

The 2016 Florida Statutes

[Title XIX](#)
PUBLIC
BUSINESS

[Chapter 287](#)
PROCUREMENT OF PERSONAL PROPERTY AND
SERVICES

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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 must include consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor.
4. The contract shall be awarded to the responsible and responsive vendor who submits the lowest responsive 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 must 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;
 - c. Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor; and
 - d. Consideration of prior relevant experience of the vendor.

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. The evaluation criteria must include consideration of prior relevant experience of the vendor.

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.

(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) If the purchase price of commodities or contractual services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, purchase of commodities or contractual services may not 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 signs 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, the 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 and any other documents relating to the emergency action to the department. A copy of the written 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 may not exceed 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. If 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 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 provide notice of its intended decision to enter a single-source purchase contract in the manner specified in s. 120.57(3).

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

1. Artistic services. As used in 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. Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration. The term also includes, but is not limited to, substance abuse and mental health services involving examination, diagnosis, treatment, prevention, or medical consultation if 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 are also exempt. For purposes of this subparagraph, the term “providers” means health professionals and 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 that have obtained exemptions under s. 501(c)(3) of the United States Internal Revenue Code or when such services are governed by 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 entities.

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

(f) Continuing education events or programs that are offered to the general public and for which fees have been collected which 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.

(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.

(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.

(9) An agency shall not divide the solicitation of commodities or contractual services so as to avoid the requirements of subsections (1)-(3).

(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 or the recipient of the funds 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.

(12) Extension of a contract for commodities or contractual services must be in writing for a period not to exceed 6 months and is subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties. There may 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 is longer. Renewal of a contract for commodities or contractual services must be in writing and is subject to the same terms and conditions set forth in the initial contract and any written amendments signed by the parties. 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 must be specified in the bid, proposal, or reply, except that an agency may negotiate lower pricing. A renewal contract may not include any compensation for costs associated with the renewal. Renewals are 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 (10), 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 \$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 is responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor.

(a) Each contract manager who is responsible for contracts in excess of the threshold amount for CATEGORY TWO must, at a minimum, complete 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 must 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.

(b) Each contract manager who is responsible for contracts in excess of \$100,000 annually must complete training in contract management and become a certified contract manager. The department is responsible for establishing and disseminating the requirements for certification which include completing the training conducted by the Chief Financial Officer for accountability in contracts and grant management. Training and certification must be coordinated by the department, and the training must be conducted jointly by the department and the Department of Financial Services. Training must promote best practices and procedures related to negotiating, managing, and ensuring accountability in agency contracts and grant agreements, which must

include the use of case studies based upon previous audits, contracts, and grant agreements. All agency contract managers must become certified within 24 months after establishment of the training and certification requirements by the department and the Department of Financial 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)(a) For a contract in excess of the threshold amount provided in s. 287.017 for CATEGORY FOUR, the agency head shall appoint:

1. 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.

2. 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.

(b) If 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 department rules 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 Chief Financial Officer and the Agency for State Technology, shall maintain a program for online procurement of commodities and contractual services. To enable the state to promote open competition and 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 for State Technology and in compliance with the standards of the agency, may contract for equipment and services necessary to develop and implement online procurement.

(b) The department shall adopt rules to administer the program for online procurement. The

rules must 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; ss. 5, 6, ch. 2013-154; s. 1, ch. 2014-135; s. 25, ch. 2014-221.

¹**Note.**—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.”

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