287.001 Legislative intent.—The Legislature recognizes that fair and open competition is a basic tenet of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured. It is essential to the effective and ethical procurement of commodities and contractual services that there be a system of uniform procedures to be utilized by state agencies in managing and procuring commodities and contractual services; that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained; and that adherence by the agency and the vendor to specific ethical considerations be required.

Comment: Opinion: Government procurement has not kept up with technology. Legislative intent can be accomplished through streamlined electronic processes that facilitates small businesses being able to compete in state procurement opportunities through a streamlined process without the legal complexities of the formal process.

History.—s. 3, ch. 82-196; s. 10, ch. 90-268; s. 7, ch. 2002-207.

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

(1) “Agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.

(2) “Agency head” means, with respect to an agency headed by a collegial body, the executive director or chief administrative officer of the agency.

(3) “Artistic services” means the rendering by a contractor of its time and effort to create or perform an artistic work in the fields of music, dance, drama, folk art, creative writing, painting, sculpture, photography, graphic arts, craft arts, industrial design, costume design, fashion design, motion pictures, television, radio, or tape and sound recording.

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

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

(6) “Competitive solicitation” means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

(7) “Contractor” means a person who contracts to sell commodities or contractual services to an agency.

(8) “Contractual service” means the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services. “Contractual service” does not include any contract for the furnishing of labor or materials for the construction, renovation, repair, modification, or demolition of any facility, building, portion of building, utility, park, parking lot, or structure or other improvement to real property entered into pursuant to chapter 255 and rules adopted thereunder.Note: Cross for Chapter 255 for construction.

(9) “Department” means the Department of Management Services.

(10) “Electronic posting” or “electronically post” means the noticing of solicitations, agency decisions or intended decisions, or other matters relating to procurement on a centralized Internet website designated by the department for this purpose.

(11) “Eligible user” means any person or entity authorized by the department pursuant to rule to purchase from state term contracts or to use the online procurement system.

(12) “Exceptional purchase” means any purchase of commodities or contractual services excepted by law or rule from the requirements for competitive solicitation, including, but not limited to, purchases from a single source; purchases upon receipt of less than two responsive bids, proposals, or replies; purchases made by an agency, after receiving approval from the department, from a contract procured, pursuant to s. 287.057(1), or by another agency; and purchases made without advertisement in the manner required by s. 287.042(3)(b).

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

(14) “Information technology” has the meaning ascribed in s. 282.0041.

(15) “Invitation to bid” means a written or electronically posted solicitation for competitive sealed bids.

(16) “Invitation to negotiate” means a written or electronically posted solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services.

(17) “Minority business enterprise” has the meaning ascribed in s. 288.703. Note: Look at definition.

(18) “Office” means the Office of Supplier Diversity of the Department of Management Services. Note: Small Business Ombudsman

(19) “Outsource” means the process of contracting with a vendor to provide a service as defined in s. 216.011(1)(f), in whole or in part, or an activity as defined in s. 216.011(1)(rr), while a state agency retains the responsibility and accountability for the service or activity and there is a transfer of management responsibility for the delivery of resources and the performance of those resources.

(20) “Renewal” means contracting with the same contractor for an additional contract period after the initial contract period, only if pursuant to contract terms specifically providing for such renewal.

(21) “Request for information” means a written or electronically posted request made by an agency to vendors for information concerning commodities or contractual services. Responses to these requests are not offers and may not be accepted by the agency to form a binding contract.

(22) “Request for proposals” means a written or electronically posted solicitation for competitive sealed proposals.

(23) “Request for a quote” means an oral or written request for written pricing or services information from a state term contract vendor for commodities or contractual services available on a state term contract from that vendor.

(24) “Responsible vendor” means a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.

(25) “Responsive bid,” “responsive proposal,” or “responsive reply” means a bid, or proposal, or reply submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation.

(26) “Responsive vendor” means a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.

(27) “State term contract” means a term contract that is competitively procured by the department pursuant to s. 287.057 and that is used by agencies and eligible users pursuant to s. 287.056.

(28) “Term contract” means an indefinite quantity contract to furnish commodities or contractual services during a defined period.

History.—s. 22, ch. 69-106; s. 1, ch. 80-374; ss. 4, 8, ch. 82-196; s. 1, ch. 83-99; s. 1, ch. 83-192; s. 1, ch. 84-158; s. 29, ch. 85-349; s. 1, ch. 86-52; ss. 6, 20, ch. 88-384; s. 1, ch. 89-289; s. 2, ch. 90-147; s. 4, ch. 90-224; s. 11, ch. 90-268; s. 36, ch. 90-335; s. 15, ch. 92-98; s. 107, ch. 92-142; s. 246, ch. 92-279; s. 55, ch. 92-326; s. 8, ch. 94-322; s. 1, ch. 95-168; s. 8, ch. 96-236; s. 24, ch. 96-320; s. 16, ch. 98-65; s. 74, ch. 98-279; s. 31, ch. 2000-164; s. 9, ch. 2000-286; s. 2, ch. 2001-278; s. 8, ch. 2002-207; s. 14, ch. 2010-151.

287.017 Purchasing categories, threshold amounts.—The following purchasing categories are hereby created:

(1) CATEGORY ONE: $20,000.

(2) CATEGORY TWO: $35,000.

(3) CATEGORY THREE: $65,000.

(4) CATEGORY FOUR: $195,000.

(5) CATEGORY FIVE: $325,000.

Note: DMS has suggested the possibility of increasing these thresholds which could benefit small businesses in competing for larger contracts through a streamlined quotation process which is devoid of legal complexities of a formal competitive solicitation. Category Two ($35,000) is the threshold at which point an agency must issue a formal solicitation. Research and Emerging Trends – Request to research what threshold other governmental entities use. State funding to private entities invoke spirit of business inclusion and access to market place. Do private entities follow state procurement guidelines when receiving state funding… cross reference to Grant requirements.

History.—ss. 5, 13, ch. 86-204; ss. 12, 34, ch. 90-268; s. 3, ch. 96-236; s. 17, ch. 98-65; s. 75, ch. 98-279; s. 43, ch. 99-399; s. 9, ch. 2002-207; s. 15, ch. 2010-151.

287.022 Purchase of insurance.—

(1) Insurance, while not a commodity, nevertheless shall be purchased for all agencies by the department, except that agencies may purchase title insurance for land acquisition and may make emergency purchases of insurance pursuant to s. 287.057(3)(a). The procedures for purchasing insurance, whether the purchase is made by the department or by the agencies, shall be the same as those set forth herein for the purchase of commodities.

(2) When an insurer or agent pays a commission or any portion thereof to any person, on insurance purchased under this part, such payment shall be reported to the department in writing and under oath within 30 days thereafter. Any failure to report as required herein shall subject the insurer or agent to the penalties provided in s. 624.15.

(3) The department and the Division of State Group Insurance shall not prohibit or limit any properly licensed insurer, health maintenance organization, prepaid limited health services organization, or insurance agent from competing for any insurance product or plan purchased, provided, or endorsed by the department or the division on the basis of the compensation arrangement used by the insurer or organization for its agents.

History.—s. 22, ch. 69-106; s. 1, ch. 89-232; s. 13, ch. 90-268; s. 76, ch. 98-279; s. 2, ch. 2001-192; s. 11, ch. 2001-278; s. 10, ch. 2002-207; s. 16, ch. 2010-151.

287.025 Prohibition against certain insurance coverage on specified state property or insurable subjects.—

(1) No primary contract of insurance shall be purchased on insurable subjects or property titled in the name of the state or its departments, divisions, bureaus, commissions, or agencies with respect to any of the following properties, coverages, or insurable subjects:

(a) Physical damage insurance on motor vehicles which are licensed for use on the public highways of this state. For the purpose of this chapter, the term “physical damage insurance” means coverage against collision, upset or overturn, fire, theft, combined additional coverage, or comprehensive;

(b) Physical damage insurance on watercraft and related equipment;

(c) Loss of rental income on any buildings unless the buildings are financed in whole or in part by revenue bonds or certificates the terms of which require such coverage or unless otherwise authorized by law;

(d) Miscellaneous equipment which is subject to a transportation feature and subject to ordinarily being covered by an inland marine insurance floater. The term “miscellaneous equipment” does not include boilers and machinery or nuclear equipment;

(e) Museum collections, artifacts, relics, or fine arts;

(f) Hull coverage on aircraft;

(g) Glass insurance;

(h) Coverage for loss against vandalism or malicious mischief unless these perils are included within an all-risks-of-physical-loss form; and

(i) Insurance against loss or damage to livestock and services of a veterinary for such animals.

(2) Excess insurance may be purchased to cover loss for physical damage on the above-described properties or risk if the aggregate exposure at any one location or actual cash value of any one item exceeds the sum of $10,000. However, no excess insurance shall be purchased on any items listed in paragraphs (1)(c), (e), (g), (h), and (i), regardless of value or risk.

(3) Any items, property, or insurable subjects titled in the name of the state or its departments, divisions, bureaus, commissions, or agencies which are not included or insured by the State Risk Management Trust Fund under chapter 284 or specifically designated not to be insured by this section shall be eligible subjects for insurance coverage through commercial insurance carriers as otherwise provided by law.

(4) No primary insurance contracts shall be purchased on any property or insurable subjects when the same is loaned to, leased by, or intended to be leased by, the state or its departments, divisions, bureaus, commissions, or agencies unless such coverage is required by the terms of the lease agreement and unless the insurance coverages required by the provisions of the lease are approved in writing by the Department of Management Services.

History.—ss. 1, 2, 3, 4, ch. 70-435; s. 1, ch. 73-64; s. 1, ch. 84-27; s. 247, ch. 92-279; s. 55, ch. 92-326; s. 63, ch. 96-418; s. 18, ch. 2000-122.

287.032 Purpose of department.—It shall be the purpose of the Department of Management Services:

(1) To promote efficiency, economy, and the conservation of energy and to effect coordination in the purchase of commodities and contractual services for the state.

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

(3) To procure and distribute federal surplus tangible personal property allocated to the state by the Federal Government.

History.—s. 22, ch. 69-106; s. 8, ch. 69-82; s. 1, ch. 76-29; s. 1, ch. 77-316; s. 2, ch. 80-374; s. 7, ch. 82-196; s. 248, ch. 92-279; s. 55, ch. 92-326; s. 77, ch. 98-279; s. 11, ch. 2002-207.

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

(1)(a) To canvass all sources of supply, establish and maintain a vendor list, and contract for the purchase, lease, or acquisition, including purchase by installment sales or lease-purchase contracts which may provide for the payment of interest on unpaid portions of the purchase price, of all commodities and contractual services required by any agency under this chapter. Any contract providing for deferred payments and the payment of interest shall be subject to specific rules adopted by the department.

(b) The department may remove from its vendor list any source of supply which fails to fulfill any of its duties specified in a contract with the state. It may reinstate any such source of supply when it is satisfied that further instances of default will not occur.

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

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

(e) The department shall include the products offered by the corporation on any listing prepared by the department which lists state term contracts executed by the department. The products or services shall be placed on such list in a category based upon specification criteria developed through a joint effort of the department and the corporation and approved by the department.

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

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

(h)1. The department may collect fees for the use of its electronic information services. The fees may be imposed on an individual transaction basis or as a fixed subscription for a designated period of time. At a minimum, the fees shall be determined in an amount sufficient to cover the department’s projected costs of the services, including overhead in accordance with the policies of the department for computing its administrative assessment. All fees collected under this paragraph shall be deposited in the Operating Trust Fund for disbursement as provided by law.

2. The department shall transfer funds generated by fees collected for the use of the department’s electronic information services from the Purchasing Oversight Account in the Operating Trust Fund to the Administrative Trust Fund in the Department of Financial Services to support statewide purchasing operations. Unless provided for in the General Appropriations Act, the amount of transfer shall be established each year in the department’s nonoperating budget based upon the estimated cost of statewide purchasing operations provided by the Department of Financial Services and may not exceed $500,000.

(2)(a) To establish purchasing agreements and procure state term contracts for commodities and contractual services, pursuant to s. 287.057, under which state agencies shall, and eligible users may, make purchases pursuant to s. 287.056. The department may restrict purchases from some term contracts to state agencies only for those term contracts where the inclusion of other governmental entities will have an adverse effect on competition or to those federal facilities located in this state. In such planning or purchasing the Office of Supplier Diversity may monitor to ensure that opportunities are afforded for contracting with minority business enterprises. ***The department, for state term contracts,*** and all agencies, for multiyear contractual services or term contracts, shall explore reasonable and economical means to utilize certified minority business enterprises. Purchases by any county, municipality, private nonprofit community transportation coordinator designated pursuant to chapter 427, while conducting business related solely to the Commission for the Transportation Disadvantaged, or other local public agency under the provisions in the state purchasing contracts, and purchases, from the corporation operating the correctional work programs, of products or services that are subject to paragraph (1)(f), are exempt from the competitive solicitation requirements otherwise applying to their purchases.

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

(c) Any person who files an action protesting a decision or intended decision pertaining to contracts administered by the department, a water management district, or an agency pursuant to s. 120.57(3)(b) shall post with the department, the water management district, or the agency at the time of filing the formal written protest a bond payable to the department, the water management district, or agency in an amount equal to 1 percent of the estimated contract amount. For protests of decisions or intended decisions pertaining to exceptional purchases, the bond shall be in an amount equal to 1 percent of the estimated contract amount for the exceptional purchase. The estimated contract amount shall be based upon the contract price submitted by the protestor or, if no contract price was submitted, the department, water management district, or agency shall estimate the contract amount based on factors including, but not limited to, the price of previous or existing contracts for similar commodities or contractual services, the amount appropriated by the Legislature for the contract, or the fair market value of similar commodities or contractual services. The agency shall provide the estimated contract amount to the vendor within 72 hours, excluding Saturdays, Sundays, and state holidays, after the filing of the notice of protest by the vendor. The estimated contract amount is not subject to protest pursuant to s. 120.57(3). The bond shall be conditioned upon the payment of all costs and charges that are adjudged against the protestor in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. In lieu of a bond, the department, the water management district, or agency may, in either case, accept a cashier’s check, official bank check, or money order in the amount of the bond. If, after completion of the administrative hearing process and any appellate court proceedings, the department, water management district, or agency prevails, it shall recover all costs and charges which shall be included in the final order or judgment, excluding attorney’s fees. This section shall not apply to protests filed by the Office of Supplier Diversity. Note: This clause essentially is an organizational conflict as the OSD falls under the Department of Management Services organizationally; however, OSD is not likely to protest a solicitation of DMS for the large state term contracts of which state agency usage is mandatory. Upon payment of such costs and charges by the protestor, the bond, cashier’s check, official bank check, or money order shall be returned to the protestor. If, after the completion of the administrative hearing process and any appellate court proceedings, the protestor prevails, the protestor shall recover from the department, water management district, or agency all costs and charges which shall be included in the final order or judgment, excluding attorney’s fees.

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

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

(b)1. Development of procedures for advertising solicitations. These procedures must provide for electronic posting of solicitations for at least 10 days before the date set for receipt of bids, proposals, or replies, unless the department or other agency determines in writing that a shorter period of time is necessary to avoid harming the interests of the state. The Office of Supplier Diversity may consult with the department regarding the development of solicitation distribution procedures to ensure that maximum distribution is afforded to certified minority business enterprises as defined in s. 288.703. Note: This is typically accomplished by contacting OSD and providing a copy of the solicitation, see subsection (d) below. Agencies do not distribute solicitations other than posting on the Vendor Bid System.

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

(c) Development of procedures for the receipt and opening of bids, proposals, or replies by an agency. Such procedures shall provide the Office of Supplier Diversity an opportunity to monitor and ensure that the contract award is consistent with the requirements of s. 287.09451. Currently there is no mechanism/procedure in place to facilitate this monitoring.

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

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

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

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

(h) Development of procedures to be used by state agencies when procuring information technology commodities and contractual services that ensure compliance with public records requirements and records retention and archiving requirements.

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

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

(5) To prescribe specific commodities and quantities to be purchased locally.

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

(b) Except for the purchase of insurance, the department may delegate to agencies the authority for the procurement of and contracting for commodities or contractual services. Note: These clauses establish that DMS has authority over state agency purchasing practices, agencies look to DMS for guidance on procurement practices for implementing vendor diversity initiatives in solicitations and day-to-day procurement practices.

(7) To establish definitions and classes of commodities and contractual services. Agencies shall follow the definitions and classes of commodities and contractual services established by the department in acquiring or purchasing commodities or contractual services. The authority of the department under this section shall not be construed to impair or interfere with the determination by state agencies of their need for, or their use of, services including particular specifications.

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

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

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

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

(12) Except as otherwise provided herein, to adopt rules necessary to carry out the purposes of this section, including the authority to delegate to any agency any and all of the responsibility conferred by this section, retaining to the department any and all authority for supervision thereof. Such purchasing of commodities and procurement of contractual services by state agencies shall be in strict accordance with the rules and procedures prescribed by the department. Note: DMS procurement oversight authority.

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

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

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

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

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

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

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

(b) To manage and enforce compliance with existing or future contracts entered into pursuant to chapter 957.

The department may not delegate the responsibilities conferred by this subsection.

History.—s. 22, ch. 69-106; s. 1, ch. 70-150; s. 1, ch. 79-92; s. 3, ch. 80-374; s. 179, ch. 81-259; ss. 4, 8, ch. 82-196; s. 2, ch. 83-99; s. 2, ch. 83-192; s. 135, ch. 83-217; s. 1, ch. 84-6; s. 1, ch. 85-2; ss. 21, 32, ch. 85-104; s. 7, ch. 88-384; s. 10, ch. 89-291; s. 11, ch. 90-136; s. 14, ch. 90-268; s. 36, ch. 90-302; s. 5, ch. 91-162; s. 1, ch. 91-298; s. 16, ch. 92-98; s. 108, ch. 92-142; ss. 81, 128, ch. 92-152; s. 249, ch. 92-279; s. 55, ch. 92-326; s. 9, ch. 94-322; s. 867, ch. 95-148; s. 2, ch. 95-216; s. 4, ch. 95-396; s. 4, ch. 96-236; s. 61, ch. 96-410; s. 37, ch. 97-100; s. 35, ch. 97-286; s. 20, ch. 97-296; s. 78, ch. 98-279; s. 44, ch. 99-399; s. 8, ch. 2000-133; s. 32, ch. 2000-164; s. 10, ch. 2000-286; s. 54, ch. 2001-61; s. 3, ch. 2001-278; s. 12, ch. 2002-207; s. 943, ch. 2002-387; s. 330, ch. 2003-261; s. 2, ch. 2004-248; s. 23, ch. 2005-2; s. 20, ch. 2006-2; s. 18, ch. 2006-79; s. 28, ch. 2009-80; s. 12, ch. 2011-50; s. 42, ch. 2011-139; s. 28, ch. 2012-5; s. 2, ch. 2012-141.

287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.—

(1) SHORT TITLE.—This section shall be known as the “Consultants’ Competitive Negotiation Act.”

(2) DEFINITIONS.—For purposes of this section:

(a) “Professional services” means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

(b) “Agency” means the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term “agency” does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. 380.06 or ss. 163.3220-163.3243.

(c) “Firm” means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state.

(d) “Compensation” means the amount paid by the agency for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated.

(e) “Agency official” means any elected or appointed officeholder, employee, consultant, person in the category of other personal service or any other person receiving compensation from the state, a state agency, municipality, or political subdivision, a school district or a school board.

(f) “Project” means that fixed capital outlay study or planning activity described in the public notice of the state or a state agency under paragraph (3)(a). A project may include:

1. A grouping of minor construction, rehabilitation, or renovation activities.

2. A grouping of substantially similar construction, rehabilitation, or renovation activities.

(g) A “continuing contract” is a contract for professional services entered into in accordance with all the procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed $2 million, for study activity if the fee for professional services for each individual study under the contract does not exceed $200,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another.

(h) A “design-build firm” means a partnership, corporation, or other legal entity that:

1. Is certified under s. 489.119 to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or

2. Is certified under s. 471.023 to practice or to offer to practice engineering; certified under s. 481.219 to practice or to offer to practice architecture; or certified under s. 481.319 to practice or to offer to practice landscape architecture.

(i) A “design-build contract” means a single contract with a design-build firm for the design and construction of a public construction project.

(j) A “design criteria package” means concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to an agency’s request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the project.

(k) A “design criteria professional” means a firm who holds a current certificate of registration under chapter 481 to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under chapter 471 to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.

(l) “Negotiate” or any form of that word means to conduct legitimate, arms length discussions and conferences to reach an agreement on a term or price. For purposes of this section, the term does not include presentation of flat-fee schedules with no alternatives or discussion.

(3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.—

(a)1. Each agency shall publicly announce, in a uniform and consistent manner, each occasion when professional services must be purchased for a project the basic construction cost of which is estimated by the agency to exceed the threshold amount provided in s. 287.017 for CATEGORY FIVE or for a planning or study activity when the fee for professional services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, except in cases of valid public emergencies certified by the agency head. The public notice must include a general description of the project and must indicate how interested consultants may apply for consideration.

2. Each agency shall provide a good faith estimate in determining whether the proposed activity meets the threshold amounts referred to in this paragraph.

(b) Each agency shall encourage firms engaged in the lawful practice of their professions that desire to provide professional services to the agency to submit annually statements of qualifications and performance data.

(c) Any firm or individual desiring to provide professional services to the agency must first be certified by the agency as qualified pursuant to law and the regulations of the agency. The agency must find that the firm or individual to be employed is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual.

(d) Each agency shall evaluate professional services, including capabilities, adequacy of personnel, past record, experience, whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act, and other factors determined by the agency to be applicable to its particular requirements. When securing professional services, an agency must endeavor to meet the minority business enterprise procurement goals under s. 287.09451.

(e) The public must not be excluded from the proceedings under this section.

(4) COMPETITIVE SELECTION.—

(a) For each proposed project, the agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the project, and ability to furnish the required services.

(b) The agency shall select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the agency shall consider such factors as the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. The agency may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations under subsection (5).

(c) This subsection does not apply to a professional service contract for a project the basic construction cost of which is estimated by the agency to be not in excess of the threshold amount provided in s. 287.017 for CATEGORY FIVE or for a planning or study activity when the fee for professional services is not in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO. However, if, in using another procurement process, the majority of the compensation proposed by firms is in excess of the appropriate threshold amount, the agency shall reject all proposals and reinitiate the procurement pursuant to this subsection.

(d) Nothing in this act shall be construed to prohibit a continuing contract between a firm and an agency.

(5) COMPETITIVE NEGOTIATION.—

(a) The agency shall negotiate a contract with the most qualified firm for professional services at compensation which the agency determines is fair, competitive, and reasonable. In making such determination, the agency shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For any lump-sum or cost-plus-a-fixed-fee professional service contract over the threshold amount provided in s. 287.017 for CATEGORY FOUR, the agency shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto will be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of the contract.

(b) Should the agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the agency determines to be fair, competitive, and reasonable, negotiations with that firm must be formally terminated. The agency shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency must terminate negotiations. The agency shall then undertake negotiations with the third most qualified firm.

(c) Should the agency be unable to negotiate a satisfactory contract with any of the selected firms, the agency shall select additional firms in the order of their competence and qualification and continue negotiations in accordance with this subsection until an agreement is reached.

(6) PROHIBITION AGAINST CONTINGENT FEES.—

(a) Each contract entered into by the agency for professional services must contain a prohibition against contingent fees as follows: “The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.” For the breach or violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

(b) Any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for an architect, professional engineer, or registered land surveyor and mapper, who offers, agrees, or contracts to solicit or secure agency contracts for professional services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of a contract for professional services shall, upon conviction in a competent court of this state, be found guilty of a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083.

(c) Any architect, professional engineer, or registered surveyor and mapper, or any group, association, company, corporation, firm, or partnership thereof, who offers to pay, or pays, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of any agency contract for professional services shall, upon conviction in a state court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083.

(d) Any agency official who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such a contract for professional services between the agency and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083.

(7) AUTHORITY OF DEPARTMENT OF MANAGEMENT SERVICES.—Notwithstanding any other provision of this section, the Department of Management Services shall be the agency of state government which is solely and exclusively authorized and empowered to administer and perform the functions described in subsections (3), (4), and (5) respecting all projects for which the funds necessary to complete same are appropriated to the Department of Management Services, irrespective of whether such projects are intended for the use and benefit of the Department of Management Services or any other agency of government. However, nothing herein shall be construed to be in derogation of any authority conferred on the Department of Management Services by other express provisions of law. Additionally, any agency of government may, with the approval of the Department of Management Services, delegate to the Department of Management Services authority to administer and perform the functions described in subsections (3), (4), and (5). Under the terms of the delegation, the agency may reserve its right to accept or reject a proposed contract.

(8) STATE ASSISTANCE TO LOCAL AGENCIES.—On any professional service contract for which the fee is over $25,000, the Department of Transportation or the Department of Management Services shall provide, upon request by a municipality, political subdivision, school board, or school district, and upon reimbursement of the costs involved, assistance in selecting consultants and in negotiating consultant contracts.

(9) APPLICABILITY TO DESIGN-BUILD CONTRACTS.—

(a) Except as provided in this subsection, this section is not applicable to the procurement of design-build contracts by any agency, and the agency must award design-build contracts in accordance with the procurement laws, rules, and ordinances applicable to the agency.

(b) The design criteria package must be prepared and sealed by a design criteria professional employed by or retained by the agency. If the agency elects to enter into a professional services contract for the preparation of the design criteria package, then the design criteria professional must be selected and contracted with under the requirements of subsections (4) and (5). A design criteria professional who has been selected to prepare the design criteria package is not eligible to render services under a design-build contract executed pursuant to the design criteria package.

(c) Except as otherwise provided in s. 337.11(7), the Department of Management Services shall adopt rules for the award of design-build contracts to be followed by state agencies. Each other agency must adopt rules or ordinances for the award of design-build contracts. Municipalities, political subdivisions, school districts, and school boards shall award design-build contracts by the use of a competitive proposal selection process as described in this subsection, or by the use of a qualifications-based selection process pursuant to subsections (3), (4), and (5) for entering into a contract whereby the selected firm will, subsequent to competitive negotiations, establish a guaranteed maximum price and guaranteed completion date. If the procuring agency elects the option of qualifications-based selection, during the selection of the design-build firm the procuring agency shall employ or retain a licensed design professional appropriate to the project to serve as the agency’s representative. Procedures for the use of a competitive proposal selection process must include as a minimum the following:

1. The preparation of a design criteria package for the design and construction of the public construction project.

2. The qualification and selection of no fewer than three design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the partners or members thereof.

3. The criteria, procedures, and standards for the evaluation of design-build contract proposals or bids, based on price, technical, and design aspects of the public construction project, weighted for the project.

4. The solicitation of competitive proposals, pursuant to a design criteria package, from those qualified design-build firms and the evaluation of the responses or bids submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals.

5. For consultation with the employed or retained design criteria professional concerning the evaluation of the responses or bids submitted by the design-build firms, the supervision or approval by the agency of the detailed working drawings of the project; and for evaluation of the compliance of the project construction with the design criteria package by the design criteria professional.

6. In the case of public emergencies, for the agency head to declare an emergency and authorize negotiations with the best qualified design-build firm available at that time.

(10) REUSE OF EXISTING PLANS.—Notwithstanding any other provision of this section, there shall be no public notice requirement or utilization of the selection process as provided in this section for projects in which the agency is able to reuse existing plans from a prior project of the agency, or, in the case of a board as defined in s. 1013.01, a prior project of that or any other board. Except for plans of a board as defined in s. 1013.01, public notice for any plans that are intended to be reused at some future time must contain a statement that provides that the plans are subject to reuse in accordance with the provisions of this subsection.

(11) CONSTRUCTION OF LAW.—Nothing in the amendment of this section by chapter 75-281, Laws of Florida, is intended to supersede the provisions of ss. 1013.45 and 1013.46.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, ch. 73-19; ss. 1, 2, 3, ch. 75-281; s. 1, ch. 77-174; s. 1, ch. 77-199; s. 10, ch. 84-321; ss. 23, 32, ch. 85-104; s. 57, ch. 85-349; s. 6, ch. 86-204; s. 1, ch. 88-108; s. 1, ch. 89-158; s. 16, ch. 90-268; s. 15, ch. 91-137; s. 7, ch. 91-162; s. 250, ch. 92-279; s. 55, ch. 92-326; s. 1, ch. 93-95; s. 114, ch. 94-119; s. 10, ch. 94-322; s. 868, ch. 95-148; s. 2, ch. 95-410; s. 45, ch. 96-399; s. 38, ch. 97-100; s. 1, ch. 97-296; s. 80, ch. 98-279; s. 55, ch. 2001-61; s. 63, ch. 2002-20; s. 944, ch. 2002-387; s. 1, ch. 2005-224; s. 19, ch. 2007-157; s. 3, ch. 2007-159; s. 3, ch. 2009-227.

287.056 Purchases from purchasing agreements and state term contracts.—

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

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

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

(2) Agencies and eligible users may use a request for quote to obtain written pricing or services information from a state term contract vendor for commodities or contractual services available on state term contract from that vendor. The purpose of a request for quote is to determine whether a price, term, or condition more favorable to the agency or eligible user than that provided in the state term contract is available. Use of a request for quote does not constitute a decision or intended decision that is subject to protest under s. 120.57(3).

History.—s. 17, ch. 92-98; s. 109, ch. 92-142; s. 213, ch. 95-148; s. 30, ch. 95-196; s. 3, ch. 95-216; s. 5, ch. 96-236; s. 81, ch. 98-279; s. 14, ch. 2002-207; s. 18, ch. 2010-151; s. 4, ch. 2011-45.

287.057 Procurement of commodities or contractual services.—

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

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

1. All invitations to bid must include:

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

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

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

3. Evaluation of bids shall include consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor. Note: This process provided the capability for up to 10% price preference to a certified minority business, of which is now precluded by the One Florida Initiative. This was not an automatic application however as applying such a percentage was still subject to internal financial review. It was more a reservation of right to award such a preference. Also, there was ambiguity in the statute at the time as the statute required award to the “lowest” bid.

(b) Request for proposals.—An agency shall use a request for proposals when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables. Various combinations or versions of commodities or contractual services may be proposed by a responsive vendor to meet the specifications of the solicitation document.

1. Before issuing a request for proposals, the agency must determine and specify in writing the reasons that procurement by invitation to bid is not practicable.

2. All requests for proposals must include:

a. A statement describing the commodities or contractual services sought;

b. The relative importance of price and other evaluation criteria; and

c. If the agency contemplates renewal of the contract, a statement to that effect.

3. Criteria that will be used for evaluation of proposals shall include, but are not limited to:

a. Price, which must be specified in the proposal;

b. If the agency contemplates renewal of the contract, the price for each year for which the contract may be renewed; and

c. Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor. Note: This process typically afforded an agency the opportunity to consider price preference on a cost proposal or bonus point on the technical proposal for CMBE utilization commitment. However, there was limited recourse should a contractor fail to achieve the level of CMBE commitment.

4. The contract shall be awarded by written notice to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and other criteria set forth in the request for proposals. The contract file shall contain documentation supporting the basis on which the award is made.

(c) Invitation to negotiate.—The invitation to negotiate is a solicitation used by an agency which is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.

1. Before issuing an invitation to negotiate, the head of an agency must determine and specify in writing the reasons that procurement by an invitation to bid or a request for proposal is not practicable.

2. The invitation to negotiate must describe the questions being explored, the facts being sought, and the specific goals or problems that are the subject of the solicitation.

3. The criteria that will be used for determining the acceptability of the reply and guiding the selection of the vendors with which the agency will negotiate must be specified.

4. The agency shall evaluate replies against all evaluation criteria set forth in the invitation to negotiate in order to establish a competitive range of replies reasonably susceptible of award. The agency may select one or more vendors within the competitive range with which to commence negotiations. After negotiations are conducted, the agency shall award the contract to the responsible and responsive vendor that the agency determines will provide the best value to the state, based on the selection criteria.

5. The contract file for a vendor selected through an invitation to negotiate must contain a short plain statement that explains the basis for the selection of the vendor and that sets forth the vendor’s deliverables and price, pursuant to the contract, along with an explanation of how these deliverables and price provide the best value to the state. Note: See note for RFP process. Some agencies currently try to address small/minority business criteria at the negotiations table which in my opinion looses leverage on strong vendor diversity initiatives and often times is not strongly negotiated on. This is evident as since inception of One Florida, it can probably be identified that 2nd tier reporting has decreased at agency levels. Also vendor diversity initiative activities are virtually non-existent in state term contracts that state agencies are mandated to procure from.

(2) Prior to the time for receipt of bids, proposals, or replies, an agency may conduct a conference or written question and answer period for purposes of assuring the vendor’s full understanding of the solicitation requirements. The vendors shall be accorded fair and equal treatment.

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

(a) The agency head determines in writing that an immediate danger to the public health, safety, or welfare or other substantial loss to the state requires emergency action. After the agency head makes such a written determination, the agency may proceed with the procurement of commodities or contractual services necessitated by the immediate danger, without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies. However, such emergency procurement shall be made by obtaining pricing information from at least two prospective vendors, which must be retained in the contract file, unless the agency determines in writing that the time required to obtain pricing information will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the state. The agency shall furnish copies of all written determinations certified under oath and any other documents relating to the emergency action to the department. A copy of the statement shall be furnished to the Chief Financial Officer with the voucher authorizing payment. The individual purchase of personal clothing, shelter, or supplies which are needed on an emergency basis to avoid institutionalization or placement in a more restrictive setting is an emergency for the purposes of this paragraph, and the filing with the department of such statement is not required in such circumstances. In the case of the emergency purchase of insurance, the period of coverage of such insurance shall not exceed a period of 30 days, and all such emergency purchases shall be reported to the department.

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

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

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

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

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

(e) Prescriptive assistive devices for the purpose of medical, developmental, or vocational rehabilitation of clients are excepted from competitive-solicitation requirements and shall be procured pursuant to an established fee schedule or by any other method which ensures the best price for the state, taking into consideration the needs of the client. Prescriptive assistive devices include, but are not limited to, prosthetics, orthotics, and wheelchairs. For purchases made pursuant to this paragraph, state agencies shall annually file with the department a description of the purchases and methods of procurement.

[1](http://www.flsenate.gov/Laws/Statutes/2012/Chapter287/All#1)(f) The following contractual services and commodities are not subject to the competitive-solicitation requirements of this section:

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

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

3. Lectures by individuals.

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

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

b. Beginning January 1, 2011, health services, including, but not limited to, substance abuse and mental health services, involving examination, diagnosis, treatment, prevention, or medical consultation, when such services are offered to eligible individuals participating in a specific program that qualifies multiple providers and uses a standard payment methodology. Reimbursement of administrative costs for providers of services purchased in this manner shall also be exempt. For purposes of this sub-subparagraph, “providers” means health professionals, health facilities, or organizations that deliver or arrange for the delivery of health services.

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

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

8. Family placement services.

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

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

11. Contracts entered into pursuant to s. 337.11.

12. Services or commodities provided by governmental agencies.

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

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

(4) An agency must document its compliance with s. 216.3475 if the purchase of contractual services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO and such services are not competitively procured.

(5) If less than two responsive bids, proposals, or replies for commodity or contractual services purchases are received, the department or other agency may negotiate on the best terms and conditions. The department or other agency shall document the reasons that such action is in the best interest of the state in lieu of resoliciting competitive sealed bids, proposals, or replies. Each agency shall report all such actions to the department on a quarterly basis, in a manner and form prescribed by the department.

(6) Upon issuance of any solicitation, an agency shall, upon request by the department, forward to the department one copy of each solicitation for all commodity and contractual services purchases in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO. An agency shall also, upon request, furnish a copy of all competitive-solicitation tabulations. The Office of Supplier Diversity may also request from the agencies any information submitted to the department pursuant to this subsection.

(7)(a) In order to strive to meet the minority business enterprise procurement goals set forth in s. 287.09451, an agency may reserve any contract for competitive solicitation only among certified minority business enterprises. Agencies shall review all their contracts each fiscal year and shall determine which contracts may be reserved for solicitation only among certified minority business enterprises. This reservation may only be used when it is determined, by reasonable and objective means, before the solicitation that there are capable, qualified certified minority business enterprises available to submit a bid, proposal, or reply on a contract to provide for effective competition. The Office of Supplier Diversity shall consult with any agency in reaching such determination when deemed appropriate. This clause needs to be deleted as Executive Order #99-281 precludes using such methods. See also, AGC protest and subsequent legal opinion form DMS General Counsel.

(b) Before a contract may be reserved for solicitation only among certified minority business enterprises, the agency head must find that such a reservation is in the best interests of the state. All determinations shall be subject to s. 287.09451(5). Once a decision has been made to reserve a contract, but before sealed bids, proposals, or replies are requested, the agency shall estimate what it expects the amount of the contract to be, based on the nature of the services or commodities involved and their value under prevailing market conditions. If all the sealed bids, proposals, or replies received are over this estimate, the agency may reject the bids, proposals, or replies and request new ones from certified minority business enterprises, or the agency may reject the bids, proposals, or replies and reopen the bidding to all eligible vendors. See note for above clause.

(c) All agencies shall consider the use of price preferences of up to 10 percent, weighted preference formulas, or other preferences for vendors as determined appropriate pursuant to guidelines established in accordance with s. 287.09451(4) to increase the participation of minority business enterprises. This needs to be deleted, see note above- Also this was only permissive and not mandatory as the word “consider” is used.

(d) All agencies shall avoid any undue concentration of contracts or purchases in categories of commodities or contractual services in order to meet the minority business enterprise purchasing goals in s. 287.09451. Suggest deletion as unfortunately we cannot control the business industries that are heavily represented by minority businesses. While it says “undue” this could cause unwarranted audit scrutiny.

(8) An agency may reserve any contract for competitive solicitation only among vendors who agree to use certified minority business enterprises as subcontractors or subvendors. The percentage of funds, in terms of gross contract amount and revenues, which must be expended with the certified minority business enterprise subcontractors and subvendors shall be determined by the agency before such contracts may be reserved. In order to bid on a contract so reserved, the vendor shall identify those certified minority business enterprises which will be utilized as subcontractors or subvendors by sworn statement. At the time of performance or project completion, the contractor shall report by sworn statement the payments and completion of work for all certified minority business enterprises used in the contract. See notes above, precluded by Executive Order 99-281.

(9) An agency shall not divide the solicitation of commodities or contractual services so as to avoid the requirements of subsections (1)-(3). Note: Recent proposed legislation such as HB1041 of 2012, if passed could have resulted in ambiguity particularly the requirement to “avoid contract bundling” yet this passage precludes an agency from dividing to avoid the formal competitive solicitation threshold.

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

(11) If two equal responses to a solicitation or a request for quote are received and one response is from a certified minority business enterprise, the agency shall enter into a contract with the certified minority business enterprise. Note: It is unknown if this section was addressed pursuant to EO #99-281 Section 2(b), however as it stands is not impacted by EO #99-281 as this is a statutory mandate as opposed to previous statutory language which is permissive in nature.

(12) Extension of a contract for contractual services shall be in writing for a period not to exceed 6 months and shall be subject to the same terms and conditions set forth in the initial contract. There shall be only one extension of a contract unless the failure to meet the criteria set forth in the contract for completion of the contract is due to events beyond the control of the contractor.

(13) Contracts for commodities or contractual services may be renewed for a period that may not exceed 3 years or the term of the original contract, whichever period is longer. Renewal of a contract for commodities or contractual services shall be in writing and shall be subject to the same terms and conditions set forth in the initial contract. If the commodity or contractual service is purchased as a result of the solicitation of bids, proposals, or replies, the price of the commodity or contractual service to be renewed shall be specified in the bid, proposal, or reply. A renewal contract may not include any compensation for costs associated with the renewal. Renewals shall be contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. Exceptional purchase contracts pursuant to paragraphs (3)(a) and (c) may not be renewed. With the exception of subsection (12), if a contract amendment results in a longer contract term or increased payments, a state agency may not renew or amend a contract for the outsourcing of a service or activity that has an original term value exceeding the sum of $10 million before submitting a written report concerning contract performance to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 90 days before execution of the renewal or amendment.

(14) For each contractual services contract, the agency shall designate an employee to function as contract manager who shall be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. Each contract manager who is responsible for contracts in excess of the threshold amount for CATEGORY TWO must attend training conducted by the Chief Financial Officer for accountability in contracts and grant management. The Chief Financial Officer shall establish and disseminate uniform procedures pursuant to s. 17.03(3) to ensure that contractual services have been rendered in accordance with the contract terms before the agency processes the invoice for payment. The procedures shall include, but need not be limited to, procedures for monitoring and documenting contractor performance, reviewing and documenting all deliverables for which payment is requested by vendors, and providing written certification by contract managers of the agency’s receipt of goods and services.

(15) Each agency shall designate at least one employee who shall serve as a contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts and who shall serve as a liaison with the contract managers and the department.

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

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

(b) At least three persons to conduct negotiations during a competitive sealed reply procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities or contractual services are sought. When the value of a contract is in excess of $1 million in any fiscal year, at least one of the persons conducting negotiations must be certified as a contract negotiator based upon rules adopted by the Department of Management Services in order to ensure that certified contract negotiators are knowledgeable about effective negotiation strategies, capable of successfully implementing those strategies, and involved appropriately in the procurement process. At a minimum, the rules must address the qualifications required for certification, the method of certification, and the procedure for involving the certified negotiator. If the value of a contract is in excess of $10 million in any fiscal year, at least one of the persons conducting negotiations must be a Project Management Professional, as certified by the Project Management Institute.

(17)(a)1. Each agency must avoid, neutralize, or mitigate significant potential organizational conflicts of interest before a contract is awarded. If the agency elects to mitigate the significant potential organizational conflict or conflicts of interest, an adequate mitigation plan, including organizational, physical, and electronic barriers, shall be developed.

2. If a conflict cannot be avoided or mitigated, an agency may proceed with the contract award if the agency head certifies that the award is in the best interests of the state. The agency head must specify in writing the basis for the certification.

(b)1. An agency head may not proceed with a contract award under subparagraph (a)2. if a conflict of interest is based upon the vendor gaining an unfair competitive advantage.

2. An unfair competitive advantage exists when the vendor competing for the award of a contract obtained:

a. Access to information that is not available to the public and would assist the vendor in obtaining the contract; or

b. Source selection information that is relevant to the contract but is not available to all competitors and that would assist the vendor in obtaining the contract.

(c) A person who receives a contract that has not been procured pursuant to subsections (1)-(3) to perform a feasibility study of the potential implementation of a subsequent contract, who participates in the drafting of a solicitation or who develops a program for future implementation, is not eligible to contract with the agency for any other contracts dealing with that specific subject matter, and any firm in which such person has any interest is not eligible to receive such contract. However, this prohibition does not prevent a vendor who responds to a request for information from being eligible to contract with an agency.

(18) Each agency shall establish a review and approval process for all contractual services contracts costing more than the threshold amount provided for in s. 287.017 for CATEGORY THREE which shall include, but not be limited to, program, financial, and legal review and approval. Such reviews and approvals shall be obtained before the contract is executed.

(19) In any procurement that costs more than the threshold amount provided for in s. 287.017 for CATEGORY TWO and is accomplished without competition, the individuals taking part in the development or selection of criteria for evaluation, the evaluation process, and the award process shall attest in writing that they are independent of, and have no conflict of interest in, the entities evaluated and selected.

(20) Nothing in this section shall affect the validity or effect of any contract in existence on October 1, 1990.

(21) An agency may contract for services with any independent, nonprofit college or university which is located within the state and is accredited by the Southern Association of Colleges and Schools, on the same basis as it may contract with any state university and college.

(22) The department, in consultation with the Agency for Enterprise Information Technology and the Comptroller, shall develop a program for online procurement of commodities and contractual services. To enable the state to promote open competition and to leverage its buying power, agencies shall participate in the online procurement program, and eligible users may participate in the program. Only vendors prequalified as meeting mandatory requirements and qualifications criteria may participate in online procurement.

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

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

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

2. Establishing the procedures for conducting online procurement.

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

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

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

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

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

2. If the department contracts with a provider for online procurement, the department, pursuant to appropriation, shall compensate the provider from the fees after the department has satisfied all ongoing costs. The provider shall report transaction data to the department each month so that the department may determine the amount due and payable to the department from each vendor.

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

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

(23) Each solicitation for the procurement of commodities or contractual services shall include the following provision: “Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.”

History.—s. 1, ch. 78-4; s. 2, ch. 80-206; s. 4, ch. 80-374; s. 1, ch. 82-121; s. 9, ch. 82-196; s. 3, ch. 83-99; s. 3, ch. 83-192; s. 7, ch. 86-204; s. 9, ch. 88-384; s. 1, ch. 89-377; s. 17, ch. 90-268; s. 8, ch. 91-162; s. 251, ch. 92-279; s. 55, ch. 92-326; s. 7, ch. 93-161; s. 11, ch. 94-322; s. 869, ch. 95-148; s. 6, ch. 96-236; s. 30, ch. 97-153; s. 82, ch. 98-279; s. 11, ch. 99-4; s. 50, ch. 99-8; s. 45, ch. 99-399; s. 33, ch. 2000-164; s. 11, ch. 2000-286; s. 56, ch. 2001-61; s. 4, ch. 2001-278; s. 37, ch. 2002-1; s. 15, ch. 2002-207; s. 331, ch. 2003-261; s. 20, ch. 2004-5; ss. 9, 58, ch. 2004-269; s. 1, ch. 2005-59; ss. 6, 15, ch. 2005-71; s. 6, ch. 2006-2; s. 4, ch. 2006-26; s. 19, ch. 2006-79; s. 25, ch. 2006-195; s. 1, ch. 2006-224; s. 8, ch. 2007-6; s. 15, ch. 2007-105; s. 6, ch. 2008-5; s. 13, ch. 2008-116; s. 5, ch. 2008-153; s. 4, ch. 2009-227; s. 9, ch. 2010-4; s. 19, ch. 2010-151; s. 13, ch. 2012-32.

1Note.—Section 25, ch. 2012-32, provides that:

“(1)  The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4), Florida Statutes, for the purpose of implementing this act.

“(2)  Notwithstanding any provision of law, such emergency rules shall remain in effect for 6 months after the date adopted and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.”

287.0571 Business case to outsource; applicability.—

(1) It is the intent of the Legislature that each state agency focus on its core mission and deliver services effectively and efficiently by leveraging resources and contracting with private sector vendors whenever vendors can more effectively and efficiently provide services and reduce the cost of government.

(2) It is further the intent of the Legislature that business cases to outsource be evaluated for feasibility, cost-effectiveness, and efficiency before a state agency proceeds with any outsourcing of services.

(3) This section does not apply to:

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

(b) A procurement of contractual services subject to s. 287.055.

(c) A contract in support of the planning, development, implementation, operation, or maintenance of the road, bridge, and public transportation construction program of the Department of Transportation.

(d) A procurement of commodities or contractual services which does not constitute an outsourcing of services or activities.

(4) An agency shall complete a business case for any outsourcing project that has an expected cost in excess of $10 million within a single fiscal year. The business case shall be submitted pursuant to s. 216.023. The business case shall be available as part of the solicitation but is not subject to challenge and shall include the following:

(a) A detailed description of the service or activity for which the outsourcing is proposed.

(b) A description and analysis of the state agency’s current performance, based on existing performance metrics if the state agency is currently performing the service or activity.

(c) The goals desired to be achieved through the proposed outsourcing and the rationale for such goals.

(d) A citation to the existing or proposed legal authority for outsourcing the service or activity.

(e) A description of available options for achieving the goals. If state employees are currently performing the service or activity, at least one option involving maintaining state provision of the service or activity shall be included.

(f) An analysis of the advantages and disadvantages of each option, including, at a minimum, potential performance improvements and risks.

(g) A description of the current market for the contractual services that are under consideration for outsourcing.

(h) A cost-benefit analysis documenting the direct and indirect specific baseline costs, savings, and qualitative and quantitative benefits involved in or resulting from the implementation of the recommended option or options. Such analysis must specify the schedule that, at a minimum, must be adhered to in order to achieve the estimated savings. All elements of cost must be clearly identified in the cost-benefit analysis, described in the business case, and supported by applicable records and reports. The state agency head shall attest that, based on the data and information underlying the business case, to the best of his or her knowledge, all projected costs, savings, and benefits are valid and achievable. As used in this section, the term “cost” means the reasonable, relevant, and verifiable cost, which may include, but is not limited to, elements such as personnel, materials and supplies, services, equipment, capital depreciation, rent, maintenance and repairs, utilities, insurance, personnel travel, overhead, and interim and final payments. The appropriate elements shall depend on the nature of the specific initiative. As used in this paragraph, the term “savings” means the difference between the direct and indirect actual annual baseline costs compared to the projected annual cost for the contracted functions or responsibilities in any succeeding state fiscal year during the term of the contract.

(i) A description of differences among current state agency policies and processes and, as appropriate, a discussion of options for or a plan to standardize, consolidate, or revise current policies and processes, if any, to reduce the customization of any proposed solution that would otherwise be required.

(j) A description of the specific performance standards that must, at a minimum, be met to ensure adequate performance.

(k) The projected timeframe for key events from the beginning of the procurement process through the expiration of a contract.

(l) A plan to ensure compliance with the public records law.

(m) A specific and feasible contingency plan addressing contractor nonperformance and a description of the tasks involved in and costs required for its implementation.

(n) A state agency’s transition plan for addressing changes in the number of agency personnel, affected business processes, employee transition issues, and communication with affected stakeholders, such as agency clients and the public. The transition plan must contain a reemployment and retraining assistance plan for employees who are not retained by the state agency or employed by the contractor.

(o) A plan for ensuring access by persons with disabilities in compliance with applicable state and federal law.

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

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

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

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

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

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

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

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

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

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

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

(h) A provision that requires the contractor to interview and consider for employment with the contractor each displaced state employee who is interested in such employment.

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

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

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

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

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

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

(k)1. A provision that provides that any copyrightable or patentable intellectual property produced as a result of work or services performed under the contract, or in any way connected with the contract, shall be the property of the state, with only such exceptions as are clearly expressed and reasonably valued in the contract.

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

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

History.—s. 2, ch. 2006-224; s. 20, ch. 2010-151.

287.0572 Present-value methodology.—

(1) The cost of bids, proposals, or replies for state contracts that include provisions for unequal payment streams or unequal time payment periods shall be evaluated using present-value methodology. Each agency, as defined in s. 287.012(1), shall perform the evaluation using the present-value discount rate supplied by the department. The present-value discount rate shall be the rate for United States Treasury notes and bonds published in the Interest Rates: Money and Capital Markets section of the most recent copy of the Federal Reserve Bulletin published at the time of issuance of the request for proposals, the invitation to negotiate, or the invitation to bid.

(2) The department may adopt rules to administer subsection (1).

History.—ss. 1, 2, ch. 85-122; s. 252, ch. 92-279; s. 55, ch. 92-326; s. 16, ch. 2002-207.

287.0575 Coordination of contracted services.—The following duties and responsibilities of the Department of Children and Family Services, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, and the Department of Veterans’ Affairs, and service providers under contract to those agencies, are established:

(1) No later than August 1, 2010, or upon entering into any new contract for health and human services, state agencies contracting for health and human services must notify their contract service providers of the requirements of this section.

(2) No later than October 1, 2010, contract service providers that have more than one contract with one or more state agencies to provide health and human services must provide to each of their contract managers a comprehensive list of their health and human services contracts. The list must include the following information:

(a) The name of each contracting state agency and the applicable office or program issuing the contract.

(b) The identifying name and number of each contract.

(c) The starting and ending date of each contract.

(d) The amount of each contract.

(e) A brief description of the purpose of the contract and the types of services provided under each contract.

(f) The name and contact information of the contract manager.

(3) With respect to contracts entered into on or after August 1, 2010, effective November 1, 2010, or 30 days after receiving the list provided under subsection (2), a single lead administrative coordinator for each contract service provider shall be designated as provided in this subsection from among the agencies having multiple contracts as provided in subsection (2). On or before the date such responsibilities are assumed, the designated lead administrative coordinator shall provide notice of his or her designation to the contract service provider and to the agency contract managers for each affected contract. Unless another lead administrative coordinator is selected by agreement of all affected contract managers, the designated lead administrative coordinator shall be the agency contract manager of the contract with the highest dollar value over the term of the contract, provided the term of the contract remaining at the time of designation exceeds 24 months. If the remaining terms of all contracts are 24 months or less, the designated lead administrative coordinator shall be the contract manager of the contract with the latest end date. A designated lead administrative coordinator, or his or her successor as contract manager, shall continue as lead administrative coordinator until another lead administrative coordinator is selected by agreement of all affected contract managers or until the end date of the contract for which the designated lead administrative coordinator serves as contract manager, at which time a new lead administrative coordinator shall be designated pursuant to this subsection, if applicable.

(4) The designated lead administrative coordinator shall be responsible for:

(a) Establishing a coordinated schedule for administrative and fiscal monitoring;

(b) Consulting with other case managers to establish a single unified set of required administrative and fiscal documentation;

(c) Consulting with other case managers to establish a single unified schedule for periodic updates of administrative and fiscal information; and

(d) Maintaining an accessible electronic file of up-to-date administrative and fiscal documents, including, but not limited to, corporate documents, membership records, audits, and monitoring reports.

(5) Contract managers for agency contracts other than the designated lead administrative coordinator must conduct administrative and fiscal monitoring activities in accordance with the coordinated schedule and must obtain any necessary administrative and fiscal documents from the designated lead administrative coordinator’s electronic file.

(6) This section does not apply to routine program performance monitoring or prohibit a contracting agency from directly and immediately contacting the service provider when the health or safety of clients is at risk.

(7) Each agency contracting for health and human services shall annually evaluate the performance of its designated lead administrative coordinator in establishing coordinated systems, improving efficiency, and reducing redundant monitoring activities for state agencies and their service providers. The annual report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

History.—s. 24, ch. 2010-151.

287.058 Contract document.—

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

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

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

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

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

(e)  Dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and criteria for evaluating the successful completion of each deliverable.

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

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

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

(i) Addressing the property rights of any intellectual property related to the contract and the specific rights of the state regarding the intellectual property if the contractor fails to provide the services or is no longer providing services.

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

(2) The written agreement shall be signed by the agency head and the contractor prior to the rendering of any contractual service the value of which is in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO, except in the case of a valid emergency as certified by the agency head. The certification of an emergency shall be prepared within 30 days after the contractor begins rendering the service and shall state the particular facts and circumstances which precluded the execution of the written agreement prior to the rendering of the service. If the agency fails to have the contract signed by the agency head and the contractor prior to rendering the contractual service, and if an emergency does not exist, the agency head shall, no later than 30 days after the contractor begins rendering the service, certify the specific conditions and circumstances to the department as well as describe actions taken to prevent recurrence of such noncompliance. The agency head may delegate the certification only to other senior management agency personnel. A copy of the certification shall be furnished to the Chief Financial Officer with the voucher authorizing payment. The department shall report repeated instances of noncompliance by an agency to the Auditor General. Nothing in this subsection shall be deemed to authorize additional compensation prohibited by s. 215.425. The procurement of contractual services shall not be divided so as to avoid the provisions of this section.

(3) Notwithstanding the provisions of subsections (1) and (2), in those cases in which state agencies are unable to procure a written agreement for the providing of health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured persons in the care or custody of a state agency, those services and drugs may be obtained by purchase order. The purchase order shall contain sufficient detail for a proper audit and shall be signed by purchasing or contracting personnel acting on behalf of the agency.

(4) Every procurement of contractual services of the value of the threshold amount provided in s. 287.017 for CATEGORY TWO or less, except for the providing of health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or the providing of other benefits as required by the provisions of chapter 440, shall be evidenced by a written agreement or purchase order. The written agreement or purchase order must contain sufficient detail for a proper audit, must be signed by purchasing or contracting personnel acting on behalf of the agency, and may contain the provisions and conditions provided in subsection (1).

(5) Unless otherwise provided in the General Appropriations Act or the substantive bill implementing the General Appropriations Act, the Chief Financial Officer may waive the requirements of this section for services which are included in s. 287.057(3)(f).

(6) A contract may not prohibit a contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding any contract to which the contractor and a state agency are parties, after contract execution and during the contract term. The provisions of this subsection are supplemental to the provisions of ss. 11.062 and 216.347 and any other law prohibiting the use of state funds for lobbying purposes.

History.—s. 10, ch. 82-196; s. 4, ch. 83-192; s. 1, ch. 85-30; s. 47, ch. 86-183; s. 8, ch. 86-204; s. 10, ch. 88-384; s. 20, ch. 88-557; s. 18, ch. 90-268; s. 8, ch. 93-161; s. 2, ch. 95-420; s. 7, ch. 96-236; s. 83, ch. 98-279; s. 3, ch. 2001-266; s. 12, ch. 2001-278; s. 17, ch. 2002-207; s. 332, ch. 2003-261; s. 6, ch. 2006-224; s. 25, ch. 2010-151.

287.05805 Contract requirement for use of state funds to purchase or improve real property.—Each state agency shall include in its standard contract document a requirement that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least 5 years from the date of purchase or the completion of the improvements or as further required by law.

History.—s. 70, ch. 2000-367.

Note.—Former s. 253.85.

287.0582 Contracts which require annual appropriation; contingency statement.—No executive branch public officer or employee shall enter into any contract on behalf of the state, which contract binds the state or its executive agencies for the purchase of services or tangible personal property for a period in excess of 1 fiscal year, unless the following statement is included in the contract: “The State of Florida’s performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.”

History.—s. 3, ch. 85-122.

287.0585 Late payments by contractors to subcontractors and suppliers; penalty.—

(1) When a contractor receives from a state agency any payment for contractual services, commodities, supplies, or construction contracts, except those construction contracts subject to the provisions of chapter 339, the contractor shall pay such moneys received to each subcontractor and supplier in proportion to the percentage of work completed by each subcontractor and supplier at the time of receipt of the payment. If the contractor receives less than full payment, then the contractor shall be required to disburse only the funds received on a pro rata basis with the contractor, subcontractors, and suppliers, each receiving a prorated portion based on the amount due on the payment. If the contractor without reasonable cause fails to make payments required by this section to subcontractors and suppliers within 7 working days after the receipt by the contractor of full or partial payment, the contractor shall pay to the subcontractors and suppliers a penalty in the amount of one-half of 1 percent of the amount due, per day, from the expiration of the period allowed herein for payment. Such penalty shall be in addition to actual payments owed and shall not exceed 15 percent of the outstanding balance due. In addition to other fines or penalties, a person found not in compliance with any provision of this subsection may be ordered by the court to make restitution for attorney’s fees and all related costs to the aggrieved party or the Department of Legal Affairs when it provides legal assistance pursuant to this section. The Department of Legal Affairs may provide legal assistance to subcontractors or vendors in proceedings brought against contractors under the provisions of this section.

(2) This section shall not apply when the contract between the contractor and subcontractors or subvendors provides otherwise, or when payments under the contract are otherwise governed by ss. 255.0705-255.078.

History.—s. 5, ch. 85-104; s. 2, ch. 89-200; s. 9, ch. 91-162; s. 14, ch. 2005-230.

287.059 Private attorney services.—

(1) For purposes of this section, the term “agency” or “state agency” includes state officers, departments, boards, commissions, divisions, bureaus, councils, and units of organization, however designated, of the executive branch of state government, community and junior colleges, and multicounty special districts exclusive of those created by interlocal agreement or which have elected governing boards.

(2) No agency shall contract for private attorney services without the prior written approval of the Attorney General, except that such written approval is not required for private attorney services:

(a) Procured by the Executive Office of the Governor, offices under the jurisdiction of the Financial Services Commission, or any department under the exclusive jurisdiction of a single Cabinet officer.

(b) Provided by legal services organizations to indigent clients.

(c) Necessary to represent the state in litigation involving the State Risk Management Trust Fund pursuant to part II of chapter 284.

(d) Procured by the university and college boards of trustees or the state universities and colleges.

(e) Procured by community and junior colleges and multicounty special districts.

(f) Procured by the Board of Trustees for the Florida School for the Deaf and the Blind.

(3) An agency requesting approval for the use of private attorney services shall first offer to contract with the Department of Legal Affairs for such attorney services at a cost pursuant to mutual agreement. The Attorney General shall decide on a case-by-case basis to accept or decline to provide such attorney services as staffing, expertise, or other legal or economic considerations warrant. If the Attorney General declines to provide the requested attorney services, the Attorney General’s written approval shall include a statement that the private attorney services requested cannot be provided by the office of the Attorney General or that such private attorney services are cost-effective in the opinion of the Attorney General. The Attorney General shall not consider political affiliation in making such decision. The office of the Attorney General shall respond to the request of an agency for prior written approval within 10 working days after receiving such request. The Attorney General may request additional information necessary for evaluation of a request. The Attorney General shall respond to the request within 10 working days after receipt of the requested information. Those agencies exempt from written approval from the Attorney General, as described in paragraphs (2)(a)-(f), may contract with the Department of Legal Affairs for attorney services. The Attorney General shall determine on a case-by-case basis whether to provide such attorney services as staffing, expertise, or other legal considerations warrant. The Attorney General may adopt, by rule, a form on which agencies requesting written approval for private attorney services shall provide information concerning:

(a) The nature of the attorney services to be provided and the issues involved.

(b) The need for use of private attorneys, rather than agency staff attorneys, utilizing the criteria provided in subsection (9).

(c) The criteria by which the agency selected the private attorney or law firm it proposes to employ, utilizing the criteria provided in subsection (10).

(d) Competitive fees for similar attorney services.

(e) The agency’s analysis estimating the number of hours for attorney services, the costs, the total contract amount, and, when appropriate, a risk or cost-benefit analysis.

(f) Which partners, associates, paralegals, research associates, or other personnel will be used, and how their time will be billed to the agency.

(g) Any other information which the Attorney General deems appropriate for the proper evaluation of the need for such private attorney services.

(4) When written approval has been received from the Attorney General, the general counsel for the agency shall review the form and legality of the contract for private attorney services and shall indicate his or her approval by signing the contract. After a contract is approved and signed by the general counsel, in order to effectuate that contract the agency head must sign the contract. The agency head shall also maintain custody of the contract.

(5) The agency head or a designee shall give written approval prior to contracting for private attorney services for all agencies exempt from written approval of the Attorney General as described in paragraphs (2)(a)-(f).

(6) The Attorney General shall, by rule, adopt a standard fee schedule for private attorney services using hourly rates or an alternative billing methodology. The Attorney General shall take into consideration the following factors:

(a) Type of controversy involved and complexity of the legal services needed.

(b) Geographic area where the attorney services are to be provided.

(c) Novelty of the legal questions involved.

(d) Amount of experience desired for the particular kind of attorney services to be provided.

(e) Other factors deemed appropriate by the Attorney General.

(f) The most cost-effective or appropriate billing methodology.

(7)(a) A contingency fee contract must be commercially reasonable. As used in this subsection, the term “commercially reasonable” means no more than the amount permissible pursuant to rule 4-1.5 of the rules regulating The Florida Bar and case law interpreting that rule.

(b) If the amount of the fee is in dispute, the counsel retained by the state shall participate in mandatory binding arbitration. Payment of all attorney’s fees is subject to appropriation. Attorney’s fees shall be forfeited if, during the pendency of the case, the counsel retained by the state takes a public position that is adverse to the state’s litigation or settlement posture.

(8) All agencies, when contracting for private attorney services, must use the standard fee schedule for private attorney services as established pursuant to this section unless the head of the agency, or his or her designee, waives use of the schedule and sets forth the reasons for deviating from the schedule in writing to the Attorney General. Such waiver must demonstrate necessity based upon criteria for deviation from the schedule which the Attorney General shall establish by rule.

(9) The Attorney General shall develop guidelines that may be used by agencies to determine when it is necessary and appropriate to seek private attorney services in lieu of staff attorney services.

(10) Agencies are encouraged to use the following criteria when selecting outside firms for attorney services:

(a) The magnitude or complexity of the case.

(b) The firm’s ratings and certifications.

(c) The firm’s minority status.

(d) The firm’s physical proximity to the case and the agency.

(e) The firm’s prior experience with the agency.

(f) The firm’s prior experience with similar cases or issues.

(g) The firm’s billing methodology and proposed rate.

(h) The firm’s current or past adversarial position, or conflict of interest, with the agency.

(i) The firm’s willingness to use resources of the agency to minimize costs.

(11) The Attorney General shall develop a standard addendum to every contract for attorney services that must be used by all agencies, unless waived by the Attorney General, describing in detail what is expected of both the contracted private attorney and the contracting agency. The addendum must address the internal system of governance if multiple law firms are parties to the contract and must, at a minimum, require that each firm identify one member who is authorized to legally bind the firm.

(12) Contracts for attorney services shall be originally executed for 1 year only, except that multiyear contracts may be entered into provided they are subject to annual appropriations and annual written approval from the Attorney General as described in subsection (3). Any amendments to extend the contract period or increase the billing rate or overall contract amount shall be considered new contracts for purposes of the written approval process described in subsection (3).

(13) The office of the Attorney General shall periodically prepare and distribute to agencies a roster by geographic location of private attorneys under contract with agencies, their fees, and primary area of legal specialization.

(14) The office of the Attorney General is authorized to competitively bid and contract with one or more court reporting services, on a circuitwide basis, on behalf of all state agencies in accordance with s. 287.057. The office of the Attorney General shall develop requests for proposal for court reporter services in consultation with the Florida Court Reporters Association. All agencies shall utilize the contracts for court reporting services entered into by the office of the Attorney General where in force, unless otherwise ordered by a court or unless an agency has a contract for court reporting services executed prior to May 5, 1993.

(15) The Attorney General’s office may, by rule, adopt standard fee schedules for court reporting services for each judicial circuit in consultation with the Florida Court Reporters Association. Agencies, when contracting for court reporting services, must use the standard fee schedule for court reporting services established pursuant to this section, provided no state contract is applicable or unless the head of the agency or his or her designee waives use of the schedule and sets forth the reasons for deviating from the schedule in writing to the Attorney General. Such waiver must demonstrate necessity based upon criteria for deviation from the schedule which the Attorney General shall establish by rule. Any proposed fee schedule under this section shall be submitted to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the Chief Justice of the Florida Supreme Court at least 60 days prior to publication of the notice to adopt the rule.

(16) Each private attorney who is under contract to provide attorney services for the state or a state agency shall, from the inception of the contractual relationship until at least 4 years after the contract expires or terminates, maintain detailed current records, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such attorney services. The private attorney shall make all such records available for inspection and copying upon request in accordance with chapter 119.

History.—s. 5, ch. 82-196; s. 2, ch. 84-158; s. 1, ch. 90-147; s. 19, ch. 90-268; s. 16, ch. 92-170; s. 9, ch. 93-161; s. 13, ch. 94-124; s. 870, ch. 95-148; ss. 10, 11, ch. 95-222; s. 54, ch. 99-13; s. 5, ch. 99-280; s. 19, ch. 2000-122; s. 4, ch. 2001-266; s. 18, ch. 2002-207; s. 333, ch. 2003-261; s. 26, ch. 2010-151.

287.0595 Pollution response action contracts; department rules.—

(1) The Department of Environmental Protection shall establish, by adopting administrative rules as provided in chapter 120:

(a) Procedures for determining the qualifications of responsible potential vendors prior to advertisement for and receipt of bids, proposals, or replies for pollution response action contracts, including procedures for the rejection of unqualified vendors. Response actions are those activities described in s. 376.301(39).

(b) Procedures for awarding such contracts to the lowest responsible and responsive vendor as well as procedures to be followed in cases in which the department declares a valid emergency to exist which would necessitate the waiver of the rules governing the awarding of such contracts to the lowest responsible and responsive vendor.

(c) Procedures governing payment of contracts.

(d) Procedures to govern negotiations for contracts, modifications to contract documents, and terms and conditions of contracts.

(2) In adopting rules under this section, the Department of Environmental Protection shall follow the criteria applicable to the department’s contracting to the maximum extent possible, consistent with the goals and purposes of ss. 376.307 and 376.3071.

(3) Any bid submitted under this section shall be confidential and exempt from the provisions of s. 119.07(1) until a selection is made and a contract signed or until bids are no longer under active consideration.

(4) This section does not apply to contracts which must be negotiated under s. 287.055.

History.—s. 1, ch. 87-337; s. 9, ch. 87-374; s. 8, ch. 89-188; s. 2, ch. 89-377; s. 3, ch. 90-54; s. 103, ch. 90-360; s. 253, ch. 92-279; s. 55, ch. 92-326; s. 1, ch. 94-355; s. 114, ch. 94-356; s. 86, ch. 95-143; s. 18, ch. 96-263; s. 14, ch. 96-277; s. 14, ch. 96-321; s. 133, ch. 96-406; s. 15, ch. 98-189; s. 55, ch. 99-13; s. 19, ch. 2002-207; s. 3, ch. 2005-50.

287.063 Deferred-payment commodity contracts; preaudit review.—

(1)(a) When any commodity contract requires deferred payments and the payment of interest, such contract shall be submitted to the Chief Financial Officer for the purpose of preaudit review and approval prior to acceptance by the state.

(b) Contracts executed pursuant to this subsection may bear interest at a rate not to exceed an average net interest cost rate which shall be computed by adding 150 basis points to the 20 “bond buyer” average yield index published immediately preceding the first day of the calendar month in which the contract is submitted to the Chief Financial Officer for preaudit review and approval.

(2)(a) No funds appropriated shall be used to acquire equipment through a lease or deferred-payment purchase arrangement unless approved by the Chief Financial Officer as economically prudent and cost-effective.

(b) The Chief Financial Officer shall establish, by rule, criteria for approving purchases made under deferred-payment contracts which require the payment of interest. Criteria shall include, but not be limited to, the following provisions:

1. No contract shall be approved in which interest exceeds the statutory ceiling contained in this section. However, the interest component of any master equipment financing agreement entered into for the purpose of consolidated financing of a deferred-payment, installment sale, or lease-purchase shall be deemed to comply with the interest rate limitation of this section so long as the interest component of every interagency agreement under such master equipment financing agreement complies with the interest rate limitation of this section.

2. No deferred-payment purchase for less than $30,000 shall be approved, unless it can be satisfactorily demonstrated and documented to the Chief Financial Officer that failure to make such deferred-payment purchase would adversely affect an agency in the performance of its duties. However, the Chief Financial Officer may approve any deferred-payment purchase if the Chief Financial Officer determines that such purchase is economically beneficial to the state.

3. No contract shall be approved which extends payment beyond 5 years, unless it can be satisfactorily demonstrated and documented to the Chief Financial Officer that failure to make such deferred-payment purchase would adversely affect an agency in the performance of its duties. The payment term may not exceed the useful life of the equipment unless the contract provides for the replacement or the extension of the useful life of the equipment during the term of the loan.

(c) The Chief Financial Officer shall require written justification based on need, usage, size of the purchase, and financial benefit to the state for deferred-payment purchases made pursuant to this subsection.

(3) This section does not apply to the Legislature.

(4) For purposes of this section, deferred-payment commodity contracts for replacing the state accounting and cash management systems may include equipment, accounting software, and implementation and project management services.

(5) For purposes of this section, the annualized amount of any such deferred payment commodity contract must be supported from available recurring funds appropriated to the agency in an appropriation category, as defined in chapter 216, that the Chief Financial Officer has determined is appropriate or that the Legislature has designated for payment of the obligation incurred under this section.

History.—s. 14, ch. 83-132; s. 30, ch. 85-349; s. 2, ch. 93-278; s. 1, ch. 2002-62; s. 334, ch. 2003-261; s. 23, ch. 2006-122; s. 24, ch. 2008-227.

287.064 Consolidated financing of deferred-payment purchases.—

(1) The Division of Bond Finance of the State Board of Administration and the Chief Financial Officer shall plan and coordinate deferred-payment purchases made by or on behalf of the state or its agencies or by or on behalf of state universities or state community colleges participating under this section pursuant to s. 1001.706(7) or s. 1001.64(26), respectively. The Division of Bond Finance shall negotiate and the Chief Financial Officer shall execute agreements and contracts to establish master equipment financing agreements for consolidated financing of deferred-payment, installment sale, or lease purchases with a financial institution or a consortium of financial institutions. As used in this act, the term “deferred-payment” includes installment sale and lease-purchase.

(a) The period during which equipment may be acquired under any one master equipment financing agreement shall be limited to not more than 3 years.

(b) Repayment of the whole or a part of the funds drawn pursuant to the master equipment financing agreement may continue beyond the period established pursuant to paragraph (a).

(c) The interest rate component of any master equipment financing agreement shall be deemed to comply with the interest rate limitation imposed in s. 287.063 so long as the interest rate component of every interagency, state university, or community college agreement entered into under such master equipment financing agreement complies with the interest rate limitation imposed in s. 287.063. Such interest rate limitation does not apply when the payment obligation under the master equipment financing agreement is rated by a nationally recognized rating service in any one of the three highest classifications, which rating services and classifications are determined pursuant to rules adopted by the Chief Financial Officer.

(2) Unless specifically exempted by the Chief Financial Officer, all deferred-payment purchases, including those made by a state university or community college that is participating under this section, shall be acquired by funding through master equipment financing agreements. The Chief Financial Officer is authorized to exempt any purchases from consolidated financing when, in his or her judgment, alternative financing would be cost-effective or otherwise beneficial to the state.

(3) The Chief Financial Officer may require agencies to enter into interagency agreements and may require participating state universities or community colleges to enter into systemwide agreements for the purpose of carrying out the provisions of this act.

(a) The term of any interagency or systemwide agreement shall expire on June 30 of each fiscal year but shall automatically be renewed annually subject to appropriations and deferred-payment schedules. The period of any interagency or systemwide agreement shall not exceed the useful life of the equipment for which the agreement was made as determined by the Chief Financial Officer.

(b) The interagency or systemwide agreements may include, but are not limited to, equipment costs, terms, and a pro rata share of program and issuance expenses.

(4) Each state university or community college may choose to have its purchasing agreements involving administrative and instructional materials consolidated under this section.

(5) The Chief Financial Officer is authorized to automatically debit each agency’s or state university’s funds and each community college’s portion of the Community College Program Fund consistently with the deferred-payment schedules.

(6) All funds debited from each agency, state university, and community college pursuant to the provisions of this section may be deposited in the trust fund and shall be used to meet the financial obligations incurred pursuant to this act. Any income from the investment of funds may be used to fund administrative costs associated with this program.

(7) The Chief Financial Officer may borrow sufficient amounts from trust funds to pay issuance expenses for the purposes of administering this section. Such amounts shall be subject to approval of the Executive Office of the Governor and subject to the notice, review, and objection procedures of s. 216.177. Amounts loaned shall be repaid as soon as practicable not to exceed the length of time obligations are issued to establish the master equipment financing agreement.

(8) The State Board of Administration and the Chief Financial Officer, individually, shall adopt rules to implement their respective responsibilities under this section.

(9) For purposes of this section, deferred-payment commodity contracts for replacing the state accounting and cash management systems may include equipment, accounting software, and implementation and project management services.

(10)(a) A master equipment financing agreement may finance the cost of energy, water, or wastewater efficiency and conservation measures as defined in s. 489.145, excluding the costs of training, operation, and maintenance, for a term of repayment that may exceed 5 years but may not exceed 20 years.

(b) The guaranteed energy, water, and wastewater savings contractor shall provide for the replacement or the extension of the useful life of the equipment during the term of the contract.

(11) For purposes of consolidated financing of deferred payment commodity contracts under this section by a state agency, the annualized amount of any such contract must be supported from available recurring funds appropriated to the agency in an appropriation category, as defined in chapter 216, which the Chief Financial Officer has determined is appropriate or which the Legislature has designated for payment of the obligation incurred under this section.

History.—s. 26, ch. 85-349; s. 10, ch. 86-204; s. 2, ch. 88-359; s. 10, ch. 90-203; s. 20, ch. 90-268; s. 254, ch. 92-279; s. 55, ch. 92-326; s. 214, ch. 95-148; ss. 18, 38, ch. 98-46; s. 56, ch. 99-13; s. 14, ch. 2000-157; s. 5, ch. 2000-340; s. 2, ch. 2002-62; s. 945, ch. 2002-387; s. 335, ch. 2003-261; ss. 9, 10, ch. 2003-399; s. 8, ch. 2004-41; s. 23, ch. 2004-234; s. 11, ch. 2004-390; s. 24, ch. 2006-122; s. 35, ch. 2007-217; s. 25, ch. 2008-227; s. 8, ch. 2010-78.

287.0641 Agreement not debt or pledge of faith or credit of state.—No agreement entered into pursuant to s. 287.064 shall establish a debt of the state or shall be a pledge of the faith and credit of the state; nor shall any agreement be a liability or obligation of the state except from appropriated funds. All agreements, however, may be automatically renewable at the end of each fiscal year, subject to sufficient annual appropriations.

History.—s. 28, ch. 85-349; s. 11, ch. 86-204.

287.0731 Team for contract negotiations.—Contingent upon funding in the General Appropriations Act, the department shall establish a team that includes a chief negotiator to specialize in conducting negotiations for the procurement of information technology with an invitation to negotiate.

History.—s. 28, ch. 94-340; s. 5, ch. 2001-278; s. 21, ch. 2002-207.

287.074 Prohibited actions by contractor personnel.—

(1) Only a public officer or a public employee upon whom the public officer has delegated authority shall, consistent with law, take actions, including, but not limited to:

(a) Selecting state employees;

(b) Approving position descriptions, performance standards, or salary adjustments for state employees; and

(c) Hiring, promoting, disciplining, demoting, and dismissing a state employee.

(2) Only a public officer shall, consistent with law, commission and appoint state officers.

History.—s. 7, ch. 2006-224.

287.075 Materially interested contractor; prohibition on certain activities.—A contractor, as defined in this chapter, or its employees, agents, or subcontractors, may not knowingly participate, through decision, approval, disapproval, or preparation of any part of a purchase request, investigation, or audit, in the procurement of commodities or contractual services by a state agency from an entity in which the contractor, or its employees, agents, or subcontractors, has a material interest.

History.—s. 8, ch. 2006-224.

287.076 Project Management Professionals training for personnel involved in managing outsourcings; funding.—The Department of Management Services may implement a program to train state agency employees who are involved in managing outsourcings as Project Management Professionals, as certified by the Project Management Institute. For the 2006-2007 fiscal year, the sum of $500,000 in recurring funds from the General Revenue Fund is appropriated to the Department of Management Services to implement this program. The Department of Management Services, in consultation with entities subject to this act, shall identify personnel to participate in this training based on requested need and ensure that each agency is represented. The Department of Management Services may remit payment for this training on behalf of all participating personnel.

History.—s. 11, ch. 2006-224.

287.082 Commodities manufactured, grown, or produced in state given preference.—Whenever two or more competitive sealed bids are received, one or more of which relates to commodities manufactured, grown, or produced within this state, and whenever all things stated in such received bids are equal with respect to price, quality, and service, the commodities manufactured, grown, or produced within this state shall be given preference.

History.—s. 22, ch. 69-106; s. 22, ch. 90-268; s. 2, ch. 95-168.

287.0821 All American and Genuine Florida meat or meat products.—As allowed by the United States Department of Agriculture, each slaughterhouse or meatpacking or processing plant in the state or other person vending any meat or meat product, the meat of which is entirely produced in the United States, may label such meat or meat product “All American”, and any such vendor selling any such meat or meat product, the meat of which is entirely produced in the state, may label such meat or meat product “Genuine Florida.”

History.—s. 3, ch. 87-400; s. 65, ch. 90-321; s. 30, ch. 2000-308.

Note.—Former s. 585.3403; s. 585.92.

287.0822 Beef and pork; prohibition on purchase; bid specifications; penalty.—

(1) Fresh or frozen beef or pork that has not been inspected by the United States Department of Agriculture or by another state’s inspection program which has been approved by the United States Department of Agriculture shall not be purchased, or caused to be purchased, by any agency of the state or of any municipality, political subdivision, school district, or special district for consumption in this state or for distribution for consumption in this state. Solicitations issued by any agency of the state or of any municipality, political subdivision, school district, or special district for the purchase of fresh or frozen beef or pork must specify that only beef or pork inspected and passed by either the United States Department of Agriculture or by another state’s inspection program which has been approved by the United States Department of Agriculture will be accepted. The supplier or vendor shall certify on the invoice that the fresh or frozen beef or pork or imported beef or pork supplied is either domestic or complies with this subsection.

(2) All solicitations for purchase of fresh or frozen meats of any kind by any agency of the state or of any municipality, political subdivision, school district, or special district using state or local funds shall include the words: “ ‘All American’ and ‘Genuine Florida’ meats or meat products shall be granted preference as allowed by Section 287.082, Florida Statutes.”

(3) Any person who knowingly violates or causes to be violated the provisions of this section shall be personally liable to the affected public agency for any funds spent in violation of the provisions of this section.

History.—s. 1, ch. 77-61; s. 1, ch. 78-71; s. 2, ch. 87-400; s. 62, ch. 90-321; s. 46, ch. 94-180; s. 3, ch. 95-168; s. 29, ch. 2000-308; s. 22, ch. 2002-207.

Note.—Former s. 585.3401; s. 585.89.

287.083 Purchase of commodities.—

(1) It shall be the policy of the state for the Department of Management Services to consider the life-cycle cost of commodities purchased by the state, when applicable and feasible as determined by the department.

(2) Definitions.—For the purpose of this section:

(a) “Major energy-consuming product” means any article so designated by the department.

(b) “Energy-efficiency standard” means a performance standard which prescribes the relationship of the energy use of a product to its useful output of services.

(3)(a) The department is authorized to establish by rule energy-efficiency standards for major energy-consuming products.

(b) When federal energy-efficiency standards exist, the department shall, when feasible, adopt standards at least as stringent as the federal standards.

(4) When energy-efficiency standards are established, life-cycle costs shall be used by the department in contracting for major energy-consuming products.

(5) In determining the life-cycle cost, the department may consider the acquisition cost of the product; the energy consumption and the projected cost of energy over the useful life of the product; and the anticipated trade-in, resale, or salvage value of the product.

History.—s. 2, ch. 77-316; s. 25, ch. 81-169; s. 85, ch. 98-279.

287.0831 Limitation on purchases to replace damaged state agency equipment; assessment protocols.—

(1) It is the intent of the Legislature that purchases of new equipment, machinery, or inventory by any state agency as a result of damage from fire, smoke, water, or any other similar incident be limited to purchases that are absolutely necessary because the damaged equipment, machinery, or inventory is in irreparable condition.

(2) By January 1, 2012, each state agency shall develop and adopt assessment protocols for evaluating and determining whether equipment, machinery, or any other inventory must be repaired or restored before any request to purchase replacement equipment, machinery, or any other inventory is approved.

History.—s. 30, ch. 2011-64.

287.0834 Motor vehicles; energy-saving equipment and additives.—Each motor vehicle purchased by the state and each motor vehicle leased by the state for a period in excess of 1 year shall use devices, equipment, and additives that have been certified as energy-saving and approved for use by the United States Environmental Protection Agency and that have been determined to be cost-effective by the Department of Management Services.

History.—s. 1, ch. 82-68; s. 256, ch. 92-279; s. 55, ch. 92-326.

[1](http://www.flsenate.gov/Laws/Statutes/2012/Chapter287/All#1)287.084 Preference to Florida businesses.—

(1)(a) When an agency, university, college, school district, or other political subdivision of the state is required to make purchases of personal property through competitive solicitation and the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, then the agency, university, college, school district, or other political subdivision of this state shall award a preference to the lowest responsible and responsive vendor having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business. In a competitive solicitation in which the lowest bid is submitted by a vendor whose principal place of business is located outside the state and that state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state, the preference to the lowest responsible and responsive vendor having a principal place of business in this state shall be 5 percent.

(b) Paragraph (a) does not apply to transportation projects for which federal aid funds are available.

(c) As used in this section, the term “other political subdivision of this state” does not include counties or municipalities.

(2) A vendor whose principal place of business is outside this state must accompany any written bid, proposal, or reply documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts.

(3)(a) A vendor whose principal place of business is in this state may not be precluded from being an authorized reseller of information technology commodities of a state contractor as long as the vendor demonstrates that it employs an internationally recognized quality management system, such as ISO 9001 or its equivalent, and provides a warranty on the information technology commodities which is, at a minimum, of equal scope and length as that of the contract.

(b) This subsection applies to any renewal of any state contract executed on or after July 1, 2012.

History.—s. 1, ch. 77-460; s. 117, ch. 79-400; s. 215, ch. 95-148; s. 3, ch. 95-420; ss. 16, 53, ch. 99-228; s. 6, ch. 2000-340; s. 23, ch. 2002-207; s. 14, ch. 2012-32.

1Note.—Section 25, ch. 2012-32, provides that:

“(1)  The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4), Florida Statutes, for the purpose of implementing this act.

“(2)  Notwithstanding any provision of law, such emergency rules shall remain in effect for 6 months after the date adopted and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.”

287.087 Preference to businesses with drug-free workplace programs.—Whenever two or more bids, proposals, or replies that are equal with respect to price, quality, and service are received by the state or by any political subdivision for the procurement of commodities or contractual services, a bid, proposal, or reply received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

(1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

(2) Inform employees about the dangers of drug abuse in the workplace, the business’s policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

(3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).

(4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee’s community by, any employee who is so convicted.

(6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

History.—s. 23, ch. 90-268; s. 24, ch. 2002-207.

287.092 Preference to certain foreign manufacturers.—Any foreign manufacturing company with a factory in the state and employing over 200 employees working in the state shall have preference over any other foreign company when price, quality, and service are the same, regardless of where the product is manufactured.

History.—s. 22, ch. 69-106.

287.093 Minority business enterprises; procurement of personal property and services from funds set aside for such purpose.—Any county, municipality, community college, or district school board may set aside up to 10 percent or more of the total amount of funds allocated for the procurement of personal property and services for the purpose of entering into contracts with minority business enterprises. Such contracts shall be competitively solicited only among minority business enterprises. The set-aside shall be used to redress present effects of past discriminatory practices and shall be subject to periodic reassessment to account for changing needs and circumstances.

History.—s. 109, ch. 84-336; s. 26, ch. 94-322; s. 25, ch. 2002-207.

287.0931 Minority business enterprises; participation in bond underwriting.—

(1) Any state or local government agency, or political subdivision thereof, issuing bonds or other tax-exempt obligations through one or more underwriters is encouraged to offer not less than 20 percent participation to minority firms.

(2) To meet such participation requirement, the minority firm must have full-time employees located in this state, must have a permanent place of business located in this state, and must be a firm which is at least 51-percent-owned by minority persons as defined in s. 288.703. However, for the purpose of bond underwriting only, the requirement that the minority person be a permanent resident of this state does not apply.

History.—s. 12, ch. 94-322; s. 126, ch. 2011-142.

287.0935 Surety bond insurers.—When the contract amount of a project does not exceed $500,000 and when public funds are utilized for the project, a person, the state, or a political subdivision shall not refuse, as surety for the project, bid bonds, performance bonds, labor and materials payment bonds, or any other surety bonds which are issued by a surety company which fulfills each of the following provisions:

(1) The surety company is licensed to do business in the State of Florida;

(2) The surety company holds a certificate of authority authorizing it to write surety bonds in this state;

(3) The surety company has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued;

(4) The surety company is otherwise in compliance with the provisions of the Florida Insurance Code; and

(5) The surety company holds a currently valid certificate of authority issued by the United States Department of the Treasury under 31 U.S.C. ss. 9304-9308.

History.—s. 29, ch. 85-104; s. 10, ch. 91-162.

287.094 Minority business enterprise programs; penalty for discrimination and false representation.—

(1) It is unlawful for any individual to falsely claim to be a minority business enterprise for purposes of qualifying for certification with any governmental certifying organization as a minority business enterprise in order to participate under a program of a state agency which is designed to assist certified minority business enterprises in the receipt of contracts with the agency for the provision of goods or services. The certification of any contractor, firm, or individual obtained by such false representation shall be permanently revoked, and the entity shall be barred from doing business with state government for a period of 36 months. Any person who violates this section is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any contractor, firm, or individual which falsely represents to an agency or to a contractor, pursuant to a state contract, that it is a certified minority business enterprise or which represents that it will use the services or commodities of a certified minority business enterprise and subsequently does not do so shall be in breach of contract. Upon determination that a breach has occurred, all payments under the contract may be immediately suspended. The contractor or firm may show that it attempted through reasonable and objective means and in good faith to comply with the terms of the contract relating to minority business enterprises but was unable to comply. If the agency determines that the contractor or firm did not act in good faith, all amounts paid to the contractor or firm under the state contract intended for expenditure with the certified minority business enterprises shall be forfeited and recoverable by the Department of Legal Affairs. In addition, the contract may be rescinded and the agency may return all goods received and recover all amounts paid under the contract.

(3) Any contractor, firm, or individual shall be barred from doing business with state government for a period of 36 months, and shall be permanently disqualified from doing business with state government as a certified minority business enterprise, if the office has determined that the contractor, firm, or individual has not acted in good faith to fulfill the terms of a contract calling for it to use the services or commodities of a certified minority business enterprise. If the Department of Legal Affairs, agency final order, or a court of law determines that a person was involved in a violation of this section, knew about such violation, or collaborated with a contractor or firm in such violation, the person, or any contractor or firm the person is employed by or affiliated with, shall be barred from doing business with state government for a period of at least 36 months.

(4) No agency shall deny any contractor, firm, or individual a fair opportunity to compete in the public procurement of commodities and services based on race, national origin, gender, religion, or physical disability, which for purposes of this subsection constitutes prohibited discrimination. Complaints alleging prohibited discrimination by an agency in its public procurement may be filed with the Office of Supplier Diversity within 60 days after the facts giving rise to the complaint are known or reasonably should have been discovered. Any complaint shall be filed in writing and must set forth the specific facts giving rise to the claim of prohibited discrimination. The Office of Supplier Diversity shall, within 10 days, refer the complaint to the Inspector General for the agency that is the subject of the complaint, who shall coordinate a prompt investigation and issue written findings of fact. These findings shall be reviewed by the Chief Inspector General or his or her designee, who is authorized to conduct any further investigation deemed necessary or appropriate. Upon a final determination that an agency has abused its discretion by engaging in prohibited discrimination, the Chief Inspector General shall refer any state employee determined to have participated in the prohibited discrimination for disciplinary action in accordance with chapter 60K(9), Florida Administrative Code, and subsequently enacted rules, up to and including termination.

(5) The owner of a minority business enterprise that has been found guilty under subsection (1) or subsection (3) shall not attempt to circumvent this section by creating a new business entity for the purposes of attempting to transact business in this state.

History.—s. 2, ch. 82-196; s. 25, ch. 85-104; s. 2, ch. 88-327; s. 13, ch. 94-322; s. 1, ch. 2000-286.

287.0943 Certification of minority business enterprises.—

(1) A business certified by any local governmental jurisdiction or organization shall be accepted by the Department of Management Services, Office of Supplier Diversity, as a certified minority business enterprise for purposes of doing business with state government when the Office of Supplier Diversity determines that the state’s minority business enterprise certification criteria are applied in the local certification process.

(2)(a) The office is hereby directed to convene a “Minority Business Certification Task Force.” The task force shall meet as often as necessary, but no less frequently than annually.

(b) The task force shall be regionally balanced and comprised of officials representing the department, counties, municipalities, school boards, special districts, and other political subdivisions of the state who administer programs to assist minority businesses in procurement or development in government-sponsored programs. The following organizations may appoint two members each of the task force who fit the description above:

1. The Florida League of Cities, Inc.

2. The Florida Association of Counties.

3. The Florida School Boards Association, Inc.

4. The Association of Special Districts.

5. The Florida Association of Minority Business Enterprise Officials.

6. The Florida Association of Government Purchasing Officials.

In addition, the Office of Supplier Diversity shall appoint seven members consisting of three representatives of minority business enterprises, one of whom should be a woman business owner, two officials of the office, and two at-large members to ensure balance. A quorum shall consist of one-third of the current members, and the task force may take action by majority vote. Any vacancy may only be filled by the organization or agency originally authorized to appoint the position.

(c) The purpose of the task force will be to propose uniform criteria and procedures by which participating entities and organizations can qualify businesses to participate in procurement or contracting programs as certified minority business enterprises in accordance with the certification criteria established by law.

(d) A final list of the criteria and procedures proposed by the task force shall be considered by the secretary. The task force may seek technical assistance from qualified providers of technical, business, and managerial expertise to ensure the reliability of the certification criteria developed.

(e) In assessing the status of ownership and control, certification criteria shall, at a minimum:

1. Link ownership by a minority person as defined in s. 288.703, or as dictated by the legal obligations of a certifying organization, to day-to-day control and financial risk by the qualifying minority owner, and to demonstrated expertise or licensure of a minority owner in any trade or profession that the minority business enterprise will offer to the state when certified. Businesses must comply with all state licensing requirements before becoming certified as a minority business enterprise.

2. If present ownership was obtained by transfer, require the minority person on whom eligibility is based to have owned at least 51 percent of the applicant firm for a minimum of 2 years, when any previous majority ownership interest in the firm was by a nonminority who is or was a relative, former employer, or current employer of the minority person on whom eligibility is based. This requirement does not apply to minority persons who are otherwise eligible who take a 51-percent-or-greater interest in a firm that requires professional licensure to operate and who will be the qualifying licenseholder for the firm when certified. A transfer made within a related immediate family group from a nonminority person to a minority person in order to establish ownership by a minority person shall be deemed to have been made solely for purposes of satisfying certification criteria and shall render such ownership invalid for purposes of qualifying for such certification if the combined total net asset value of all members of such family group exceeds $1 million. For purposes of this subparagraph, the term “related immediate family group” means one or more children under 16 years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.

3. Require that prospective certified minority business enterprises be currently performing or seeking to perform a useful business function. A “useful business function” is defined as a business function which results in the provision of materials, supplies, equipment, or services to customers. Acting as a conduit to transfer funds to a nonminority business does not constitute a useful business function unless it is done so in a normal industry practice. As used in this section, the term “acting as a conduit” means, in part, not acting as a regular dealer by making sales of material, goods, or supplies from items bought, kept in stock, and regularly sold to the public in the usual course of business. Brokers, manufacturer’s representatives, sales representatives, and nonstocking distributors are considered as conduits that do not perform a useful business function, unless normal industry practice dictates.

(f) When a business receives payments or awards exceeding $100,000 in one fiscal year, a review of its certification status or an audit will be conducted within 2 years. In addition, random reviews or audits will be conducted as deemed appropriate by the Office of Supplier Diversity.

(g) The certification criteria approved by the task force and adopted by the Department of Management Services shall be included in a statewide and interlocal agreement as defined in s. 287.09431 and, in accordance with s. 163.01, shall be executed according to the terms included therein.

(h) The certification procedures should allow an applicant seeking certification to designate on the application form the information the applicant considers to be proprietary, confidential business information. As used in this paragraph, “proprietary, confidential business information” includes, but is not limited to, any information that would be exempt from public inspection pursuant to the provisions of chapter 119; trade secrets; internal auditing controls and reports; contract costs; or other information the disclosure of which would injure the affected party in the marketplace or otherwise violate s. 286.041. The executor in receipt of the application shall issue written and final notice of any information for which noninspection is requested but not provided for by law.

(i) A business that is certified under the provisions of the statewide and interlocal agreement shall be deemed a certified minority enterprise in all jurisdictions or organizations where the agreement is in effect, and that business is deemed available to do business as such within any such jurisdiction or with any such organization statewide. All state agencies must accept minority business enterprises certified in accordance with the statewide and interlocal agreement of s. 287.09431, and that business shall also be deemed a “certified minority business enterprise” as defined in s. 288.703. However, any governmental jurisdiction or organization that administers a minority business purchasing program may reserve the right to establish further certification procedures necessary to comply with federal law.

(j) The statewide and interlocal agreement shall be guided by the terms and conditions found therein and may be amended at any meeting of the task force and subsequently adopted by the secretary of the Department of Management Services. The amended agreement must be enacted, initialed, and legally executed by at least two-thirds of the certifying entities party to the existing agreement and adopted by the state as originally executed in order to bind the certifying entity.

(k) The task force shall meet for the first time no later than 45 days after the effective date of this act.

(3)(a) The office shall review and evaluate the certification programs and procedures of all prospective executors of the statewide and interlocal agreement to determine if their programs exhibit the capacity to meet the standards of the agreement.

(b) The evaluations shall, at a minimum, consider: the certifying entity’s capacity to conduct investigations of applicants seeking certification under the designated criteria; the ability of the certifying entity to collect the requisite data and to establish adequate protocol to store and exchange said information among the executors of the agreement and to provide adequate security to prevent unauthorized access to information gathered during the certification process; and the degree to which any legal obligations or supplemental requirements unique to the certifying entity exceed the capacity of that entity to conduct certifications.

(c) Any firms certified by organizations or governmental entities determined not to meet the state certification criteria shall not be eligible to participate as certified minority business enterprises in the minority business assistance programs of the state. For a period of 1 year from the effective date of this legislation, the executor of the statewide and interlocal agreement may elect to accept only minority business enterprises certified pursuant to criteria in place at the time the agreement was signed. After the 1-year period, either party may elect to withdraw from the agreement without further notice.

(d) Any organizations or governmental entities determined by the office not to meet the standards of the agreement shall not be eligible to execute the statewide and interlocal agreement as a participating organization until approved by the office.

(e) Any participating program receiving three or more challenges to its certification decisions pursuant to subsection (4) from other organizations that are executors to the statewide and interlocal agreement, shall be subject to a review by the office, as provided in paragraphs (a) and (b), of the organization’s capacity to perform under such agreement and in accordance with the core criteria established by the task force. The office shall submit a report to the secretary of the Department of Management Services regarding the results of the review.

(f) The office shall maintain a directory of all executors of the statewide and interlocal agreement. The directory should be communicated to the general public.

(4) A certification may be challenged by any executor to the statewide and interlocal agreement upon the grounds of failure by the certifying organization to adhere to the adopted criteria or to the certifying organization’s rules and procedures, or on the grounds of a misrepresentation or fraud by the certified minority business enterprise. The challenge shall proceed according to procedures specified in the agreement.

(5)(a) The secretary of the Department of Management Services shall execute the statewide and interlocal agreement established under s. 287.09431 on behalf of the state. The office shall certify minority business enterprises in accordance with the laws of this state and, by affidavit, shall recertify such minority business enterprises not less than once each year.

(b) The office shall contract with parties to the statewide and interlocal agreement to perform onsite visits associated with state certifications.

(6)(a) The office shall maintain up-to-date records of all certified minority business enterprises, as defined in s. 288.703, and of applications for certification that were denied and shall make this list available to all agencies. The office shall, for statistical purposes, collect and track subgroupings of gender and nationality status for each certified minority business enterprise. Agency spending shall also be tracked for these subgroups. The records may include information about minority business enterprises that provide legal services, auditing services, and health services. Agencies shall use this list in efforts to meet the minority business enterprise procurement goals set forth in s. 287.09451.

(b) The office shall establish and administer a computerized data bank to carry out the requirements of paragraph (a), to be available to all executors of the statewide and interlocal agreement. Data maintained in the data bank shall be sufficient to allow each executor to reasonably monitor certifications it has issued.

(7) The office shall identify minority business enterprises eligible for certification in all areas of state services and commodities purchasing. The office may contract with a private firm or other agency, if necessary, in seeking to identify minority business enterprises for certification. Agencies may request the office to identify certifiable minority business enterprises that are in the business of providing a given service or commodity; the office shall respond to such requests and seek out such certifiable minority business enterprises.

(8) The office shall adopt rules necessary to implement this section.

(9) State agencies shall comply with this act except to the extent that the requirements of this act are in conflict with federal law.

(10) Any transfer of ownership or permanent change in the management and daily operations of a certified minority business enterprise which may affect certification must be reported to the original certifying jurisdiction or entity and to the office within 14 days of the transfer or change taking place. In the event of a transfer of ownership, the transferee seeking to do business with the state as a certified minority business enterprise is responsible for such reporting. In the event of a permanent change in the management and daily operations, owners seeking to do business with the state as a certified minority business enterprise are responsible for reporting such change to the office. Any person violating the provisions of this subsection shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(11) To deter fraud in the program, the Auditor General may review the criteria by which a business became certified as a certified minority business enterprise.

(12) Any executor of the statewide and interlocal agreement may revoke the certification or recertification of a firm doing business as a certified minority business enterprise if the minority business enterprise does not meet the requirements of the jurisdiction or certifying entity that certified or recertified the firm as a certified minority business enterprise, or the requirements of subsection (2), s. 288.703, and any rule of the office or the Department of Management Services or if the business acquired certification or recertification by means of falsely representing any entity as a minority business enterprise for purposes of qualifying for certification or recertification.

(13) Unless permanently revoked, a certified minority business enterprise for which certification or recertification has been revoked may not apply or reapply for certification or recertification for a minimum of 36 months after the date of the notice of revocation.

(14)(a) Except for certification decisions issued by the Office of Supplier Diversity, an executor to the statewide and interlocal agreement shall, in accordance with its rules and procedures:

1. Give reasonable notice to affected persons or parties of its decision to deny certification based on failure to meet eligibility requirements of the statewide and interlocal agreement of s. 287.09431, together with a summary of the grounds therefor.

2. Give affected persons or parties an opportunity, at a convenient time and place, to present to the agency written or oral evidence in opposition to the action or of the executor’s refusal to act.

3. Give a written explanation of any subsequent decision of the executor overruling the objections.

(b) An applicant that is denied minority business enterprise certification based on failure to meet eligibility requirements of the statewide and interlocal agreement pursuant to s. 287.09431 may not reapply for certification or recertification until at least 6 months after the date of the notice of the denial of certification or recertification.

(15) The office shall adopt rules in compliance with this part.

History.—s. 22, ch. 85-104; s. 3, ch. 88-327; s. 24, ch. 90-268; s. 11, ch. 91-162; s. 244, ch. 91-224; s. 257, ch. 92-279; s. 55, ch. 92-326; ss. 14, 26, ch. 94-322; s. 7, ch. 96-311; s. 25, ch. 96-320; s. 1, ch. 98-295; s. 2, ch. 2000-286; s. 57, ch. 2001-61; s. 38, ch. 2004-335; s. 45, ch. 2005-251; s. 27, ch. 2011-34; s. 127, ch. 2011-142.

287.09431 Statewide and interlocal agreement on certification of business concerns for the status of minority business enterprise.—The statewide and interlocal agreement on certification of business concerns for the status of minority business enterprise is hereby enacted and entered into with all jurisdictions or organizations legally joining therein. If, within 2 years from the date that the certification core criteria are approved by the Department of Management Services, the agreement included herein is not executed by a majority of county and municipal governing bodies that administer a minority business assistance program on the effective date of this act, then the Legislature shall review this agreement. It is the intent of the Legislature that if the agreement is not executed by a majority of the requisite governing bodies, then a statewide uniform certification process should be adopted, and that said agreement should be repealed and replaced by a mandatory state government certification process.

ARTICLE I

PURPOSE, FINDINGS, AND POLICY.—

(1)  The parties to this agreement, desiring by common action to establish a uniform certification process in order to reduce the multiplicity of applications by business concerns to state and local governmental programs for minority business assistance, declare that it is the policy of each of them, on the basis of cooperation with one another, to remedy social and economic disadvantage suffered by certain groups, resulting in their being historically underutilized in ownership and control of commercial enterprises. Thus, the parties seek to address this history by increasing the participation of the identified groups in opportunities afforded by government procurement.

(2)  The parties find that the State of Florida presently certifies firms for participation in the minority business assistance programs of the state. The parties find further that some counties, municipalities, school boards, special districts, and other divisions of local government require a separate, yet similar, and in most cases redundant certification in order for businesses to participate in the programs sponsored by each government entity.

(3)  The parties find further that this redundant certification has proven to be unduly burdensome to the minority-owned firms intended to benefit from the underlying purchasing incentives.

(4) The parties agree that:

(a)  They will facilitate integrity, stability, and cooperation in the statewide and interlocal certification process, and in other elements of programs established to assist minority-owned businesses.

(b)  They shall cooperate with agencies, organizations, and associations interested in certification and other elements of minority business assistance.

(c) It is the purpose of this agreement to provide for a uniform process whereby the status of a business concern may be determined in a singular review of the business information for these purposes, in order to eliminate any undue expense, delay, or confusion to the minority-owned businesses in seeking to participate in the minority business assistance programs of state and local jurisdictions.

ARTICLE II

DEFINITIONS.—As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

(1)  “Awarding organization” means any political subdivision or organization authorized by law, ordinance, or agreement to enter into contracts and for which the governing body has entered into this agreement.

(2) “Department” means the Department of Management Services.

(3)  “Minority” means a person who is a lawful, permanent resident of the state, having origins in one of the minority groups as described and adopted by the Department of Management Services, hereby incorporated by reference.

(4)  “Minority business enterprise” means any small business concern as defined in subsection (6) that meets all of the criteria described and adopted by the Department of Management Services, hereby incorporated by reference.

(5)  “Participating state or local organization” means any political subdivision of the state or organization designated by such that elects to participate in the certification process pursuant to this agreement, which has been approved according to s. 287.0943(3) and has legally entered into this agreement.

(6)  “Small business concern” means an independently owned and operated business concern which is of a size and type as described and adopted by vote related to this agreement of the commission, hereby incorporated by reference.

ARTICLE III

STATEWIDE AND INTERLOCAL CERTIFICATIONS.—

(1)  All awarding organizations shall accept a certification granted by any participating organization which has been approved according to s. 287.0943(3) and has entered into this agreement, as valid status of minority business enterprise.

(2)  A participating organization shall certify a business concern that meets the definition of minority business enterprise in this agreement, in accordance with the duly adopted eligibility criteria.

(3)  All participating organizations shall issue notice of certification decisions granting or denying certification to all other participating organizations within 14 days of the decision. Such notice may be made through electronic media.

(4)  No certification will be granted without an onsite visit to verify ownership and control of the prospective minority business enterprise, unless verification can be accomplished by other methods of adequate verification or assessment of ownership and control.

(5)  The certification of a minority business enterprise pursuant to the terms of this agreement shall not be suspended, revoked, or otherwise impaired except on any grounds which would be sufficient for revocation or suspension of a certification in the jurisdiction of the participating organization.

(6)  The certification determination of a party may be challenged by any other participating organization by the issuance of a timely written notice by the challenging organization to the certifying organization’s determination within 10 days of receiving notice of the certification decision, stating the grounds therefor.

(7)  The sole accepted grounds for challenge shall be the failure of the certifying organization to adhere to the adopted criteria or the certifying organization’s rules or procedures, or the perpetuation of a misrepresentation or fraud by the firm.

(8)  The certifying organization shall reexamine its certification determination and submit written notice to the applicant and the challenging organization of its findings within 30 days after the receipt of the notice of challenge.

(9)  If the certification determination is affirmed, the challenging agency may subsequently submit timely written notice to the firm of its intent to revoke certification of the firm.

ARTICLE IV

APPROVED AND ACCEPTED PROGRAMS.—Nothing in this agreement shall be construed to repeal or otherwise modify any ordinance, law, or regulation of a party relating to the existing minority business assistance provisions and procedures by which minority business enterprises participate therein.

ARTICLE V

TERM.—The term of the agreement shall be 5 years, after which it may be reexecuted by the parties.

ARTICLE VI

AGREEMENT EVALUATION.—The designated state and local officials may meet from time to time as a group to evaluate progress under the agreement, to formulate recommendations for changes, or to propose a new agreement.

ARTICLE VII

OTHER ARRANGEMENTS.—Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party in order to comply with federal law.

ARTICLE VIII

EFFECT AND WITHDRAWAL.—

(1)  This agreement shall become effective when properly executed by a legal representative of the participating organization, when enacted into the law of the state and after an ordinance or other legislation is enacted into law by the governing body of each participating organization. Thereafter it shall become effective as to any participating organization upon the enactment of this agreement by the governing body of that organization.

(2)  Any party may withdraw from this agreement by enacting legislation repealing the same, but no such withdrawal shall take effect until one year after the governing body of the withdrawing party has given notice in writing of the withdrawal to the other parties.

(3) No withdrawal shall relieve the withdrawing party of any obligations imposed upon it by law.

ARTICLE IX

FINANCIAL RESPONSIBILITY.—

(1)  A participating organization shall not be financially responsible or liable for the obligations of any other participating organization related to this agreement.

(2)  The provisions of this agreement shall constitute neither a waiver of any governmental immunity under Florida law nor a waiver of any defenses of the parties under Florida law. The provisions of this agreement are solely for the benefit of its executors and not intended to create or grant any rights, contractual or otherwise, to any person or entity.

ARTICLE X

VENUE AND GOVERNING LAW.—The obligations of the parties to this agreement are performable only within the county where the participating organization is located, and statewide for the Office of Supplier Diversity, and venue for any legal action in connection with this agreement shall lie, for any participating organization except the Office of Supplier Diversity, exclusively in the county where the participating organization is located. This agreement shall be governed by and construed in accordance with the laws and court decisions of the state.

ARTICLE XI

CONSTRUCTION AND SEVERABILITY.—This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the State Constitution or the United States Constitution, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the State Constitution, the agreement shall remain in full force and effect as to all severable matters.

History.—ss. 15, 26, ch. 94-322; s. 26, ch. 96-320; s. 57, ch. 99-13; s. 12, ch. 2000-286; s. 9, ch. 2011-213.

287.09451 Office of Supplier Diversity; powers, duties, and functions.—

(1) The Legislature finds that there is evidence of a systematic pattern of past and continuing racial discrimination against minority business enterprises and a disparity in the availability and use of minority business enterprises in the state procurement system. It is determined to be a compelling state interest to rectify such discrimination and disparity. Based upon statistical data profiling this discrimination, the Legislature has enacted race-conscious and gender-conscious remedial programs to ensure minority participation in the economic life of the state, in state contracts for the purchase of commodities and services, and in construction contracts. The purpose and intent of this section is to increase participation by minority business enterprises accomplished by encouraging the use of minority business enterprises and the entry of new and diversified minority business enterprises into the marketplace.

(2) The Office of Supplier Diversity is established within the Department of Management Services to assist minority business enterprises in becoming suppliers of commodities, services, and construction to state government.

(3) The secretary shall appoint an executive director for the Office of Supplier Diversity, who shall serve at the pleasure of the secretary.

(4) The Office of Supplier Diversity shall have the following powers, duties, and functions:

(a) To adopt rules to determine what constitutes a “good faith effort” for purposes of state agency compliance with the minority business enterprise procurement goals set forth in s. 287.042. Factors which shall be considered by the Minority Business Enterprise Assistance Office in determining good faith effort shall include, but not be limited to:

1. Whether the agency scheduled presolicitation or prebid meetings for the purpose of informing minority business enterprises of contracting and subcontracting opportunities.

2. Whether the contractor advertised in general circulation, trade association, or minority-focus media concerning the subcontracting opportunities.

3. Whether the agency effectively used services and resources of available minority community organizations; minority contractors’ groups; local, state, and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of minority business enterprises or minority persons.

4. Whether the agency provided written notice to a reasonable number of minority business enterprises that their interest in contracting with the agency was being solicited in sufficient time to allow the minority business enterprises to participate effectively.

(b) To adopt rules to determine what constitutes a “good faith effort” for purposes of contractor compliance with contractual requirements relating to the use of services or commodities of a minority business enterprise under s. 287.094(2). Factors which shall be considered by the Office of Supplier Diversity in determining whether a contractor has made good faith efforts shall include, but not be limited to:

1. Whether the contractor attended any presolicitation or prebid meetings that were scheduled by the agency to inform minority business enterprises of contracting and subcontracting opportunities.

2. Whether the contractor advertised in general circulation, trade association, or minority-focus media concerning the subcontracting opportunities.

3. Whether the contractor provided written notice to a reasonable number of specific minority business enterprises that their interest in the contract was being solicited in sufficient time to allow the minority business enterprises to participate effectively.

4. Whether the contractor followed up initial solicitations of interest by contacting minority business enterprises or minority persons to determine with certainty whether the minority business enterprises or minority persons were interested.

5. Whether the contractor selected portions of the work to be performed by minority business enterprises in order to increase the likelihood of meeting the minority business enterprise procurement goals, including, where appropriate, breaking down contracts into economically feasible units to facilitate minority business enterprise participation.

6. Whether the contractor provided interested minority business enterprises or minority persons with adequate information about the plans, specifications, and requirements of the contract or the availability of jobs.

7. Whether the contractor negotiated in good faith with interested minority business enterprises or minority persons, not rejecting minority business enterprises or minority persons as unqualified without sound reasons based on a thorough investigation of their capabilities.

8. Whether the contractor effectively used the services of available minority community organizations; minority contractors’ groups; local, state, and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of minority business enterprises or minority persons.

(c) To adopt rules and do all things necessary or convenient to guide all state agencies toward making expenditures for commodities, contractual services, construction, and architectural and engineering services with certified minority business enterprises in accordance with the minority business enterprise procurement goals set forth in s. 287.042.

(d) To monitor the degree to which agencies procure services, commodities, and construction from minority business enterprises in conjunction with the Department of Financial Services as specified in s. 17.11.

(e) To receive and disseminate information relative to procurement opportunities, availability of minority business enterprises, and technical assistance.

(f) To advise agencies on methods and techniques for achieving procurement objectives.

(g) To provide a central minority business enterprise certification process which includes independent verification of status as a minority business enterprise.

(h) To develop procedures to investigate complaints against minority business enterprises or contractors alleged to violate any provision related to this section or s. 287.0943, that may include visits to worksites or business premises, and to refer all information on businesses suspected of misrepresenting minority status to the Department of Management Services for investigation. When an investigation is completed and there is reason to believe that a violation has occurred, the matter shall be referred to the office of the Attorney General, Department of Legal Affairs, for prosecution.

(i) To maintain a directory of all minority business enterprises which have been certified and provide this information to any agency or business requesting it.

(j) To encourage all firms which do more than $1 million in business with the state within a 12-month period to develop, implement, and submit to this office a minority business development plan.

(k) To communicate on a monthly basis with the Small and Minority Business Advisory Council to keep the council informed on issues relating to minority enterprise procurement.

(l) To serve as an advocate for minority business enterprises, and coordinate with the small and minority business ombudsman, as defined in s. 288.703, which duties shall include:

1. Ensuring that agencies supported by state funding effectively target the delivery of services and resources, as related to minority business enterprises.

2. Establishing standards within each industry with which the state government contracts on how agencies and contractors may provide the maximum practicable opportunity for minority business enterprises.

3. Assisting agencies and contractors by providing outreach to minority businesses, by specifying and monitoring technical and managerial competence for minority business enterprises, and by consulting in planning of agency procurement to determine how best to provide opportunities for minority business enterprises.

4. Integrating technical and managerial assistance for minority business enterprises with government contracting opportunities.

(m) To certify minority business enterprises, as defined in s. 288.703, and as specified in ss. 287.0943 and 287.09431, and shall recertify such minority businesses at least once every 2 years. Minority business enterprises must be recertified at least once every 2 years. Such certifications may include an electronic signature.

(n)1. To develop procedures to be used by an agency in identifying commodities, contractual services, architectural and engineering services, and construction contracts, except those architectural, engineering, construction, or other related services or contracts subject to the provisions of chapter 339, that could be provided by minority business enterprises. Each agency is encouraged to spend 21 percent of the moneys actually expended for construction contracts, 25 percent of the moneys actually expended for architectural and engineering contracts, 24 percent of the moneys actually expended for commodities, and 50.5 percent of the moneys actually expended for contractual services during the previous fiscal year, except for the state university construction program which shall be based upon public education capital outlay projections for the subsequent fiscal year, and reported to the Legislature pursuant to s. 216.023, for the purpose of entering into contracts with certified minority business enterprises as defined in s. 288.703, or approved joint ventures. However, in the event of budget reductions pursuant to s. 216.221, the base amounts may be adjusted to reflect such reductions. The overall spending goal for each industry category shall be subdivided as follows:

a. For construction contracts: 4 percent for black Americans, 6 percent for Hispanic-Americans, and 11 percent for American women.

b. For architectural and engineering contracts: 9 percent for Hispanic-Americans, 1 percent for Asian-Americans, and 15 percent for American women.

c. For commodities: 2 percent for black Americans, 4 percent for Hispanic-Americans, 0.5 percent for Asian-Americans, 0.5 percent for Native Americans, and 17 percent for American women.

d. For contractual services: 6 percent for black Americans, 7 percent for Hispanic-Americans, 1 percent for Asian-Americans, 0.5 percent for Native Americans, and 36 percent for American women.

2. For the purposes of commodities contracts for the purchase of equipment to be used in the construction and maintenance of state transportation facilities involving the Department of Transportation, the terms “minority business enterprise” and “minority person” have the same meanings as provided in s. 288.703. In order to ensure that the goals established under this paragraph for contracting with certified minority business enterprises are met, the department, with the assistance of the Office of Supplier Diversity, shall make recommendations to the Legislature on revisions to the goals, based on an updated statistical analysis, at least once every 5 years. Such recommendations shall be based on statistical data indicating the availability of and disparity in the use of minority businesses contracting with the state. The results of the first updated disparity study must be presented to the Legislature no later than December 1, 1996.

3. In determining the base amounts for assessing compliance with this paragraph, the Office of Supplier Diversity may develop, by rule, guidelines for all agencies to use in establishing such base amounts. These rules must include, but are not limited to, guidelines for calculation of base amounts, a deadline for the agencies to submit base amounts, a deadline for approval of the base amounts by the Office of Supplier Diversity, and procedures for adjusting the base amounts as a result of budget reductions made pursuant to s. 216.221.

4. To determine guidelines for the use of price preferences, weighted preference formulas, or other preferences, as appropriate to the particular industry or trade, to increase the participation of minority businesses in state contracting. These guidelines shall include consideration of:

a. Size and complexity of the project.

b. The concentration of transactions with minority business enterprises for the commodity or contractual services in question in prior agency contracting.

c. The specificity and definition of work allocated to participating minority business enterprises.

d. The capacity of participating minority business enterprises to complete the tasks identified in the project.

e. The available pool of minority business enterprises as prime contractors, either alone or as partners in an approved joint venture that serves as the prime contractor.

5. To determine guidelines for use of joint ventures to meet minority business enterprises spending goals. For purposes of this section, “joint venture” means any association of two or more business concerns to carry out a single business enterprise for profit, for which purpose they combine their property, capital, efforts, skills, and knowledge. The guidelines shall allow transactions with joint ventures to be eligible for credit against the minority business enterprise goals of an agency when the contracting joint venture demonstrates that at least one partner to the joint venture is a certified minority business enterprise as defined in s. 288.703, and that such partner is responsible for a clearly defined portion of the work to be performed, and shares in the ownership, control, management, responsibilities, risks, and profits of the joint venture. Such demonstration shall be by verifiable documents and sworn statements and may be reviewed by the Office of Supplier Diversity at or before the time a contract bid, proposal, or reply is submitted. An agency may count toward its minority business enterprise goals a portion of the total dollar amount of a contract equal to the percentage of the ownership and control held by the qualifying certified minority business partners in the contracting joint venture, so long as the joint venture meets the guidelines adopted by the office.

(o)1. To establish a system to record and measure the use of certified minority business enterprises in state contracting. This system shall maintain information and statistics on certified minority business enterprise participation, awards, dollar volume of expenditures and agency goals, and other appropriate types of information to analyze progress in the access of certified minority business enterprises to state contracts and to monitor agency compliance with this section. Such reporting must include, but is not limited to, the identification of all subcontracts in state contracting by dollar amount and by number of subcontracts and the identification of the utilization of certified minority business enterprises as prime contractors and subcontractors by dollar amounts of contracts and subcontracts, number of contracts and subcontracts, minority status, industry, and any conditions or circumstances that significantly affected the performance of subcontractors. Agencies shall report their compliance with the requirements of this reporting system at least annually and at the request of the office. All agencies shall cooperate with the office in establishing this reporting system. Except in construction contracting, all agencies shall review contracts costing in excess of CATEGORY FOUR as defined in s. 287.017 to determine if such contracts could be divided into smaller contracts to be separately solicited and awarded, and shall, when economical, offer such smaller contracts to encourage minority participation.

2. To report agency compliance with the provisions of subparagraph 1. for the preceding fiscal year to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives on or before February 1 of each year. The report must contain, at a minimum, the following:

a. Total expenditures of each agency by industry.

b. The dollar amount and percentage of contracts awarded to certified minority business enterprises by each state agency.

c. The dollar amount and percentage of contracts awarded indirectly to certified minority business enterprises as subcontractors by each state agency.

d. The total dollar amount and percentage of contracts awarded to certified minority business enterprises, whether directly or indirectly, as subcontractors.

e. A statement and assessment of good faith efforts taken by each state agency.

f. A status report of agency compliance with subsection (6), as determined by the Minority Business Enterprise Office.

(5)(a) Each agency shall, at the time the specifications or designs are developed or contract sizing is determined for any proposed procurement costing in excess of CATEGORY FOUR, as defined in s. 287.017, forward a notice to the Office of Supplier Diversity of the proposed procurement and any determination on the designs of specifications of the proposed procurement that impose requirements on prospective vendors, no later than 30 days prior to the issuance of a solicitation, except that this provision shall not apply to emergency acquisitions. The 30-day notice period shall not toll the time for any other procedural requirements.

(b) If the Office of Supplier Diversity determines that the proposed procurement will not likely allow opportunities for minority business enterprises, the office may, within 20 days after it receives the information specified in paragraph (a), propose the implementation of minority business enterprise utilization provisions or submit alternative procurement methods that would significantly increase minority business enterprise contracting opportunities.

(c) Whenever the agency and the Office of Supplier Diversity disagree, the matter shall be submitted for determination to the head of the agency or the senior-level official designated pursuant to this section as liaison for minority business enterprise issues.

(d) If the proposed procurement proceeds to competitive solicitation, the office is hereby granted standing to protest, pursuant to this section, in a timely manner, any contract award during competitive solicitation for contractual services and construction contracts that fail to include minority business enterprise participation, if any responsible and responsive vendor has demonstrated the ability to achieve any level of participation, or, any contract award for commodities where, a reasonable and economical opportunity to reserve a contract, statewide or district level, for minority participation was not executed or, an agency failed to adopt an applicable preference for minority participation. The bond requirement shall be waived for the office purposes of this subsection.

(e) An agency may presume that a vendor offering no minority participation has not made a good faith effort when other vendors offer minority participation of firms listed as relevant to the agency’s purchasing needs in the pertinent locality or statewide to complete the project.

(f) Paragraph (a) will not apply when the Office of Supplier Diversity determines that an agency has established a work plan to allow advance consultation and planning with minority business enterprises and where such plan clearly demonstrates:

1. A high level of advance planning by the agency with minority business enterprises.

2. A high level of accessibility, knowledge, and experience by minority business enterprises in the agency’s contract decisionmaking process.

3. A high quality of agency monitoring and enforcement of internal implementation of minority business utilization provisions.

4. A high quality of agency monitoring and enforcement of contractor utilization of minority business enterprises, especially tracking subcontractor data, and ensuring the integrity of subcontractor reporting.

5. A high quality of agency outreach, agency networking of major vendors with minority vendors, and innovation in techniques to improve utilization of minority business enterprises.

6. Substantial commitment, sensitivity, and proactive attitude by the agency head and among the agency minority business staff.

(6) Each state agency shall coordinate its minority business enterprise procurement activities with the Office of Supplier Diversity. At a minimum, each agency shall:

(a) Adopt a minority business enterprise utilization plan for review and approval by the Office of Supplier Diversity which should require meaningful and useful methods to attain the legislative intent in assisting minority business enterprises. Note: This is being interpreted as an ”annual plan” , suggest approach be that an agency head establish its policy on minority business enterprises within 6 months of taking office, and failing to do so the previously established policy stands in (similar to Executive Orders), however this would not preclude an agency head from confirming previous policy.

(b) Designate a senior-level employee in the agency as a minority enterprise assistance officer, responsible for overseeing the agency’s minority business utilization activities, and who is not also charged with purchasing responsibility. Note: Suggest striking “and who is not also charged with purchasing responsibility”. A senior-level agency employee and agency purchasing officials shall be accountable to the agency head for the agency’s minority business utilization performance. The Office of Supplier Diversity shall advise each agency on compliance performance.

(c) If an agency deviates significantly from its utilization plan in 2 consecutive or 3 out of 5 total fiscal years, the Office of Supplier Diversity may review any and all solicitations and contract awards of the agency as deemed necessary until such time as the agency meets its utilization plan.

History.—s. 28, ch. 96-320; s. 86, ch. 98-279; s. 4, ch. 2000-286; s. 26, ch. 2002-207; s. 336, ch. 2003-261; s. 1, ch. 2009-83; s. 1, ch. 2010-103; s. 128, ch. 2011-142; s. 10, ch. 2011-213.

[1](http://www.flsenate.gov/Laws/Statutes/2012/Chapter287/All#1)287.0947 Florida Advisory Council on Small and Minority Business Development; creation; membership; duties.—

(1) The Secretary of Management Services may create the Florida Advisory Council on Small and Minority Business Development with the purpose of advising and assisting the secretary in carrying out the secretary’s duties with respect to minority businesses and economic and business development. It is the intent of the Legislature that the membership of such council include practitioners, laypersons, financiers, and others with business development experience who can provide invaluable insight and expertise for this state in the diversification of its markets and networking of business opportunities. The council shall initially consist of 19 persons, each of whom is or has been actively engaged in small and minority business development, either in private industry, in governmental service, or as a scholar of recognized achievement in the study of such matters. Initially, the council shall consist of members representing all regions of the state and shall include at least one member from each group identified within the definition of “minority person” in s. 288.703(4), considering also gender and nationality subgroups, and shall consist of the following:

(a) Four members consisting of representatives of local and federal small and minority business assistance programs or community development programs.

(b) Eight members composed of representatives of the minority private business sector, including certified minority business enterprises and minority supplier development councils, among whom at least two shall be women and at least four shall be minority persons.

(c) Two representatives of local government, one of whom shall be a representative of a large local government, and one of whom shall be a representative of a small local government.

(d) Two representatives from the banking and insurance industry.

(e) Two members from the private business sector, representing the construction and commodities industries.

(f) A member from the board of directors of Enterprise Florida, Inc.

A candidate for appointment may be considered if eligible to be certified as an owner of a minority business enterprise, or if otherwise qualified under the criteria above. Vacancies may be filled by appointment of the secretary, in the manner of the original appointment.

(2) Each appointed member shall serve for a term of 2 years from the date of appointment, except that a vacancy shall be filled by appointment for the remainder of the unexpired term. The council shall annually elect a chair and a vice chair. The council shall adopt internal procedures or bylaws necessary for efficient operations. Members of the council shall serve without compensation or honorarium but shall be entitled to per diem and travel expenses pursuant to s. 112.061 for the performance of duties for the council. The executive administrator of the commission may remove a council member for cause.

(3) Within 30 days after its initial meeting, the council shall elect from among its members a chair and a vice chair.

(4) The council shall meet at the call of its chair, at the request of a majority of its membership, at the request of the commission or its executive administrator, or at such times as may be prescribed by rule, but not less than once a year, to offer its views on issues related to small and minority business development of concern to this state. A majority of the members of the council shall constitute a quorum.

(5) The powers and duties of the council include, but are not limited to: researching and reviewing the role of small and minority businesses in the state’s economy; reviewing issues and emerging topics relating to small and minority business economic development; studying the ability of financial markets and institutions to meet small business credit needs and determining the impact of government demands on credit for small businesses; assessing the implementation of s. 187.201(21), requiring a state economic development comprehensive plan, as it relates to small and minority businesses; assessing the reasonableness and effectiveness of efforts by any state agency or by all state agencies collectively to assist minority business enterprises; and advising the Governor, the secretary, and the Legislature on matters relating to small and minority business development which are of importance to the international strategic planning and activities of this state.

(6) On or before January 1 of each year, the council shall present an annual report to the secretary that sets forth in appropriate detail the business transacted by the council during the year and any recommendations to the secretary, including those to improve business opportunities for small and minority business enterprises.

History.—ss. 27, 32, ch. 85-104; s. 32, ch. 90-268; s. 18, ch. 94-322; s. 872, ch. 95-148; s. 29, ch. 96-320; s. 39, ch. 97-100; s. 129, ch. 2011-142; s. 11, ch. 2011-213; s. 29, ch. 2012-5.

1Note.—Expired October 1, 1995, pursuant to s. 32, ch. 85-104. This section was amended by s. 29, ch. 96-320; s. 39, ch. 97-100; s. 129, ch. 2011-142; s. 11, ch. 2011-213; and s. 29, ch. 2012-5.

287.095 Department of Corrections; prison industry programs.—

(1) The purchase of raw materials for use by the Department of Corrections in its prison industry programs to manufacture or process products for resale is exempt from the provisions of this part.

(2) The provisions of this part do not apply to any purchases of commodities or contractual services made by any state agency from the department or from the nonprofit corporation organized under chapter 946.

(3) All products offered for purchase to a state agency by the corporation organized under chapter 946 shall be produced in majority part by inmate labor, except for products not made by inmates which products are contractually allied to products made by inmates which are offered by the corporation, provided the value of the products not made by inmates do not exceed 2 percent of the total sales of the corporation in any year.

History.—s. 1, ch. 82-76; s. 3, ch. 82-409; s. 3, ch. 83-209; s. 27, ch. 2002-207.

287.131 Assistance of Department of Financial Services.—The Department of Financial Services shall provide the Department of Management Services with technical assistance in all matters pertaining to the purchase of insurance for all agencies, and shall make surveys of the insurance needs of the state and all departments thereof, including the benefits, if any, of self-insurance.

History.—ss. 13, 22, 35, ch. 69-106; s. 87, ch. 98-279; s. 338, ch. 2003-261.

287.132 Legislative intent with respect to integrity of public contracting and purchasing process.—Recognizing that the preservation of the integrity of the public contracting and purchasing process of the state is vital and is a matter of interest to all the people of the state, the Legislature determines and declares that:

(1) The procedures of public entities for determining with whom they transact business exist to secure for the public the benefits of free, fair, and open competition among those persons whose conduct reflects good citizenship.

(2) The opportunity to bid on public entity contracts or to supply goods and services to public entities or to otherwise transact business with public entities is a privilege, not a right.

(3) In order to preserve the integrity of the public contracting and purchasing process, the privilege of transacting business with public entities should be denied to persons involved in certain crimes.

(4) Persons involved in certain crimes should be denied the privilege of transacting business with public entities and the opportunity of obtaining economic benefit through the transaction of business of any kind with public entities.

To these ends, it is the intent of the Legislature to provide sufficient authority to the state, its departments and agencies, and political subdivisions to ensure the integrity of public contracting and purchasing.

History.—s. 1, ch. 89-114.

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

(1) As used in this section:

(a) “Affiliate” means:

1. A predecessor or successor of a person convicted of a public entity crime; or

2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

(b) “Convicted” or “conviction” means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

(c) “Convicted vendor list” means the list required to be kept by the department pursuant to paragraph (3)(d).

(d) “Department” means the Department of Management Services.

(e) “Person” means any natural person or any entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term “person” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

(f) “Public entity” means the State of Florida, any of its departments or agencies, or any political subdivision.

(g) “Public entity crime” means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

(2)(a) A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

(b) A public entity may not accept any bid, proposal, or reply from, award any contract to, or transact any business in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO with any person or affiliate on the convicted vendor list for a period of 36 months following the date that person or affiliate was placed on the convicted vendor list unless that person or affiliate has been removed from the list pursuant to paragraph (3)(f). A public entity that was transacting business with a person at the time of the commission of a public entity crime resulting in that person being placed on the convicted vendor list may not accept any bid, proposal, or reply from, award any contract to, or transact any business with any other person who is under the same, or substantially the same, control as the person whose name appears on the convicted vendor list so long as that person’s name appears on the convicted vendor list.

(3)(a) All invitations to bid, requests for proposals, and invitations to negotiate, as defined in s. 287.012, and any contract document described by s. 287.058 shall contain a statement informing persons of the provisions of paragraph (2)(a).

(b) Any person must notify the department within 30 days after a conviction of a public entity crime applicable to that person or to an affiliate of that person. Any public entity which receives information that a person has been convicted of a public entity crime shall transmit that information to the department in writing within 10 days.

(c) If the department has reason to believe that a person or an affiliate has been convicted of a public entity crime, the department may issue a written demand upon that person or affiliate, concerning any such conviction or affiliation, to appear and be examined under oath, to answer interrogatories under oath, or to produce documents or other tangible evidence for inspection and copying. The department shall conduct any such inquiry in accord with applicable provisions of the Florida Rules of Civil Procedure.

(d) The department shall maintain a list of the names and addresses of those who have been disqualified from the public contracting and purchasing process under this section. The department shall publish an initial list on January 1, 1990, and shall publish an updated version of the list quarterly thereafter. The revised quarterly lists shall be electronically posted. Notwithstanding this paragraph, a person or affiliate disqualified from the public contracting and purchasing process pursuant to this section shall be disqualified as of the date the final order is entered.

(e)1. Upon receiving reasonable information from any source that a person has been convicted, the department shall investigate the information and determine whether good cause exists to place that person or an affiliate of that person on the convicted vendor list. If good cause exists, the department shall notify the person or affiliate in writing of its intent to place the name of that person or affiliate on the convicted vendor list, and of the person’s or affiliate’s right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person or affiliate does not request a hearing, the department shall enter a final order placing the name of the person or affiliate on the convicted vendor list. No person or affiliate may be placed on the convicted vendor list without receiving an individual notice of intent from the department.

2. Within 21 days of receipt of the notice of intent, the person or affiliate may file a petition for a formal hearing pursuant to ss. 120.569 and 120.57(1) to determine whether it is in the public interest for that person or affiliate to be placed on the convicted vendor list. A person or affiliate may not file a petition for an informal hearing under s. 120.57(2). The procedures of chapter 120 shall apply to any formal hearing under this section except where they are in conflict with the following provisions:

a. The petition shall be filed with the department. The department shall be a party to the proceeding for all purposes.

b. Within 5 days after the filing of the petition, the department shall notify the Division of Administrative Hearings of the request for a formal hearing. The director of the Division of Administrative Hearings shall, within 5 days after receipt of notice from the department, assign an administrative law judge to preside over the proceeding. The administrative law judge, upon request by a party, may consolidate related proceedings.

c. The administrative law judge shall conduct the formal hearing within 30 days after being assigned, unless otherwise stipulated by the parties.

d. Within 30 days after the formal hearing or receipt of the hearing transcript, whichever is later, the administrative law judge shall enter a final order, which shall consist of findings of fact, conclusions of law, interpretation of agency rules, and any other information required by law or rule to be contained in the final order. Such final order shall place or not place the person or affiliate on the convicted vendor list.

e. The final order of the administrative law judge shall be final agency action for purposes of s. 120.68.

f. At any time after the filing of the petition, informal disposition may be made pursuant to s. 120.57(4). In that event, the administrative law judge shall enter a final order adopting the stipulation, agreed settlement, or consent order.

3. In determining whether it is in the public interest to place a person or affiliate on the convicted vendor list, the administrative law judge shall consider the following factors:

a. Whether the person or affiliate committed a public entity crime.

b. The nature and details of the public entity crime.

c. The degree of culpability of the person or affiliate proposed to be placed on the convicted vendor list.

d. Prompt or voluntary payment of any damages or penalty as a result of the conviction.

e. Cooperation with state or federal investigation or prosecution of any public entity crime, provided that a good faith exercise of any constitutional, statutory, or other right during any portion of the investigation or prosecution of any public entity crime shall not be considered a lack of cooperation.

f. Disassociation from any other persons or affiliates convicted of the public entity crime.

g. Prior or future self-policing by the person or affiliate to prevent public entity crimes.

h. Reinstatement or clemency in any jurisdiction in relation to the public entity crime at issue in the proceeding.

i. Compliance by the person or affiliate with the notification provisions of paragraph (b).

j. The needs of public entities for additional competition in the procurement of goods and services in their respective markets.

k. Mitigation based upon any demonstration of good citizenship by the person or affiliate.

4. In any proceeding under this section, the department shall be required to prove that it is in the public interest for the person to whom it has given notice under this section to be placed on the convicted vendor list. Proof of a conviction of the person or that one is an affiliate of such person shall constitute a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the convicted vendor list. Prompt payment of damages or posting of a bond, cooperation with investigation, and termination of the employment or other relationship with the employee or other natural person responsible for the public entity crime shall create a rebuttable presumption that it is not in the public interest to place a person or affiliate on the convicted vendor list. Status as an affiliate must be proven by clear and convincing evidence. If the administrative law judge determines that the person was not convicted or is not an affiliate of such person, that person or affiliate shall not be placed on the convicted vendor list.

5. Any person or affiliate who has been notified by the department of its intent to place his or her name on the convicted vendor list may offer evidence on any relevant issue. An affidavit alone shall not constitute competent substantial evidence that the person has not been convicted or is not an affiliate of a person so convicted. Upon establishment of a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the convicted vendor list, that person or affiliate may prove by a preponderance of the evidence that it would not be in the public interest to put him or her on the convicted vendor list, based upon evidence addressing the factors in subparagraph 3.

(f)1. A person on the convicted vendor list may petition for removal from the list no sooner than 6 months from the date a final order is entered disqualifying that person from the public purchasing and contracting process pursuant to this section, but may petition for removal at any time if the petition is based upon a reversal of the conviction on appellate review or pardon. The petition shall be filed with the department, and the proceeding shall be conducted pursuant to the procedures and requirements of this subsection.

2. A person may be removed from the convicted vendor list subject to such terms and conditions as may be prescribed by the administrative law judge upon a determination that removal is in the public interest. In determining whether removal would be in the public interest, the administrative law judge shall give consideration to any relevant factors, including, but not limited to, the factors identified in subparagraph (e)3. Upon proof that a person’s conviction has been reversed on appellate review or that he or she has been pardoned, the administrative law judge shall determine that removal of the person or an affiliate of that person from the convicted vendor list is in the public interest.

3. If a petition for removal is denied, the person or affiliate may not petition for another hearing on removal for a period of 9 months after the date of denial, unless the petition is based upon a reversal of the conviction on appellate review or a pardon. The department may petition for removal prior to the expiration of such period if, in its discretion, it determines that removal would be in the public interest.

(4) The conviction of a person for a public entity crime, or placement on the convicted vendor list, shall not affect any rights or obligations under any contract, franchise, or other binding agreement which predates such conviction or placement on the convicted vendor list. However, the administrative law judge in a proceeding instituted under this section may declare voidable any specific contract, franchise, or other binding agreement entered into after July 1, 1989, by a person placed on the convicted vendor list and a public entity, but only if the administrative law judge finds as fact that the person to be placed on the list has not satisfied the criteria set forth in sub-subparagraphs (3)(e)3.d., f., and g.

(5) The provisions of this section do not apply to any activities regulated by the Florida Public Service Commission or to the purchase of goods or services made by any public entity from the Department of Corrections, from the nonprofit corporation organized under chapter 946, or from any accredited nonprofit workshop certified under ss. 413.032-413.037.

History.—s. 2, ch. 89-114; s. 1, ch. 90-33; s. 32, ch. 90-268; s. 259, ch. 92-279; s. 55, ch. 92-326; s. 217, ch. 95-148; s. 33, ch. 95-196; s. 4, ch. 95-420; s. 62, ch. 96-410; s. 58, ch. 99-13; s. 29, ch. 2002-207.

287.134 Discrimination; denial or revocation of the right to transact business with public entities.—

(1) As used in this section:

(a) “Affiliate” means:

1. A predecessor or successor of an entity that discriminated; or

2. An entity under the control of any natural person or entity that is active in the management of the entity that discriminated. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one entity of shares constituting a controlling interest in another entity, or a pooling of equipment or income among entities when not for fair market value under an arm’s length agreement, shall be a prima facie case that one entity controls another entity.

(b) “Discrimination” or “discriminated” means a determination of liability by a state circuit court or federal district court for a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion by an entity; if an appeal is made, the determination of liability does not occur until the completion of any appeals to a higher tribunal.

(c) “Discriminatory vendor list” means the list required to be kept by the department pursuant to paragraph (3)(d).

(d) “Department” means the Department of Management Services.

(e) “Entity” means any natural person or any entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity.

(f) “Public entity” means this state and any department or agency of this state.

(g) “Senior management” includes chief executive officers; assistant chief executive officers, including, but not limited to, assistant presidents, vice presidents, or assistant treasurers; chief financial officers; chief personnel officers; or any employee of an entity performing similar functions.

(2)(a) An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

(b) A public entity may not accept any bid, proposals, or replies from, award any contract to, or transact any business with any entity or affiliate on the discriminatory vendor list for a period of 36 months following the date that entity or affiliate was placed on the discriminatory vendor list unless that entity or affiliate has been removed from the list pursuant to paragraph (3)(f). A public entity that was transacting business with an entity at the time of the discrimination resulting in that entity being placed on the discriminatory vendor list may not accept any bid, proposal, or reply from, award any contract to, or transact any business with any other entity who is under the same, or substantially the same, control as the entity whose name appears on the discriminatory vendor list so long as that entity’s name appears on the discriminatory vendor list.

(3)(a) All invitations to bid, requests for proposals, and invitations to negotiate, as defined by s. 287.012, and any written contract document of the state must contain a statement informing entities of the provisions of paragraph (2)(a).

(b) An entity must notify the department within 30 days after a final determination of discrimination. Any public entity which receives information that an entity has discriminated shall transmit that information to the department in writing within 10 days. Before entering into any contract with the state, all entities shall disclose to the department whether they have been found liable, in a state circuit court or federal court, for violation of any state or federal law prohibiting discrimination based on race, gender, national origin, disability, or religion.

(c) The department shall maintain a list of the names and addresses of any entity which has been disqualified from the public contracting and purchasing process under this section. The department shall publish an initial list on January 1, 2001, and shall publish an updated version of the list quarterly thereafter. The revised quarterly lists shall be electronically posted. Notwithstanding this paragraph, an entity or affiliate disqualified from the public contracting and purchasing process pursuant to this section shall be disqualified as of the date the final order is entered.

(d)1. Upon receiving reasonable information from any source that an entity has discriminated, the department shall investigate the information and determine whether good cause exists to place that entity or an affiliate of that entity on the discriminatory vendor list. If good cause exists, the department shall notify the entity or affiliate in writing of its intent to place the name of that entity or affiliate on the discriminatory vendor list, and of the entity’s or affiliate’s right to a hearing, the procedure that must be followed, and the applicable time requirements. If the entity or affiliate does not request a hearing, the department shall enter a final order placing the name of the entity or affiliate on the discriminatory vendor list. No entity or affiliate may be placed on the discriminatory vendor list without receiving an individual notice of intent from the department.

2. Within 21 days after receipt of the notice of intent, the entity or affiliate may file a petition for a formal hearing pursuant to ss. 120.569 and 120.57(1) to determine whether it is in the public interest for that entity or affiliate to be placed on the discriminatory vendor list. An entity or affiliate may not file a petition for an informal hearing under s. 120.57(2). The procedures of chapter 120 shall apply to any formal hearing under this section except where they are in conflict with the following provisions:

a. The petition shall be filed with the department. The department shall be a party to the proceeding for all purposes.

b. Within 5 days after the filing of the petition, the department shall notify the Division of Administrative Hearings of the request for a formal hearing. The director of the Division of Administrative Hearings shall, within 5 days after receipt of notice from the department, assign an administrative law judge to preside over the proceeding. The administrative law judge, upon request by a party, may consolidate related proceedings.

c. The administrative law judge shall conduct the formal hearing within 30 days after being assigned, unless otherwise stipulated by the parties.

d. Within 30 days after the formal hearing or receipt of the hearing transcript, whichever is later, the administrative law judge shall enter a final order, which shall consist of findings of fact, conclusions of law, interpretation of agency rules, and any other information required by law or rule to be contained in the final order. Such final order shall place or not place the entity or affiliate on the discriminatory vendor list.

e. The final order of the administrative law judge shall be final agency action for purposes of s. 120.68.

f. At any time after the filing of the petition, informal disposition may be made pursuant to s. 120.57(4). In that event, the administrative law judge shall enter a final order adopting the stipulation, agreed settlement, or consent order.

3. It shall not be in the public interest to place an entity or affiliate on the discriminatory vendor list if:

a. Discrimination did not occur;

b. The discrimination was committed by an employee of the entity or affiliate other than senior management; or

c. The member of senior management responsible for the discrimination is no longer an employee of the entity or affiliate.

4. In determining whether it is in the public interest to place an entity or affiliate on the discriminatory vendor list, the administrative law judge shall consider the following factors:

a. The nature and details of the discrimination.

b. The degree of culpability of the entity or affiliate proposed to be placed on the discriminatory vendor list.

c. The prompt or voluntary payment of any damages or penalty as a result of the discrimination.

d. Prior or future self-policing by the entity or affiliate to prevent discrimination.

e. Compliance by the entity or affiliate with the notification provisions of paragraph (b).

f. The needs of public entities for additional competition in the procurement of goods and services in their respective markets.

g. Mitigation based upon any demonstration of good citizenship by the entity or affiliate.

5. In any proceeding under this section, the department shall be required to prove by clear and convincing evidence that it is in the public interest for the entity to which the department has given notice under this section to be placed on the discriminatory vendor list. Proof of discrimination by the entity or a person or entity which is an affiliate of such entity shall constitute a prima facie case that it is in the public interest for the entity or affiliate to which the department has given notice to be put on the discriminatory vendor list. Status as an affiliate must be proven by clear and convincing evidence.

6. Any entity or affiliate which has been notified by the department of the department’s intent to place the entity’s or affiliate’s name on the discriminatory vendor list may offer evidence on any relevant issue. Upon establishment of a prima facie case that it is in the public interest for the entity or affiliate to which the department has given notice to be put on the discriminatory vendor list, that entity or affiliate may prove by a preponderance of the evidence that it would not be in the public interest to put such entity on the discriminatory vendor list, based upon evidence addressing the factors in subparagraphs 3. and 4.

(e)1. An entity on the discriminatory vendor list may petition for removal from the list no sooner than 6 months from the date a final order is entered disqualifying that entity from the public purchasing and contracting process pursuant to this section. The petition shall be filed with the department and the proceeding shall be conducted pursuant to the procedures and requirements of this subsection.

2. An entity may be removed from the discriminatory vendor list subject to such terms and conditions as may be prescribed by the administrative law judge upon a determination that removal is in the public interest. In determining whether removal would be in the public interest, the administrative law judge shall give consideration to any relevant factors, including, but not limited to, the factors identified in subparagraphs 3. and 4.

3. If a petition for removal is denied, the entity or affiliate may not petition for another hearing on removal for a period of 9 months after the date of denial. The department may petition for removal prior to the expiration of such period if, in the department’s discretion, the department determines that removal would be in the public interest.

(4) Placement on the discriminatory vendor list shall not affect any rights or obligations under any contract, franchise, or other binding agreement which predates such conviction or placement on the discriminatory vendor list.

(5) The provisions of this section do not apply to any activities regulated by the Florida Public Service Commission or to the purchase of goods or services made by any public entity from the Department of Corrections, from the nonprofit corporation organized under chapter 946, or from any accredited nonprofit workshop certified under ss. 413.032-413.037.

History.—s. 6, ch. 2000-286; s. 30, ch. 2002-207.

287.135 Prohibition against contracting with scrutinized companies.—

(1) In addition to the terms defined in ss. 287.012 and 215.473, as used in this section, the term:

(a) “Awarding body” means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

(b) “Business operations” means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

(c) “Local governmental entity” means a county, municipality, special district, or other political subdivision of the state.

(2) A company that, at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or is engaged in business operations in Cuba or Syria, is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of $1 million or more.

(3)(a) Any contract with an agency or local governmental entity for goods or services of $1 million or more entered into or renewed on or after July 1, 2011, through June 30, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5) or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

(b) Any contract with an agency or local governmental entity for goods or services of $1 million or more entered into or renewed on or after July 1, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5), been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria.

(4) Notwithstanding subsection (2) or subsection (3), an agency or local governmental entity, on a case-by-case basis, may permit a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or a company with business operations in Cuba or Syria, to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of $1 million or more under the conditions set forth in paragraph (a) or the conditions set forth in paragraph (b):

(a)1. With respect to a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, all of the following occur:

a. The scrutinized business operations were made before July 1, 2011.

b. The scrutinized business operations have not been expanded or renewed after July 1, 2011.

c. The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.

d. The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.

2. With respect to a company engaged in business operations in Cuba or Syria, all of the following occur:

a. The business operations were made before July 1, 2012.

b. The business operations have not been expanded or renewed after July 1, 2012.

c. The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.

d. The company has adopted, has publicized, and is implementing a formal plan to cease business operations and to refrain from engaging in any new business operations.

(b) One of the following occurs:

1. The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.

2. For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.

3. For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

(5) At the time a company submits a bid or proposal for a contract or before the company enters into or renews a contract with an agency or governmental entity for goods or services of $1 million or more, the company must certify that the company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operations in Cuba or Syria.

(a) If, after the agency or the local governmental entity determines, using credible information available to the public, that the company has submitted a false certification, the agency or local governmental entity shall provide the company with written notice of its determination. The company shall have 90 days following receipt of the notice to respond in writing and to demonstrate that the determination of false certification was made in error. If the company does not make such demonstration within 90 days after receipt of the notice, the agency or the local governmental entity shall bring a civil action against the company. If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay the penalty described in subparagraph 1. and all reasonable attorney fees and costs, including any costs for investigations that led to the finding of false certification.

1. A civil penalty equal to the greater of $2 million or twice the amount of the contract for which the false certification was submitted shall be imposed.

2. The company is ineligible to bid on any contract with an agency or local governmental entity for 3 years after the date the agency or local governmental entity determined that the company submitted a false certification.

(b) A civil action to collect the penalties described in paragraph (a) must commence within 3 years after the date the false certification is submitted.

(6) Only the agency or local governmental entity that is a party to the contract may cause a civil action to be brought under this section. This section does not create or authorize a private right of action or enforcement of the penalties provided in this section. An unsuccessful bidder, or any other person other than the agency or local governmental entity, may not protest the award of a contract or contract renewal on the basis of a false certification.

(7) This section preempts any ordinance or rule of any agency or local governmental entity involving public contracts for goods or services of $1 million or more with a company engaged in scrutinized business operations.

(8) The department shall submit to the Attorney General of the United States a written notice:

(a) Describing this section within 30 days after July 1, 2011.

(b) Within 30 days after July 1, 2012, apprising the Attorney General of the United States of the inclusion of companies with business operations in Cuba or Syria within the provisions of this section.

(9) This section becomes inoperative on the date that federal law ceases to authorize the states to adopt and enforce the contracting prohibitions of the type provided for in this section.