

Recognizing Local governments and agencies have their own specific procurement policy, below is excerpts from F.S. Chapter 287

CHAPTER 287

PROCUREMENT OF PERSONAL PROPERTY AND SERVICES

PART I

**COMMODITIES, INSURANCE, AND CONTRACTUAL SERVICES
(ss. 287.001-287.1345)**

PART II

MEANS OF TRANSPORT (ss. 287.14-287.20)

PART I

**COMMODITIES, INSURANCE, AND
CONTRACTUAL SERVICES**

¹287.057 Procurement of commodities or contractual services.—

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(5) 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:

(f) The following contractual services and commodities are not subject to the competitive-solicitation requirements of this section:

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13. Services or commodities provided by governmental agencies.

(22) 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.

Below is subsection (f) in entirety:

(f) The following contractual services and commodities are not subject to the competitive-solicitation requirements of this section:

1. Artistic services.
2. Academic program reviews.
3. Lectures by individuals.
4. Auditing services.
5. Legal services, including attorney, paralegal, expert witness, appraisal, or mediator services.
6. Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration.
7. 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.
8. Medicaid services delivered to an eligible Medicaid recipient by a health care provider who has not previously applied for and received a Medicaid provider number from the Agency for Health Care Administration. However, this exception shall be valid for a period not to exceed 90 days after the date of delivery to the Medicaid recipient and shall not be renewed by the agency.
9. Family placement services.
10. 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.
11. Training and education services provided to injured employees pursuant to s. 440.491(6).

12. Contracts entered into pursuant to s. 337.11.

13. Services or commodities provided by governmental agencies.

(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.

(6) 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.

(7) 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.

(8)(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.

(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.

(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.

(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.

(9) 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.

(10) An agency shall not divide the procurement of commodities or contractual services so as to avoid the requirements of subsections (1) through (5).

(11) 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.

(12) 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.

(13) 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.

(14)(a) 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 (5)(a) and (c) may not be renewed. With the exception of subsection (13), 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.

(b) Notwithstanding paragraph (a), the Department of Children and Family Services may enter into agreements, not to exceed 20 years, with a private provider to finance, design, and construct a forensic treatment facility, as defined in s. 916.106(10), of at least 200 beds and to operate all aspects of daily operations within the forensic treatment facility. The selected contractor is authorized to sponsor the issuance of tax-exempt certificates of participation or other securities to finance the project, and the state is authorized to enter into a lease-purchase agreement for the forensic treatment facility. This paragraph expires July 1, 2006.

²(c) Notwithstanding paragraph (a), the Department of Children and Family Services may enter into agreements, not to exceed 23 years, with a private contractor to finance, design, and construct a secure facility, as described in s. 394.917, of at least 600 beds and to operate all aspects of daily operations within the secure facility. The contractor may sponsor the issuance of tax-exempt certificates of participation or other securities to finance the project, and the state may enter into a lease-purchase agreement for the secure facility. The department shall begin the implementation of this privatization initiative by July 1, 2006. This paragraph expires July 1, 2007.

(15) 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. The agency shall establish procedures to ensure that contractual services have been rendered in accordance with the contract terms prior to processing the invoice for payment.

(16) 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.

(17) 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.

(18) A person who receives a contract that has not been procured pursuant to subsections (1) through (5) 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.

(19) 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.

(20) 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.

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

(22) 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.

(23)(a) The department, in consultation with the State Technology Office and the Comptroller, shall develop a program for on-line 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 on-line procurement program, and eligible users may participate in the program. Only vendors prequalified as meeting mandatory requirements and qualifications criteria shall be permitted to participate in on-line procurement. The department, in consultation with the State Technology Office, may contract for equipment and services necessary to develop and implement on-line procurement.

(b) The department, in consultation with the State Technology Office, shall adopt rules, pursuant to ss. 120.536(1) and 120.54, to administer the program for on-line 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 on-line procurement.

3. Establishing the criteria for eligible commodities and contractual services.
4. Establishing the procedures for providing access to on-line procurement.
5. Determining the criteria warranting any exceptions to participation in the on-line procurement program.

³(c)1. The department may impose and shall collect all fees for the use of the on-line procurement systems. Such 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 such services, including administrative and project service costs in accordance with the policies of the department. All fees and surcharges collected under this paragraph shall be deposited in the Grants and Donations Trust Fund as provided by law.

2. If the department contracts with a provider for on-line procurement, the department, pursuant to appropriation, shall compensate the provider from such 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 such fees are due. For any 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.

(24)(a) The State Technology Office shall establish, in consultation with the department, state strategic information technology alliances for the acquisition and use of information technology and related material with prequalified contractors or partners to provide the state with efficient, cost-effective, and advanced information technology.

(b) In consultation with and under contract to the State Technology Office, the state strategic information technology alliances shall design, develop, and deploy projects providing the information technology needed to collect, store, and process the state's data and information, provide connectivity, and integrate and standardize computer networks and information systems of the state.

(c) The partners in the state strategic information technology alliances shall be industry leaders with demonstrated experience in the public and private sectors.

(d) The State Technology Office, in consultation with the department, shall adopt rules, pursuant to ss. 120.536(1) and 120.54, to administer the state strategic information technology alliances.

(25) For the 2005-2006 fiscal year only, notwithstanding any specific provision of this chapter or chapter 255 to the contrary, the Department of Management Services is authorized to issue an invitation to negotiate to contract for 384 additional beds for expansion at the Gadsden

Correctional Facility to house medium-custody female inmates and for 235 additional beds for expansion at the Bay Correctional Facility and 235 additional beds at Moore Haven Correctional Facility to house medium-custody and close-custody inmates. Any such invitation to negotiate shall be limited to modifications of existing contracts between the Department of Management Services and firms currently operating private correctional facilities and shall be for design, financing, acquisition, leasing, construction, and operation of the additional beds. By October 1, 2005, and quarterly thereafter, the department shall report to the President of the Senate and the Speaker of the House of Representatives on the specific activities completed and remaining to be completed, along with timeframes for each activity, to add the additional beds. Procurement should be completed in a manner that allows sufficient time for the new beds to become operational by July 2007. This subsection expires July 1, 2006.

(26) 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.

¹**Note.**--Section 12, ch. 2006-224, provides that "[n]otwithstanding any law to the contrary, a state agency under the individual control of the Attorney General, the Chief Financial Officer, or the Commissioner of Agriculture is subject to this act."

²**Note.**--Section 4, ch. 2006-26, added paragraph (14)(c) "[i]n order to implement Specific Appropriation[s] 375-380 of the 2006-2007 General Appropriations Act."

³**Note.**--Section 19, ch. 2006-79, amended paragraph (23)(c), effective July 1, 2007, to read:

(c)1. The department may impose and shall collect all fees for the use of the on-line procurement systems. 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. All fees and surcharges collected under this paragraph shall be deposited in the Operating Trust Fund as provided by law.

2. If the department contracts with a provider for on-line 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 any 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.

FTA Procurement

FTA C 4220.1F

THIRD PARTY CONTRACTING GUIDANCE

STATE OR LOCAL GOVERNMENT PURCHASING SCHEDULES OR PURCHASING CONTRACTS. FTA uses the term “state or local government purchasing schedule” to mean an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the General Services Administration’s (GSA) Cooperative Purchasing Program available for Federal Government use. If the State or local government wishes to permit others to use its schedules, the State or local government might seek the agreement of the vendor to provide the listed property or services to others with access to the schedules, or it may permit the vendor to determine whether or not it wishes to do so. **CAUTION:** The term “State or local government purchasing schedule” does not include intergovernmental purchasing schedules to be the type of State or local intergovernmental agreements.

a. Use.

(1) Use Permitted. FTA’s policies are as follows:

(a) General. The Common Grant Rule for governmental recipients encourages recipients and subrecipients to enter into State and local intergovernmental agreements for procurements of property or services, and.

(b) State or Local Government Permission Required. If so permitted by State or local authorities, a non-governmental recipient may also use State and local sources of property and services. This is because 49 C.F.R. § 18.36(a) permits States to use their own policies and procedures they use for their own purchases, not because those schedules are “State intergovernmental agreements,”