

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

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

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

17 287.058 Contract document.—

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

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 23 For all claims against the Contractor under any
 24 contract or purchase order, and regardless of the
 25 basis on which the claim is made, the Contractor's

26 liability for direct damages under a contract or
27 purchase order shall be limited to the greater of
28 \$100,000, the dollar amount of the contract or
29 purchase order, or two times the charges rendered by
30 the Contractor under the purchase order. This
31 limitation shall not apply to claims arising under the
32 Indemnity paragraph contained in this agreement.
33 Unless otherwise specifically enumerated in the
34 Contract or in the purchase order, no party shall be
35 liable to another for special, indirect, punitive, or
36 consequential damages, including lost data or records
37 (unless the contract or purchase order requires the
38 Contractor to back-up data or records), even if the
39 party has been advised that such damages are possible.
40 No party shall be liable for lost profits, lost
41 revenue, or lost institutional operating savings. The
42 State and Customer may, in addition to other remedies
43 available to them at law or equity and upon notice to
44 the Contractor, retain such monies from amounts due
45 Contractor as may be necessary to satisfy any claim
46 for damages, penalties, costs and the like asserted by
47 or against them. The State may set off any liability
48 or other obligation of the Contractor or its
49 affiliates to the State against any payments due the
50 Contractor under any contract with the State.

51 Section 2. For the purpose of incorporating the amendment
52 made by this act to section 287.058, Florida Statutes, in a
53 reference thereto, subsection (5) of section 287.0571, Florida
54 Statutes, is reenacted to read:

55 287.0571 Business case to outsource; applicability.—

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

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

70 (b) A service-level-agreement provision describing all
71 services to be provided under the terms of the agreement, the
72 state agency's service requirements and performance objectives,
73 specific responsibilities of the state agency and the
74 contractor, and the process for amending any portion of the
75 service-level agreement. Each service-level agreement must

76 contain an exclusivity clause that allows the state agency to
77 retain the right to perform the service or activity, directly or
78 with another contractor, if service levels are not being
79 achieved.

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

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

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

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

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

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

100 (f) A provision that requires the contractor and its

101 subcontractors to maintain adequate accounting records that
102 comply with all applicable federal and state laws and generally
103 accepted accounting principles.

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

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

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

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

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

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

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

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

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

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

149 (1) If applicable, a provision that allows the agency to
150 purchase from the contractor, at its depreciated value, assets

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151 used by the contractor in the performance of the contract. If
152 assets have not depreciated, the agency shall retain the right
153 to negotiate to purchase at an agreed-upon cost.

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

158 1002.84 Early learning coalitions; school readiness powers
159 and duties.—Each early learning coalition shall:

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

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