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2 An act relating to contract liability; amending s.
3 287.058, F.S.; requiring that certain procurement
4 agreements include a specified provision; reenacting
5 ss. 287.0571(5) and 1002.84(13), F.S., relating to
6 contract requirements for proposed outsourcing and
7 procurement contract requirements for early learning
8 coalitions, respectively, to incorporate the amendment
9 made to s. 287.058, F.S., in references thereto;
10 providing an effective date.

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

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14 Section 1. Subsection (8) is added to section 287.058,
15 Florida Statutes, to read:

16 287.058 Contract document.—

17 (8) In addition to any other provision required to be
18 included, the written agreement for a procurement of contractual
19 services in excess of the threshold amount provided in s.
20 287.017 for CATEGORY TWO must include the following limitation
21 of liability provision for breach of contract:

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23 For all claims against the Contractor under any
24 contract or purchase order, and regardless of the
25 basis on which the claim is made, the Contractor's
26 liability for direct damages under a contract or
27 purchase order shall be limited to the greater of
28 \$100,000, the dollar amount of the contract or
29 purchase order, or two times the charges rendered by

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30 the Contractor under the purchase order. The
31 limitation of liability contemplated herein does not
32 apply to any claim arising under an indemnity section
33 of the agreement or any section of the agreement
34 relating to insurance for the provision of
35 Professional Services as defined in section 287.055,
36 Florida Statutes, unless otherwise agreed to by the
37 parties to the contract. Unless otherwise specifically
38 enumerated in the contract or in the purchase order,
39 no party shall be liable to another for special,
40 indirect, punitive, or consequential damages,
41 including lost data or records (unless the contract or
42 purchase order requires the Contractor to back up data
43 or records), even if the party has been advised that
44 such damages are possible. No party shall be liable
45 for lost profits, lost revenue, or lost institutional
46 operating savings. The State and Customer may, in
47 addition to other remedies available to them at law or
48 equity and upon notice to the Contractor, retain such
49 monies from amounts due the Contractor as may be
50 necessary to satisfy any claim for damages, penalties,
51 costs, and the like asserted by or against them. The
52 State may set off any liability or other obligation of
53 the Contractor or its affiliates to the State against
54 any payments due the Contractor under any contract
55 with the State.

56 Section 2. For the purpose of incorporating the amendment
57 made by this act to section 287.058, Florida Statutes, in a
58 reference thereto, subsection (5) of section 287.0571, Florida

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59 Statutes, is reenacted to read:

60 287.0571 Business case to outsource; applicability.—

61 (5) In addition to the contract requirements provided in s.
62 287.058, each contract for a proposed outsourcing, pursuant to
63 this section, must include, but need not be limited to, the
64 following contractual provisions:

65 (a) A scope-of-work provision that clearly specifies each
66 service or deliverable to be provided, including a description
67 of each deliverable or activity that is quantifiable,
68 measurable, and verifiable. This provision must include a clause
69 that states if a particular service or deliverable is
70 inadvertently omitted or not clearly specified but determined to
71 be operationally necessary and verified to have been performed
72 by the agency within the 12 months before the execution of the
73 contract, such service or deliverable will be provided by the
74 contractor through the identified contract-amendment process.

75 (b) A service-level-agreement provision describing all
76 services to be provided under the terms of the agreement, the
77 state agency's service requirements and performance objectives,
78 specific responsibilities of the state agency and the
79 contractor, and the process for amending any portion of the
80 service-level agreement. Each service-level agreement must
81 contain an exclusivity clause that allows the state agency to
82 retain the right to perform the service or activity, directly or
83 with another contractor, if service levels are not being
84 achieved.

85 (c) A provision that identifies all associated costs,
86 specific payment terms, and payment schedules, including
87 provisions governing incentives and financial disincentives and

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88 criteria governing payment.

89 (d) A provision that identifies a clear and specific
90 transition plan that will be implemented in order to complete
91 all required activities needed to transfer the service or
92 activity from the state agency to the contractor and operate the
93 service or activity successfully.

94 (e) A performance-standards provision that identifies all
95 required performance standards, which must include, at a
96 minimum:

97 1. Detailed and measurable acceptance criteria for each
98 deliverable and service to be provided to the state agency under
99 the terms of the contract which document the required
100 performance level.

101 2. A method for monitoring and reporting progress in
102 achieving specified performance standards and levels.

103 3. The sanctions or disincentives that shall be imposed for
104 nonperformance by the contractor or state agency.

105 (f) A provision that requires the contractor and its
106 subcontractors to maintain adequate accounting records that
107 comply with all applicable federal and state laws and generally
108 accepted accounting principles.

109 (g) A provision that authorizes the state agency to have
110 access to and to audit all records related to the contract and
111 subcontracts, or any responsibilities or functions under the
112 contract and subcontracts, for purposes of legislative
113 oversight, and a requirement for audits by a service
114 organization in accordance with professional auditing standards,
115 if appropriate.

116 (h) A provision that requires the contractor to interview

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117 and consider for employment with the contractor each displaced
118 state employee who is interested in such employment.

119 (i) A contingency-plan provision that describes the
120 mechanism for continuing the operation of the service or
121 activity, including transferring the service or activity back to
122 the state agency or successor contractor if the contractor fails
123 to perform and comply with the performance standards and levels
124 of the contract and the contract is terminated.

125 (j) A provision that requires the contractor and its
126 subcontractors to comply with public records laws, specifically
127 to:

128 1. Keep and maintain the public records that ordinarily and
129 necessarily would be required by the state agency in order to
130 perform the service or activity.

131 2. Provide the public with access to such public records on
132 the same terms and conditions that the state agency would
133 provide the records and at a cost that does not exceed that
134 provided in chapter 119 or as otherwise provided by law.

135 3. Ensure that records that are exempt or records that are
136 confidential and exempt are not disclosed except as authorized
137 by law.

138 4. Meet all requirements for retaining records and transfer
139 to the state agency, at no cost, all public records in
140 possession of the contractor upon termination of the contract
141 and destroy any duplicate public records that are exempt or
142 confidential and exempt. All records stored electronically must
143 be provided to the state agency in a format that is compatible
144 with the information technology systems of the state agency.

145 (k)1. A provision that provides that any copyrightable or

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146 patentable intellectual property produced as a result of work or
147 services performed under the contract, or in any way connected
148 with the contract, shall be the property of the state, with only
149 such exceptions as are clearly expressed and reasonably valued
150 in the contract.

151 2. A provision that provides that, if the primary purpose
152 of the contract is the creation of intellectual property, the
153 state shall retain an unencumbered right to use such property.

154 (1) If applicable, a provision that allows the agency to
155 purchase from the contractor, at its depreciated value, assets
156 used by the contractor in the performance of the contract. If
157 assets have not depreciated, the agency shall retain the right
158 to negotiate to purchase at an agreed-upon cost.

159 Section 3. For the purpose of incorporating the amendment
160 made by this act to section 287.058, Florida Statutes, in a
161 reference thereto, subsection (13) of section 1002.84, Florida
162 Statutes, is reenacted to read:

163 1002.84 Early learning coalitions; school readiness powers
164 and duties.—Each early learning coalition shall:

165 (13) Comply with federal procurement requirements and the
166 procurement requirements of ss. 215.971, 287.057, and 287.058,
167 except that an early learning coalition is not required to
168 competitively procure direct services for school readiness
169 program and Voluntary Prekindergarten Education Program
170 providers.

171 Section 4. This act shall take effect July 1, 2023.