



104964

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/24/2021	.	
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The Committee on Governmental Oversight and Accountability
(Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

(1) In order to preserve the interest of the state in the
prudent expenditure of state funds, each public agency contract



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11 for services entered into or amended on or after July 1, 2020,
12 shall authorize the public agency to inspect the:

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

16 (b) Programmatic records, papers, and documents of the
17 contractor which the public agency determines are necessary to
18 monitor the performance of the contract or to ensure that the
19 terms of the contract are being met.

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

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

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

26 287.042 Powers, duties, and functions.—The department shall
27 have the following powers, duties, and functions:

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

35 Section 3. Subsection (2) of section 287.056, Florida
36 Statutes, is amended, and subsection (4) is added to that
37 section, to read:

38 287.056 Purchases from purchasing agreements and state term
39 contracts.—



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40 (2) Agencies and eligible users may use a request for quote
41 to obtain written pricing or services information from a state
42 term contract vendor for commodities or contractual services
43 available on state term contract from that vendor. The purpose
44 of a request for quote is to determine whether a price, term, or
45 condition more favorable to the agency or eligible user than
46 that provided in the state term contract is available. If an
47 agency issues a request for quote for contractual services for
48 any contract with 100 vendors or fewer, the agency must issue a
49 request for quote to all vendors approved to provide such
50 contractual services. For any contract with more than 100
51 vendors, the agency must issue a request for quote to a minimum
52 of 100 vendors approved to provide such contractual services.
53 Use of a request for quote does not constitute a decision or
54 intended decision that is subject to protest under s. 120.57(3).

55 (4) A firm or individual placed on the suspended vendor
56 list pursuant to s. 287.1351 or placed on a disqualified vendor
57 list pursuant to s. 287.133 or s. 287.134 is immediately
58 disqualified from state term contract eligibility.

59 Section 4. Subsections (4) through (16) and (17) through
60 (23) of section 287.057, Florida Statutes, are renumbered as
61 subsections (5) through (17) and (19) through (25),
62 respectively, paragraph (c) of subsection (3) and present
63 subsections (13) through (16) are amended, and new subsections
64 (4), (18), and (26) are added to that section, to read:

65 287.057 Procurement of commodities or contractual
66 services.—

67 (3) If the purchase price of commodities or contractual
68 services exceeds the threshold amount provided in s. 287.017 for



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69 CATEGORY TWO, purchase of commodities or contractual services
70 may not be made without receiving competitive sealed bids,
71 competitive sealed proposals, or competitive sealed replies
72 unless:

73 (c) Commodities or contractual services available only from
74 a single source may be excepted from the competitive-
75 solicitation requirements. If an agency believes that
76 commodities or contractual services are available only from a
77 single source, the agency shall electronically post a
78 description of the commodities or contractual services sought
79 for at least 15 ~~7~~ business days. The description must include a
80 request that prospective vendors provide information regarding
81 their ability to supply the commodities or contractual services
82 described. If it is determined in writing by the agency, after
83 reviewing any information received from prospective vendors that
84 the commodities or contractual services are available only from
85 a single source, the agency shall provide notice of its intended
86 decision to enter a single-source purchase contract in the
87 manner specified in s. 120.57(3). Each agency shall report all
88 such actions to the department on a quarterly basis in a manner
89 and form prescribed by the department and the department shall
90 report such information to the Governor, the President of the
91 Senate, and the Speaker of the House of Representatives no later
92 than January 1, 2022, and each January 1 thereafter.

93 (4) A state agency may not initiate a competitive
94 solicitation for a product or service if the completion of such
95 competitive solicitation would:

96 (a) Require a change in law; or

97 (b) Require a change to the agency's budget other than a



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98 transfer authorized in s. 216.292(2) or (3), unless the
99 initiation of such competitive solicitation is specifically
100 authorized in law, in the General Appropriations Act, or by the
101 Legislative Budget Commission.

102 (c) This subsection does not apply to a competitive
103 solicitation for which the agency head certifies that a valid
104 emergency exists.

105 (14) ~~(13)~~ Contracts for commodities or contractual services
106 may be renewed for a period that may not exceed 3 years or the
107 term of the original contract, whichever is longer. Renewal of a
108 contract for commodities or contractual services must be in
109 writing and is subject to the same terms and conditions set
110 forth in the initial contract and any written amendments signed
111 by the parties. If the commodity or contractual service is
112 purchased as a result of the solicitation of bids, proposals, or
113 replies, the price of the commodity or contractual service to be
114 renewed must be specified in the bid, proposal, or reply, except
115 that an agency may negotiate lower pricing. A renewal contract
116 may not include any compensation for costs associated with the
117 renewal. Renewals are contingent upon satisfactory performance
118 evaluations by the agency and subject to the availability of
119 funds. Exceptional purchase contracts pursuant to paragraphs
120 (3) (a) and (c) may not be renewed. With the exception of
121 subsection (11) ~~(10)~~, if a contract amendment results in a
122 longer contract term or increased payments, a state agency may
123 not renew or amend a contract for the outsourcing of a service
124 or activity that has an original term value exceeding \$5 ~~\$10~~
125 million before submitting a written report concerning contract
126 performance to the Governor, the President of the Senate, and



127 the Speaker of the House of Representatives at least 90 days
128 before execution of the renewal or amendment.

129 (15) (a) ~~(14)~~ For each contractual services contract, the
130 agency shall designate an employee to function as contract
131 manager who is responsible for enforcing performance of the
132 contract terms and conditions and serve as a liaison between
133 ~~with~~ the contractor and the agency. The contract manager may not
134 be an individual who has been employed, within the previous 5
135 years, by the vendor awarded the contractual services contract.
136 The primary responsibilities of a contract manager include:

137 1. Participating in the solicitation development and review
138 of contract documents.

139 2. Monitoring the contractor's progress and performance to
140 ensure procured products and services conform to the contract
141 requirements and keep timely records of findings.

142 3. Managing and documenting any changes to the contract
143 through the amendment process authorized by the terms of the
144 contract.

145 4. Monitoring the contract budget to ensure sufficient
146 funds are available throughout the term of the contract.

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

149 (b) ~~(a)~~ Each contract manager who is responsible for
150 contracts in excess of the threshold amount for CATEGORY TWO
151 must, at a minimum, complete training conducted by the Chief
152 Financial Officer for accountability in contracts and grant
153 management. The Chief Financial Officer shall evaluate such
154 training every 5 years to assess its effectiveness and update
155 the training curriculum. The Chief Financial Officer shall



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156 establish and disseminate uniform procedures pursuant to s.
157 17.03(3) to ensure that contractual services have been rendered
158 in accordance with the contract terms before the agency
159 processes the invoice for payment. The procedures must include,
160 but need not be limited to, procedures for monitoring and
161 documenting contractor performance, reviewing and documenting
162 all deliverables for which payment is requested by vendors, and
163 providing written certification by contract managers of the
164 agency's receipt of goods and services.

165 (c) ~~(b)~~ Each contract manager who is responsible for
166 contracts in excess of \$100,000 annually must, in addition to
167 the accountability in contracts and grant management training
168 required in paragraph (b) and within 6 months after being
169 assigned responsibility for such contracts, complete training in
170 contract management and become a certified contract manager. The
171 department is responsible for establishing and disseminating the
172 training and certification requirements for certified contract
173 managers. Training must promote best practices and procedures
174 related to negotiating, managing, and ensuring accountability in
175 agency contracts and grant agreements, which must include the
176 use of case studies based upon previous audits, contracts, and
177 grant agreements. A certified contract manager must complete
178 training every 5 years for certification renewal requirements
179 for certification which include completing the training
180 conducted by the Chief Financial Officer for accountability in
181 contracts and grant management. Training and certification must
182 be coordinated by the department, and the training must be
183 conducted jointly by the department and the Department of
184 Financial Services. The department shall evaluate such training



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185 every 5 years to assess its effectiveness and update the
186 training curriculum. ~~Training must promote best practices and~~
187 ~~procedures related to negotiating, managing, and ensuring~~
188 ~~accountability in agency contracts and grant agreements, which~~
189 ~~must include the use of case studies based upon previous audits,~~
190 ~~contracts, and grant agreements. All agency contract managers~~
191 ~~must become certified within 24 months after establishment of~~
192 ~~the training and certification requirements by the department~~
193 ~~and the Department of Financial Services.~~

194 (d) Each contract manager who is responsible for contracts
195 in excess of \$10 million annually must, in addition to the
196 training required in paragraph (b) and the training and
197 certification required in paragraph (c), possess at least 5
198 years of experience managing contracts in excess of \$5 million
199 annually.

200 (16) ~~(15)~~ Each agency shall designate at least one employee
201 who shall serve as a contract administrator responsible for
202 maintaining a contract file and financial information on all
203 contractual services contracts and who shall serve as a liaison
204 with the contract managers and the department. For a contract of
205 \$500,000 or less annually, the contract administrator may also
206 serve as the contract manager if he or she has completed the
207 required training. For a contract in excess of \$500,000
208 annually, the contract administrator may not serve as both the
209 contract administrator and the contract manager.

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

213 1. At least three persons to independently evaluate



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214 proposals and replies who collectively have experience and
215 knowledge in the program areas and service requirements for the
216 commodity ~~which commodities~~ or contractual services ~~are~~ sought.

217 2. At least three persons to a negotiation team to conduct
218 negotiations during a competitive sealed reply procurement. The
219 negotiation team members must ~~who~~ collectively have experience
220 and knowledge in negotiating contracts, contract procurement,
221 and the program areas and service requirements for the commodity
222 ~~which commodities~~ or contractual services ~~are~~ sought.

223 (b)1. If the value of a contract is in excess of \$1 million
224 in any fiscal year, at least one of the persons conducting
225 negotiations must be ~~certified as a~~ certified contract
226 negotiator. ~~based upon department rules in order to ensure that~~
227 ~~certified contract negotiators are knowledgeable about effective~~
228 ~~negotiation strategies, capable of successfully implementing~~
229 ~~those strategies, and involved appropriately in the procurement~~
230 ~~process. At a minimum, the rules must address the qualifications~~
231 ~~required for certification, the method of certification, and the~~
232 ~~procedure for involving the certified negotiator.~~

233 2. If the value of a contract is in excess of \$10 million
234 in any fiscal year, at least one of the persons conducting
235 negotiations must be a Project Management Professional, as
236 certified by the Project Management Institute. The Project
237 Management Professional shall provide guidance based on his or
238 her experience, education, and competency to lead and direct
239 complex projects.

240 3. The department is responsible for establishing and
241 disseminating the certification and training requirements for
242 certified contract negotiators. Training must ensure that



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243 certified contract negotiators are knowledgeable about effective
244 negotiation strategies, capable of successfully implementing
245 those strategies, and involved appropriately in the procurement
246 process. The department shall evaluate such training every 5
247 years in order to assess its effectiveness and update the
248 training curriculum. A certified contract negotiator is required
249 to complete training every 5 years for certification renewal.

250 Qualification requirements for certification must include:

251 a. At least 12 months' experience as a purchasing agent,
252 contract manager, or contract administrator for an agency or
253 local governmental entity where at least 50 percent of the
254 designated duties included procuring commodities or contractual
255 services, participating in contract negotiation, contract
256 management, or contract administration, or working as an agency
257 attorney whose duties included providing legal counsel to the
258 agency's purchasing or contracting staff.

259 b. Experience during the preceding 5 years in leading at
260 least two federal, state, or local government negotiation teams
261 through a negotiated procurement, or participation in at least
262 three federal, state, or local government negotiated
263 procurements.

264 (18) Any person who supervises contract administrators or
265 contract or grant managers that meet criteria for certification
266 in subsection (15) shall annually complete public procurement
267 training for supervisors within 12 months of appointment to the
268 supervisory position. The department is responsible for
269 establishing and disseminating the training course content
270 required for supervisors and training shall commence no later
271 than July 1, 2022.



272 (26) (a) For each contractual services contract in excess of
273 \$1 million, the agency head shall establish a continuing
274 oversight team after the contract has been awarded. The agency
275 head shall appoint at least four persons, one of whom must be
276 the certified contract manager, to the continuing oversight
277 team. If the value of the contractual services contract is in
278 excess of \$5 million, at least one of the persons on the
279 continuing oversight team must possess at least 5 years of
280 experience in managing contracts of a similar scope or size. If
281 the value of the contractual services contract is in excess of
282 \$20 million, the continuing oversight team shall consist of at
283 least five persons, at least one of the persons on the
284 continuing oversight team must be from a state agency other than
285 the agency or agencies participating in the contract. Members of
286 the continuing oversight team must be employees of the state and
287 must collectively have experience and knowledge in contract
288 management, contract administration, contract enforcement, and
289 the program areas and service requirements for the contractual
290 services purchased.

291 (b)1. For contracts in excess of \$1 million, each
292 continuing oversight team must meet at least quarterly.

293 2. For contracts in excess of \$10 million, each continuing
294 oversight team must meet at least monthly. A representative of
295 the contractor must be made available to members of the
296 continuing oversight team for at least one meeting every
297 calendar quarter to respond to any questions or requests for
298 information from the continuing oversight team concerning
299 contractor performance.

300 (c)1. Within 30 days of the formation of the continuing



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301 oversight team, the continuing oversight team must convene an
302 initial meeting with representatives of the contractor to
303 achieve a mutual understanding of the contract requirements, to
304 provide the contractor with an orientation to the contract
305 management process, and to provide an explanation of the role of
306 the continuing oversight team, contract manager, and contract
307 administrator.

308 2. The continuing oversight team must meet to discuss the
309 status of the contract, the pace of deliverables, the quality of
310 deliverables, contractor responsiveness, and contractor
311 performance. The contract administrator must be present at each
312 meeting with the contract file and all applicable financial
313 information. The continuing oversight team may submit written
314 questions to the contractor concerning any items discussed
315 during a continuing oversight team meeting. The contractor must
316 respond to the team's questions within 10 business days after
317 receiving the written questions. The questions and responses
318 must be included in the contract file.

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

320 1. The agency head and the department of any deficiency in
321 a contractor's performance which substantially affects the pace
322 of deliverables or the likelihood of the successful completion
323 of the contract.

324 2. The agency head, the department, and the Office of
325 Policy and Budget in the Executive Office of the Governor of any
326 significant change in contract scope or any increase in the cost
327 of the contract that is 5 percent of the planned contract cost
328 or greater within the fiscal year for contractual service
329 contracts of at least \$5 million.



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330 3. The agency head, the department, the Office of Policy
331 and Budget in the Executive Office of the Governor, and the
332 legislative appropriations committees of any significant change
333 in contract scope or any increase in the cost of the contract
334 that is 5 percent of the planned contract cost or greater within
335 the fiscal year for contractual service contracts of \$10 million
336 or greater.

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

339 287.058 Contract document.—

340 (7) A contract may not contain a nondisclosure clause that
341 prohibits the contractor from disclosing information relevant to
342 the performance of the contract to members or staff of the
343 Senate or the House of Representatives.

344 Section 6. Section 287.1351, Florida Statutes, is created
345 to read:

346 287.1351 Suspended vendors; state contracts.—

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

351 (2) (a) A vendor that is in default on any contract with an
352 agency or has otherwise repeatedly demonstrated a recent
353 inability to fulfill the terms and conditions of previous state
354 contracts or to adequately perform its duties under those
355 contracts may not submit a bid, proposal, or reply to an agency
356 or enter into or renew a contract to provide any goods or
357 services to an agency after its placement, pursuant to this
358 section, on the suspended vendor list.



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359 (b) An agency may not accept a bid, proposal, or reply
360 from, or enter into or renew any contract with, a vendor on the
361 suspended vendor list until such vendor has been removed from
362 the suspended vendor list and returned to the vendor list
363 maintained by the department pursuant to s. 287.042(1)(a) and
364 (b) and the vendor has reimbursed the agency for any
365 reprocurement costs.

366 (3) An agency shall notify the department of any vendor
367 that has met the grounds for suspension described in paragraph
368 (2)(a). The agency must provide documentation to the department
369 evidencing the vendor's default or other grounds for suspension.
370 The department shall review the documentation provided and
371 determine whether good cause exists to remove the vendor from
372 the vendor list and to place it on the suspended vendor list. If
373 good cause exists, the department must notify the vendor in
374 writing of its intent to remove the vendor from the vendor list
375 and of the vendor's right to an administrative hearing and the
376 applicable procedures and time requirements for any such
377 hearing. If the vendor does not request an administrative
378 hearing, the department must enter a final order removing the
379 vendor from the vendor list. A vendor may not be removed from
380 the vendor list without receiving an individual notice of intent
381 from the department.

382 (4) Within 21 days after receipt of the notice of intent,
383 the vendor may file with the department a petition for a formal
384 hearing pursuant to ss. 120.569 and 120.57 to challenge the
385 department's decision to remove the vendor from the vendor list.
386 A vendor that fails to timely file a petition in accordance with
387 this subsection is deemed to have waived its right to a hearing,



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388 and the department's decision to remove the vendor from the
389 vendor list becomes final agency action.

390 (5) (a) The department shall place any vendor removed from
391 the vendor list pursuant to this section on the suspended vendor
392 list. One year or more after entry of the final order of its
393 suspension, a suspended vendor may file a petition with the
394 department for removal from the suspended vendor list. The
395 proceeding on the petition must be conducted in accordance with
396 chapter 120. The vendor may be removed from the suspended vendor
397 list if the administrative law judge determines that removal
398 from the list would be in the public interest. In determining
399 whether removal from the list would be in the public interest,
400 the administrative law judge may consider, but is not limited
401 to, whether the suspended vendor has prepared a corrective
402 action plan that addresses the original grounds for default or
403 failure to fulfill the terms and conditions of the contract,
404 reimbursed the agency for any procurement costs, or provided
405 additional evidence that the vendor has taken other remedial
406 action.

407 (b) If a petition for removal from the suspended vendor
408 list is denied, the vendor may not petition for another hearing
409 on removal for a period of at least 9 months after the date of
410 the denial. The department may petition for the suspended
411 vendor's removal before the expiration of such period if, in the
412 department's discretion, the department determines that removal
413 from the suspended vendor list would be in the public interest.

414 Section 7. Section 287.136, Florida Statutes, is amended to
415 read:

416 287.136 Audit of executed contract documents.—



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417 (1) After execution of a contract, the Chief Financial
418 Officer shall perform audits of the executed contract document
419 and contract manager's records to ensure that adequate internal
420 controls are in place for complying with the terms and
421 conditions of the contract and for the validation and receipt of
422 goods and services.

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

427 (b)~~(2)~~ Within 30 days after receipt of the final audit
428 report, the agency head shall submit to the Chief Financial
429 Officer or designee his or her written statement of explanation
430 or rebuttal concerning findings requiring corrective action,
431 including corrective action to be taken to preclude a
432 recurrence.

433 (2) Beginning October 1, 2021, and every 3 years
434 thereafter, each agency inspector general shall complete a risk
435 based compliance audit of all contracts executed by the agency
436 for the preceding 3 fiscal years. The audit must include an
437 evaluation of and identify any trend in vendor preference. The
438 audit findings must be submitted to the agency head, the
439 Secretary of the Department of Management Services, and the
440 Governor.

441 ===== T I T L E A M E N D M E N T =====

442 And the title is amended as follows:

443 Delete everything before the enacting clause
444 and insert:

445 A bill to be entitled



446 An act relating to agency contracts for commodities
447 and contractual services; reenacting and amending s.
448 216.1366, F.S.; abrogating the scheduled expiration of
449 provisions relating to certain public agency contracts
450 for services; amending s. 287.042, F.S.; providing
451 that the Department of Management Services may enter
452 into an agreement authorizing an agency to make
453 purchases under certain contracts if the Secretary of
454 Management Services makes a certain determination;
455 amending s. 287.056, F.S.; providing that an agency
456 must issue a request for quote to certain approved
457 vendors when it issues a request for quote for
458 contractual services; providing for the
459 disqualification of certain firms or individuals from
460 state term contract eligibility; amending s. 287.057,
461 F.S.; revising the period of time during which an
462 agency must electronically post a description of
463 certain services in certain circumstances; requiring
464 an agency to report certain actions to the department
465 in a specified manner and form; requiring the
466 department to annually report certain information to
467 the Governor and the Legislature by a specified date;
468 prohibiting an agency from initiating a competitive
469 solicitation in certain circumstances; requiring an
470 agency to submit a report concerning contract
471 performance before certain contract renewals or
472 amendments are executed; providing that a designated
473 contract manager serves as a liaison between the
474 contractor and the agency; prohibiting certain



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475 individuals from serving as a contract manager;
476 providing the responsibilities of a contract manager;
477 requiring the Chief Financial Officer to evaluate
478 certain training at certain intervals; requiring that
479 certain contract managers complete training and
480 certification within a specified timeframe; requiring
481 the department to establish and disseminate certain
482 training and certification requirements; requiring the
483 department to evaluate certain training at certain
484 intervals; requiring certain contract managers to
485 possess certain experience in managing contracts;
486 authorizing a contract administrator to also serve as
487 a contract manager in certain circumstances; providing
488 that evaluations of proposals and replies must be
489 conducted independently; providing for specified teams
490 to conduct certain negotiations; requiring a Project
491 Management Professional to provide guidance based on
492 certain qualifications; providing qualification
493 requirements for contract negotiator certification;
494 requiring supervisors of contract administrators or
495 contract and grant managers meeting certain criteria
496 to complete training within a specified period;
497 providing that the department is responsible for
498 establishing and disseminating supervisor training by
499 a date certain; providing for a continuing oversight
500 team in certain circumstances; providing requirements
501 for continuing oversight team members and meetings;
502 requiring a continuing oversight team to provide
503 notice of certain deficiencies and changes in contract



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504 scope to certain entities; amending s. 287.058, F.S.;

505 prohibiting a contract document for certain

506 contractual services from containing a certain

507 nondisclosure clause; creating s. 287.1351, F.S.;

508 defining the term "vendor"; prohibiting certain

509 vendors from submitting bids, proposals, or replies

510 from, or entering into or renewing any contract with,

511 an agency; prohibiting an agency from accepting a bid,

512 proposal, or reply from, or entering into a contract

513 with, a suspended vendor until certain conditions are

514 met; requiring an agency to notify the department of,

515 and provide certain information regarding, any such

516 vendors; requiring the department to review any vendor

517 reported by an agency; requiring the department to

518 notify a vendor of any intended removal from the

519 vendor list; specifying administrative remedies, and

520 applicable procedures, for an affected vendor;

521 requiring the department to place any such vendor on

522 the suspended vendor list; authorizing the removal of

523 a suspended vendor from the suspended vendor list in

524 accordance with specified procedures; specifying

525 requirements and limitations; amending s. 287.136,

526 F.S; requiring each agency inspector general to

527 complete certain audits of executed contracts at

528 certain intervals; providing an effective date.