

By Senator Boyd

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1 A bill to be entitled
2 An act relating to contract liability; amending s.
3 287.058, F.S.; requiring that certain procurement
4 contracts contain a provision specifying a finite
5 maximum limit of liability for a contractor; requiring
6 maximum liability terms for such contract or purchase
7 order to be specified as a defined monetary threshold
8 or formula; providing applicability; reenacting ss.
9 287.0571(5) and 1002.84(13), F.S., relating to
10 contract requirements for proposed outsourcing and
11 procurement contract requirements for early learning
12 coalitions, respectively, to incorporate the amendment
13 made to s. 287.058, F.S., in references thereto;
14 providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. Present paragraph (i) of subsection (1) of
19 section 287.058, Florida Statutes, is redesignated as paragraph
20 (j), and a new paragraph (i) is added to that subsection, to
21 read:

22 287.058 Contract document.—

23 (1) Every procurement of contractual services in excess of
24 the threshold amount provided in s. 287.017 for CATEGORY TWO,
25 except for the providing of health and mental health services or
26 drugs in the examination, diagnosis, or treatment of sick or
27 injured state employees or the providing of other benefits as
28 required by chapter 440, shall be evidenced by a written
29 agreement embodying all provisions and conditions of the

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30 procurement of such services, which shall, where applicable,
31 include, but not be limited to, a provision:

32 (i) Specifying a finite maximum limit of liability for the
33 contractor by a defined monetary threshold or monetary formula.

34 1. Liability terms as enumerated under any contract or
35 purchase order of a governmental entity must specify a defined
36 monetary threshold or monetary formula that establishes the
37 maximum liability of the contractor for the contract or purchase
38 order.

39 2. The monetary threshold or monetary formula may not apply
40 to claims arising under separate contractual provisions specific
41 to indemnification.

42
43 In lieu of a written agreement, the agency may authorize the use
44 of a purchase order for classes of contractual services if the
45 provisions of paragraphs (a)-(j) ~~(a)-(i)~~ are included in the
46 purchase order or solicitation. The purchase order must include,
47 but need not be limited to, an adequate description of the
48 services, the contract period, and the method of payment. In
49 lieu of printing the provisions of paragraphs (a)-(c) and (g) in
50 the contract document or purchase order, agencies may
51 incorporate the requirements of paragraphs (a)-(c) and (g) by
52 reference.

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

57 287.0571 Business case to outsource; applicability.—

58 (5) In addition to the contract requirements provided in s.

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59 287.058, each contract for a proposed outsourcing, pursuant to
60 this section, must include, but need not be limited to, the
61 following contractual provisions:

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

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

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

86 (d) A provision that identifies a clear and specific
87 transition plan that will be implemented in order to complete

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88 all required activities needed to transfer the service or
89 activity from the state agency to the contractor and operate the
90 service or activity successfully.

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

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

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

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

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

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

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

116 (i) A contingency-plan provision that describes the

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117 mechanism for continuing the operation of the service or
118 activity, including transferring the service or activity back to
119 the state agency or successor contractor if the contractor fails
120 to perform and comply with the performance standards and levels
121 of the contract and the contract is terminated.

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

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

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

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

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

142 (k)1. A provision that provides that any copyrightable or
143 patentable intellectual property produced as a result of work or
144 services performed under the contract, or in any way connected
145 with the contract, shall be the property of the state, with only

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146 such exceptions as are clearly expressed and reasonably valued
147 in the contract.

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

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

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

160 1002.84 Early learning coalitions; school readiness powers
161 and duties.—Each early learning coalition shall:

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

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