

By Senator Brodeur

9-01566-21

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1 A bill to be entitled
2 An act relating to agency contracts for commodities
3 and contractual services; amending s. 287.042, F.S.;
4 providing that the Department of Management Services
5 may enter into an agreement authorizing an agency to
6 make purchases under certain contracts if the
7 Secretary of Management Services makes a certain
8 determination; amending s. 287.056, F.S.; providing
9 that an agency must issue a request for quote to
10 certain approved vendors when it issues a request for
11 quote for commodities or contractual services;
12 providing for the disqualification of certain firms or
13 individuals from state term contract eligibility;
14 amending s. 287.057, F.S.; revising the timeframe
15 during which an agency must electronically post a
16 description of certain services in certain
17 circumstances; requiring an agency to report certain
18 actions to the department in a specified manner and
19 form; requiring an agency to submit a report
20 concerning contract performance before certain
21 contract renewals or amendments are executed;
22 providing that a designated contract manager serves as
23 a liaison between the contractor and the agency;
24 prohibiting certain individuals from serving as a
25 contract manager; providing the responsibilities of a
26 contract manager; requiring the Chief Financial
27 Officer to evaluate certain training at certain
28 intervals; requiring that certain contract managers
29 complete training and certification within a specified

9-01566-21

20211616__

30 timeframe; requiring the department to establish and
31 disseminate certain training and certification
32 requirements; requiring the department to evaluate
33 certain training at certain intervals; requiring
34 certain contract managers to be certified Project
35 Management Professionals; authorizing a contract
36 administrator to also serve as a contract manager in
37 certain circumstances; providing for specified teams
38 to make certain evaluations and conduct certain
39 negotiations; requiring a Project Management
40 Professional to provide guidance based on certain
41 qualifications; providing qualification requirements
42 for contract negotiator certification; providing for a
43 continuing oversight team in certain circumstances;
44 providing requirements for continuing oversight team
45 members and meetings; requiring a continuing oversight
46 team to provide notice of certain changes in contract
47 scope to certain entities; amending s. 287.136, F.S.;
48 requiring each agency inspector general to complete
49 certain audits of executed contracts at certain
50 intervals; requiring the audits be submitted to
51 certain persons; providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Subsection (16) of section 287.042, Florida
56 Statutes, is amended to read:

57 287.042 Powers, duties, and functions.—The department shall
58 have the following powers, duties, and functions:

9-01566-21

20211616__

59 (16) To evaluate contracts let by the Federal Government,
60 another state, or a political subdivision for the provision of
61 commodities and contract services, and, if it is determined by
62 the Secretary of Management Services in writing to be cost-
63 effective and ~~in~~ the best value to ~~interest~~ of the state, to
64 enter into a written agreement authorizing an agency to make
65 purchases under such contract.

66 Section 2. Subsection (2) of section 287.056, Florida
67 Statutes, is amended, and subsection (4) is added to that
68 section, to read:

69 287.056 Purchases from purchasing agreements and state term
70 contracts.—

71 (2) Agencies and eligible users may use a request for quote
72 to obtain written pricing or services information from a state
73 term contract vendor for commodities or contractual services
74 available on state term contract from that vendor. The purpose
75 of a request for quote is to determine whether a price, term, or
76 condition more favorable to the agency or eligible user than
77 that provided in the state term contract is available. If an
78 agency issues a request for quote for commodities or contractual
79 services, the agency must issue a request for quote to all
80 vendors approved to provide such commodity or contractual
81 services. Use of a request for quote does not constitute a
82 decision or intended decision that is subject to protest under
83 s. 120.57(3).

84 (4) A firm or individual removed from the source of supply
85 pursuant to s. 287.042(1)(b) or placed on a disqualified vendor
86 list pursuant to s. 287.133 or s. 287.134 is immediately
87 disqualified from state term contract eligibility.

9-01566-21

20211616__

88 Section 3. Paragraph (c) of subsection (3) and subsections
89 (13) through (16) of section 287.057, Florida Statutes, are
90 amended, and subsection (24) is added to that section, to read:

91 287.057 Procurement of commodities or contractual
92 services.—

93 (3) If the purchase price of commodities or contractual
94 services exceeds the threshold amount provided in s. 287.017 for
95 CATEGORY TWO, purchase of commodities or contractual services
96 may not be made without receiving competitive sealed bids,
97 competitive sealed proposals, or competitive sealed replies
98 unless:

99 (c) Commodities or contractual services available only from
100 a single source may be excepted from the competitive-
101 solicitation requirements. If an agency believes that
102 commodities or contractual services are available only from a
103 single source, the agency shall electronically post a
104 description of the commodities or contractual services sought
105 for at least 15 7 business days. The description must include a
106 request that prospective vendors provide information regarding
107 their ability to supply the commodities or contractual services
108 described. If it is determined in writing by the agency, after
109 reviewing any information received from prospective vendors that
110 the commodities or contractual services are available only from
111 a single source, the agency shall provide notice of its intended
112 decision to enter a single-source purchase contract in the
113 manner specified in s. 120.57(3). Each agency shall report all
114 such actions to the department on a quarterly basis in a manner
115 and form prescribed by the department.

116 (13) Contracts for commodities or contractual services may

9-01566-21

20211616__

117 be renewed for a period that may not exceed 3 years or the term
118 of the original contract, whichever is longer. Renewal of a
119 contract for commodities or contractual services must be in
120 writing and is subject to the same terms and conditions set
121 forth in the initial contract and any written amendments signed
122 by the parties. If the commodity or contractual service is
123 purchased as a result of the solicitation of bids, proposals, or
124 replies, the price of the commodity or contractual service to be
125 renewed must be specified in the bid, proposal, or reply, except
126 that an agency may negotiate lower pricing. A renewal contract
127 may not include any compensation for costs associated with the
128 renewal. Renewals are contingent upon satisfactory performance
129 evaluations by the agency and subject to the availability of
130 funds. Exceptional purchase contracts pursuant to paragraphs
131 (3) (a) and (c) may not be renewed. With the exception of
132 subsection (10), if a contract amendment results in a longer
133 contract term or increased payments, a state agency may not
134 renew or amend a contract for the outsourcing of a service or
135 activity that has an original term value exceeding \$5 ~~\$10~~
136 million before submitting a written report concerning contract
137 performance to the Governor, the President of the Senate, and
138 the Speaker of the House of Representatives at least 90 days
139 before execution of the renewal or amendment.

140 (14) (a) For each contractual services contract, the agency
141 shall designate an employee to function as contract manager who
142 is responsible for enforcing performance of the contract terms
143 and conditions and serve as a liaison between ~~with~~ the
144 contractor and the agency. The contract manager may not be an
145 individual who has been employed, within the previous 5 years,

9-01566-21

20211616__

146 by the vendor awarded the contractual services contract. The
147 primary responsibilities of a contract manager include:

148 1. Participating in the solicitation development and review
149 of contract documents.

150 2. Monitoring the contractor's progress and performance to
151 ensure procured products and services conform to the contract
152 requirements and to keep timely records of findings.

153 3. Managing and documenting any changes to the contract
154 through the amendment process authorized by the terms of the
155 contract.

156 4. Monitoring the contract budget to ensure sufficient
157 funds are available throughout the term of the contract.

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

160 (b)(a) Each contract manager who is responsible for
161 contracts in excess of the threshold amount for CATEGORY TWO
162 must, at a minimum, complete training conducted by the Chief
163 Financial Officer for accountability in contracts and grant
164 management. The Chief Financial Officer shall evaluate such
165 training every 5 years to assess its effectiveness and update
166 the training curriculum. The Chief Financial Officer shall
167 establish and disseminate uniform procedures pursuant to s.
168 17.03(3) to ensure that contractual services have been rendered
169 in accordance with the contract terms before the agency
170 processes the invoice for payment. The procedures must include,
171 but need not be limited to, procedures for monitoring and
172 documenting contractor performance, reviewing and documenting
173 all deliverables for which payment is requested by vendors, and
174 providing written certification by contract managers of the

9-01566-21

20211616__

175 agency's receipt of goods and services.

176 (c)~~(b)~~ Each contract manager who is responsible for
177 contracts in excess of \$100,000 annually must, in addition to
178 the accountability in contracts and grant management training
179 required in paragraph (b) and within 6 months after being
180 assigned responsibility for such contracts, complete training in
181 contract management and become a certified contract manager. The
182 department is responsible for establishing and disseminating the
183 training and certification requirements for certified contract
184 managers. Training must promote best practices and procedures
185 related to negotiating, managing, and ensuring accountability in
186 agency contracts and grant agreements, which must include the
187 use of case studies based upon previous audits, contracts, and
188 grant agreements. A certified contract manager must complete
189 training every 5 years for certification renewal requirements
190 ~~for certification which include completing the training~~
191 ~~conducted by the Chief Financial Officer for accountability in~~
192 ~~contracts and grant management.~~ Training and certification must
193 be coordinated by the department, and the training must be
194 conducted jointly by the department and the Department of
195 Financial Services. The department shall evaluate such training
196 every 5 years to assess its effectiveness and update the
197 training curriculum ~~Training must promote best practices and~~
198 ~~procedures related to negotiating, managing, and ensuring~~
199 ~~accountability in agency contracts and grant agreements, which~~
200 ~~must include the use of case studies based upon previous audits,~~
201 ~~contracts, and grant agreements. All agency contract managers~~
202 ~~must become certified within 24 months after establishment of~~
203 ~~the training and certification requirements by the department~~

9-01566-21

20211616__

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

205 (d) Each contract manager who is responsible for contracts
206 in excess of \$10 million annually must, in addition to the
207 training required in paragraph (b) and the training and
208 certification required in paragraph (c), be a Project Management
209 Professional, as certified by the Project Management Institute.

210 (15) Each agency shall designate at least one employee who
211 shall serve as a contract administrator responsible for
212 maintaining a contract file and financial information on all
213 contractual services contracts and who shall serve as a liaison
214 with the contract managers and the department. For a contract of
215 \$250,000 or less annually, the contract administrator may also
216 serve as the contract manager if he or she has completed the
217 required training. For a contract in excess of \$250,000
218 annually, the contract administrator may not serve as both the
219 contract administrator and the contract manager.

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

223 1. At least three persons to an evaluation team to evaluate
224 proposals and replies. The members of the evaluation team must
225 ~~who~~ collectively have experience and knowledge in the program
226 areas and service requirements for the commodity which
227 ~~commodities~~ or contractual services ~~are~~ sought.

228 2. At least three persons to a negotiation team to conduct
229 negotiations during a competitive sealed reply procurement. The
230 negotiation team members must ~~who~~ collectively have experience
231 and knowledge in negotiating contracts, contract procurement,
232 and the program areas and service requirements for the commodity

9-01566-21

20211616__

233 ~~which commodities or contractual services are sought.~~

234 (b)1. If the value of a contract is in excess of \$1 million
235 in any fiscal year, at least one of the persons conducting
236 negotiations must be ~~certified as a~~ certified contract
237 negotiator ~~based upon department rules in order to ensure that~~
238 ~~certified contract negotiators are knowledgeable about effective~~
239 ~~negotiation strategies, capable of successfully implementing~~
240 ~~those strategies, and involved appropriately in the procurement~~
241 ~~process. At a minimum, the rules must address the qualifications~~
242 ~~required for certification, the method of certification, and the~~
243 ~~procedure for involving the certified negotiator.~~

244 2. If the value of a contract is in excess of \$10 million
245 in any fiscal year, at least one of the persons conducting
246 negotiations must be a Project Management Professional, as
247 certified by the Project Management Institute. The Project
248 Management Professional shall provide guidance based on his or
249 her experience, education, and competency to lead and direct
250 complex projects.

251 3. The department is responsible for establishing and
252 disseminating the certification and training requirements for
253 certified contract negotiators. Training must ensure that
254 certified contract negotiators are knowledgeable about effective
255 negotiation strategies, capable of successfully implementing
256 those strategies, and appropriately involved in the procurement
257 process. The department shall evaluate such training every 5
258 years in order to assess its effectiveness and update the
259 training curriculum. A certified contract negotiator is required
260 to complete training every 5 years for certification renewal.
261 Qualification requirements for certification must include:

9-01566-21

20211616__

262 a. At least 12 months' experience as a purchasing agent,
263 contract manager, or contract administrator for an agency or
264 local governmental entity where at least 50 percent of the
265 designated duties included procuring commodities or contractual
266 services, participating in contract negotiation, contract
267 management, or contract administration, or working as an agency
268 attorney whose duties included providing legal counsel to the
269 agency's purchasing or contracting staff.

270 b. Experience during the preceding 5 years in leading at
271 least three federal, state, or local government negotiation
272 teams through a negotiated procurement, or participation in at
273 least five federal, state, or local government negotiated
274 procurements.

275 (24) (a) For each contractual services contract in excess of
276 \$1 million, the agency head shall establish a continuing
277 oversight team after the contract has been awarded. The agency
278 head shall appoint at least four persons, one of whom must be
279 the contract manager, to the continuing oversight team. If the
280 value of the contractual services contract is in excess of \$5
281 million, at least one of the persons on the continuing oversight
282 team must be a Project Management Professional, as certified by
283 the Project Management Institute. Members of the continuing
284 oversight team must collectively have experience and knowledge
285 in contract management, contract administration, contract
286 enforcement, and the program areas and service requirements for
287 the contractual services purchased.

288 (b) Continuing oversight teams must meet at least quarterly
289 to discuss the status of the contract, the pace of deliverables,
290 and contractor performance. The contract administrator must be

9-01566-21

20211616__

291 present at each meeting with the contract file and all
292 applicable financial information. The continuing oversight team
293 must notify, in writing:

294 1. The agency head and the department of any deficiency in
295 a contractor's performance.

296 2. The agency head, the department, and the Office of
297 Policy and Budget in the Executive Office of the Governor of any
298 significant change in contract scope and any increase in the
299 cost of the contract that is 5 percent of the planned contract
300 cost or greater within the fiscal year for contractual service
301 contracts of less than \$5 million.

302 3. The agency head, the department, the Office of Policy
303 and Budget in the Executive Office of the Governor, and the
304 legislative appropriations committees of any significant change
305 in contract scope and any increase in the cost of the contract
306 that is 5 percent of the planned contract cost or greater within
307 the fiscal year for contractual service contracts of \$5 million
308 or greater.

309 Section 4. Section 287.136, Florida Statutes, is amended to
310 read:

311 287.136 Audit of executed contract documents.—

312 (1) After execution of a contract, the Chief Financial
313 Officer shall perform audits of the executed contract document
314 and contract manager's records to ensure that adequate internal
315 controls are in place for complying with the terms and
316 conditions of the contract and for the validation and receipt of
317 goods and services.

318 (a) ~~(1)~~ At the conclusion of the audit, the Chief Financial
319 Officer's designee shall discuss the audit and potential

9-01566-21

20211616__

320 findings with the official whose office is subject to audit. The
321 final audit report shall be submitted to the agency head.

322 (b)~~(2)~~ Within 30 days after receipt of the final audit
323 report, the agency head shall submit to the Chief Financial
324 Officer or designee his or her written statement of explanation
325 or rebuttal concerning findings requiring corrective action,
326 including corrective action to be taken to preclude a
327 recurrence.

328 (2) Beginning October 1, 2021, and every 3 years
329 thereafter, each agency inspector general shall complete a
330 compliance audit of all contract documents executed by the
331 agency for the preceding 3 fiscal years. The audit must include
332 an evaluation of and identify any trend in vendor preference.
333 The audit findings must be submitted to the agency head, the
334 Secretary of the Department of Management Services, and the
335 Governor.

336 Section 5. This act shall take effect July 1, 2021.