

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/SB 1146

SPONSOR: Governmental Oversight and Productivity Committee and Senator Argenziano

SUBJECT: Purchasing and Procurement

DATE: March 22, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	Fav/CS
2.	_____	_____	GA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill authorizes the Department of Management Services (DMS) to establish the Center for Efficient Government, and provides for the powers and duties of the center. The bill requires that an agency develop a detailed business case before a service may be outsourced, and requires that an agency submit the proposed business case with the agency's legislative budget request. The bill prescribes the process for approval if the outsourcing is not included in the agency's approved operating budget, and provides that an agency may not privatize a service without specific authority to do so. The bill prescribes specific contract requirements for contracts exceeding \$250,000, and the approval process to be followed for certain contract amendments. The bill specifies that when a contract is in excess of \$1 million, one of the negotiators must be certified as a contract negotiator by the DMS.

The bill creates section 215.4211, F.S., to provide for optional review of state agency contracts by the Chief Financial Officer.

The bill repeals section 14.203, F.S.; which currently provides for the existence and duties and functions of the State Council on Competitive Government.

The bill appropriates funds and authorizes positions for the Center for Efficient Government, specifies restrictions on contractor supervision of state employees, and prohibits contractor involvement in certain procurements.

This bill creates unnumbered sections of the Florida Statutes, creates section 215.4211 of the Florida Statutes, and repeals section 14.203 of the Florida Statutes.

II. Present Situation:

State Planning and Budgeting Process: Article III, s. 19 of the State Constitution states that:

. . . general law shall prescribe the adoption of annual state budgetary and planning processes and require that detail reflecting the annualized costs of the state budget and reflecting the nonrecurring costs of the budget requests shall accompany state department and agency legislative budget requests, the governor's recommended budget, and appropriation bills. For purposes of this subsection, the terms department and agency shall include the judicial branch.

The power to appropriate is an exclusive legislative power that may not be delegated; however, this power is limited given the State Constitution's requirement that general law prescribe the adoption of annual state budgetary and planning processes and its provision of the gubernatorial line item veto power.¹

The constitutionally required state budgetary and planning processes are set forth in ch. 216, F.S. These require a legislative budget request (LBR)² to be submitted to the Legislature and Governor by the head of each state agency³ at a time scheduled by the Governor, but no later than September 15th of each year, and Judicial branch and the Division of Administrative Hearings no later than September 15th of each year.

The legislative budget instructions are jointly developed by the appropriations committees of the Legislature and the Executive Office of the Governor and must be transmitted to the agencies, judicial branch, and Division of Administrative Hearings no later than June 15th of each year.⁴

For each program, the LBR must contain: (a) the legal authority for a program, a statement of purpose, and approved program components; (2) information on expenditures for the prior fiscal year (FY), current-year estimated expenditures, and requested expenditures for the next FY according to appropriation category; (3) details on trust funds and fees; (4) the total number of authorized, fixed, and requested positions; (5) a description of and justification for changes in amounts and positions requested for the next FY; (6) information resource requests; (7) legislatively approved output and outcome performance measures and any proposed revisions to measures; (8) proposed performance standards; (9) prior year performance data; and (10) proposed performance incentives and disincentives.⁵

¹ Article III, sections 8 and 19 of the State Constitution.

² "Legislative budget request" means, ". . . a request to the Legislature, filed pursuant to s. 216.023, or supplemental detailed requests filed with the Legislature, for the amounts of money such agency or branch believes will be needed in the performance of the functions that it is authorized, or which it is requesting authorization by law, to perform." Section 216.011(1)(y), F.S.

³ "State agency" or "agency" means, ". . . any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. For purposes of this chapter and chapter 215, 'state agency' or 'agency' includes, but is not limited to, state attorneys, public defenders, the capital collateral regional counsels, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission. Solely for the purposes of implementing s. 19(h), Art. III of the State Constitution, the terms "state agency" or "agency" include the judicial branch." Section 216.011(1)(qq), F.S.

⁴ Section 216.023(1) through (3), F.S.

⁵ Section 287.023(4), F.S.

Role of the Chief Financial Officer: Pursuant to Art. IV, s. 4 of the State Constitution, the Chief Financial Officer is the member of the Cabinet charged serving as the chief fiscal officer of the state, settling and approving accounts against the state, and keeping all state funds and securities. Pursuant to s. 215.42, F.S., the Chief Financial Officer may require proof of delivery and receipt of purchases before honoring any voucher for payment, and s. 215.422, F.S., provides the procedure to be followed in paying invoices. A report released in 1999 by the Public Corruption Study Commission⁶ recommended that the role of the Comptroller be enhanced to allow greater review and input in the contracting process.⁷ The report specifically recommended that s. 215.42, F.S., be amended to provide that the Comptroller could require terms and conditions in contracts to ensure proper delivery and receipt of deliverables, and could review and comment upon, but not disprove, agency procurement contracts and purchase orders.⁸ Legislation was subsequently introduced⁹ that would have amended s. 215.42, F.S., as recommended in the report; the legislation was not enacted.

Agency Procurement of Commodities and Services: The comprehensive process contained in ch. 287, F.S., for the procurement of commodities and contractual services by executive agencies¹⁰ sets forth numerous requirements for fair and open competition among vendors, agency maintenance of written documentation that supports procurement decisions, and implementation of monitoring mechanisms. Legislative intent language for the chapter explains that the process is necessary in order to:

- Reduce improprieties and opportunities for favoritism;
- Insure the equitable and economical award of public contracts; and
- Inspire public confidence in state procurement.¹¹

The Department of Management Services (DMS) is statutorily designated as the central executive agency procurement authority and its responsibilities include: overseeing agency implementation of the ch. 287, F.S., competitive procurement process;¹² creating uniform agency procurement rules;¹³ implementing the online procurement program;¹⁴ and establishing state term contracts.¹⁵ The agency procurement process is also partly decentralized in that agencies, except in the case of state term contracts, may procure goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through the DMS.

⁶ Established pursuant to Executive Order 99-237, to review laws and prepare specific recommendations on how Florida might better prevent and respond to acts of public corruption.

⁷ Public Corruption Study Commission, Report to the Governor, December 15, 1999, p.6.

⁸ *Id.* at 24.

⁹ Senate Bill 1100 from the 2000 Regular Session.

¹⁰ Section 287.012(1), F.S., provides that the term “agency” for purposes of ch. 287, F.S., “. . . 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 university and college boards of trustees or the state universities and colleges.”

¹¹ Section 287.001, F.S.

¹² Sections 287.032 and 287.042, F.S.

¹³ Sections 287.032(2) and 287.042(3), (4), and (12), F.S.

¹⁴ Section 287.057(23), F.S.

¹⁵ Sections 287.042(2), F.S.; 287.056 and 287.1345, F.S.

Contract Extensions and Renewals: Section 287, F.S., defines and provides for the use of contract extensions and renewals. “Extension” means an increase in the time allowed for the contract period due to circumstances which, without fault of either party, make performance impracticable or impossible, or which prevent a new contract from being executed, with or without a proportional increase in the total dollar amount, with any increase to be based on the method and rate previously established in the contract.¹⁶ An extension of a contract for contractual services must be in writing, may not exceed 6 months, and must be subject to the same terms and conditions of the initial contract. There may be only one extension of a contract, unless the failure to meet the criteria set forth in the contract for completion of the contract is due to events beyond the control of the contractor.¹⁷

“Renewal” means contracting with the same contractor for an additional contract period after the initial contract period, only if pursuant to contract terms specifically providing for such renewal.¹⁸

Contracts for commodities or contractual services may be renewed for a period that may not exceed 3 years or the term of the original contract, whichever period is longer. Renewal of a contract for commodities or contractual services must be in writing and is subject to the same terms and conditions set forth in the initial contract. If the commodity or contractual service is purchased as a result of a competitive procurement, the price of the commodity or contractual service to be renewed must be specified in the bid, proposal, or reply. A renewal contract may not include any compensation for costs associated with the renewal. Renewals must be contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds.¹⁹

Outsourcing - Procurement and Contracting: During the past few years, as the pace of the outsourcing²⁰ of functions previously performed by governmental entities has increased, the number of audits and reports finding issues and problems in the procurements and contracts leading to the outsourcing has concurrently increased. During the first third of the 2004-2005 fiscal year, the Auditor General’s Office released 18 operational audit reports concerning state agency policy implementation and spending. Of the 18 reports, 10²¹ identified deficiencies in agency outsourcing, contracting, and procurement activities.²² Specifically, these reports

¹⁶ Section 287.012(14), F.S.

¹⁷ Section 287.057(13), F.S.

¹⁸ Section 287.012(20), F.S.

¹⁹ Section 287.057(14)(a), F.S.

²⁰ Neither “outsource” nor “privatize” is currently defined for general applicability in Florida statute. Section 409.1671, F.S., defines “privatize” to mean to contract with competent, community-based agencies, for the purposes of the section.

²¹ The 10 Auditor General operational audit reports are: (1) *Real Estate Strategic Planning and Management Contract*, Department of Management Service, Report No. 2005-015, July 2004; (2) *MyFlorida Alliance, State Technology Office*, Report No. 2005-008, July 2004; (3) *Department of Veterans’ Affairs*, Report No. 2005-023, August 2004; (4) *Selected Administrative Functions*, Department of Management Services, Report No. 2005-035, September 2004; (5) *Deferred Compensation Program*, Department of Financial Services, Report No. 2005-038, September 2004, (6) *Pharmaceutical Contracts*, Department of Corrections, Report No. 2005-037, September 2004; (7) *Contracts and Other-Personal-Services Employment*, Department of Revenue, Report No. 2005-041, October 2004; (8) *Outsourcing of Canteen Operations*, Department of Corrections, Report No. 2005-044, October 2004; (9) *People First*, Department of Management Services, Report No. 2005-047, October 2004; and (10) *Pharmaceuticals at County Health Departments*, Department of Health, Report No. 2005-039, October 2004.

²² The eight remaining operational audit reports evaluated agency program execution and identified deficiencies relating to

documented a critical need for greater legislative oversight and improved executive agency performance in the areas of: (1) outsourcing initiative justification and planning; (2) fairness and competition in state procurement; (3) compliance with procurement law; (4) contract drafting; (5) vendor performance monitoring; and (6) risk management. A variety of procurement and contracting issues have also been documented in several more recent reports of the Auditor General.²³ The Office of Program Policy Analysis and Government Accountability released 78 reports from 1996 to 2003 that have addressed privatization of programs and services.²⁴ Recent reports by both OPPAGA²⁵ and agency inspectors general²⁶ have mirrored the concerns raised in Auditor General reports.

Concise data on number of outsourcing initiatives undertaken by state agencies is somewhat difficult to come by, though the Center for Efficient Government (Center) has released information²⁷ stating that there were 138 outsourced projects between January, 1999 and June, 2004. Of those, four projects alone account for at least \$2.25 *billion*.²⁸

Current State Council on Competitive Government: In 1994, s. 14.203, F.S.,²⁹ was enacted to create the State Council on Competitive Government, which is composed of the Governor and Cabinet sitting as the Administration Commission,³⁰ for the purpose of identifying and evaluating opportunities for outsourcing and privatization in executive branch agencies.³¹ The terms “outsourcing” and “privatization” are not specifically utilized; instead, the section uses the term “commercial activity,” defined as, “. . . an activity that provides a product or service that is available from a private source.”³² The Legislature delegated authority to the Council to identify, upon its own initiative or upon identification by the OPPAGA, commercial activities that are currently being performed by state agencies. When the Council determines that a commercial activity might be better provided by requiring competition with private sources or other state

specific agency functions.

²³ Auditor General Report Nos. 2005-047, 2005-015, 2005-008, and 2005-116.

²⁴ OPPAGA Report No. 04-02.

²⁵ See *Progress Report: DJJ Prevention Makes Progress; More Analysis and Contract Monitoring Needed*, Department of Juvenile Justice, Report No. 04-47, July 2004 (recommending that that Department of Juvenile Justice adopt a formal monitoring process for its prevention program contracts); and *Progress Report: Inmate Health Care Consolidation Progressing; Privatization Requires Agency Vigilance*, Department of Corrections, Report No. 04-61, August 2004 (recommending that the Department of Corrections carefully analyze the costs and benefits of its privatization initiatives and include detailed performance measures and sanctions for non-compliance in its privatization contracts).

²⁶ See *Department Contract Management*, Department of Management Services, Office of Inspector General, Report No. 2004-01, April 19, 2004 (finding that the Department of Management Services: has no methods to track, monitor or report on contracts; has insufficient policies and procedures to guide staff through the procurement and management of service contracts; and has failed in some cases to comply with purchasing statutes and to maintain documentation that justify purchasing actions); State of Florida, Chief Inspector General’s Office, Case No. 200403230002, July 14, 2004 (finding that Department of Children and Families’ staff had committed procurement improprieties).

²⁷ Current as of June 30, 2004.

²⁸ Department of Children and Families’ Community-Based Care privatization of foster care valued at \$1.4 billion; Department of Corrections’ comprehensive health care services to inmates in Region IV valued at \$300 million; Department of Management Services’ human resources outsourcing initiative valued at \$300 million; Department of Corrections’ food service operations outsourcing valued at \$275 million.

²⁹ See Chapter 94-249, s. 50, L.O.F.

³⁰ See Section 14.202, F.S. (creating the Administration Commission as part of the Executive Office of the Governor and requiring action by the commission to be approved by the Governor and at least two other members of the commission).

³¹ The terms “outsourcing” and “privatization” are not defined in Florida statute for purposes of general applicability.

³² Section 14.203, F.S.

agency service providers,³³ the section permits the Council to recommend that a state agency engage in any process, including competitive bidding, which creates competition for the activity with private sources or other state agency service providers.

Additionally, the section authorizes the Council to:

- Adopt rules to implement any provision of the section.
- Hold public hearings or conduct studies.
- Consult with private sources.
- Require a state agency to conduct an in-house cost estimate, a management study, or any other hearing, study, review, or cost estimate concerning any aspect of an identified state service.
- Develop and require for use by state agencies methods to accurately and fairly estimate and account for the cost of providing an identified state service.
- Require that an identified state service be submitted to competitive bidding or another process that creates competition with private sources or other governmental entities.
- Prescribe, in consultation with affected state agencies, the specifications and conditions of purchase procedures that must be followed by a state agency or a private source engaged in competitive bidding to provide an identified state service.
- Award a contract to a state agency currently providing the service, another state agency, a private source, or any combination of such entities, if the bidder presents the best and most reasonable bid. In awarding such a contract, the council must:
- Give consideration as to how to transfer the program back if the bidder is not successful in carrying out the requirements of the contract; and
- Require bids to include an analysis of health care benefits, retirement, and workers' compensation insurance for employees of the contractor, which are reasonably comparable to those provided by the state.
- Determine the terms and conditions of a contract for service or interagency contract to provide an identified state service or other commercial activity, including requiring that a minimum level of health insurance coverage for employee and employee family coverage, whether employer-paid or employee-paid, or a combination thereof, is available to employees.³⁴
- Require the state agency to encourage state employees to organize and submit a bid for the identified state service.

In determining whether an identified state service should be submitted to competitive bidding, the council must consider, at a minimum:

³³ The section refers to the consideration of such commercial activities as "identified state service." This term is defined as, ". . . a service provided by the state that is under consideration to determine whether the service may be better provided through competition with private sources." Section 14.203(1)(b), F.S.

³⁴ See, s. 110.107, F.S. (defining the term "layoff" for purposes of ch. 110, F.S., as the, ". . . termination of employment due to a shortage of funds or work, or a material change in the duties or organization of an agency, including the outsourcing or privatization of an activity or function previously performed by career service employees."); and s. 110.227(2), F.S. (requiring the Department of Management Services to adopt rules governing career service layoffs requiring that consideration be given to comparative merit, demonstrated skills, and the employee's experience).

- Any constitutional and legal implications that may arise as a result of such action.
- The cost of supervising the work of any private contractor.
- The total cost to the state agency of such agency's performance of a service, including all indirect costs related to that state agency and costs of such agencies as the Chief Financial Officer, the Attorney General, and other such support agencies to the extent such costs would not be incurred if a contract is awarded. Costs for the current provision of the service shall be considered only when such costs would actually be saved if the contract were awarded to another entity.

State agencies must perform any activities required by the Council in the performance of its duties or the exercise of its powers under the section. Contracts entered into by the council to implement the current section, and any decision regarding whether a state agency shall engage in competitive bidding, are exempt from state law regulating or limiting purchasing practices and decisions, including ch. 120, F.S. A contract entered into under the section constitutes an executive branch recommendation, and does not take effect until a specific appropriation is provided by law to fund the contract, and must include language that its effect is contingent upon a specific appropriation.

The Council has not met since the late 1990s and during the past several years, agency outsourcing and privatization projects have been initiated and executed at the individual agency level, rather than through any direction of the Council. The solicitations and ensuing contracts resulting from this approach have often been the subject of the reports and audits discussed above.

Current Center for Efficient Government: On March 11, 2004, the Governor entered an executive order³⁵ creating the Center for Efficient Government (Center) within the DMS. Directives in the order included requiring the Center to: (a) establish a five-member oversight panel of agency heads; (b) create a centralized, multi-stage, gate process for the review, evaluation, and approval of agency outsourcing initiatives; (c) provide documentation of the completion of each stage to the Legislature prior to initiation of the next stage; (d) review past outsourcing projects for best business practices and existing outsourcing plans to ensure agency compliance with Center standards; (f) maintain a database with information about initiatives being performed by contractors that includes a description of the work being performed, applicable performance measures, and contractor and subcontractor identification; and (g) implement a program to transition impacted state employees.³⁶

Pursuant to the Governor's order, the Center began its operations in April 2004. Currently, the Secretary of the DMS chairs the Center for Efficient Government Oversight Board (Board) and its four other members consist of the Secretaries for the Departments of Health and Transportation and the Executive Directors for the Department of Revenue and the Agency for Workforce Innovation. The Center's policies require all agency outsourcing projects to go through a sequential review and validation process, referred to as the "Gate Process." The Board,

³⁵ Executive Order No. 04-45.

³⁶ *Id.* at 1-2; *See also* Executive Order No. 04-89 (entered on April 30, 2004, and directing agencies to address state employee transition in its business case and to develop job placement policies that include requiring contractor employment interviews for impacted employees and reemployment and retraining assistance plans for employees not retained by the agency or hired by the contractor).

however, only reviews and validates projects estimated to be valued at more than \$10 million per fiscal year and enterprise wide projects that are proposed by the Center. The term “outsourced function” is defined by the Center as “one which was previously performed by state employees and is now operated by a third party entity while the state remains fully responsible for the provision of affected services and maintains control over management and policy decisions.”³⁷

The Center has published process standards for the five stages of the Gate Process established by the Center: (1) Business Case Development; (2) Procurement Process; (3) Contract Management; (4) Transition Management: Training, Communications, Workforce; and (5) Post Implementation. As an agency completes each stage, the Board is to review the agency’s progress and determine whether to validate that progress so that the agency may continue to the next stage. Center materials indicate that statutory authority is required for agency outsourcing projects.³⁸

Since the Center is not created in statute, does not have statutorily-assigned functions and duties, and does not have general or specific statutory authority to enact rules, the standards and guidelines it enacts do not flow from a legislative delegation of authority. Further, even though the Center process is “voluntary,” the Center standards and guidelines may conflict with the specific legislative provisions contained in s. 14.203, F.S., which provide a different process and standard.

Furthermore, the scope of powers of the Center under the executive order does not extend throughout the executive branch. The executive order by its own terms applies only to those agencies whose heads are appointed by the Governor.³⁹ Other agencies are requested in the executive order to cooperate with the Center.⁴⁰ Application of the Center’s outsourcing requirements only to those agencies with heads that are appointed by the Governor is inconsistent with the application of statutory procurement requirements, such as those contained in ch. 287, F.S.,⁴¹ to all state agencies regardless of whether the agency head is appointed by the Governor or the Governor and Cabinet, or where the agency head is a constitutional officer or collegial body.

Training for Negotiators and Contracting Personnel: Currently, s. 287.057(17), F.S., provides that for contracts in excess of \$150,000, an agency head shall appoint: (a) at least three persons to evaluate proposals who collectively have experience and knowledge in the program areas and service requirements for which commodities or services are sought; and (b) at least three persons to conduct negotiations during a competitive procurement who collectively have experience and knowledge in negotiating contracts, contract procurement, and the program areas and service requirements for which commodities and services are sought.

³⁷ See Center Frequent Questions and Answers, February 16, 2005, posted at http://dms.myflorida.com/dms/administration/center_for_efficient_government/center_for_efficient_government_faqs.

³⁸ *Id.*

³⁹ The process established in s. 14.203, F.S., applies to all executive branch entities and the entity responsible is the Governor and Cabinet sitting as the Administration Commission.

⁴⁰ See Executive Order No. 04-45 at Section 2. (providing for the order’s applicability).

⁴¹ Chapter 287, F.S., contains statutory requirements for the procurement of commodities and contractual services.

Chapter 287, F.S., also provides that for each contractual services contract, an agency shall designate a contract manager responsible for enforcing performance of the contract terms and conditions, and at least one employee as contract administrator responsible for maintaining a contract file and financial information on all contractual services contracts. The contract administrator shall serve as a liaison with the contract managers and the Department of Management Services.

Audit Report No. 2003-3, by the Inspector General of the Executive Office of the Governor, recommended that the DMS undertake a statewide training initiative for contract managers and monitors. In its response to that report, the DMS agreed with the recommendation, and subsequently developed a training and certification program for purchasing professionals. The DMS' training and certification manual⁴² states that the purposes of the program are to both provide Florida purchasing professionals training, and encourage and recognize professional development in the field. The training program is based upon standards developed by the National Institute of Governmental Purchasing (NIGP),⁴³ and contains Florida-specific training. The training program can lead ultimately to both nationally-recognized and state-recognized certifications. One of the certifications resulting from the DMS training program is a "Florida Certified Negotiator." As of March 7, 2005, the DMS has trained and recognized ten agency employees as "Florida Certified Negotiators."

III. Effect of Proposed Changes:

Section 1. Provides definitions of "agency," "contractor," "outsourcing," "performance standards," "privatize," and "service" for purposes of the section. "Outsourcing" and "privatize," have not heretofore been defined in Florida Statute, and have sometimes been used interchangeably.

The bill authorizes the Department of Management Services (DMS) to establish the Center for Efficient Government (Center), which shall promote best practices in procurement and contracting. The bill provides that the Center shall assist agencies, when requested, in complying with the requirements of this section. Such assistance by the Center could include assistance in developing business cases, solicitation documents, and contracts, and supporting negotiations, change management, performance measurement, and contract management. The Center shall also develop standards, processes and templates for complying with this section. The Center shall also create and maintain a database of state procurement initiatives, including some specific data regarding contractual services.

Business Case Requirements: Paragraph (a) of subsection (3) delineates the business case requirements with which an agency must comply before the outsourcing of a service; the business case is deemed part of the solicitation process and not a rule subject to challenge pursuant to s. 120.54, F.S. The business case must include the following:

⁴² Available on March 8, 2005, at

http://dms.myflorida.com/dms/purchasing/florida_s_public_purchasing_training_and_certification/training_and_certification_manual

⁴³ The NIGP "is a not-for-profit education and research organization dedicated to helping governments manage tax dollars wisely." NIGP website at <http://www.nigp.org/>.

- A detailed description of both the service to be outsourced and the state's current performance of that service, and a rationale documenting how outsourcing would be in the best interest of the state, agency, or its clients.
- A validated cost-benefit analysis, including a detailed plan and timeline identifying all actions necessary to realize expected benefits. The agency head must verify that all costs, savings, and benefits are valid and achievable pursuant to s. 92.525, F.S.⁴⁴
- A statement that describes with specificity the potential effect upon applicable federal, state and local revenues; the direct effect upon general revenue, trust funds, general revenue service charges, and interest on trust funds; and the indirect effect on federal funding and cost allocations.
- A plan to ensure compliance with public-records law, including a plan for:
 - Providing for public records at a cost not exceeding the cost provided in ch. 119, F.S.;
 - Ensuring the confidentiality of exempt or confidential records;
 - Meeting records retention requirements; and
 - Transferring public records to the state at no cost upon termination of the contract.
- A transition and implementation plan for addressing relevant changes in the number of agency personnel, affected business processes, and employee transition issues. The plan must also specify the mechanism for continuing the service if the service provider fails to perform as required by the contract. All full-time equivalent (FTE) positions subject to outsourcing shall be placed in reserve by the Executive Office of the Governor (EOG) until the end of the second year of the contract. Notwithstanding the provisions of s. 216.262, F.S., the EOG shall request authority from the Legislative Budget Commission (LBC) to reestablish FTEs above the number fixed by the Legislature when a contract is terminated and the outsourced service must be returned to the agency.
- A listing of assets proposed for transfer to or use by the service provider; the requirements for maintaining those assets in accordance with ch. 273, F.S.; a plan for disposition of the assets upon termination of the contract; and a description of how the transfer or use by the service provider is in the best interest of the state.

Approval Processes for Proposed Outsourcings: Subparagraph (b)1. of subsection (3) provides that if an agency proposes to outsource a service in the *next* fiscal year, the agency shall submit the business case with the agency's final legislative budget request, in the manner and form prescribed by s. 16.023, F.S. Upon approval in the General Appropriations Act, the agency may initiate the competitive procurement process and enter into resulting contracts.

If an agency proposes to outsource a service *during* a fiscal year, and the outsourcing provision was not included in the agency's approved operating budget, the validated business case that complies with subparagraph (a) must be provided to the EOG, the President of the Senate, the Speaker of the House, and the chairs of the legislative appropriations committees and relevant substantive committees, at least 45 days before release of any solicitation. Budgetary changes inconsistent with the agency's approved budget may not be made to existing programs unless such changes are recommended to and approved by the LBC.

⁴⁴ Section 92.525, F.S., provides for the verification of documents by oath, affirmation, or the signing of a written declaration, and provides for a criminal penalty for a person who knowingly makes a false declaration.

If a proposed outsourcing affects information technology systems, the agency shall submit the feasibility study documentation as required by the legislative budget request instructions of s. 216.023, F.S.

Privatization: The bill provides that an agency may not privatize a service without specific authority provided for in:

- general law;
- the General Appropriations Act;
- legislation implementing the General Appropriations Act; or
- a special appropriations act.

Contract Requirements: Paragraph (a) of subsection (4) delineates the specific terms that must be included in contracts entered into which are greater than \$250,000.⁴⁵ In addition to the provisions required by s. 287.017, F.S., such contracts must include:

- a detailed scope of work;
- all service level agreements;
- associated costs and savings, payment terms and schedule, and implementation schedule;
- specific identification of all performance standards, including measurable acceptance criteria, a method for monitoring progress, and penalties for nonperformance;
- a requirement that the contractor maintain accounting records which comply with state and federal laws, and generally accepted accounting principles.
- a requirement allowing the agency to have access to and conduct audits of all contract-related records;
- a requirement that ownership of any intellectual property critical to the assumption of the outsourced service be transferred to the state if the service provider ceases to provide the outsourced service;
- a requirement describing the timing and substance of all contract-related reports, and that all such reports comply with relevant state and federal standards;
- a requirement that the contractor comply with public records laws, with specific requirements as to retention, access, and confidentiality;
- a requirement that state funds provided for purchase of or improvements to real property be made contingent upon the contractor granting the state a security interest in the property;
- a provision that the contractor annually submit and verify, pursuant to s. 92.525, F.S., all required financial statements.

Paragraph (b) of subsection (4) provides that a contract may include cost-neutral, performance-based incentives.

Paragraph (c) requires that for contracts in excess of \$1 million, at least one of the contract negotiators must be certified as a contract negotiator based upon standards promulgated by the DMS.

⁴⁵ Category Five of the purchasing categories established in s. 287.017, F.S.

Contract Amendments: Paragraph (d) provides that an agency may not amend a contract without first submitting the proposed amendment to the EOG for approval if the effect of the amendment would be to increase the value of the contract by \$250,000, or the term of the contract by one year or more. The chairs of the legislative appropriations committees shall be immediately notified of the proposed contract amendment; the EOG may not approve the proposed contract amendment until 14 days following receipt of the notification of the appropriations committees.

If either chair of the appropriations committees objects to the proposed contract amendment within the 14 days, the EOG must either disapprove the proposed contract amendment, or submit the proposed amendment to the Administration Commission. The Administration Commission can approve the amendment by a two-thirds vote, with the Governor voting in the affirmative. Without approval by the Administration Commission, the proposed amendment is disapproved. Upon approval by either the Governor or the Administration the agency may execute the proposed amendment. Contract amendments issued under legislative direction, including funding adjustments provided for in the General Appropriations Act, need not be submitted for approval pursuant to this paragraph.

This paragraph is modeled on and mostly mirrors s. 339.135(7), F.S., which provides the process by which proposed amendments to work programs adopted by the Department of Transportation are to be submitted for approval.

Contract Renewals and Extensions: Paragraph (e) provides that prior to renewal or extension of a contract, the agency shall verify that costs, savings and performance standards have been met, and the corresponding documentation must be included in the contract file.

Section 2. Creates s. 215.4211, F.S., to provide that the Chief Financial Officer may request to review and provide comments prior to the execution of any contract required to be in compliance with paragraph (4)(a) of section 1 of this bill.

Section 3. Repeals s. 14.203, F.S., the statutory basis for the State Council on Competitive Government.

Section 4. Appropriates 8 FTE positions and \$1 million from the General Revenue Fund to the Center for Efficient Government in the DMS to fund the costs of the Center for fiscal year 2005-2006.

Section 5. Provides that a contractor, as defined in Chapter 287, F.S., or its employees, agents, or subcontractors, may not supervise state employees.

Section 6. Provides that no contractor, or its employees, agents, or subcontractors, may participate in a procurement process for the procurement of contractual services from an entity of which the contractor, or its employees, agents, or subcontractors, has a material interest.

Section 7. The bill takes effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill appropriates \$1 million from the General Revenue Fund to the Center, and authorizes 8 FTE positions, for the 2005-2006 fiscal year.

The cost to agencies of complying with the more detailed business case and contractual term requirements of the bill, if any, may be offset by the value generated to the state by contracts resulting from well-crafted business cases and contracts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
