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**HOUSE OF REPRESENTATIVES
SMARTER GOVERNMENT COUNCIL
ANALYSIS**

BILL #: CS/HB 395
RELATING TO: Commodity Procurement
SPONSOR(S): Representative(s) Detert & others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 4 NAYS 0
 - (2) SMARTER GOVERNMENT COUNCIL YEAS 12 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

State agencies must follow uniform procedures when procuring commodities and contractual services in order to ensure a competitive and fair bidding process. "Commodity" is defined to include various supplies, materials, goods, merchandise, food, equipment, and other personal property purchased, leased, or otherwise contracted for by the state and its agencies. It appears that this definition would include the purchase of *software* and *implementation services*, although those items are not expressly mentioned.

Current law also provides for deferred-payment commodity contracts and specifies the criteria agencies must follow when entering into contracts that require deferred payments and the payment of interest, including criteria pertaining to the use of consolidated financing in such contracts. The State Comptroller's Office is considering the replacement of the statewide accounting system, known as FLAIR, and the state cash management system. This office is considering the use of consolidated financing as a means of acquiring a new, integrated, accounting system.

CS/HB 395 amends those provisions of law pertaining to deferred-payment commodity contracts and consolidated financing of deferred-payment purchases to expressly allow the purchase of software and implementation services for the purpose of replacing the state accounting and state cash management systems.

By expressly mentioning software and implementation services in the provisions relating to deferred-payment and consolidated financing, CS/HB 395 reinforces that an agency may utilize these provisions to purchase software and implementation services. *However, the language of CS/HB 395 effectively limits the use of deferred-payment commodity contracts and consolidated financing for the purchase of software or implementation services for the sole purpose of replacing the state accounting and cash management systems. Please see "Effect of Proposed Changes" for further discussion.*

CS/HB 395 does not appear to have a fiscal impact on local governments. However, the acquisition of a new state accounting system will have a fiscal impact on state government. Please see the "Fiscal Analysis and Economic Impact Statement" for fiscal comments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Procurement of Personal Property and Services

Chapter 287, F.S., deals with public procurement of personal property and services. This chapter requires state agencies¹ to follow uniform procedures when procuring commodities and contractual services in order to ensure a competitive and fair bidding process. State agencies are permitted to use any one of the following forms of solicitation when initiating the competitive bid process: invitation to bid,² request for proposals,³ request for a quote,⁴ or an invitation to negotiate.⁵

The definition of commodity includes any of the various supplies, materials, goods, merchandise, food, equipment, and other personal property purchased, leased, or otherwise contracted for by the state and its agencies. Although this definition does not specifically reference *software* or *implementation services*, it can be reasonably inferred that the inclusion of "goods" and "equipment" in the definition would include those items.

When any contract for a commodity requires deferred payments and the payment of interest, such a contract must be submitted to the Comptroller for the purpose of a preaudit review and approval prior to acceptance by the State. Section 287.063, F.S., establishes a maximum interest rate for

¹ "Agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the State University System.

² "Invitation to bid" means a written solicitation for competitive sealed bids with the title, date, and hour of the public bid opening designated and specifically defining the commodity, group of commodities, or services for which bids are sought. It includes instructions prescribing all conditions for bidding and shall be distributed to all prospective bidders simultaneously. The invitation to bid is used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required. A written solicitation includes a solicitation published or transmitted by electronic means.

³ "Request for proposals" means a written solicitation for competitive sealed proposals with the title, date, and hour of the public opening designated. A written solicitation includes a solicitation published or transmitted by electronic means. The request for proposals is used when the agency is incapable of specifically defining the scope of work for which the commodity, group of commodities, or contractual service is required and when the agency is requesting that a qualified offeror propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.

⁴ "Request for a quote" means a solicitation that calls for pricing information for purposes of competitively selecting and procuring commodities and contractual services from qualified or registered vendors.

⁵ "Invitation to negotiate" means a written solicitation that calls for responses to select one or more persons or business entities with which to commence negotiations for the procurement of commodities or contractual services.

such contracts, and requires the Comptroller to establish, by rule,⁶ criteria for approving purchases made under deferred-payment contracts which require the payment of interest.

Section 287.064, F.S., pertains to consolidated financing of deferred-payment purchases. This section requires the Division of Bond Finance of the State Board of Administration and the Comptroller to plan and coordinate deferred-payment purchases made by or on behalf of the State or its agencies. The Division of Bond Finance is responsible for negotiating the terms of the agreement, and the Comptroller is responsible for executing the agreement to establish master equipment financing agreements⁷ for consolidated financing of deferred-payment, installment sale, or lease purchases with a financial institution or a consortium of financial institutions.

FLAIR and Cash Management System Replacement

According to the Department of Banking and Finance, the statewide accounting system, known as FLAIR,⁸ and the state Cash Management System (CMS) are outmoded and need to be replaced with modern software. These two systems are used by the State of Florida to conduct its payroll, accounting, and cash management functions. The systems are not integrated; they are stand-alone systems between which data is transferred through interfaces. The applications used by CMS facilitate the Treasurer's responsibilities for monitoring cash levels and activities in State bank accounts, receipt and disbursements of funds, investment of available balances, performance of related accounting functions, and cash management operations and consultations.⁹

These two systems were developed using technology from the 1970's and 1980's, and therefore lack modern financial management tools. For example, the current state accounting system, FLAIR, and its chart of accounts were designed to capture expenditure information by organizational entity and object of expenditure rather than by activity or unit of output. Because of this, FLAIR cannot currently provide policy makers information on how state agencies expend appropriated funds on their activities or how state services' costs vary between program components or between state agencies. In addition, the volume of transactions processed by FLAIR far exceed its original design capabilities. In sum, the Department of Banking and Finance believes that "the State is in jeopardy of suffering a catastrophic failure of these systems if they are not soon replaced."¹⁰

The State Comptroller's Office wants to replace FLAIR and CMS with an enterprise resource planning software solution. According to the Department of Banking and Finance, this software solution would establish the necessary foundation for an integrated financial management system and provide the State with numerous benefits. In order to finance this new system, the State Comptroller's Office is considering the use of the Consolidated Equipment Financing Program

⁶ Chapter 3A-3, F.A.C., deals with the Consolidated Equipment Financing Program and establishes the role of the State Comptroller in this program.

⁷ Rule 3A-3.001(1)(e), F.A.C., defines "Master Equipment Financing Agreement" as "a master equipment financing agreement to be executed pursuant to Section 287.064, Florida Statutes, for the purpose of implementing a consolidated financing program for the acquisition of equipment by deferred-payment purchases made by or on behalf of the State of Florida or its agencies or by or on behalf of state community colleges. The term 'Master Equipment Financing Agreement' includes all agreements and contracts necessary or convenient for the establishment of a Master Equipment Financing Agreement."

⁸ Florida Accounting Information Resource (FLAIR).

⁹ Pursuant to an electronic transmission sent by the Department of Banking and Finance's Director of Accounting on December 14, 2001.

¹⁰ Pursuant to an electronic transmission sent by the Department of Banking and Finance's Director of Accounting on December 14, 2001.

(CEFP), created by s. 287.064, F.S. The CEFP arranges for low-cost, tax-free interest financing; the current five year financing rate is 4.23%.¹¹

C. EFFECT OF PROPOSED CHANGES:

Currently, the definition of commodity in Chapter 287, F.S., appears to include software and implementation services. Accordingly all of the provisions within this chapter pertaining to commodities would apply to software and implementation services. More particularly, if an agency wanted to purchase software and implementation services, the agency would be subject to the competitive bid process for commodities as provided for in Chapter 287, F.S., and the provisions of deferred-payment and consolidated financing could apply to such purchases.

CS/HB 395 amends those provisions of law pertaining to deferred-payment commodity contracts and consolidated financing of deferred-payment purchases to expressly allow the purchase of software and implementation services for the purpose of replacing the state accounting and state cash management systems.

CS/HB 395 will afford the State Comptroller's Office the opportunity of utilizing consolidated financing for the purpose of replacing the state accounting and cash management systems. The Consolidated Equipment Financing Program (CEFP) arranges for low-cost, tax-free interest financing; the current five year financing rate is 4.23 percent.

By expressly mentioning software and implementation services in the provisions relating to deferred-payment and consolidated financing, CS/HB 395 reinforces that an agency may utilize these provisions to purchase software and implementation services. *However, the language of this CS/HB 395 effectively limits the use of deferred-payment commodity contracts and consolidated financing for the purchase of software or implementation services for the sole purpose of replacing the state accounting and cash management systems. Therefore, if an agency wanted to use a deferred-payment commodity contract or consolidated financing to purchase software or implementation services for any reason other than replacing the state accounting and cash management systems, the agency would be prohibited from doing so as a result of the language in CS/HB 395.*

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments" section.

¹¹ Pursuant to an electronic transmission sent by the Department of Banking and Finance's Director of Accounting on December 12, 2001.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Department of Banking and Finance, this bill does not require any additional appropriations because it simply clarifies that the State Comptroller's Office can purchase software and implementation services as "commodities" for the purpose of replacing the current state accounting and cash management systems. The Department of Banking and Finance estimates that the five year cost for the implementation of a new enterprise resource planning solution, to replace the current systems, would be approximately \$91.9 million.¹²

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This council substitute does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This council substitute does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This council substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

¹² Pursuant to an email received from the Department of Banking and Finance's Office of Legislative Affairs on December 11, 2001.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 10, 2002, the Council for Smarter Government adopted a strike-all amendment to HB 395. The original bill amends the definition of commodity by including the following statement in the definition: "For the purpose of replacing the state accounting and cash management systems, the term 'commodity' includes accounting software and implementation and project management services." This amended definition effectively limits the classification of software and implementation services as commodities to the sole instance of when such items are purchased in order to replace the state accounting and cash management systems. Accordingly, if any agency wanted to purchase software or implementation services for any reason other than replacing the state accounting and cash management systems, software and implementation services would not be classified as a commodities, so the agency would not be subject to the competitive bid requirements set forth in Chapter 287, F.S. The strike-all amendment maintains the current definition of commodity in Chapter 287, F.S., and only makes changes to those provisions relating to deferred-payment commodity contracts and consolidated financing of deferred-payment purchases.

The Council for Smarter Government reported the bill favorably as a council substitute.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Lauren Cyran, M.S.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE SMARTER GOVERNMENT COUNCIL:

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