

1 A bill to be entitled
2 An act relating to the Department of Management Services;
3 amending ss. 17.11, 255.102, and 287.012, F.S.; conforming
4 provisions to the elimination of the Office of Supplier
5 Diversity and the transfer of its duties to the Division
6 of State Purchasing; amending s. 287.042, F.S.; providing
7 that fees collected by the department for the use of its
8 electronic information services in excess of the
9 obligations and encumbrances to cover the department's
10 costs of providing the services shall be calculated
11 annually and transferred to the General Revenue Fund;
12 conforming provisions to the elimination of the Office of
13 Supplier Diversity and the transfer of its duties to the
14 Division of State Purchasing; amending s. 287.057, F.S.;
15 conforming provisions to the elimination of the Office of
16 Supplier Diversity and the transfer of its duties to the
17 Division of State Purchasing; conforming cross-references;
18 providing that fees collected by the department for the
19 use of the services of its online procurement systems in
20 excess of the obligations and encumbrances to cover the
21 department's costs of providing the services shall be
22 calculated annually and transferred to the General Revenue
23 Fund; amending s. 287.094, F.S.; conforming provisions to
24 the elimination of the Office of Supplier Diversity and
25 the transfer of its duties to the Division of State
26 Purchasing; providing that certain complaints formerly
27 filed with the office may be filed with agency inspectors
28 general; providing that a business certified by the office

29 as a minority business enterprise under s. 287.0943, F.S.,
 30 as of a specified date shall continue to be recognized as
 31 a certified minority business enterprise for purposes of
 32 doing business with state government for a specified
 33 period; amending s. 287.0943, F.S.; providing for
 34 certification of minority businesses by other specified
 35 governments if certification criteria meet, at a minimum,
 36 the state's criteria; providing duties of the Division of
 37 State Purchasing; eliminating provisions relating to the
 38 certification of minority business enterprises by the
 39 Office of Supplier Diversity; deleting provisions relating
 40 to the Minority Business Certification Task Force;
 41 deleting provisions relating to review and evaluation of
 42 certification programs and procedures of statewide and
 43 interlocal minority business certification agreements;
 44 amending s. 287.09431, F.S.; conforming provisions to the
 45 elimination of the Office of Supplier Diversity and the
 46 transfer of its duties to the Division of State
 47 Purchasing; conforming cross-references; amending s.
 48 287.09451, F.S.; deleting provisions creating the Office
 49 of Supplier Diversity within the department; providing for
 50 assumption of specified powers and duties by the Division
 51 of State Purchasing; eliminating provisions relating to
 52 the certification of minority business enterprises by the
 53 office; deleting provisions relating to specified
 54 communication and advocacy duties of the office; deleting
 55 obsolete provisions; amending ss. 288.703, 288.712, and
 56 288.955, F.S.; conforming provisions to the elimination of

57 | the Office of Supplier Diversity and the transfer of its
 58 | duties to the Division of State Purchasing; amending s.
 59 | 287.05721, F.S.; repealing the definition of "council" as
 60 | it relates to the Council on Efficient Government;
 61 | repealing s. 287.0573, F.S., creating the Council on
 62 | Efficient Government within the department; amending s.
 63 | 287.0574, F.S.; conforming provisions to the elimination
 64 | of the Council on Efficient Government; requiring that a
 65 | business case be submitted in the form and manner required
 66 | by the budget instructions; providing an effective date.
 67 |

68 | Be It Enacted by the Legislature of the State of Florida:
 69 |

70 | Section 1. Subsection (2) of section 17.11, Florida
 71 | Statutes, is amended to read:

72 | 17.11 To report disbursements made.—

73 | (2) The Chief Financial Officer shall also cause to have
 74 | reported from the Florida Accounting Information Resource
 75 | Subsystem no less than quarterly the disbursements which
 76 | agencies made to small businesses, as defined in the Florida
 77 | Small and Minority Business Assistance Act; to certified
 78 | minority business enterprises in the aggregate; and to certified
 79 | minority business enterprises broken down into categories of
 80 | minority persons, as well as gender and nationality subgroups.
 81 | This information shall be made available to the agencies, the
 82 | Division of State Purchasing ~~Office of Supplier Diversity~~, the
 83 | Governor, the President of the Senate, and the Speaker of the
 84 | House of Representatives. Each agency shall be responsible for

85 the accuracy of information entered into the Florida Accounting
 86 Information Resource Subsystem for use in this reporting.

87 Section 2. Section 255.102, Florida Statutes, is amended
 88 to read:

89 255.102 Contractor utilization of minority business
 90 enterprises.—

91 (1) Agencies shall consider the use of price preferences,
 92 weighted preference formulas, or other preferences for
 93 construction contracts, as determined appropriate by the
 94 Division of State Purchasing ~~Office of Supplier Diversity~~ to
 95 increase minority participation.

96 (2) The Division of State Purchasing ~~Office of Supplier~~
 97 ~~Diversity~~, in collaboration with the Board of Governors of the
 98 State University System, shall adopt rules to determine what is
 99 a "good faith effort" for purposes of contractor compliance with
 100 minority participation goals established for competitively
 101 awarded building and construction projects. Pro forma efforts
 102 shall not be considered good faith. Factors which shall be
 103 considered by the state agency in determining whether a
 104 contractor has made good faith efforts shall include, but not be
 105 limited to:

106 (a) Whether the contractor attended any presolicitation or
 107 prebid meetings that were scheduled by the agency to inform
 108 minority business enterprises of contracting and subcontracting
 109 opportunities.

110 (b) Whether the contractor advertised in general
 111 circulation, trade association, or minority-focus media
 112 concerning the subcontracting opportunities.

PCB GOA 10-03

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113 (c) Whether the contractor provided written notice to all
114 relevant subcontractors listed on the minority vendor list for
115 that locality and statewide as provided by the agency as of the
116 date of issuance of the invitation to bid, that their interest
117 in the contract was being solicited in sufficient time to allow
118 the minority business enterprises to participate effectively.

119 (d) Whether the contractor followed up initial
120 solicitations of interest by contacting minority business
121 enterprises, the Division of State Purchasing ~~Office of Supplier~~
122 ~~Diversity~~, or minority persons who responded and provided
123 detailed information about prebid meetings, access to plans,
124 specifications, contractor's project manager, subcontractor
125 bonding, if any, payment schedule, bid addenda, and other
126 assistance provided by the contractor to enhance minority
127 business enterprise participation.

128 (e) Whether the contractor selected portions of the work
129 to be performed by minority business enterprises in order to
130 increase the likelihood of meeting the minority business
131 enterprise procurement goals, including, where appropriate,
132 breaking down contracts into economically feasible units to
133 facilitate minority business enterprise participation under
134 reasonable and economical conditions of performance.

135 (f) Whether the contractor provided the Division of State
136 Purchasing ~~Office of Supplier Diversity~~ as well as interested
137 minority business enterprises or minority persons with adequate
138 information about the plans, specifications, and requirements of
139 the contract or the availability of jobs at a time no later than
140 when such information was provided to other subcontractors.

141 (g) Whether the contractor negotiated in good faith with
 142 interested minority business enterprises or minority persons,
 143 not rejecting minority business enterprises or minority persons
 144 as unqualified without sound reasons based on a thorough
 145 investigation of their capabilities or imposing implausible
 146 conditions of performance on the contract.

147 (h) Whether the contractor diligently seeks to replace a
 148 minority business enterprise subcontractor that is unable to
 149 perform successfully with another minority business enterprise.

150 (i) Whether the contractor effectively used the services
 151 of available minority community organizations; minority
 152 contractors' groups; local, state, and federal minority business
 153 assistance offices; and other organizations that provide
 154 assistance in the recruitment and placement of minority business
 155 enterprises or minority persons.

156 (3) If an agency considers any other criteria in
 157 determining whether a contractor has made a good faith effort,
 158 the agency shall adopt such criteria in accordance with s.
 159 120.54, and, where required by that section, by rule, ~~after May~~
 160 ~~31, 1994~~. In adopting such criteria, the agency shall identify
 161 the specific factors in as objective a manner as possible to be
 162 used to assess a contractor's performance against said criteria.

163 (4) Notwithstanding the provisions of s. 287.09451 to the
 164 contrary, agencies shall monitor good faith efforts of
 165 contractors in competitively awarded building and construction
 166 projects, in accordance with rules established pursuant to this
 167 section. It is the responsibility of the contractor to exercise
 168 good faith efforts in accordance with rules established pursuant

169 to this section, and to provide documentation necessary to
 170 assess efforts to include minority business participation.

171 Section 3. Subsections (11) through (18) of section
 172 287.012, Florida Statutes, are redesignated as subsections (12)
 173 through (19), respectively, and present subsection (19) of that
 174 section is amended to read:

175 287.012 Definitions.—As used in this part, the term:

176 ~~(11)-(19)~~ "Division" ~~"Office"~~ means the Division of State
 177 Purchasing Office of Supplier Diversity of the Department of
 178 Management Services.

179 Section 4. Paragraph (h) of subsection (1), paragraphs (a)
 180 and (c) of subsection (2), paragraphs (b) and (c) of subsection
 181 (3), and subsection (10) of section 287.042, Florida Statutes,
 182 are amended to read:

183 287.042 Powers, duties, and functions.—The department
 184 shall have the following powers, duties, and functions:

185 (1)

186 (h)1. The department may collect fees for the use of its
 187 electronic information services. The fees may be imposed on an
 188 individual transaction basis or as a fixed subscription for a
 189 designated period of time. At a minimum, the fees shall be
 190 determined in an amount sufficient to cover the department's
 191 projected costs of the services, including overhead in
 192 accordance with the policies of the Department of Management
 193 Services for computing its administrative assessment. All fees
 194 collected under this paragraph shall be deposited in the
 195 Operating Trust Fund for disbursement as provided by law.

196 2. Effective July 1, 2010, any fees collected pursuant to

197 subparagraph 1. and remaining in the Operating Trust Fund in
 198 excess of the obligations and encumbrances to cover the
 199 department's costs of providing services pursuant to
 200 subparagraph 1. shall be calculated as of June 5 each year and
 201 transferred to the General Revenue Fund before June 30 of each
 202 year.

203 (2) (a) To establish purchasing agreements and procure
 204 state term contracts for commodities and contractual services,
 205 pursuant to s. 287.057, under which state agencies shall, and
 206 eligible users may, make purchases pursuant to s. 287.056. The
 207 department may restrict purchases from some term contracts to
 208 state agencies only for those term contracts where the inclusion
 209 of other governmental entities will have an adverse effect on
 210 competition or to those federal facilities located in this
 211 state. In such planning or purchasing the department ~~Office of~~
 212 ~~Supplier Diversity~~ may monitor to ensure that opportunities are
 213 afforded for contracting with minority business enterprises. The
 214 department, for state term contracts, and all agencies, for
 215 multiyear contractual services or term contracts, shall explore
 216 reasonable and economical means to utilize certified minority
 217 business enterprises. Purchases by any county, municipality,
 218 private nonprofit community transportation coordinator
 219 designated pursuant to chapter 427, while conducting business
 220 related solely to the Commission for the Transportation
 221 Disadvantaged, or other local public agency under the provisions
 222 in the state purchasing contracts, and purchases, from the
 223 corporation operating the correctional work programs, of
 224 products or services that are subject to paragraph (1) (f), are

225 exempt from the competitive solicitation requirements otherwise
 226 applying to their purchases.

227 (c) Any person who files an action protesting a decision
 228 or intended decision pertaining to contracts administered by the
 229 department, a water management district, or an agency pursuant
 230 to s. 120.57(3)(b) shall post with the department, the water
 231 management district, or the agency at the time of filing the
 232 formal written protest a bond payable to the department, the
 233 water management district, or agency in an amount equal to 1
 234 percent of the estimated contract amount. For protests of
 235 decisions or intended decisions pertaining to exceptional
 236 purchases, the bond shall be in an amount equal to 1 percent of
 237 the estimated contract amount for the exceptional purchase. The
 238 estimated contract amount shall be based upon the contract price
 239 submitted by the protestor or, if no contract price was
 240 submitted, the department, water management district, or agency
 241 shall estimate the contract amount based on factors including,
 242 but not limited to, the price of previous or existing contracts
 243 for similar commodities or contractual services, the amount
 244 appropriated by the Legislature for the contract, or the fair
 245 market value of similar commodities or contractual services. The
 246 agency shall provide the estimated contract amount to the vendor
 247 within 72 hours, excluding Saturdays, Sundays, and state
 248 holidays, after the filing of the notice of protest by the
 249 vendor. The estimated contract amount is not subject to protest
 250 pursuant to s. 120.57(3). The bond shall be conditioned upon the
 251 payment of all costs and charges that are adjudged against the
 252 protestor in the administrative hearing in which the action is

253 brought and in any subsequent appellate court proceeding. In
 254 lieu of a bond, the department, the water management district,
 255 or agency may, in either case, accept a cashier's check,
 256 official bank check, or money order in the amount of the bond.
 257 If, after completion of the administrative hearing process and
 258 any appellate court proceedings, the department, water
 259 management district, or agency prevails, it shall recover all
 260 costs and charges which shall be included in the final order or
 261 judgment, excluding attorney's fees. ~~This section shall not~~
 262 ~~apply to protests filed by the Office of Supplier Diversity.~~
 263 Upon payment of such costs and charges by the protestor, the
 264 bond, cashier's check, official bank check, or money order shall
 265 be returned to the protestor. If, after the completion of the
 266 administrative hearing process and any appellate court
 267 proceedings, the protestor prevails, the protestor shall recover
 268 from the department, water management district, or agency all
 269 costs and charges which shall be included in the final order or
 270 judgment, excluding attorney's fees.

271 (3) To establish a system of coordinated, uniform
 272 procurement policies, procedures, and practices to be used by
 273 agencies in acquiring commodities and contractual services,
 274 which shall include, but not be limited to:

275 (b)1. Development of procedures for advertising
 276 solicitations. These procedures must provide for electronic
 277 posting of solicitations for at least 10 days before the date
 278 set for receipt of bids, proposals, or replies, unless the
 279 department or other agency determines in writing that a shorter
 280 period of time is necessary to avoid harming the interests of

281 the state. The ~~Office of Supplier Diversity~~ may consult with the
 282 department may develop ~~regarding the development of~~ solicitation
 283 distribution procedures to ensure that maximum distribution is
 284 afforded to certified minority business enterprises as defined
 285 in s. 288.703.

286 2. Development of procedures for electronic posting. The
 287 department shall designate a centralized website on the Internet
 288 for the department and other agencies to electronically post
 289 solicitations, decisions or intended decisions, and other
 290 matters relating to procurement.

291 (c) Development of procedures for the receipt and opening
 292 of bids, proposals, or replies by an agency. Such procedures
 293 shall provide the department ~~Office of Supplier Diversity~~ an
 294 opportunity to monitor and ensure that the contract award is
 295 consistent with the requirements of s. 287.09451.

296 (10) To prepare statistical data concerning the method of
 297 procurement, terms, usage, and disposition of commodities and
 298 contractual services by agencies. All agencies shall furnish
 299 such information for this purpose to the division ~~office~~ and to
 300 the department, as the department or division ~~office~~ may call
 301 for, but no less frequently than annually, on such forms or in
 302 such manner as the department may prescribe.

303 Section 5. Subsection (7), paragraphs (a), (b), and (c) of
 304 subsection (8), and paragraph (c) of subsection (23) of section
 305 287.057, Florida Statutes, are amended to read:

306 287.057 Procurement of commodities or contractual
 307 services.—

308 (7) Upon issuance of any solicitation, an agency shall,

309 upon request by the department, forward to the department one
 310 copy of each solicitation for all commodity and contractual
 311 services purchases in excess of the threshold amount provided in
 312 s. 287.017 for CATEGORY TWO. An agency shall also, upon request,
 313 furnish a copy of all competitive-solicitation tabulations. ~~The~~
 314 ~~Office of Supplier Diversity may also request from the agencies~~
 315 ~~any information submitted to the department pursuant to this~~
 316 ~~subsection.~~

317 (8) (a) In order to strive to meet the minority business
 318 enterprise procurement goals set forth in s. 287.09451, an
 319 agency may reserve any contract for competitive solicitation
 320 only among certified minority business enterprises. Agencies
 321 shall review all their contracts each fiscal year and shall
 322 determine which contracts may be reserved for solicitation only
 323 among certified minority business enterprises. This reservation
 324 may only be used when it is determined, by reasonable and
 325 objective means, before the solicitation that there are capable,
 326 qualified certified minority business enterprises available to
 327 submit a bid, proposal, or reply on a contract to provide for
 328 effective competition. The department may ~~Office of Supplier~~
 329 ~~Diversity shall~~ consult with any agency in reaching such
 330 determination when deemed appropriate.

331 (b) Before a contract may be reserved for solicitation
 332 only among certified minority business enterprises, the agency
 333 head must find that such a reservation is in the best interests
 334 of the state. All determinations shall be subject to s.
 335 287.09451 (3) ~~(5)~~. Once a decision has been made to reserve a
 336 contract, but before sealed bids, proposals, or replies are

337 requested, the agency shall estimate what it expects the amount
 338 of the contract to be, based on the nature of the services or
 339 commodities involved and their value under prevailing market
 340 conditions. If all the sealed bids, proposals, or replies
 341 received are over this estimate, the agency may reject the bids,
 342 proposals, or replies and request new ones from certified
 343 minority business enterprises, or the agency may reject the
 344 bids, proposals, or replies and reopen the bidding to all
 345 eligible vendors.

346 (c) All agencies shall consider the use of price
 347 preferences of up to 10 percent, weighted preference formulas,
 348 or other preferences for vendors as determined appropriate
 349 pursuant to guidelines established in accordance with s.
 350 287.09451 (2) ~~(4)~~ to increase the participation of minority
 351 business enterprises.

352 (23) The department, in consultation with the Agency for
 353 Enterprise Information Technology and the Comptroller, shall
 354 develop a program for online procurement of commodities and
 355 contractual services. To enable the state to promote open
 356 competition and to leverage its buying power, agencies shall
 357 participate in the online procurement program, and eligible
 358 users may participate in the program. Only vendors prequalified
 359 as meeting mandatory requirements and qualifications criteria
 360 may participate in online procurement.

361 (c) The department may impose and shall collect all fees
 362 for the use of the online procurement systems.

363 1. The fees may be imposed on an individual transaction
 364 basis or as a fixed percentage of the cost savings generated. At

365 a minimum, the fees must be set in an amount sufficient to cover
 366 the projected costs of the services, including administrative
 367 and project service costs in accordance with the policies of the
 368 department.

369 2. If the department contracts with a provider for online
 370 procurement, the department, pursuant to appropriation, shall
 371 compensate the provider from the fees after the department has
 372 satisfied all ongoing costs. The provider shall report
 373 transaction data to the department each month so that the
 374 department may determine the amount due and payable to the
 375 department from each vendor.

376 3. All fees that are due and payable to the state on a
 377 transactional basis or as a fixed percentage of the cost savings
 378 generated are subject to s. 215.31 and must be remitted within
 379 40 days after receipt of payment for which the fees are due. For
 380 fees that are not remitted within 40 days, the vendor shall pay
 381 interest at the rate established under s. 55.03(1) on the unpaid
 382 balance from the expiration of the 40-day period until the fees
 383 are remitted.

384 4. All fees and surcharges collected under this paragraph
 385 shall be deposited in the Operating Trust Fund for disbursement
 386 as provided by law.

387 5. Effective July 1, 2010, any fees collected pursuant to
 388 subparagraph 1. and remaining in the Operating Trust Fund in
 389 excess of the obligations and encumbrances to cover the
 390 department's costs of providing services pursuant to
 391 subparagraph 1. shall be calculated as of June 5 each year and

392 transferred to the General Revenue Fund before June 30 of each
 393 year.

394 Section 6. Subsections (3) and (4) of section 287.094,
 395 Florida Statutes, are amended to read:

396 287.094 Minority business enterprise programs; penalty for
 397 discrimination and false representation.—

398 (3) Any contractor, firm, or individual shall be barred
 399 from doing business with state government for a period of 36
 400 months, and shall be permanently disqualified from doing
 401 business with state government as a certified minority business
 402 enterprise, if the division ~~office~~ has determined that the
 403 contractor, firm, or individual has not acted in good faith to
 404 fulfill the terms of a contract calling for it to use the
 405 services or commodities of a certified minority business
 406 enterprise. If the Department of Legal Affairs, agency final
 407 order, or a court of law determines that a person was involved
 408 in a violation of this section, knew about such violation, or
 409 collaborated with a contractor or firm in such violation, the
 410 person, or any contractor or firm the person is employed by or
 411 affiliated with, shall be barred from doing business with state
 412 government for a period of at least 36 months.

413 (4) No agency shall deny any contractor, firm, or
 414 individual a fair opportunity to compete in the public
 415 procurement of commodities and services based on race, national
 416 origin, gender, religion, or physical disability, which for
 417 purposes of this subsection constitutes prohibited
 418 discrimination. Complaints alleging prohibited discrimination by
 419 an agency in its public procurement may be filed with the

420 Inspector General for the agency that is the subject of the
 421 complaint ~~Office of Supplier Diversity~~ within 60 days after the
 422 facts giving rise to the complaint are known or reasonably
 423 should have been discovered. Any complaint shall be filed in
 424 writing and must set forth the specific facts giving rise to the
 425 claim of prohibited discrimination. The ~~Office of Supplier~~
 426 ~~Diversity shall, within 10 days, refer the complaint to the~~
 427 Inspector General for the agency that is the subject of the
 428 complaint, ~~who~~ shall coordinate a prompt investigation and issue
 429 written findings of fact. These findings shall be reviewed by
 430 the Chief Inspector General or his or her designee, who is
 431 authorized to conduct any further investigation deemed necessary
 432 or appropriate. Upon a final determination that an agency has
 433 abused its discretion by engaging in prohibited discrimination,
 434 the Chief Inspector General shall refer any state employee
 435 determined to have participated in the prohibited discrimination
 436 for disciplinary action in accordance with chapter 60K(9),
 437 Florida Administrative Code, and subsequently enacted rules, up
 438 to and including termination.

439 Section 7. A business certified by the Office of Supplier
 440 Diversity as a minority business enterprise under s. 287.0943,
 441 Florida Statutes, as of June 30, 2010, shall continue to be
 442 recognized as a certified minority business enterprise for
 443 purposes of doing business with state government for 2 years
 444 from the effective date of certification, but not later than
 445 June 30, 2012.

446 Section 8. Section 287.0943, Florida Statutes, is amended
 447 to read:

448 287.0943 Certification of minority business enterprises.-
 449 (1) A business certified by a department of the Federal
 450 Government or any local governmental jurisdiction or
 451 organization shall be accepted by the Department of Management
 452 Services, Office of Supplier Diversity, as a certified minority
 453 business enterprise for purposes of doing business with state
 454 government when the minority business enterprise has obtained
 455 certification or recertification within the past 2 years and the
 456 Office of Supplier Diversity determines that the state's
 457 minority business enterprise certification criteria used in the
 458 certification process met, at a minimum, the criteria adopted by
 459 the Department of Management Services are applied in the local
 460 certification process.

461 (2) (a) ~~The office is hereby directed to convene a~~
 462 ~~"Minority Business Certification Task Force." The task force~~
 463 ~~shall meet as often as necessary, but no less frequently than~~
 464 ~~annually.~~

465 (b) ~~The task force shall be regionally balanced and~~
 466 ~~comprised of officials representing the department, counties,~~
 467 ~~municipalities, school boards, special districts, and other~~
 468 ~~political subdivisions of the state who administer programs to~~
 469 ~~assist minority businesses in procurement or development in~~
 470 ~~government sponsored programs. The following organizations may~~
 471 ~~appoint two members each of the task force who fit the~~
 472 ~~description above:~~

- 473 1. ~~The Florida League of Cities, Inc.~~
- 474 2. ~~The Florida Association of Counties.~~
- 475 3. ~~The Florida School Boards Association, Inc.~~

- 476 ~~4. The Association of Special Districts.~~
- 477 ~~5. The Florida Association of Minority Business Enterprise~~
- 478 ~~Officials.~~
- 479 ~~6. The Florida Association of Government Purchasing~~
- 480 ~~Officials.~~

481

482 ~~In addition, the Office of Supplier Diversity shall appoint~~

483 ~~seven members consisting of three representatives of minority~~

484 ~~business enterprises, one of whom should be a woman business~~

485 ~~owner, two officials of the office, and two at-large members to~~

486 ~~ensure balance. The chairperson of the Legislative Committee on~~

487 ~~Intergovernmental Relations or a designee shall be a member of~~

488 ~~the task force, ex officio. A quorum shall consist of one-third~~

489 ~~of the current members, and the task force may take action by~~

490 ~~majority vote. Any vacancy may only be filled by the~~

491 ~~organization or agency originally authorized to appoint the~~

492 ~~position.~~

493 ~~(c) The purpose of the task force will be to propose~~

494 ~~uniform criteria and procedures by which participating entities~~

495 ~~and organizations can qualify businesses to participate in~~

496 ~~procurement or contracting programs as certified minority~~

497 ~~business enterprises in accordance with the certification~~

498 ~~criteria established by law.~~

499 ~~(d) A final list of the criteria and procedures proposed~~

500 ~~by the task force shall be considered by the secretary. The task~~

501 ~~force may seek technical assistance from qualified providers of~~

502 ~~technical, business, and managerial expertise to ensure the~~

503 ~~reliability of the certification criteria developed.~~

504 (a)~~(e)~~ In assessing the status of ownership and control,
 505 certification criteria shall, at a minimum:

506 1. Link ownership by a minority person, as defined in s.
 507 288.703(3), or as dictated by the legal obligations of a
 508 certifying organization, to day-to-day control and financial
 509 risk by the qualifying minority owner, and to demonstrated
 510 expertise or licensure of a minority owner in any trade or
 511 profession that the minority business enterprise will offer to
 512 the state when certified. Businesses must comply with all state
 513 licensing requirements prior to becoming certified as a minority
 514 business enterprise.

515 2. If present ownership was obtained by transfer, require
 516 the minority person on whom eligibility is based to have owned
 517 at least 51 percent of the applicant firm for a minimum of 2
 518 years, when any previous majority ownership interest in the firm
 519 was by a nonminority who is or was a relative, former employer,
 520 or current employer of the minority person on whom eligibility
 521 is based. This requirement shall not apply to minority persons
 522 who are otherwise eligible who take a 51-percent-or-greater
 523 interest in a firm that requires professional licensure to
 524 operate and who will be the qualifying licenseholder for the
 525 firm when certified. A transfer made within a related immediate
 526 family group from a nonminority person to a minority person in
 527 order to establish ownership by a minority person shall be
 528 deemed to have been made solely for purposes of satisfying
 529 certification criteria and shall render such ownership invalid
 530 for purposes of qualifying for such certification if the
 531 combined total net asset value of all members of such family

532 group exceeds \$1 million. For purposes of this subparagraph, the
 533 term "related immediate family group" means one or more children
 534 under 16 years of age and a parent of such children or the
 535 spouse of such parent residing in the same house or living unit.

536 3. Require that prospective certified minority business
 537 enterprises be currently performing or seeking to perform a
 538 useful business function. A "useful business function" is
 539 defined as a business function which results in the provision of
 540 materials, supplies, equipment, or services to customers. Acting
 541 as a conduit to transfer funds to a nonminority business does
 542 not constitute a useful business function unless it is done so
 543 in a normal industry practice. As used in this section, the term
 544 "acting as a conduit" means, in part, not acting as a regular
 545 dealer by making sales of material, goods, or supplies from
 546 items bought, kept in stock, and regularly sold to the public in
 547 the usual course of business. Brokers, manufacturer's
 548 representatives, sales representatives, and nonstocking
 549 distributors are considered as conduits that do not perform a
 550 useful business function, unless normal industry practice
 551 dictates.

552 (b) ~~(f)~~ When a business receives payments or awards
 553 exceeding \$100,000 in one fiscal year, a review of its
 554 certification status or an audit will be conducted within 2
 555 years. ~~In addition, random reviews or audits will be conducted~~
 556 ~~as deemed appropriate by the Office of Supplier Diversity.~~

557 (c) ~~(g)~~ The certification criteria ~~approved by the task~~
 558 ~~force and~~ adopted by the Department of Management Services shall
 559 be included in a statewide and interlocal agreement as defined

560 in s. 287.09431 and, in accordance with s. 163.01, shall be
 561 executed according to the terms included therein.

562 (d)~~(h)~~ The certification procedures should allow an
 563 applicant seeking certification to designate on the application
 564 form the information the applicant considers to be proprietary,
 565 confidential business information. As used in this paragraph,
 566 "proprietary, confidential business information" includes, but
 567 is not limited to, any information that would be exempt from
 568 public inspection pursuant to the provisions of chapter 119;
 569 trade secrets; internal auditing controls and reports; contract
 570 costs; or other information the disclosure of which would injure
 571 the affected party in the marketplace or otherwise violate s.
 572 286.041. The executor in receipt of the application shall issue
 573 written and final notice of any information for which
 574 noninspection is requested but not provided for by law.

575 (e)~~(i)~~ A business that is certified under the provisions
 576 of the statewide and interlocal agreement shall be deemed a
 577 certified minority enterprise in all jurisdictions or
 578 organizations where the agreement is in effect, and that
 579 business is deemed available to do business as such within any
 580 such jurisdiction or with any such organization statewide. All
 581 state agencies must accept minority business enterprises
 582 certified in accordance with the statewide and interlocal
 583 agreement of s. 287.09431, and that business shall also be
 584 deemed a "certified minority business enterprise" as defined in
 585 s. 288.703. However, any governmental jurisdiction or
 586 organization that administers a minority business purchasing
 587 program may reserve the right to establish further certification

588 procedures necessary to comply with federal law.

589 ~~(j) The statewide and interlocal agreement shall be guided~~
 590 ~~by the terms and conditions found therein and may be amended at~~
 591 ~~any meeting of the task force and subsequently adopted by the~~
 592 ~~secretary of the Department of Management Services. The amended~~
 593 ~~agreement must be enacted, initialed, and legally executed by at~~
 594 ~~least two-thirds of the certifying entities party to the~~
 595 ~~existing agreement and adopted by the state as originally~~
 596 ~~executed in order to bind the certifying entity.~~

597 ~~(k) The task force shall meet for the first time no later~~
 598 ~~than 45 days after the effective date of this act.~~

599 ~~(3)(a) The office shall review and evaluate the~~
 600 ~~certification programs and procedures of all prospective~~
 601 ~~executors of the statewide and interlocal agreement to determine~~
 602 ~~if their programs exhibit the capacity to meet the standards of~~
 603 ~~the agreement.~~

604 ~~(b) The evaluations shall, at a minimum, consider: the~~
 605 ~~certifying entity's capacity to conduct investigations of~~
 606 ~~applicants seeking certification under the designated criteria;~~
 607 ~~the ability of the certifying entity to collect the requisite~~
 608 ~~data and to establish adequate protocol to store and exchange~~
 609 ~~said information among the executors of the agreement and to~~
 610 ~~provide adequate security to prevent unauthorized access to~~
 611 ~~information gathered during the certification process; and the~~
 612 ~~degree to which any legal obligations or supplemental~~
 613 ~~requirements unique to the certifying entity exceed the capacity~~
 614 ~~of that entity to conduct certifications.~~

615 (3)(e) Any firms certified by organizations or

616 governmental entities determined not to meet the state
 617 certification criteria shall not be eligible to participate as
 618 certified minority business enterprises in the minority business
 619 assistance programs of the state. ~~For a period of 1 year from~~
 620 ~~the effective date of this legislation, the executor of the~~
 621 ~~statewide and interlocal agreement may elect to accept only~~
 622 ~~minority business enterprises certified pursuant to criteria in~~
 623 ~~place at the time the agreement was signed. After the 1-year~~
 624 ~~period,~~ Either party to the statewide and interlocal agreement
 625 may elect to withdraw from the agreement without further notice.

626 ~~(d) Any organizations or governmental entities determined~~
 627 ~~by the office not to meet the standards of the agreement shall~~
 628 ~~not be eligible to execute the statewide and interlocal~~
 629 ~~agreement as a participating organization until approved by the~~
 630 ~~office.~~

631 ~~(e) Any participating program receiving three or more~~
 632 ~~challenges to its certification decisions pursuant to subsection~~
 633 ~~(4) from other organizations that are executors to the statewide~~
 634 ~~and interlocal agreement, shall be subject to a review by the~~
 635 ~~office, as provided in paragraphs (a) and (b), of the~~
 636 ~~organization's capacity to perform under such agreement and in~~
 637 ~~accordance with the core criteria established by the task force.~~
 638 ~~The office shall submit a report to the secretary of the~~
 639 ~~Department of Management Services regarding the results of the~~
 640 ~~review.~~

641 ~~(f) The office shall maintain a directory of all executors~~
 642 ~~of the statewide and interlocal agreement. The directory should~~
 643 ~~be communicated to the general public.~~

644 (4) A certification may be challenged by any executor to
645 the statewide and interlocal agreement upon the grounds of
646 failure by the certifying organization to adhere to the adopted
647 criteria or to the certifying organization's rules and
648 procedures, or on the grounds of a misrepresentation or fraud by
649 the certified minority business enterprise. The challenge shall
650 proceed according to procedures specified in the agreement.

651 (5) ~~(a)~~ The secretary of the Department of Management
652 Services shall execute the statewide and interlocal agreement
653 established under s. 287.09431 on behalf of the state. ~~The~~
654 ~~office shall certify minority business enterprises in accordance~~
655 ~~with the laws of this state and, by affidavit, shall recertify~~
656 ~~such minority business enterprises not less than once each year.~~

657 ~~(b) The office shall contract with parties to the~~
658 ~~statewide and interlocal agreement to perform onsite visits~~
659 ~~associated with state certifications.~~

660 (6) ~~(a) The office shall maintain up to date records of all~~
661 ~~certified minority business enterprises, as defined in s.~~
662 ~~288.703, and of applications for certification that were denied~~
663 ~~and shall make this list available to all agencies. The division~~
664 ~~office shall, for statistical purposes, collect and track~~
665 subgroupings of gender and nationality status for each certified
666 minority business enterprise. Agency spending shall also be
667 tracked for these subgroups. The records may include information
668 about minority business enterprises that provide legal services,
669 auditing services, and health services. Agencies shall use this
670 list in efforts to meet the minority business enterprise
671 procurement goals set forth in s. 287.09451.

672 ~~(b) The office shall establish and administer a~~
 673 ~~computerized data bank to carry out the requirements of~~
 674 ~~paragraph (a), to be available to all executors of the statewide~~
 675 ~~and interlocal agreement. Data maintained in the data bank shall~~
 676 ~~be sufficient to allow each executor to reasonably monitor~~
 677 ~~certifications it has issued.~~

678 ~~(7) The office shall identify minority business~~
 679 ~~enterprises eligible for certification in all areas of state~~
 680 ~~services and commodities purchasing. The office may contract~~
 681 ~~with a private firm or other agency, if necessary, in seeking to~~
 682 ~~identify minority business enterprises for certification.~~
 683 ~~Agencies may request the office to identify certifiable minority~~
 684 ~~business enterprises that are in the business of providing a~~
 685 ~~given service or commodity; the office shall respond to such~~
 686 ~~requests and seek out such certifiable minority business~~
 687 ~~enterprises.~~

688 ~~(8) The office shall adopt rules necessary to implement~~
 689 ~~this section.~~

690 (7)~~(9)~~ State agencies shall comply with this act except to
 691 the extent that the requirements of this act are in conflict
 692 with federal law.

693 (8)~~(10)~~ Any transfer of ownership or permanent change in
 694 the management and daily operations of a certified minority
 695 business enterprise which may affect certification must be
 696 reported to the original certifying jurisdiction or entity ~~and~~
 697 ~~to the office~~ within 14 days of the transfer or change taking
 698 place. In the event of a transfer of ownership, the transferee
 699 seeking to do business with the state as a certified minority

700 business enterprise is responsible for such reporting. ~~In the~~
 701 ~~event of a permanent change in the management and daily~~
 702 ~~operations, owners seeking to do business with the state as a~~
 703 ~~certified minority business enterprise are responsible for~~
 704 ~~reporting such change to the office.~~ Any person violating the
 705 provisions of this subsection commits ~~shall be guilty of a~~
 706 misdemeanor of the first degree, punishable as provided in s.
 707 775.082 or s. 775.083.

708 (9) ~~(11)~~ To deter fraud in the program, the Auditor General
 709 may review the criteria by which a business became certified as
 710 a certified minority business enterprise.

711 (10) ~~(12)~~ Any executor of the statewide and interlocal
 712 agreement may revoke the certification or recertification of a
 713 firm doing business as a certified minority business enterprise
 714 if the minority business enterprise does not meet the
 715 requirements of the jurisdiction or certifying entity that
 716 certified or recertified the firm as a certified minority
 717 business enterprise, or the requirements of subsection (2), s.
 718 288.703, and any rule of the division ~~office~~ or the Department
 719 of Management Services or if the business acquired certification
 720 or recertification by means of falsely representing any entity
 721 as a minority business enterprise for purposes of qualifying for
 722 certification or recertification.

723 (11) ~~(13)~~ Unless permanently revoked, a certified minority
 724 business enterprise for which certification or recertification
 725 has been revoked may not apply or reapply for certification or
 726 recertification for a minimum of 36 months after the date of the
 727 notice of revocation.

728 ~~(12)-(14)~~ (a) ~~Except for certification decisions issued by~~
 729 ~~the Office of Supplier Diversity,~~ An executor to the statewide
 730 and interlocal agreement shall, in accordance with its rules and
 731 procedures:

732 1. Give reasonable notice to affected persons or parties
 733 of its decision to deny certification based on failure to meet
 734 eligibility requirements of the statewide and interlocal
 735 agreement of s. 287.09431, together with a summary of the
 736 grounds therefor.

737 2. Give affected persons or parties an opportunity, at a
 738 convenient time and place, to present to the agency written or
 739 oral evidence in opposition to the action or of the executor's
 740 refusal to act.

741 3. Give a written explanation of any subsequent decision
 742 of the executor overruling the objections.

743 (b) An applicant that is denied minority business
 744 enterprise certification based on failure to meet eligibility
 745 requirements of the statewide and interlocal agreement pursuant
 746 to s. 287.09431 may not reapply for certification or
 747 recertification until at least 6 months after the date of the
 748 notice of the denial of certification or recertification.

749 ~~(13)-(15)~~ The division ~~office~~ shall adopt rules in
 750 compliance with this part.

751 Section 9. Section 287.09431, Florida Statutes, is amended
 752 to read:

753 287.09431 Statewide and interlocal agreement on
 754 certification of business concerns for the status of minority
 755 business enterprise.—The statewide and interlocal agreement on

756 certification of business concerns for the status of minority
 757 business enterprise is hereby enacted and entered into with all
 758 jurisdictions or organizations legally joining therein. If,
 759 within 2 years from the date that the certification core
 760 criteria are approved by the Department of Labor and Employment
 761 Security, the agreement included herein is not executed by a
 762 majority of county and municipal governing bodies that
 763 administer a minority business assistance program on the
 764 effective date of this act, then the Legislature shall review
 765 this agreement. It is the intent of the Legislature that if the
 766 agreement is not executed by a majority of the requisite
 767 governing bodies, then a statewide uniform certification process
 768 should be adopted, and that said agreement should be repealed
 769 and replaced by a mandatory state government certification
 770 process.

771 ARTICLE I

772 PURPOSE, FINDINGS, AND POLICY.—

773 (1) The parties to this agreement, desiring by common
 774 action to establish a uniform certification process in order to
 775 reduce the multiplicity of applications by business concerns to
 776 state and local governmental programs for minority business
 777 assistance, declare that it is the policy of each of them, on
 778 the basis of cooperation with one another, to remedy social and
 779 economic disadvantage suffered by certain groups, resulting in
 780 their being historically underutilized in ownership and control
 781 of commercial enterprises. Thus, the parties seek to address
 782 this history by increasing the participation of the identified
 783 groups in opportunities afforded by government procurement.

784 (2) The parties find that the State of Florida presently
 785 certifies firms for participation in the minority business
 786 assistance programs of the state. The parties find further that
 787 some counties, municipalities, school boards, special districts,
 788 and other divisions of local government require a separate, yet
 789 similar, and in most cases redundant certification in order for
 790 businesses to participate in the programs sponsored by each
 791 government entity.

792 (3) The parties find further that this redundant
 793 certification has proven to be unduly burdensome to the
 794 minority-owned firms intended to benefit from the underlying
 795 purchasing incentives.

796 (4) The parties agree that:

797 (a) They will facilitate integrity, stability, and
 798 cooperation in the statewide and interlocal certification
 799 process, and in other elements of programs established to assist
 800 minority-owned businesses.

801 (b) They shall cooperate with agencies, organizations, and
 802 associations interested in certification and other elements of
 803 minority business assistance.

804 (c) It is the purpose of this agreement to provide for a
 805 uniform process whereby the status of a business concern may be
 806 determined in a singular review of the business information for
 807 these purposes, in order to eliminate any undue expense, delay,
 808 or confusion to the minority-owned businesses in seeking to
 809 participate in the minority business assistance programs of
 810 state and local jurisdictions.

811 ARTICLE II

812 DEFINITIONS.—As used in this agreement and contracts made
 813 pursuant to it, unless the context clearly requires otherwise:

814 (1) "Awarding organization" means any political
 815 subdivision or organization authorized by law, ordinance, or
 816 agreement to enter into contracts and for which the governing
 817 body has entered into this agreement.

818 (2) "Department" means the Department of Labor and
 819 Employment Security.

820 (3) "Minority" means a person who is a lawful, permanent
 821 resident of the state, having origins in one of the minority
 822 groups as described and adopted by the Department of Labor and
 823 Employment Security, hereby incorporated by reference.

824 (4) "Minority business enterprise" means any small
 825 business concern as defined in subsection (6) that meets all of
 826 the criteria described and adopted by the Department of Labor
 827 and Employment Security, hereby incorporated by reference.

828 (5) "Participating state or local organization" means any
 829 political subdivision of the state or organization designated by
 830 such that elects to participate in the certification process
 831 pursuant to this agreement, which has ~~been approved according to~~
 832 ~~s. 287.0943(3) and has~~ legally entered into this agreement.

833 (6) "Small business concern" means an independently owned
 834 and operated business concern which is of a size and type as
 835 described and adopted by vote related to this agreement of the
 836 commission, hereby incorporated by reference.

837 ARTICLE III

838 STATEWIDE AND INTERLOCAL CERTIFICATIONS.—

839 (1) All awarding organizations shall accept a

840 certification granted by any participating organization which
 841 has ~~been approved according to s. 287.0943(3) and~~ has entered
 842 into this agreement, as valid status of minority business
 843 enterprise.

844 (2) A participating organization shall certify a business
 845 concern that meets the definition of minority business
 846 enterprise in this agreement, in accordance with the duly
 847 adopted eligibility criteria.

848 (3) All participating organizations shall issue notice of
 849 certification decisions granting or denying certification to all
 850 other participating organizations within 14 days of the
 851 decision. Such notice may be made through electronic media.

852 (4) No certification will be granted without an onsite
 853 visit to verify ownership and control of the prospective
 854 minority business enterprise, unless verification can be
 855 accomplished by other methods of adequate verification or
 856 assessment of ownership and control.

857 (5) The certification of a minority business enterprise
 858 pursuant to the terms of this agreement shall not be suspended,
 859 revoked, or otherwise impaired except on any grounds which would
 860 be sufficient for revocation or suspension of a certification in
 861 the jurisdiction of the participating organization.

862 (6) The certification determination of a party may be
 863 challenged by any other participating organization by the
 864 issuance of a timely written notice by the challenging
 865 organization to the certifying organization's determination
 866 within 10 days of receiving notice of the certification
 867 decision, stating the grounds therefor.

868 (7) The sole accepted grounds for challenge shall be the
 869 failure of the certifying organization to adhere to the adopted
 870 criteria or the certifying organization's rules or procedures,
 871 or the perpetuation of a misrepresentation or fraud by the firm.

872 (8) The certifying organization shall reexamine its
 873 certification determination and submit written notice to the
 874 applicant and the challenging organization of its findings
 875 within 30 days after the receipt of the notice of challenge.

876 (9) If the certification determination is affirmed, the
 877 challenging agency may subsequently submit timely written notice
 878 to the firm of its intent to revoke certification of the firm.

879 ARTICLE IV

880 APPROVED AND ACCEPTED PROGRAMS.—Nothing in this agreement
 881 shall be construed to repeal or otherwise modify any ordinance,
 882 law, or regulation of a party relating to the existing minority
 883 business assistance provisions and procedures by which minority
 884 business enterprises participate therein.

885 ARTICLE V

886 TERM.—The term of the agreement shall be 5 years, after
 887 which it may be reexecuted by the parties.

888 ARTICLE VI

889 AGREEMENT EVALUATION.—The designated state and local
 890 officials may meet from time to time as a group to evaluate
 891 progress under the agreement, to formulate recommendations for
 892 changes, or to propose a new agreement.

893 ARTICLE VII

894 OTHER ARRANGEMENTS.—Nothing in this agreement shall be
 895 construed to prevent or inhibit other arrangements or practices

896 | of any party in order to comply with federal law.

897 | ARTICLE VIII

898 | EFFECT AND WITHDRAWAL.—

899 | (1) This agreement shall become effective when properly
 900 | executed by a legal representative of the participating
 901 | organization, when enacted into the law of the state and after
 902 | an ordinance or other legislation is enacted into law by the
 903 | governing body of each participating organization. Thereafter it
 904 | shall become effective as to any participating organization upon
 905 | the enactment of this agreement by the governing body of that
 906 | organization.

907 | (2) Any party may withdraw from this agreement by enacting
 908 | legislation repealing the same, but no such withdrawal shall
 909 | take effect until one year after the governing body of the
 910 | withdrawing party has given notice in writing of the withdrawal
 911 | to the other parties.

912 | (3) No withdrawal shall relieve the withdrawing party of
 913 | any obligations imposed upon it by law.

914 | ARTICLE IX

915 | FINANCIAL RESPONSIBILITY.—

916 | (1) A participating organization shall not be financially
 917 | responsible or liable for the obligations of any other
 918 | participating organization related to this agreement.

919 | (2) The provisions of this agreement shall constitute
 920 | neither a waiver of any governmental immunity under Florida law
 921 | nor a waiver of any defenses of the parties under Florida law.
 922 | The provisions of this agreement are solely for the benefit of
 923 | its executors and not intended to create or grant any rights,

924 contractual or otherwise, to any person or entity.

925 ARTICLE X

926 VENUE AND GOVERNING LAW.—The obligations of the parties to
 927 this agreement are performable only within the county where the
 928 participating organization is located, ~~and statewide for the~~
 929 ~~Office of Supplier Diversity,~~ and venue for any legal action in
 930 connection with this agreement shall lie~~,~~ for any participating
 931 organization ~~except the Office of Supplier Diversity,~~
 932 exclusively in the county where the participating organization
 933 is located. This agreement shall be governed by and construed in
 934 accordance with the laws and court decisions of the state.

935 ARTICLE XI

936 CONSTRUCTION AND SEVERABILITY.—This agreement shall be
 937 liberally construed so as to effectuate the purposes thereof.
 938 The provisions of this agreement shall be severable and if any
 939 phrase, clause, sentence, or provision of this agreement is
 940 declared to be contrary to the State Constitution or the United
 941 States Constitution, or the application thereof to any
 942 government, agency, person, or circumstance is held invalid, the
 943 validity of the remainder of this agreement and the
 944 applicability thereof to any government, agency, person, or
 945 circumstance shall not be affected thereby. If this agreement
 946 shall be held contrary to the State Constitution, the agreement
 947 shall remain in full force and effect as to all severable
 948 matters.

949 Section 10. Section 287.09451, Florida Statutes, is
 950 amended to read:

951 287.09451 Division ~~Office of Supplier Diversity,~~ powers,

952 duties, and functions.—

953 (1) The Legislature finds that there is evidence of a
 954 systematic pattern of past and continuing racial discrimination
 955 against minority business enterprises and a disparity in the
 956 availability and use of minority business enterprises in the
 957 state procurement system. It is determined to be a compelling
 958 state interest to rectify such discrimination and disparity.
 959 Based upon statistical data profiling this discrimination, the
 960 Legislature has enacted race-conscious and gender-conscious
 961 remedial programs to ensure minority participation in the
 962 economic life of the state, in state contracts for the purchase
 963 of commodities and services, and in construction contracts. The
 964 purpose and intent of this section is to increase participation
 965 by minority business enterprises accomplished by encouraging the
 966 use of minority business enterprises and the entry of new and
 967 diversified minority business enterprises into the marketplace.

968 ~~(2) The Office of Supplier Diversity is established within~~
 969 ~~the Department of Management Services to assist minority~~
 970 ~~business enterprises in becoming suppliers of commodities,~~
 971 ~~services, and construction to state government.~~

972 ~~(3) The secretary shall appoint an executive director for~~
 973 ~~the Office of Supplier Diversity, who shall serve at the~~
 974 ~~pleasure of the secretary.~~

975 (2)~~(4)~~ The division ~~Office of Supplier Diversity~~ shall
 976 have the following powers, duties, and functions:

977 (a) To adopt rules to determine what constitutes a "good
 978 faith effort" for purposes of state agency compliance with the
 979 minority business enterprise procurement goals set forth in s.

980 287.042. Factors which shall be considered ~~by the Minority~~
 981 ~~Business Enterprise Assistance Office~~ in determining good faith
 982 effort shall include, but not be limited to:

983 1. Whether the agency scheduled presolicitation or prebid
 984 meetings for the purpose of informing minority business
 985 enterprises of contracting and subcontracting opportunities.

986 2. Whether the contractor advertised in general
 987 circulation, trade association, or minority-focus media
 988 concerning the subcontracting opportunities.

989 3. Whether the agency effectively used services and
 990 resources of available minority community organizations;
 991 minority contractors' groups; local, state, and federal minority
 992 business assistance offices; and other organizations that
 993 provide assistance in the recruitment and placement of minority
 994 business enterprises or minority persons.

995 4. Whether the agency provided written notice to a
 996 reasonable number of minority business enterprises that their
 997 interest in contracting with the agency was being solicited in
 998 sufficient time to allow the minority business enterprises to
 999 participate effectively.

1000 (b) To adopt rules to determine what constitutes a "good
 1001 faith effort" for purposes of contractor compliance with
 1002 contractual requirements relating to the use of services or
 1003 commodities of a minority business enterprise under s.

1004 287.094(2). Factors which shall be considered by the division
 1005 ~~Office of Supplier Diversity~~ in determining whether a contractor
 1006 has made good faith efforts shall include, but not be limited
 1007 to:

1008 | 1. Whether the contractor attended any presolicitation or
 1009 | prebid meetings that were scheduled by the agency to inform
 1010 | minority business enterprises of contracting and subcontracting
 1011 | opportunities.

1012 | 2. Whether the contractor advertised in general
 1013 | circulation, trade association, or minority-focus media
 1014 | concerning the subcontracting opportunities.

1015 | 3. Whether the contractor provided written notice to a
 1016 | reasonable number of specific minority business enterprises that
 1017 | their interest in the contract was being solicited in sufficient
 1018 | time to allow the minority business enterprises to participate
 1019 | effectively.

1020 | 4. Whether the contractor followed up initial
 1021 | solicitations of interest by contacting minority business
 1022 | enterprises or minority persons to determine with certainty
 1023 | whether the minority business enterprises or minority persons
 1024 | were interested.

1025 | 5. Whether the contractor selected portions of the work to
 1026 | be performed by minority business enterprises in order to
 1027 | increase the likelihood of meeting the minority business
 1028 | enterprise procurement goals, including, where appropriate,
 1029 | breaking down contracts into economically feasible units to
 1030 | facilitate minority business enterprise participation.

1031 | 6. Whether the contractor provided interested minority
 1032 | business enterprises or minority persons with adequate
 1033 | information about the plans, specifications, and requirements of
 1034 | the contract or the availability of jobs.

1035 | 7. Whether the contractor negotiated in good faith with

1036 interested minority business enterprises or minority persons,
 1037 not rejecting minority business enterprises or minority persons
 1038 as unqualified without sound reasons based on a thorough
 1039 investigation of their capabilities.

1040 8. Whether the contractor effectively used the services of
 1041 available minority community organizations; minority
 1042 contractors' groups; local, state, and federal minority business
 1043 assistance offices; and other organizations that provide
 1044 assistance in the recruitment and placement of minority business
 1045 enterprises or minority persons.

1046 (c) To adopt rules and do all things necessary or
 1047 convenient to guide all state agencies toward making
 1048 expenditures for commodities, contractual services,
 1049 construction, and architectural and engineering services with
 1050 certified minority business enterprises in accordance with the
 1051 minority business enterprise procurement goals set forth in s.
 1052 287.042.

1053 (d) To monitor the degree to which agencies procure
 1054 services, commodities, and construction from minority business
 1055 enterprises in conjunction with the Department of Financial
 1056 Services as specified in s. 17.11.

1057 (e) To receive and disseminate information relative to
 1058 procurement opportunities, availability of minority business
 1059 enterprises, and technical assistance.

1060 (f) To advise agencies on methods and techniques for
 1061 achieving procurement objectives.

1062 ~~(g) To provide a central minority business enterprise~~
 1063 ~~certification process which includes independent verification of~~

1064 ~~status as a minority business enterprise.~~

1065 ~~(h) To develop procedures to investigate complaints~~

1066 ~~against minority business enterprises or contractors alleged to~~

1067 ~~violate any provision related to this section or s. 287.0943,~~

1068 ~~that may include visits to worksites or business premises, and~~

1069 ~~to refer all information on businesses suspected of~~

1070 ~~misrepresenting minority status to the Department of Management~~

1071 ~~Services for investigation. When an investigation is completed~~

1072 ~~and there is reason to believe that a violation has occurred,~~

1073 ~~the Department of Labor and Employment Security shall refer the~~

1074 ~~matter to the office of the Attorney General, Department of~~

1075 ~~Legal Affairs, for prosecution.~~

1076 ~~(i) To maintain a directory of all minority business~~

1077 ~~enterprises which have been certified and provide this~~

1078 ~~information to any agency or business requesting it.~~

1079 ~~(j) To encourage all firms which do more than \$1 million~~

1080 ~~in business with the state within a 12-month period to develop,~~

1081 ~~implement, and submit to this office a minority business~~

1082 ~~development plan.~~

1083 ~~(k) To communicate on a monthly basis with the Small and~~

1084 ~~Minority Business Advisory Council to keep the council informed~~

1085 ~~on issues relating to minority enterprise procurement.~~

1086 ~~(l) To serve as an advocate for minority business~~

1087 ~~enterprises, and coordinate with the small and minority business~~

1088 ~~ombudsman, as defined in s. 288.703, which duties shall include:~~

1089 ~~1. Ensuring that agencies supported by state funding~~

1090 ~~effectively target the delivery of services and resources, as~~

1091 ~~related to minority business enterprises.~~

1092 ~~2. Establishing standards within each industry with which~~
 1093 ~~the state government contracts on how agencies and contractors~~
 1094 ~~may provide the maximum practicable opportunity for minority~~
 1095 ~~business enterprises.~~

1096 ~~3. Assisting agencies and contractors by providing~~
 1097 ~~outreach to minority businesses, by specifying and monitoring~~
 1098 ~~technical and managerial competence for minority business~~
 1099 ~~enterprises, and by consulting in planning of agency procurement~~
 1100 ~~to determine how best to provide opportunities for minority~~
 1101 ~~business enterprises.~~

1102 ~~4. Integrating technical and managerial assistance for~~
 1103 ~~minority business enterprises with government contracting~~
 1104 ~~opportunities.~~

1105 ~~(m) To certify minority business enterprises, as defined~~
 1106 ~~in s. 288.703, and as specified in ss. 287.0943 and 287.09431,~~
 1107 ~~and shall recertify such minority businesses at least once every~~
 1108 ~~2 years. Minority business enterprises must be recertified at~~
 1109 ~~least once every 2 years by affidavit.~~

1110 (g)~~(n)~~1. To develop procedures to be used by an agency in
 1111 identifying commodities, contractual services, architectural and
 1112 engineering services, and construction contracts, except those
 1113 architectural, engineering, construction, or other related
 1114 services or contracts subject to the provisions of chapter 339,
 1115 that could be provided by minority business enterprises. Each
 1116 agency is encouraged to spend 21 percent of the moneys actually
 1117 expended for construction contracts, 25 percent of the moneys
 1118 actually expended for architectural and engineering contracts,
 1119 24 percent of the moneys actually expended for commodities, and

1120 50.5 percent of the moneys actually expended for contractual
 1121 services during the previous fiscal year, except for the state
 1122 university construction program which shall be based upon public
 1123 education capital outlay projections for the subsequent fiscal
 1124 year, and reported to the Legislature pursuant to s. 216.023,
 1125 for the purpose of entering into contracts with certified
 1126 minority business enterprises as defined in s. 288.703(2), or
 1127 approved joint ventures. However, in the event of budget
 1128 reductions pursuant to s. 216.221, the base amounts may be
 1129 adjusted to reflect such reductions. The overall spending goal
 1130 for each industry category shall be subdivided as follows:

1131 a. For construction contracts: 4 percent for black
 1132 Americans, 6 percent for Hispanic-Americans, and 11 percent for
 1133 American women.

1134 b. For architectural and engineering contracts: 9 percent
 1135 for Hispanic-Americans, 1 percent for Asian-Americans, and 15
 1136 percent for American women.

1137 c. For commodities: 2 percent for black Americans, 4
 1138 percent for Hispanic-Americans, 0.5 percent for Asian-Americans,
 1139 0.5 percent for Native Americans, and 17 percent for American
 1140 women.

1141 d. For contractual services: 6 percent for black
 1142 Americans, 7 percent for Hispanic-Americans, 1 percent for
 1143 Asian-Americans, 0.5 percent for Native Americans, and 36
 1144 percent for American women.

1145 2. For the purposes of commodities contracts for the
 1146 purchase of equipment to be used in the construction and
 1147 maintenance of state transportation facilities involving the

1148 Department of Transportation, "minority business enterprise" has
 1149 the same meaning as provided in s. 288.703. "Minority person"
 1150 has the same meaning as in s. 288.703(3). In order to ensure
 1151 that the goals established under this paragraph for contracting
 1152 with certified minority business enterprises are met, the
 1153 department, ~~with the assistance of the Office of Supplier~~
 1154 ~~Diversity~~, shall make recommendations to the Legislature on
 1155 revisions to the goals, based on an updated statistical
 1156 analysis, at least once every 5 years. Such recommendations
 1157 shall be based on statistical data indicating the availability
 1158 of and disparity in the use of minority businesses contracting
 1159 with the state. ~~The results of the first updated disparity study~~
 1160 ~~must be presented to the Legislature no later than December 1,~~
 1161 ~~1996.~~

1162 3. In determining the base amounts for assessing
 1163 compliance with this paragraph, the division ~~Office of Supplier~~
 1164 ~~Diversity~~ may develop, by rule, guidelines for all agencies to
 1165 use in establishing such base amounts. These rules must include,
 1166 but are not limited to, guidelines for calculation of base
 1167 amounts, a deadline for the agencies to submit base amounts, a
 1168 deadline for approval of the base amounts by the division ~~Office~~
 1169 ~~of Supplier Diversity~~, and procedures for adjusting the base
 1170 amounts as a result of budget reductions made pursuant to s.
 1171 216.221.

1172 4. To determine guidelines for the use of price
 1173 preferences, weighted preference formulas, or other preferences,
 1174 as appropriate to the particular industry or trade, to increase
 1175 the participation of minority businesses in state contracting.

1176 These guidelines shall include consideration of:

1177 a. Size and complexity of the project.

1178 b. The concentration of transactions with minority

1179 business enterprises for the commodity or contractual services

1180 in question in prior agency contracting.

1181 c. The specificity and definition of work allocated to

1182 participating minority business enterprises.

1183 d. The capacity of participating minority business

1184 enterprises to complete the tasks identified in the project.

1185 e. The available pool of minority business enterprises as

1186 prime contractors, either alone or as partners in an approved

1187 joint venture that serves as the prime contractor.

1188 5. To determine guidelines for use of joint ventures to

1189 meet minority business enterprises spending goals. For purposes

1190 of this section, "joint venture" means any association of two or

1191 more business concerns to carry out a single business enterprise

1192 for profit, for which purpose they combine their property,

1193 capital, efforts, skills, and knowledge. The guidelines shall

1194 allow transactions with joint ventures to be eligible for credit

1195 against the minority business enterprise goals of an agency when

1196 the contracting joint venture demonstrates that at least one

1197 partner to the joint venture is a certified minority business

1198 enterprise as defined in s. 288.703, and that such partner is

1199 responsible for a clearly defined portion of the work to be

1200 performed, and shares in the ownership, control, management,

1201 responsibilities, risks, and profits of the joint venture. Such

1202 demonstration shall be by verifiable documents and sworn

1203 statements and may be reviewed by the division ~~Office of~~

PCB GOA 10-03

Redraft - A

2010

1204 ~~Supplier Diversity~~ at or before the time a contract bid,
 1205 proposal, or reply is submitted. An agency may count toward its
 1206 minority business enterprise goals a portion of the total dollar
 1207 amount of a contract equal to the percentage of the ownership
 1208 and control held by the qualifying certified minority business
 1209 partners in the contracting joint venture, so long as the joint
 1210 venture meets the guidelines adopted by the division office.

1211 (h) ~~(e)~~1. To establish a system to record and measure the
 1212 use of certified minority business enterprises in state
 1213 contracting. This system shall maintain information and
 1214 statistics on certified minority business enterprise
 1215 participation, awards, dollar volume of expenditures and agency
 1216 goals, and other appropriate types of information to analyze
 1217 progress in the access of certified minority business
 1218 enterprises to state contracts and to monitor agency compliance
 1219 with this section. Such reporting must include, but is not
 1220 limited to, the identification of all subcontracts in state
 1221 contracting by dollar amount and by number of subcontracts and
 1222 the identification of the utilization of certified minority
 1223 business enterprises as prime contractors and subcontractors by
 1224 dollar amounts of contracts and subcontracts, number of
 1225 contracts and subcontracts, minority status, industry, and any
 1226 conditions or circumstances that significantly affected the
 1227 performance of subcontractors. Agencies shall report their
 1228 compliance with the requirements of this reporting system at
 1229 least annually and at the request of the division office. All
 1230 agencies shall cooperate with the division office in
 1231 establishing this reporting system. Except in construction

1232 contracting, all agencies shall review contracts costing in
 1233 excess of CATEGORY FOUR as defined in s. 287.017 to determine if
 1234 such contracts could be divided into smaller contracts to be
 1235 separately solicited and awarded, and shall, when economical,
 1236 offer such smaller contracts to encourage minority
 1237 participation.

1238 2. To report agency compliance with the provisions of
 1239 subparagraph 1. for the preceding fiscal year to the Governor
 1240 and Cabinet, the President of the Senate, and the Speaker of the
 1241 House of Representatives, ~~and the secretary of the Department of~~
 1242 ~~Labor and Employment Security~~ on or before February 1 of each
 1243 year. The report must contain, at a minimum, the following:

1244 a. Total expenditures of each agency by industry.

1245 b. The dollar amount and percentage of contracts awarded
 1246 to certified minority business enterprises by each state agency.

1247 c. The dollar amount and percentage of contracts awarded
 1248 indirectly to certified minority business enterprises as
 1249 subcontractors by each state agency.

1250 d. The total dollar amount and percentage of contracts
 1251 awarded to certified minority business enterprises, whether
 1252 directly or indirectly, as subcontractors.

1253 e. A statement and assessment of good faith efforts taken
 1254 by each state agency.

1255 f. A status report of agency compliance with subsection
 1256 (4)(6), ~~as determined by the Minority Business Enterprise~~
 1257 ~~Office~~.

1258 (3)(5)(a) Each agency shall, at the time the
 1259 specifications or designs are developed or contract sizing is

1260 determined for any proposed procurement costing in excess of
 1261 CATEGORY FOUR, as defined in s. 287.017, forward a notice to the
 1262 division ~~Office of Supplier Diversity~~ of the proposed
 1263 procurement and any determination on the designs of
 1264 specifications of the proposed procurement that impose
 1265 requirements on prospective vendors, no later than 30 days prior
 1266 to the issuance of a solicitation, except that this provision
 1267 shall not apply to emergency acquisitions. The 30-day notice
 1268 period shall not toll the time for any other procedural
 1269 requirements.

1270 (b) If the division ~~Office of Supplier Diversity~~
 1271 determines that the proposed procurement will not likely allow
 1272 opportunities for minority business enterprises, the division
 1273 ~~office~~ may, within 20 days after it receives the information
 1274 specified in paragraph (a), propose the implementation of
 1275 minority business enterprise utilization provisions or submit
 1276 alternative procurement methods that would significantly
 1277 increase minority business enterprise contracting opportunities.

1278 (c) Whenever the agency and the division ~~Office of~~
 1279 ~~Supplier Diversity~~ disagree, the matter shall be submitted for
 1280 determination to the head of the agency or the senior-level
 1281 official designated pursuant to this section as liaison for
 1282 minority business enterprise issues.

1283 (d) If the proposed procurement proceeds to competitive
 1284 solicitation, the division ~~office~~ is hereby granted standing to
 1285 protest, pursuant to this section, in a timely manner, any
 1286 contract award during competitive solicitation for contractual
 1287 services and construction contracts that fail to include

1288 minority business enterprise participation, if any responsible
 1289 and responsive vendor has demonstrated the ability to achieve
 1290 any level of participation, or, any contract award for
 1291 commodities where, a reasonable and economical opportunity to
 1292 reserve a contract, statewide or district level, for minority
 1293 participation was not executed or, an agency failed to adopt an
 1294 applicable preference for minority participation. The bond
 1295 requirement shall be waived for the division ~~office~~ purposes of
 1296 this subsection.

1297 (e) An agency may presume that a vendor offering no
 1298 minority participation has not made a good faith effort when
 1299 other vendors offer minority participation of firms listed as
 1300 relevant to the agency's purchasing needs in the pertinent
 1301 locality or statewide to complete the project.

1302 (f) Paragraph (a) will not apply when the division ~~Office~~
 1303 ~~of Supplier Diversity~~ determines that an agency has established
 1304 a work plan to allow advance consultation and planning with
 1305 minority business enterprises and where such plan clearly
 1306 demonstrates:

1307 1. A high level of advance planning by the agency with
 1308 minority business enterprises.

1309 2. A high level of accessibility, knowledge, and
 1310 experience by minority business enterprises in the agency's
 1311 contract decisionmaking process.

1312 3. A high quality of agency monitoring and enforcement of
 1313 internal implementation of minority business utilization
 1314 provisions.

1315 4. A high quality of agency monitoring and enforcement of

1316 contractor utilization of minority business enterprises,
 1317 especially tracking subcontractor data, and ensuring the
 1318 integrity of subcontractor reporting.

1319 5. A high quality of agency outreach, agency networking of
 1320 major vendors with minority vendors, and innovation in
 1321 techniques to improve utilization of minority business
 1322 enterprises.

1323 6. Substantial commitment, sensitivity, and proactive
 1324 attitude by the agency head and among the agency minority
 1325 business staff.

1326 (4) ~~(6)~~ Each state agency shall coordinate its minority
 1327 business enterprise procurement activities with the division
 1328 ~~Office of Supplier Diversity~~. At a minimum, each agency shall:

1329 (a) Adopt a minority business enterprise utilization plan
 1330 for review and approval by the division ~~Office of Supplier~~
 1331 ~~Diversity~~ which should require meaningful and useful methods to
 1332 attain the legislative intent in assisting minority business
 1333 enterprises.

1334 (b) Designate a senior-level employee in the agency as a
 1335 minority enterprise assistance officer, responsible for
 1336 overseeing the agency's minority business utilization
 1337 activities, and who is not also charged with purchasing
 1338 responsibility. A senior-level agency employee and agency
 1339 purchasing officials shall be accountable to the agency head for
 1340 the agency's minority business utilization performance. The
 1341 division ~~Office of Supplier Diversity~~ shall advise each agency
 1342 on compliance performance.

1343 (c) If an agency deviates significantly from its

1344 utilization plan in 2 consecutive or 3 out of 5 total fiscal
 1345 years, the division ~~Office of Supplier Diversity~~ may review any
 1346 and all solicitations and contract awards of the agency as
 1347 deemed necessary until such time as the agency meets its
 1348 utilization plan.

1349 Section 11. Subsections (4) and (6) of section 288.703,
 1350 Florida Statutes, are amended to read:

1351 288.703 Definitions.—As used in this act, the following
 1352 words and terms shall have the following meanings unless the
 1353 content shall indicate another meaning or intent:

1354 (4) "Certified minority business enterprise" means a
 1355 business which has been certified by the certifying organization
 1356 or jurisdiction in accordance with s. 287.0943~~(1) and (2)~~.

1357 (6) "Ombudsman" means an office or individual whose
 1358 responsibilities include coordinating with the Division of State
 1359 Purchasing ~~Office of Supplier Diversity~~ for the interests of and
 1360 providing assistance to small and minority business enterprises
 1361 in dealing with governmental agencies and in developing
 1362 proposals for changes in state agency rules.

1363 Section 12. Subsection (5) of section 288.712, Florida
 1364 Statutes, is amended to read:

1365 288.712 Guarantor funds.—

1366 (5) The board shall do all of the following to implement
 1367 the black contractors bonding program:

1368 (a) Conduct outreach, marketing, and recruitment of black
 1369 contractors.

1370 ~~(b) Provide assistance to the Office of Supplier Diversity~~
 1371 ~~within the Department of Management Services, as needed, to~~

1372 ~~certify new black business enterprises and to train appropriate~~
 1373 ~~department staff.~~

1374 (b)~~(e)~~ Provide business development services to black
 1375 business enterprises in the developmental and transitional
 1376 stages of the program, including financing and bonding
 1377 assistance and management and technical assistance.

1378 (c)~~(d)~~ Develop a mentor program to bring businesses into a
 1379 working relationship with black contractors in a way that
 1380 commercially benefits both entities and serves the purpose of
 1381 the program.

1382 (d)~~(e)~~ No later than December 31, 2007, prepare and submit
 1383 to the Governor a detailed report outlining and evaluating the
 1384 progress made in implementing the black contractors bonding
 1385 program.

1386 (e)~~(f)~~ Establish a process by which black contractors may
 1387 apply for contract assistance, financial and bonding assistance,
 1388 management and technical assistance, and mentoring
 1389 opportunities.

1390 Section 13. Paragraphs (k), (l), and (m) of subsection (9)
 1391 of section 288.955, Florida Statutes, are amended to read:

1392 288.955 Scripps Florida Funding Corporation.—

1393 (9) PERFORMANCE EXPECTATIONS.—In addition to the
 1394 provisions prescribed in subsection (8), the contract between
 1395 the corporation and the grantee shall include a provision that
 1396 the grantee, in cooperation with the Office of Tourism, Trade,
 1397 and Economic Development, shall report to the corporation on
 1398 performance expectations that reflect the aspirations of the
 1399 Governor and the Legislature for the benefits accruing to this

PCB GOA 10-03

Redraft - A

2010

1400 state as a result of the funds appropriated pursuant to this
 1401 section. These shall include, but are not limited to,
 1402 performance expectations addressing:

1403 (k) The establishment and implementation of policies to
 1404 promote supplier diversity by complying ~~using the guidelines~~
 1405 ~~developed by the Office of Supplier Diversity under s. 287.09451~~
 1406 ~~and to comply~~ with the ordinances, including any small business
 1407 ordinances, enacted by the county and which are applicable to
 1408 the biomedical research institution and campus located in this
 1409 state.

1410 ~~(l) The designation by the grantee of a representative to~~
 1411 ~~coordinate with the Office of Supplier Diversity.~~

1412 (l) ~~(m)~~ The establishment and implementation of a program
 1413 to conduct workforce recruitment activities at public and
 1414 private colleges and universities and community colleges in this
 1415 state which request the participation of the grantee.

1416
 1417 The contract shall require the grantee to provide information to
 1418 the corporation on the progress in meeting these performance
 1419 expectations on an annual basis. It is the intent of the
 1420 Legislature that, in fulfilling its obligation to work with
 1421 Florida's public and private colleges and universities, Scripps
 1422 Florida work with such colleges and universities regardless of
 1423 size.

1424 Section 14. Section 287.05721, Florida Statutes, is
 1425 amended to read:

1426 287.05721 Definitions.—As used in ss. 287.0571-287.0574,
 1427 the term:

1428 ~~(1) "Council" means the Council on Efficient Government.~~

1429 ~~(2)~~ "outsource" means the process of contracting with a
 1430 vendor to provide a service as defined in s. 216.011(1)(f), in
 1431 whole or in part, or an activity as defined in s.
 1432 216.011(1)(rr), while a state agency retains the responsibility
 1433 and accountability for the service or activity and there is a
 1434 transfer of management responsibility for the delivery of
 1435 resources and the performance of those resources.

1436 Section 15. Section 287.0573, Florida Statutes, is
 1437 repealed.

1438 Section 16. Subsections (1) through (4) of section
 1439 287.0574, Florida Statutes, are amended to read:

1440 287.0574 Business cases to outsource; review and analysis;
 1441 requirements.—

1442 (1) A business case to outsource having a projected cost
 1443 exceeding \$10 million in any fiscal year shall require:

1444 (a) An initial business case analysis conducted by the
 1445 state agency and submitted to ~~the council,~~ the Governor, the
 1446 President of the Senate, and the Speaker of the House of
 1447 Representatives at least 60 days before a solicitation is
 1448 issued. ~~The council shall evaluate the business case analysis~~
 1449 ~~and submit an advisory report to the state agency, the Governor,~~
 1450 ~~the President of the Senate, and the Speaker of the House of~~
 1451 ~~Representatives when the advisory report is completed, but at~~
 1452 ~~least 30 days before the agency issues the solicitation.~~

1453 (b) A final business case analysis conducted by the state
 1454 agency and submitted after the conclusion of any negotiations,
 1455 at least 30 days before execution of a contract, to ~~the council,~~

1456 the Governor, the President of the Senate, and the Speaker of
 1457 the House of Representatives.

1458 (2) A proposal to outsource having a projected cost that
 1459 ranges from \$1 million to \$10 million in any fiscal year shall
 1460 require:

1461 (a) An initial business case analysis conducted by the
 1462 state agency and submission of the business case, at least 30
 1463 days before issuing a solicitation, to ~~the council,~~ the
 1464 Governor, the President of the Senate, and the Speaker of the
 1465 House of Representatives.

1466 (b) A final business case analysis conducted by the state
 1467 agency and submitted after the conclusion of any negotiations,
 1468 at least 30 days before execution of a contract, to ~~the council,~~
 1469 the Governor, the President of the Senate, and the Speaker of
 1470 the House of Representatives.

1471 (3) A business case to outsource having a projected cost
 1472 that is less than \$1 million in any fiscal year shall require a
 1473 final business case analysis conducted by the state agency after
 1474 the conclusion of any negotiations ~~and provided at least 30 days~~
 1475 ~~before execution of a contract to the council. The council shall~~
 1476 ~~provide such business cases in its annual report to the~~
 1477 ~~Legislature.~~

1478 (4) For any proposed outsourcing, the state agency shall
 1479 develop a business case that justifies the proposal to
 1480 outsource. In order to reduce any administrative burden, the
 1481 ~~council may allow a~~ state agency shall ~~to~~ submit the business
 1482 case in the form and manner required by the budget instructions
 1483 issued pursuant to s. 216.023(1), (2), and (4)(a)7., augmented

1484 with additional information if necessary, to ensure that the
 1485 requirements of this section are met. The business case is not
 1486 subject to challenge or protest pursuant to chapter 120. The
 1487 business case must include, but need not be limited to:

1488 (a) A detailed description of the service or activity for
 1489 which the outsourcing is proposed.

1490 (b) A description and analysis of the state agency's
 1491 current performance, based on existing performance metrics if
 1492 the state agency is currently performing the service or
 1493 activity.

1494 (c) The goals desired to be achieved through the proposed
 1495 outsourcing and the rationale for such goals.

1496 (d) A citation to the existing or proposed legal authority
 1497 for outsourcing the service or activity.

1498 (e) A description of available options for achieving the
 1499 goals. If state employees are currently performing the service
 1500 or activity, at least one option involving maintaining state
 1501 provision of the service or activity shall be included.

1502 (f) An analysis of the advantages and disadvantages of
 1503 each option, including, at a minimum, potential performance
 1504 improvements and risks.

1505 (g) A description of the current market for the
 1506 contractual services that are under consideration for
 1507 outsourcing.

1508 (h) A cost-benefit analysis documenting the direct and
 1509 indirect specific baseline costs, savings, and qualitative and
 1510 quantitative benefits involved in or resulting from the
 1511 implementation of the recommended option or options. Such

PCB GOA 10-03

Redraft - A

2010

1512 analysis must specify the schedule that, at a minimum, must be
1513 adhered to in order to achieve the estimated savings. All
1514 elements of cost must be clearly identified in the cost-benefit
1515 analysis, described in the business case, and supported by
1516 applicable records and reports. The state agency head shall
1517 attest that, based on the data and information underlying the
1518 business case, to the best of his or her knowledge, all
1519 projected costs, savings, and benefits are valid and achievable.
1520 As used in this section, the term "cost" means the reasonable,
1521 relevant, and verifiable cost, which may include, but is not
1522 limited to, elements such as personnel, materials and supplies,
1523 services, equipment, capital depreciation, rent, maintenance and
1524 repairs, utilities, insurance, personnel travel, overhead, and
1525 interim and final payments. The appropriate elements shall
1526 depend on the nature of the specific initiative. As used in this
1527 section, the term "savings" means the difference between the
1528 direct and indirect actual annual baseline costs compared to the
1529 projected annual cost for the contracted functions or
1530 responsibilities in any succeeding state fiscal year during the
1531 term of the contract.

1532 (i) A description of differences among current state
1533 agency policies and processes and, as appropriate, a discussion
1534 of options for or a plan to standardize, consolidate, or revise
1535 current policies and processes, if any, to reduce the
1536 customization of any proposed solution that would otherwise be
1537 required.

1538 (j) A description of the specific performance standards
1539 that must, at a minimum, be met to ensure adequate performance.

1540 (k) The projected timeframe for key events from the
 1541 beginning of the procurement process through the expiration of a
 1542 contract.

1543 (l) A plan to ensure compliance with the public records
 1544 law.

1545 (m) A specific and feasible contingency plan addressing
 1546 contractor nonperformance and a description of the tasks
 1547 involved in and costs required for its implementation.

1548 (n) A state agency's transition plan for addressing
 1549 changes in the number of agency personnel, affected business
 1550 processes, employee transition issues, and communication with
 1551 affected stakeholders, such as agency clients and the public.
 1552 The transition plan must contain a reemployment and retraining
 1553 assistance plan for employees who are not retained by the state
 1554 agency or employed by the contractor.

1555 (o) A plan for ensuring access by persons with
 1556 disabilities in compliance with applicable state and federal
 1557 law.

1558 (p) A description of legislative and budgetary actions
 1559 necessary to accomplish the proposed outsourcing.

1560 Section 17. This act shall take effect July 1, 2010.