

1 A bill to be entitled

2 An act relating to agency contracts for commodities
3 and contractual services; reenacting and amending s.
4 216.1366, F.S.; abrogating the scheduled expiration of
5 provisions relating to certain public agency contracts
6 for services; amending s. 287.042, F.S.; providing
7 that the Department of Management Services may enter
8 into an agreement authorizing an agency to make
9 purchases under certain contracts if the Secretary of
10 Management Services makes a certain determination;
11 amending s. 287.056, F.S.; providing that an agency
12 must issue a request for quote to certain approved
13 vendors when it issues a request for quote for
14 contractual services; providing for the
15 disqualification of certain firms or individuals from
16 state term contract eligibility; amending s. 287.057,
17 F.S.; revising the period of time during which an
18 agency must electronically post a description of
19 certain services in certain circumstances; requiring
20 an agency to report certain actions to the department
21 in a specified manner and form; requiring the
22 department to annually report certain information to
23 the Governor and the Legislature by a specified date;
24 prohibiting an agency from initiating a competitive
25 solicitation in certain circumstances; requiring an

26 | agency to submit a report concerning contract
27 | performance before certain contract renewals or
28 | amendments are executed; providing that a designated
29 | contract manager serves as a liaison between the
30 | contractor and the agency; prohibiting certain
31 | individuals from serving as a contract manager;
32 | providing the responsibilities of a contract manager;
33 | requiring the Chief Financial Officer to evaluate
34 | certain training at certain intervals; requiring that
35 | certain contract managers complete training and
36 | certification within a specified timeframe; requiring
37 | the department to establish and disseminate certain
38 | training and certification requirements; requiring the
39 | department to evaluate certain training at certain
40 | intervals; requiring certain contract managers to
41 | possess certain experience in managing contracts;
42 | authorizing a contract administrator to also serve as
43 | a contract manager in certain circumstances; providing
44 | that evaluations of proposals and replies must be
45 | conducted independently; providing for specified teams
46 | to conduct certain negotiations; requiring a Project
47 | Management Professional to provide guidance based on
48 | certain qualifications; providing qualification
49 | requirements for contract negotiator certification;
50 | requiring supervisors of contract administrators or

51 contract and grant managers meeting certain criteria
52 to complete training within a specified period;
53 providing that the department is responsible for
54 establishing and disseminating supervisor training by
55 a date certain; providing for a continuing oversight
56 team in certain circumstances; providing requirements
57 for continuing oversight team members and meetings;
58 requiring a continuing oversight team to provide
59 notice of certain deficiencies and changes in contract
60 scope to certain entities; amending s. 287.058, F.S.;
61 prohibiting a contract document for certain
62 contractual services from containing a certain
63 nondisclosure clause; creating s. 287.1351, F.S.;
64 defining the term "vendor"; prohibiting certain
65 vendors from submitting bids, proposals, or replies
66 from, or entering into or renewing any contract with,
67 an agency; prohibiting an agency from accepting a bid,
68 proposal, or reply from, or entering into a contract
69 with, a suspended vendor until certain conditions are
70 met; requiring an agency to notify the department of,
71 and provide certain information regarding, any such
72 vendors; requiring the department to review any vendor
73 reported by an agency; requiring the department to
74 notify a vendor of any intended removal from the
75 vendor list; specifying administrative remedies, and

76 applicable procedures, for an affected vendor;
 77 requiring the department to place any such vendor on
 78 the suspended vendor list; authorizing the removal of
 79 a suspended vendor from the suspended vendor list in
 80 accordance with specified procedures; specifying
 81 requirements and limitations; amending s. 287.136,
 82 F.S; requiring each agency inspector general to
 83 complete certain audits of executed contracts at
 84 certain intervals; providing an effective date.

85

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

87

88 Section 1. Notwithstanding the expiration date in section
 89 106 of chapter 2020-114, Laws of Florida, section 216.1366,
 90 Florida Statutes, is reenacted and amended to read:

91 216.1366 Contract terms.—

92 (1) In order to preserve the interest of the state in the
 93 prudent expenditure of state funds, each public agency contract
 94 for services entered into or amended on or after July 1, 2020,
 95 shall authorize the public agency to inspect the:

96 (a) Financial records, papers, and documents of the
 97 contractor that are directly related to the performance of the
 98 contract or the expenditure of state funds.

99 (b) Programmatic records, papers, and documents of the
 100 contractor which the public agency determines are necessary to

101 monitor the performance of the contract or to ensure that the
102 terms of the contract are being met.

103 (2) The contract shall require the contractor to provide
104 such records, papers, and documents requested by the public
105 agency within 10 business days after the request is made.

106 ~~(3) This section expires July 1, 2021.~~

107 Section 2. Subsection (16) of section 287.042, Florida
108 Statutes, is amended to read:

109 287.042 Powers, duties, and functions.—The department
110 shall have the following powers, duties, and functions:

111 (16) To evaluate contracts let by the Federal Government,
112 another state, or a political subdivision for the provision of
113 commodities and contract services, and, if it is determined by
114 the Secretary of Management Services in writing to be cost-
115 effective and ~~in the best value to interest of~~ the state, to
116 enter into a written agreement authorizing an agency to make
117 purchases under such contract.

118 Section 3. Subsection (2) of section 287.056, Florida
119 Statutes, is amended, and subsection (4) is added to that
120 section, to read:

121 287.056 Purchases from purchasing agreements and state
122 term contracts.—

123 (2) Agencies and eligible users may use a request for
124 quote to obtain written pricing or services information from a
125 state term contract vendor for commodities or contractual

126 services available on state term contract from that vendor. The
127 purpose of a request for quote is to determine whether a price,
128 term, or condition more favorable to the agency or eligible user
129 than that provided in the state term contract is available. If
130 an agency issues a request for quote for contractual services
131 for any contract with 100 vendors or fewer, the agency must
132 issue a request for quote to all vendors approved to provide
133 such contractual services. For any contract with more than 100
134 vendors, the agency must issue a request for quote to a minimum
135 of 100 vendors approved to provide such contractual services.

136 Use of a request for quote does not constitute a decision or
137 intended decision that is subject to protest under s. 120.57(3).

138 (4) A firm or individual placed on the suspended vendor
139 list pursuant to s. 287.1351 or placed on a disqualified vendor
140 list pursuant to s. 287.133 or s. 287.134 is immediately
141 disqualified from state term contract eligibility.

142 Section 4. Subsections (4) through (16) and (17) through
143 (23) of section 287.057, Florida Statutes, are renumbered as
144 subsections (5) through (17) and (19) through (25),
145 respectively, paragraph (c) of subsection (3) and present
146 subsections (13) through (16) are amended, and new subsections
147 (4), (18), and (26) are added to that section, to read:

148 287.057 Procurement of commodities or contractual
149 services.—

150 (3) If the purchase price of commodities or contractual

151 services exceeds the threshold amount provided in s. 287.017 for
152 CATEGORY TWO, purchase of commodities or contractual services
153 may not be made without receiving competitive sealed bids,
154 competitive sealed proposals, or competitive sealed replies
155 unless:

156 (c) Commodities or contractual services available only
157 from a single source may be excepted from the competitive-
158 solicitation requirements. If an agency believes that
159 commodities or contractual services are available only from a
160 single source, the agency shall electronically post a
161 description of the commodities or contractual services sought
162 for at least 15 ~~7~~ business days. The description must include a
163 request that prospective vendors provide information regarding
164 their ability to supply the commodities or contractual services
165 described. If it is determined in writing by the agency, after
166 reviewing any information received from prospective vendors that
167 the commodities or contractual services are available only from
168 a single source, the agency shall provide notice of its intended
169 decision to enter a single-source purchase contract in the
170 manner specified in s. 120.57(3). Each agency shall report all
171 such actions to the department on a quarterly basis in a manner
172 and form prescribed by the department and the department shall
173 report such information to the Governor, the President of the
174 Senate, and the Speaker of the House of Representatives no later
175 than January 1, 2022, and each January 1 thereafter.

176 (4) A state agency may not initiate a competitive
177 solicitation for a product or service if the completion of such
178 competitive solicitation would:

179 (a) Require a change in law; or

180 (b) Require a change to the agency's budget other than a
181 transfer authorized in s. 216.292(2) or (3), unless the
182 initiation of such competitive solicitation is specifically
183 authorized in law, in the General Appropriations Act, or by the
184 Legislative Budget Commission.

185 (c) This subsection does not apply to a competitive
186 solicitation for which the agency head certifies that a valid
187 emergency exists.

188 (14)~~(13)~~ Contracts for commodities or contractual services
189 may be renewed for a period that may not exceed 3 years or the
190 term of the original contract, whichever is longer. Renewal of a
191 contract for commodities or contractual services must be in
192 writing and is subject to the same terms and conditions set
193 forth in the initial contract and any written amendments signed
194 by the parties. If the commodity or contractual service is
195 purchased as a result of the solicitation of bids, proposals, or
196 replies, the price of the commodity or contractual service to be
197 renewed must be specified in the bid, proposal, or reply, except
198 that an agency may negotiate lower pricing. A renewal contract
199 may not include any compensation for costs associated with the
200 renewal. Renewals are contingent upon satisfactory performance

201 evaluations by the agency and subject to the availability of
202 funds. Exceptional purchase contracts pursuant to paragraphs
203 (3) (a) and (c) may not be renewed. With the exception of
204 subsection (11) ~~(10)~~, if a contract amendment results in a
205 longer contract term or increased payments, a state agency may
206 not renew or amend a contract for the outsourcing of a service
207 or activity that has an original term value exceeding \$5 ~~\$10~~
208 million before submitting a written report concerning contract
209 performance to the Governor, the President of the Senate, and
210 the Speaker of the House of Representatives at least 90 days
211 before execution of the renewal or amendment.

212 (15) (a) ~~(14)~~ For each contractual services contract, the
213 agency shall designate an employee to function as contract
214 manager who is responsible for enforcing performance of the
215 contract terms and conditions and serve as a liaison between
216 ~~with~~ the contractor and the agency. The contract manager may not
217 be an individual who has been employed, within the previous 5
218 years, by the vendor awarded the contractual services contract.

219 The primary responsibilities of a contract manager include:

220 1. Participating in the solicitation development and
221 review of contract documents.

222 2. Monitoring the contractor's progress and performance to
223 ensure procured products and services conform to the contract
224 requirements and keep timely records of findings.

225 3. Managing and documenting any changes to the contract

226 through the amendment process authorized by the terms of the
227 contract.

228 4. Monitoring the contract budget to ensure sufficient
229 funds are available throughout the term of the contract.

230 5. Exercising applicable remedies, as appropriate, when a
231 contractor's performance is deficient.

232 (b) ~~(a)~~ Each contract manager who is responsible for
233 contracts in excess of the threshold amount for CATEGORY TWO
234 must, at a minimum, complete training conducted by the Chief
235 Financial Officer for accountability in contracts and grant
236 management. The Chief Financial Officer shall evaluate such
237 training every 5 years to assess its effectiveness and update
238 the training curriculum. The Chief Financial Officer shall
239 establish and disseminate uniform procedures pursuant to s.
240 17.03(3) to ensure that contractual services have been rendered
241 in accordance with the contract terms before the agency
242 processes the invoice for payment. The procedures must include,
243 but need not be limited to, procedures for monitoring and
244 documenting contractor performance, reviewing and documenting
245 all deliverables for which payment is requested by vendors, and
246 providing written certification by contract managers of the
247 agency's receipt of goods and services.

248 (c) ~~(b)~~ Each contract manager who is responsible for
249 contracts in excess of \$100,000 annually must, in addition to
250 the accountability in contracts and grant management training

251 required in paragraph (b) and within 6 months after being
252 assigned responsibility for such contracts, complete training in
253 contract management and become a certified contract manager. The
254 department is responsible for establishing and disseminating the
255 training and certification requirements for certified contract
256 managers. Training must promote best practices and procedures
257 related to negotiating, managing, and ensuring accountability in
258 agency contracts and grant agreements, which must include the
259 use of case studies based upon previous audits, contracts, and
260 grant agreements. A certified contract manager must complete
261 training every 5 years for certification renewal requirements
262 ~~for certification which include completing the training~~
263 ~~conducted by the Chief Financial Officer for accountability in~~
264 ~~contracts and grant management.~~ Training and certification must
265 be coordinated by the department, and the training must be
266 conducted jointly by the department and the Department of
267 Financial Services. The department shall evaluate such training
268 every 5 years to assess its effectiveness and update the
269 training curriculum. ~~Training must promote best practices and~~
270 ~~procedures related to negotiating, managing, and ensuring~~
271 ~~accountability in agency contracts and grant agreements, which~~
272 ~~must include the use of case studies based upon previous audits,~~
273 ~~contracts, and grant agreements. All agency contract managers~~
274 ~~must become certified within 24 months after establishment of~~
275 ~~the training and certification requirements by the department~~

276 ~~and the Department of Financial Services.~~

277 (d) Each contract manager who is responsible for contracts
278 in excess of \$10 million annually must, in addition to the
279 training required in paragraph (b) and the training and
280 certification required in paragraph (c), possess at least 5
281 years of experience managing contracts in excess of \$5 million
282 annually.

283 (16)~~(15)~~ Each agency shall designate at least one employee
284 who shall serve as a contract administrator responsible for
285 maintaining a contract file and financial information on all
286 contractual services contracts and who shall serve as a liaison
287 with the contract managers and the department. For a contract of
288 \$500,000 or less annually, the contract administrator may also
289 serve as the contract manager if he or she has completed the
290 required training. For a contract in excess of \$500,000
291 annually, the contract administrator may not serve as both the
292 contract administrator and the contract manager.

293 (17) (a)~~(16) (a)~~ For a contract in excess of the threshold
294 amount provided in s. 287.017 for CATEGORY FOUR, the agency head
295 shall appoint:

296 1. At least three persons to independently evaluate
297 proposals and replies who collectively have experience and
298 knowledge in the program areas and service requirements for the
299 commodity ~~which commodities~~ or contractual services ~~are~~ sought.

300 2. At least three persons to a negotiation team to conduct

301 negotiations during a competitive sealed reply procurement. The
302 negotiation team members must ~~who~~ collectively have experience
303 and knowledge in negotiating contracts, contract procurement,
304 and the program areas and service requirements for the commodity
305 ~~which commodities~~ or contractual services are sought.

306 (b) 1. If the value of a contract is in excess of \$1
307 million in any fiscal year, at least one of the persons
308 conducting negotiations must be ~~certified as a~~ certified
309 contract negotiator. ~~based upon department rules in order to~~
310 ~~ensure that certified contract negotiators are knowledgeable~~
311 ~~about effective negotiation strategies, capable of successfully~~
312 ~~implementing those strategies, and involved appropriately in the~~
313 ~~procurement process. At a minimum, the rules must address the~~
314 ~~qualifications required for certification, the method of~~
315 ~~certification, and the procedure for involving the certified~~
316 ~~negotiator.~~

317 2. If the value of a contract is in excess of \$10 million
318 in any fiscal year, at least one of the persons conducting
319 negotiations must be a Project Management Professional, as
320 certified by the Project Management Institute. The Project
321 Management Professional shall provide guidance based on his or
322 her experience, education, and competency to lead and direct
323 complex projects.

324 3. The department is responsible for establishing and
325 disseminating the certification and training requirements for

326 certified contract negotiators. Training must ensure that
327 certified contract negotiators are knowledgeable about effective
328 negotiation strategies, capable of successfully implementing
329 those strategies, and involved appropriately in the procurement
330 process. The department shall evaluate such training every 5
331 years in order to assess its effectiveness and update the
332 training curriculum. A certified contract negotiator is required
333 to complete training every 5 years for certification renewal.
334 Qualification requirements for certification must include:
335 a. At least 12 months' experience as a purchasing agent,
336 contract manager, or contract administrator for an agency or
337 local governmental entity where at least 50 percent of the
338 designated duties included procuring commodities or contractual
339 services, participating in contract negotiation, contract
340 management, or contract administration, or working as an agency
341 attorney whose duties included providing legal counsel to the
342 agency's purchasing or contracting staff.
343 b. Experience during the preceding 5 years in leading at
344 least two federal, state, or local government negotiation teams
345 through a negotiated procurement, or participation in at least
346 three federal, state, or local government negotiated
347 procurements.
348 (18) Any person who supervises contract administrators or
349 contract or grant managers that meet criteria for certification
350 in subsection (15) shall annually complete public procurement

351 training for supervisors within 12 months of appointment to the
352 supervisory position. The department is responsible for
353 establishing and disseminating the training course content
354 required for supervisors and training shall commence no later
355 than July 1, 2022.

356 (26) (a) For each contractual services contract in excess
357 of \$1 million, the agency head shall establish a continuing
358 oversight team after the contract has been awarded. The agency
359 head shall appoint at least four persons, one of whom must be
360 the certified contract manager, to the continuing oversight
361 team. If the value of the contractual services contract is in
362 excess of \$5 million, at least one of the persons on the
363 continuing oversight team must possess at least 5 years of
364 experience in managing contracts of a similar scope or size. If
365 the value of the contractual services contract is in excess of
366 \$20 million, the continuing oversight team shall consist of at
367 least five persons, at least one of the persons on the
368 continuing oversight team must be from a state agency other than
369 the agency or agencies participating in the contract. Members of
370 the continuing oversight team must be employees of the state and
371 must collectively have experience and knowledge in contract
372 management, contract administration, contract enforcement, and
373 the program areas and service requirements for the contractual
374 services purchased.

375 (b)1. For contracts in excess of \$1 million, each

376 continuing oversight team must meet at least quarterly.

377 2. For contracts in excess of \$10 million, each continuing
378 oversight team must meet at least monthly. A representative of
379 the contractor must be made available to members of the
380 continuing oversight team for at least one meeting every
381 calendar quarter to respond to any questions or requests for
382 information from the continuing oversight team concerning
383 contractor performance.

384 (c)1. Within 30 days of the formation of the continuing
385 oversight team, the continuing oversight team must convene an
386 initial meeting with representatives of the contractor to
387 achieve a mutual understanding of the contract requirements, to
388 provide the contractor with an orientation to the contract
389 management process, and to provide an explanation of the role of
390 the continuing oversight team, contract manager, and contract
391 administrator.

392 2. The continuing oversight team must meet to discuss the
393 status of the contract, the pace of deliverables, the quality of
394 deliverables, contractor responsiveness, and contractor
395 performance. The contract administrator must be present at each
396 meeting with the contract file and all applicable financial
397 information. The continuing oversight team may submit written
398 questions to the contractor concerning any items discussed
399 during a continuing oversight team meeting. The contractor must
400 respond to the team's questions within 10 business days after

401 receiving the written questions. The questions and responses
402 must be included in the contract file.

403 (d) The continuing oversight team must notify, in writing:

404 1. The agency head and the department of any deficiency in
405 a contractor's performance which substantially affects the pace
406 of deliverables or the likelihood of the successful completion
407 of the contract.

408 2. The agency head, the department, and the Office of
409 Policy and Budget in the Executive Office of the Governor of any
410 significant change in contract scope or any increase in the cost
411 of the contract that is 5 percent of the planned contract cost
412 or greater within the fiscal year for contractual service
413 contracts of at least \$5 million.

414 3. The agency head, the department, the Office of Policy
415 and Budget in the Executive Office of the Governor, and the
416 legislative appropriations committees of any significant change
417 in contract scope or any increase in the cost of the contract
418 that is 5 percent of the planned contract cost or greater within
419 the fiscal year for contractual service contracts of \$10 million
420 or greater.

421 Section 5. Subsection (7) is added to section 287.058,
422 Florida Statutes, to read:

423 287.058 Contract document.—

424 (7) A contract may not contain a nondisclosure clause that
425 prohibits the contractor from disclosing information relevant to

426 the performance of the contract to members or staff of the
427 Senate or the House of Representatives.

428 Section 6. Section 287.1351, Florida Statutes, is created
429 to read:

430 287.1351 Suspended vendors; state contracts.—

431 (1) As used in this section, the term "vendor" means a
432 person or an entity that provides goods or services to an agency
433 under a contract or submits a bid, proposal, or reply to provide
434 goods or services to an agency.

435 (2)(a) A vendor that is in default on any contract with an
436 agency or has otherwise repeatedly demonstrated a recent
437 inability to fulfill the terms and conditions of previous state
438 contracts or to adequately perform its duties under those
439 contracts may not submit a bid, proposal, or reply to an agency
440 or enter into or renew a contract to provide any goods or
441 services to an agency after its placement, pursuant to this
442 section, on the suspended vendor list.

443 (b) An agency may not accept a bid, proposal, or reply
444 from, or enter into or renew any contract with, a vendor on the
445 suspended vendor list until such vendor has been removed from
446 the suspended vendor list and returned to the vendor list
447 maintained by the department pursuant to s. 287.042(1)(a) and
448 (b) and the vendor has reimbursed the agency for any
449 reprocurement costs.

450 (3) An agency shall notify the department of any vendor

451 that has met the grounds for suspension described in paragraph
452 (2) (a). The agency must provide documentation to the department
453 evidencing the vendor's default or other grounds for suspension.
454 The department shall review the documentation provided and
455 determine whether good cause exists to remove the vendor from
456 the vendor list and to place it on the suspended vendor list. If
457 good cause exists, the department must notify the vendor in
458 writing of its intent to remove the vendor from the vendor list
459 and of the vendor's right to an administrative hearing and the
460 applicable procedures and time requirements for any such
461 hearing. If the vendor does not request an administrative
462 hearing, the department must enter a final order removing the
463 vendor from the vendor list. A vendor may not be removed from
464 the vendor list without receiving an individual notice of intent
465 from the department.

466 (4) Within 21 days after receipt of the notice of intent,
467 the vendor may file with the department a petition for a formal
468 hearing pursuant to ss. 120.569 and 120.57 to challenge the
469 department's decision to remove the vendor from the vendor list.
470 A vendor that fails to timely file a petition in accordance with
471 this subsection is deemed to have waived its right to a hearing,
472 and the department's decision to remove the vendor from the
473 vendor list becomes final agency action.

474 (5) (a) The department shall place any vendor removed from
475 the vendor list pursuant to this section on the suspended vendor

476 list. One year or more after entry of the final order of its
477 suspension, a suspended vendor may file a petition with the
478 department for removal from the suspended vendor list. The
479 proceeding on the petition must be conducted in accordance with
480 chapter 120. The vendor may be removed from the suspended vendor
481 list if the administrative law judge determines that removal
482 from the list would be in the public interest. In determining
483 whether removal from the list would be in the public interest,
484 the administrative law judge may consider, but is not limited
485 to, whether the suspended vendor has prepared a corrective
486 action plan that addresses the original grounds for default or
487 failure to fulfill the terms and conditions of the contract,
488 reimbursed the agency for any reprocurement costs, or provided
489 additional evidence that the vendor has taken other remedial
490 action.

491 (b) If a petition for removal from the suspended vendor
492 list is denied, the vendor may not petition for another hearing
493 on removal for a period of at least 9 months after the date of
494 the denial. The department may petition for the suspended
495 vendor's removal before the expiration of such period if, in the
496 department's discretion, the department determines that removal
497 from the suspended vendor list would be in the public interest.

498 Section 7. Section 287.136, Florida Statutes, is amended
499 to read:

500 287.136 Audit of executed contract documents.—

501 (1) After execution of a contract, the Chief Financial
502 Officer shall perform audits of the executed contract document
503 and contract manager's records to ensure that adequate internal
504 controls are in place for complying with the terms and
505 conditions of the contract and for the validation and receipt of
506 goods and services.

507 (a)~~(1)~~ At the conclusion of the audit, the Chief Financial
508 Officer's designee shall discuss the audit and potential
509 findings with the official whose office is subject to audit. The
510 final audit report shall be submitted to the agency head.

511 (b)~~(2)~~ Within 30 days after receipt of the final audit
512 report, the agency head shall submit to the Chief Financial
513 Officer or designee his or her written statement of explanation
514 or rebuttal concerning findings requiring corrective action,
515 including corrective action to be taken to preclude a
516 recurrence.

517 (2) Beginning October 1, 2021, and every 3 years
518 thereafter, each agency inspector general shall complete a risk
519 based compliance audit of all contracts executed by the agency
520 for the preceding 3 fiscal years. The audit must include an
521 evaluation of and identify any trend in vendor preference. The
522 audit findings must be submitted to the agency head, the
523 Secretary of the Department of Management Services, and the
524 Governor.

525 Section 8. This act shall take effect July 1, 2021.