fail to adhere
 1207 to service standards.

1208 15. Provide procedures for selecting service providers and
 1209 standards for qualification as a service provider that
 1210 reasonably assure that any service provider selected will
 1211 continue to operate as an ongoing concern and is capable of
 1212 providing the specified services in the manner required.

1213 16. Provide for reasonable accounting and data-reporting
 1214 practices.

1215 17. Provide for annual review of costs associated with the
 1216 administration and servicing of the policies issued by the plan
 1217 to determine alternatives by which costs can be reduced.

1218 | 18. Authorize the acquisition of such excess insurance or
1219 | reinsurance as is consistent with the purposes of the plan.

1220 | 19. Provide for an annual report to the office on a date
1221 | specified by the office and containing such information as the
1222 | office reasonably requires.

1223 | 20. Establish multiple rating plans for various
1224 | classifications of risk which reflect risk of loss, hazard
1225 | grade, actual losses, size of premium, and compliance with loss
1226 | control. At least one of such plans must be a preferred-rating
1227 | plan to accommodate small-premium policyholders with good
1228 | experience as defined in sub-subparagraph 22.a.

1229 | 21. Establish agent commission schedules.

1230 | 22. For employers otherwise eligible for coverage under
1231 | the plan, establish three tiers of employers meeting the
1232 | criteria and subject to the rate limitations specified in this
1233 | subparagraph.

1234 | a. Tier One.—

1235 | (I) Criteria; rated employers.—An employer that has an
1236 | experience modification rating shall be included in Tier One if
1237 | the employer meets all of the following:

1238 | (A) The experience modification is below 1.00.

1239 | (B) The employer had no lost-time claims subsequent to the
1240 | applicable experience modification rating period.

1241 | (C) The total of the employer's medical-only claims
1242 | subsequent to the applicable experience modification rating
1243 | period did not exceed 20 percent of premium.

1244 (II) Criteria; non-rated employers.—An employer that does
1245 not have an experience modification rating shall be included in
1246 Tier One if the employer meets all of the following:

1247 (A) The employer had no lost-time claims for the 3-year
1248 period immediately preceding the inception date or renewal date
1249 of the employer's coverage under the plan.

1250 (B) The total of the employer's medical-only claims for
1251 the 3-year period immediately preceding the inception date or
1252 renewal date of the employer's coverage under the plan did not
1253 exceed 20 percent of premium.

1254 (C) The employer has secured workers' compensation
1255 coverage for the entire 3-year period immediately preceding the
1256 inception date or renewal date of the employer's coverage under
1257 the plan.

1258 (D) The employer is able to provide the plan with a loss
1259 history generated by the employer's prior workers' compensation
1260 insurer, except if the employer is not able to produce a loss
1261 history due to the insolvency of an insurer, the receiver shall
1262 provide to the plan, upon the request of the employer or the
1263 employer's agent, a copy of the employer's loss history from the
1264 records of the insolvent insurer if the loss history is
1265 contained in records of the insurer which are in the possession
1266 of the receiver. If the receiver is unable to produce the loss
1267 history, the employer may, in lieu of the loss history, submit
1268 an affidavit from the employer and the employer's insurance
1269 agent setting forth the loss history.

1270 (E) The employer is not a new business.

1271 (III) Premiums.—The premiums for Tier One insureds shall
 1272 be set at a premium level 25 percent above the comparable
 1273 voluntary market premiums until the plan has sufficient
 1274 experience as determined by the board to establish an
 1275 actuarially sound rate for Tier One, at which point the board
 1276 shall, subject to paragraph (e), adjust the rates, if necessary,
 1277 to produce actuarially sound rates, provided such rate
 1278 adjustment shall not take effect prior to January 1, 2007.

1279 b. Tier Two.—

1280 (I) Criteria; rated employers.—An employer that has an
 1281 experience modification rating shall be included in Tier Two if
 1282 the employer meets all of the following:

1283 (A) The experience modification is equal to or greater
 1284 than 1.00 but not greater than 1.10.

1285 (B) The employer had no lost-time claims subsequent to the
 1286 applicable experience modification rating period.

1287 (C) The total of the employer's medical-only claims
 1288 subsequent to the applicable experience modification rating
 1289 period did not exceed 20 percent of premium.

1290 (II) Criteria; non-rated employers.—An employer that does
 1291 not have any experience modification rating shall be included in
 1292 Tier Two if the employer is a new business. An employer shall be
 1293 included in Tier Two if the employer has less than 3 years of
 1294 loss experience in the 3-year period immediately preceding the
 1295 inception date or renewal date of the employer's coverage under
 1296 the plan and the employer meets all of the following:

1297 (A) The employer had no lost-time claims for the 3-year
1298 period immediately preceding the inception date or renewal date
1299 of the employer's coverage under the plan.

1300 (B) The total of the employer's medical-only claims for
1301 the 3-year period immediately preceding the inception date or
1302 renewal date of the employer's coverage under the plan did not
1303 exceed 20 percent of premium.

1304 (C) The employer is able to provide the plan with a loss
1305 history generated by the workers' compensation insurer that
1306 provided coverage for the portion or portions of such period
1307 during which the employer had secured workers' compensation
1308 coverage, except if the employer is not able to produce a loss
1309 history due to the insolvency of an insurer, the receiver shall
1310 provide to the plan, upon the request of the employer or the
1311 employer's agent, a copy of the employer's loss history from the
1312 records of the insolvent insurer if the loss history is
1313 contained in records of the insurer which are in the possession
1314 of the receiver. If the receiver is unable to produce the loss
1315 history, the employer may, in lieu of the loss history, submit
1316 an affidavit from the employer and the employer's insurance
1317 agent setting forth the loss history.

1318 (III) Premiums.—The premiums for Tier Two insureds shall
1319 be set at a rate level 50 percent above the comparable voluntary
1320 market premiums until the plan has sufficient experience as
1321 determined by the board to establish an actuarially sound rate
1322 for Tier Two, at which point the board shall, subject to
1323 paragraph (e), adjust the rates, if necessary, to produce

1324 actuarially sound rates, provided such rate adjustment shall not
1325 take effect prior to January 1, 2007.

1326 c. Tier Three.—

1327 (I) Eligibility.—An employer shall be included in Tier
1328 Three if the employer does not meet the criteria for Tier One or
1329 Tier Two.

1330 (II) Rates.—The board shall establish, subject to
1331 paragraph (e), and the plan shall charge, actuarially sound
1332 rates for Tier Three insureds.

1333 23. For Tier One or Tier Two employers which employ no
1334 nonexempt employees or which report payroll which is less than
1335 the minimum wage hourly rate for one full-time employee for 1
1336 year at 40 hours per week, the plan shall establish actuarially
1337 sound premiums, provided, however, that the premiums may not
1338 exceed \$2,500. These premiums shall be in addition to the fee
1339 specified in subparagraph 26. When the plan establishes
1340 actuarially sound rates for all employers in Tier One and Tier
1341 Two, the premiums for employers referred to in this paragraph
1342 are no longer subject to the \$2,500 cap.

1343 24. Provide for a depopulation program to reduce the
1344 number of insureds in the plan. If an employer insured through
1345 the plan is offered coverage from a voluntary market carrier:

1346 a. During the first 30 days of coverage under the plan;

1347 b. Before a policy is issued under the plan;

1348 c. By issuance of a policy upon expiration or cancellation
1349 of the policy under the plan; or

1350 d. By assumption of the plan's obligation with respect to
1351 an in-force policy,

1352
1353 that employer is no longer eligible for coverage through the
1354 plan. The premium for risks assumed by the voluntary market
1355 carrier must be no greater than the premium the insured would
1356 have paid under the plan, and shall be adjusted upon renewal to
1357 reflect changes in the plan rates and the tier for which the
1358 insured would qualify as of the time of renewal. The insured may
1359 be charged such premiums only for the first 3 years of coverage
1360 in the voluntary market. A premium under this subparagraph is
1361 deemed approved and is not an excess premium for purposes of s.
1362 627.171.

1363 25. Require that policies issued and applications must
1364 include a notice that the policy could be replaced by a policy
1365 issued from a voluntary market carrier and that, if an offer of
1366 coverage is obtained from a voluntary market carrier, the
1367 policyholder is no longer eligible for coverage through the
1368 plan. The notice must also specify that acceptance of coverage
1369 under the plan creates a conclusive presumption that the
1370 applicant or policyholder is aware of this potential.

1371 26. Require that each application for coverage and each
1372 renewal premium be accompanied by a nonrefundable fee of \$475 to
1373 cover costs of administration and fraud prevention. The board
1374 may, with the prior approval of the office, increase the amount
1375 of the fee pursuant to a rate filing to reflect increased costs
1376 of administration and fraud prevention. The fee is not subject
1377 to commission and is fully earned upon commencement of coverage.

1378 Section 21. Paragraph (e) of subsection (6) of section
1379 627.351, Florida Statutes, is amended to read:

CS/CS/HB 1309

2013

1380 627.351 Insurance risk apportionment plans.—
1381 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—
1382 (e) Purchases that equal or exceed \$2,500, but are less
1383 than \$25,000, shall be made by receipt of written quotes,
1384 written record of telephone quotes, or informal bids, whenever
1385 practical. The procurement of goods or services valued at or
1386 over \$25,000 shall be subject to competitive solicitation,
1387 except in situations where the goods or services are provided by
1388 a sole source or are deemed an emergency purchase; the services
1389 are exempted from competitive solicitation requirements under s.
1390 287.057(3)(e) ~~287.057(3)(f)~~; or the procurement of services is
1391 subject to s. 627.3513. Justification for the sole-sourcing or
1392 emergency procurement must be documented. Contracts for goods or
1393 services valued at or over \$100,000 are subject to approval by
1394 the board.

1395 Section 22. Subsection (2) of section 765.5155, Florida
1396 Statutes, is amended to read:

1397 765.5155 Donor registry; education program.—

1398 (2) The agency and the department shall jointly contract
1399 for the operation of a donor registry and education program. The
1400 contractor shall be procured by competitive solicitation
1401 pursuant to chapter 287, notwithstanding any exemption in s.
1402 287.057(3)(e) ~~287.057(3)(f)~~. When awarding the contract,
1403 priority shall be given to existing nonprofit groups that are
1404 based within the state, have expertise working with procurement
1405 organizations, have expertise in conducting statewide organ and
1406 tissue donor public education campaigns, and represent the needs
1407 of the organ and tissue donation community in the state.

1408 Section 23. Subsection (10) of section 893.055, Florida
 1409 Statutes, is amended to read:
 1410 893.055 Prescription drug monitoring program.—
 1411 (10) All costs incurred by the department in administering
 1412 the prescription drug monitoring program shall be funded through
 1413 federal grants or private funding applied for or received by the
 1414 state. The department may not commit funds for the monitoring
 1415 program without ensuring funding is available. The prescription
 1416 drug monitoring program and the implementation thereof are
 1417 contingent upon receipt of the nonstate funding. The department
 1418 and state government shall cooperate with the direct-support
 1419 organization established pursuant to subsection (11) in seeking
 1420 federal grant funds, other nonstate grant funds, gifts,
 1421 donations, or other private moneys for the department so long as
 1422 the costs of doing so are not considered material. Nonmaterial
 1423 costs for this purpose include, but are not limited to, the
 1424 costs of mailing and personnel assigned to research or apply for
 1425 a grant. Notwithstanding the exemptions to competitive-
 1426 solicitation requirements under s. 287.057(3)(e) ~~287.057(3)(f)~~,
 1427 the department shall comply with the competitive-solicitation
 1428 requirements under s. 287.057 for the procurement of any goods
 1429 or services required by this section. Funds provided, directly
 1430 or indirectly, by prescription drug manufacturers may not be
 1431 used to implement the program.
 1432 Section 24. Except as otherwise expressly provided in this
 1433 act, this act shall take effect July 1, 2013.