

1
2 An act relating to procurement of contractual
3 services by an agency; amending s. 20.22, F.S.;
4 placing the Center for Efficient Government in
5 the Department of Management Services; creating
6 s. 287.0571, F.S.; providing a popular name;
7 providing legislative intent; providing that
8 procurements of specified commodities and
9 services are not subject to the act; providing
10 specified applicability; creating s. 287.0573,
11 F.S.; providing definitions; creating s.
12 287.0574, F.S.; providing criteria for the
13 procurement of contractual services by an
14 agency; requiring an agency to include with its
15 final legislative budget request the business
16 cases for specified procurements; creating s.
17 287.0575, F.S.; creating the Commission on
18 Efficient Government within the Department of
19 Management Services; providing for purpose,
20 membership, and organization of the commission;
21 providing duties and responsibilities of the
22 commission; creating the Center for Efficient
23 Government; providing purpose and organization
24 of the center; providing duties and
25 responsibilities of the center; requiring the
26 center to recommend and implement a centralized
27 gate process for reviewing, evaluating, and
28 approving agency procurements; requiring state
29 agencies to submit specified information,
30 documents, and other materials required under
31 commission rules; creating s. 287.0576, F.S.;

1 specifying procurements which must be reviewed
2 and evaluated under the centralized gate
3 process; providing minimum requirements for the
4 centralized gate process; providing for
5 specified determinations by the commission at
6 each gate; providing procedure with respect to
7 an unfavorable finding by the commission with
8 respect to a procurement required by law;
9 providing that agencies under the individual
10 control of the Attorney General, Chief
11 Financial Officer, or Commissioner of
12 Agriculture are subject to the act, with
13 specified exceptions; providing authority of
14 the agency head with respect to procurements by
15 such agencies; establishing the gates within
16 the centralized gate process; requiring
17 agencies to submit specified documents for
18 commission review at each gate; providing for
19 nullification of executed contracts for
20 procurement under specified circumstances;
21 requiring the commission to take action at each
22 gate within a specified time period; providing
23 procedure if the commission does not take
24 action within such time period; requiring the
25 submission of annual status reports; creating
26 s. 287.0577, F.S.; providing requirements for
27 procurement of certain contractual services;
28 requiring an agency to develop a business case
29 which describes and analyzes a contractual
30 services procurement under consideration;
31 providing that the business case is not subject

1 to challenge or protest under the
2 Administrative Procedure Act; providing
3 required components of a business case;
4 defining "cost" and "savings"; providing
5 requirements with respect to the solicitation
6 for a contractual services procurement;
7 providing contract requirements for a
8 contractual services procurement; providing
9 requirements with respect to contract
10 amendments; providing that specified contract
11 amendments must be submitted to the Executive
12 Office of the Governor for approval; requiring
13 notification of such submission to the chairs
14 of the legislative appropriations committees;
15 prohibiting the division of a contract
16 amendment to avoid specified requirements;
17 requiring documentation of contractor
18 performance prior to renewal or extension of a
19 contract; creating s. 287.0578, F.S.; providing
20 for conditional supersession of the act;
21 amending s. 287.057, F.S.; providing a
22 requirement with respect to the composition of
23 persons chosen to conduct negotiations during a
24 specified competitive sealed reply procurement;
25 creating s. 215.4211, F.S.; authorizing the
26 Chief Financial Officer to review contracts for
27 state agencies; creating s. 216.1817, F.S.;
28 requiring the placement of full-time equivalent
29 positions in reserve under certain conditions;
30 providing for the reestablishment of full-time
31 equivalent positions upon termination of a

1 contract and reversion of functions and
2 responsibilities to the agency; providing
3 nonapplicability of the act with respect to the
4 privatization of boards, commissions, or
5 councils created within the Department of
6 Business and Professional Regulation; creating
7 s. 287.074, F.S.; providing that only public
8 officers or employees must perform certain
9 functions; providing restrictions on contractor
10 involvement in the procurement of contractual
11 services; providing for future termination of
12 the Center for Efficient Government and the
13 Commission on Efficient Government; providing
14 legislative intent with respect to the
15 performance of review functions and assistance
16 to agencies for procurements of contractual
17 services by state agencies after a specified
18 date; providing that positions authorized under
19 the act shall remain with the Department of
20 Management Services after a specified date;
21 repealing s. 14.203, F.S., which creates the
22 State Council on Competitive Government and
23 provides duties and authority of the council;
24 providing an appropriation; providing full-time
25 equivalent positions; amending s. 119.0721,
26 F.S.; removing a cross reference; clarifying
27 the meaning of "commercial activity" to conform
28 to the removal of the reference; providing an
29 effective date.
30
31

ENROLLED

2005 Legislature

CS for CS for SB 1146, 3rd Engrossed

1 WHEREAS, the private sector can often perform services
2 with greater efficiency and effectiveness at a lower
3 cost than the state, and

4 WHEREAS, the state has long been a leader in innovative
5 practices, in part because of its partnerships with the
6 private sector, and

7 WHEREAS, the state desires to reap the benefits of
8 lower costs, high quality, and innovation by working closely
9 with the private sector, and

10 WHEREAS, the state still maintains responsibility for
11 ensuring that the services performed by the private sector on
12 behalf of the state are of high quality, cost-effective, and
13 appropriate functions for the private sector, and

14 WHEREAS, leading businesses have developed best
15 practices to determine what to obtain from the market and how
16 to ensure that such services are provided at the desired
17 quality and at the appropriate cost, and

18 WHEREAS, the executive branch has made great progress
19 in promoting the use of such best practices, and the citizens
20 of the state could benefit by the increased adoption across
21 state government of such best practices, NOW, THEREFORE,

22

23 Be It Enacted by the Legislature of the State of Florida:

24

25 Section 1. Paragraph (i) is added to subsection (2) of
26 section 20.22, Florida Statutes, to read:

27 20.22 Department of Management Services.--There is
28 created a Department of Management Services.

29 (2) The following divisions and programs within the
30 Department of Management Services are established:

31 (i) Center for Efficient Government.

1 Section 2. Section 287.0571, Florida Statutes, is
2 created to read:

3 287.0571 Applicability of ss. 287.0571-287.0578.--

4 (1) Sections 287.0571-287.0578 shall be known as the
5 "Center for Efficient Government Act".

6 (2) It is the intent of the Legislature that state
7 agencies focus on their core missions and deliver services
8 effectively and efficiently by leveraging resources and
9 contracting with the private sector for services that can be
10 more effectively provided by the private sector and that
11 reduce the cost of government for all citizens of the state.

12 (3) The provisions of this act shall not be required
13 to apply to procurements of commodities and contractual
14 services listed in s. 287.057(5)(e), (f), and (g) and (22).

15 (4) The provisions of this act shall not apply to:

16 (a) Procurements of commodities and contractual
17 services subject to s. 287.055.

18 (b) Contracts in support of the planning, development,
19 implementation, operation, or maintenance of the road, bridge,
20 and public transportation construction program of the
21 Department of Transportation.

22 Section 3. Section 287.0573, Florida Statutes, is
23 created to read:

24 287.0573 Definitions.--For the purposes of this act:

25 (1) "Center" means the Center for Efficient
26 Government.

27 (2) "Centralized gate process" means the system of
28 review phases for a proposed procurement of contractual
29 services, the conclusion of each phase being a "gate" or
30 decision point at which the commission determines whether the
31 procurement under consideration may proceed to the next phase.

1 (3) "Commission" means the Commission on Efficient
2 Government.

3 Section 4. Section 287.0574, Florida Statutes, is
4 created to read:

5 287.0574 Criteria for procurement of contractual
6 services.--

7 (1) The agency must include with its final legislative
8 budget request the business cases for procurements for
9 contractual services that the agency proposes in the fiscal
10 year for which the final legislative budget request is
11 submitted, in the manner and form prescribed in the
12 legislative budget request instructions pursuant to s.
13 216.023.

14 (2) When compared to the cost and quality of service
15 performed by state employees, an agency may procure a
16 contractual service currently or previously provided by state
17 employees only if, upon full implementation of a procurement,
18 it:

19 (a) Results in reasonable cost savings while
20 maintaining at least the same quality of service;

21 (b) Reasonably increases the quality of service while
22 not exceeding the same level of cost; or

23 (c) Significantly increases measurable outputs and
24 quality while minimally increasing costs, at levels and
25 percentages proposed by the procuring agency and approved in
26 writing in advance of the procurement by the commission. Only
27 projects with an annual cost below \$10 million in each fiscal
28 year may meet this criterion.

29 Section 5. Section 287.0575, Florida Statutes, is
30 created to read:

31

1 287.0575 Commission on Efficient Government;
2 membership; duties; Center for Efficient Government; duties.--

3 (1) The Commission on Efficient Government is created
4 within the Department of Management Services to oversee the
5 Center for Efficient Government and carry out the
6 responsibilities specified in this section.

7 (a) The commission shall consist of seven members
8 appointed by the Governor:

9 1. Four members shall be heads of executive branch
10 agencies.

11 2. Three members shall be from the private sector and,
12 collectively, shall have experience with procurement,
13 successfully increasing operational efficiency, and
14 implementing complex projects in the private sector business
15 environment. No private sector member of the commission may at
16 any time during his or her appointment to the commission be
17 registered to lobby the executive or legislative branch.

18 (b) By August 1, 2005, the Governor shall appoint two
19 private sector members and two agency heads for terms of 3
20 years and one private sector member and two agency heads for
21 terms of 4 years. Thereafter, each member shall serve for a
22 term of 4 years. The private sector members shall serve
23 without compensation but shall be entitled to reimbursement
24 for per diem and travel expenses pursuant to s. 112.061.

25 (c) No member of the commission shall participate in
26 commission review of a procurement when his or her agency
27 is conducting the procurement or, in the case of a private
28 sector member, he or she has a business relationship with an
29 entity that is involved or could potentially be involved in
30 the procurement.

31

1 (d) The members of the commission may not delegate
2 their membership to a designee.

3 (e) A quorum shall consist of at least four members,
4 including at least two private-sector members. At least one
5 private-sector member must vote on the prevailing side for
6 commission action to take effect.

7 (f) Any vacancy on the commission shall be filled in
8 the same manner as the original appointment, and any member
9 appointed to fill a vacancy occurring for a reason other than
10 the expiration of a term shall serve only for the unexpired
11 term of the member's predecessor.

12 (g) At the first meeting of the commission after
13 August 1, 2005, the members of the commission shall elect, by
14 majority vote of those in attendance, a member to serve as
15 chair of the commission. No later than September 1 of each
16 succeeding year, the commission shall elect a new chair.

17 (h) The commission shall:

18 1. Oversee the Center for Efficient Government.

19 2. Adopt the centralized gate process.

20 3. Review, evaluate, and grant approval of, withhold
21 approval of, or deny approval of a proposed procurement at
22 each gate established within the centralized gate process. The
23 commission shall adopt rules regarding the procurements that
24 must pass through the centralized gate process. Such
25 procurements shall include, at a minimum, those subject to the
26 requirements of s. 287.0576(1).

27 4. Approve templates and guidelines and adopt rules
28 prescribing standards and procedures for use by agencies
29 during the procurement process which shall, at a minimum,
30 include the requirements under ss. 287.0576-287.0577 for
31 procurements of contractual services.

1 5. Implement a plan for providing information and
2 documentation to the Legislature and the Governor on behalf of
3 agencies and in compliance with the provisions of this
4 chapter. The plan shall include, at a minimum, providing
5 copies of documents to be reviewed by the commission to the
6 President of the Senate, the Speaker of the House of
7 Representatives, the Governor, and the chairs of the relevant
8 appropriations and substantive legislative committees at least
9 14 days prior to the meeting of the commission at which the
10 proposed procurement will be discussed.

11 6. Review the performance of procurements which have
12 advanced through the full centralized gate process.

13 (2) The Center for Efficient Government is created in
14 the department to establish and promote best business
15 practices so that the delivery of services to citizens of the
16 state are provided in the most effective and cost-efficient
17 manner possible. The secretary of the department shall appoint
18 a director of the center. The duties and responsibilities of
19 the center are:

20 (a) Recommending and implementing a centralized gate
21 process for reviewing and evaluating, and granting,
22 withholding, or denying approval of, agency procurements
23 which, at a minimum, shall include the requirements contained
24 in s. 287.0576(1) and (2) for contractual services
25 procurements.

26 (b) Providing support and assistance to the
27 commission, including, but not limited to, reviewing and
28 validating agency business cases, recommending standards,
29 processes, templates, and guidelines for use by agencies
30 during the procurement process and providing information and
31 documentation as requested or required by law.

1 (c) Assisting agencies directly in the procurement
2 process as needed to ensure a high-quality procurement,
3 including, but not limited to, developing and updating
4 business cases, drafting solicitation and contract documents,
5 participating in contract negotiations, identifying
6 performance measures, and advising agencies on performance
7 measurement, contract management, and change management. The
8 center shall also provide information, training, and technical
9 assistance to agencies on the use of the standards, processes,
10 templates, and guidelines developed for use by agencies during
11 the procurement process.

12 (d) Collecting data and information from agencies on
13 an ongoing basis with regard to the status and results of
14 procurements that have advanced completely through the
15 centralized gate process, recommending incorporation of any
16 lessons learned from such projects into commission standards,
17 procedures, templates, and guidelines, as appropriate, and
18 identifying and disseminating to agencies information
19 regarding best practices in procurement, particularly
20 contractual services procurements.

21 (e) Developing and implementing, in consultation with
22 the Agency for Workforce Innovation, guidelines for assisting
23 employees whose jobs are eliminated as a result of
24 procurements.

25 (3) The department shall employ an adequate number of
26 highly skilled, credentialed staff who collectively possess
27 significant expertise and experience as required to carry out
28 the responsibilities of this act.

29 (4) Agencies shall submit to the center all
30 information, documents, or other materials required by
31 commission rule or this chapter.

1 Section 6. Section 287.0576, Florida Statutes, is
2 created to read:

3 287.0576 Review and analysis of proposed procurement
4 of contractual services; centralized gate process.--

5 (1) At a minimum, procurements required to undergo
6 review and analysis through the centralized gate process
7 adopted by the commission are:

8 (a) Contractual services procurements that have an
9 estimated total cost of \$10 million or more in any fiscal
10 year.

11 (b) New contractual services procurements that will
12 require adjustments to the agency's budget, in accordance with
13 chapter 216, totaling \$1 million or more. Amendments to
14 existing contracts are excluded.

15 (c) Contractual services procurements that do not
16 involve an outlay of state funds estimated to total \$10
17 million or more in any fiscal year because of the provision of
18 services by the contractor at a rate significantly below
19 market rate, the significant investment of other resources by
20 the agency, or other reason, but in which the total value of
21 the services performed by the agency and contractor under the
22 contract is estimated to total \$10 million or more in any
23 fiscal year. Examples of such procurements include, but are
24 not limited to, free, no-cost, or codevelopment contracts.

25 (d) Contractual services procurements for which the
26 sum of gross revenues or shared savings to be generated for
27 the state and contractor over the term of the contract plus
28 the sum of any payments to the contractor by the agency over
29 the term of the contract, if any, is estimated to total \$10
30 million or more in any fiscal year.

31

1 (e) Contractual services procurements that do not meet
2 the criteria in paragraphs (a)-(d) that the Legislature has
3 directed to be subject to the centralized gate process.

4 (2) Extensions and renewals of contracts resulting
5 from procurements in subsection (1) and extensions and
6 renewals of contracts meeting the criteria identified in
7 paragraphs (1)(a), (c), and (d) which did not pass through the
8 center shall undergo review and analysis through the
9 centralized gate process implemented by the center, though,
10 notwithstanding any law to the contrary, such contracts shall
11 pass only through such gates as the commission determines are
12 appropriate based on the legislative intent of this act.

13
14 For purposes of determining whether a procurement meets the
15 requirements of this section, multiple contractual services
16 procurements for substantially similar or related functions or
17 responsibilities occurring in a coordinated fashion or in
18 close time proximity to one another are considered a single
19 contractual services procurement for purposes of meeting the
20 thresholds set forth in this section.

21 (3) The centralized gate process shall require, at a
22 minimum, review of the procurement by the commission at each
23 gate. At each gate, the commission shall determine by majority
24 vote to:

25 (a) Approve the procurement, if the agency has
26 sufficiently met the requirements of the current gate, and
27 advance the procurement to the next phase;

28 (b) Withhold approval of the procurement, if
29 additional work must be completed in order to satisfy the
30 requirements of the current gate, and retain the procurement
31 in that phase; or

1 (c) Deny the procurement, if the procurement is not a
2 good business decision, and remove the procurement from
3 consideration.

4
5 Notwithstanding the provisions of this section, the commission
6 may not deny procurements which are required by law. If the
7 commission determines that a procurement required by law is
8 not a good business decision, the commission shall withhold
9 approval and transmit to the President of the Senate, the
10 Speaker of the House of Representatives, and the Governor the
11 reasons why the procurement should not be completed and any
12 recommendation for legislative action. If the President of the
13 Senate or the Speaker of the House of Representatives has not
14 responded within 14 business days of receipt of the
15 communication, the commission shall proceed at its discretion
16 consistent with the Legislative intent of this act.

17
18 Notwithstanding any law to the contrary, agencies under the
19 individual control of the Attorney General, the Chief
20 Financial Officer, or the Commissioner of Agriculture are
21 subject to the provisions of this act, except that the
22 commission shall not grant, withhold, or deny approval of a
23 procurement by such agency but instead may only provide
24 recommendations to the agency. The respective agency head
25 shall have sole authority to grant, withhold, or deny approval
26 of such procurement.

27 (4) The gates and required documentation comprising
28 the centralized gate process shall, at a minimum, consist of:

29 (a) The proposal identification gate, which shall
30 include the business case.

31

1 (b) The procurement preparation gate, which shall
2 include the updated business case and the solicitation
3 documents prior to the issuance of such documents. An agency
4 may not release solicitation documents without the
5 commission's approval at this gate. The commission must review
6 and approve the written determination of the agency required
7 pursuant to s. 287.057(3)(a) before granting approval for the
8 use of an invitation to negotiate, or withhold approval
9 pending submission by the agency of an acceptable alternative
10 solicitation method.

11 (c) The contract development gate, which shall include
12 the final business case and the proposed unexecuted contract.
13 An agency may not execute the contract without the
14 commission's approval at this gate.

15 (d) The transition management gate, which shall
16 include updates to the final business case and, for a
17 procurement of contractual services, an analysis of the
18 agency's and contractor's readiness for the contractor to
19 perform the proposed responsibility or function. An agency may
20 not transition to contractor performance without the
21 commission's approval at this gate.

22 (e) The post-implementation gate, which shall include
23 updates to the final business case and a report on the
24 adequacy of contractor performance.

25 (5)(a) Any executed contract for a procurement passing
26 through the centralized gate process pursuant to this section
27 shall be null and void if an agency fails to comply with the
28 commission decision at the proposal identification,
29 procurement preparation, or contract development gate.

30 (b) Failure to comply with any other requirements of
31 this act or implementing rules shall not affect the validity

1 of the competitive solicitation and award process or any
2 contract.

3 (6) The commission shall take action at each gate
4 within 60 days of the submission of a procurement by an
5 agency. If the commission does not take action within this
6 timeframe, the agency head shall determine whether to grant,
7 withhold, or deny approval of the procurement at that gate
8 based on the rules and guidelines of the commission for that
9 gate and shall notify the Governor, the President of the
10 Senate, the Speaker of the House of Representatives, and the
11 commission of such action and the circumstances thereof.

12 (7) During the terms of the contracts, the agency
13 shall annually submit with its legislative budget request a
14 status report for each procurement that has passed through at
15 least the first three gates of the centralized gate process
16 describing the progress made to date, actual completion dates
17 in comparison to planned completion dates, actual costs
18 incurred in comparison to projected costs incurred, current
19 issues requiring resolution, planned project milestones,
20 deliverables, and expenditures for the next reporting period,
21 and any other information relating to the contractual services
22 that may be requested.

23 Section 7. Section 287.0577, Florida Statutes, is
24 created to read:

25 287.0577 Requirements for procurement of certain
26 contractual services.--In addition to the other applicable
27 requirements of this chapter, an agency shall comply with the
28 following requirements for, at a minimum, procurements of
29 contractual services estimated to total \$1 million or more in
30 any fiscal year and those subject to review under s.
31 287.0576(1)(b), (c), (d), and (e) and (2):

1 (1) BUSINESS CASE.--The agency shall develop a
2 business case which describes and analyzes the procurement.
3 The business case is not subject to challenge or protest
4 pursuant to chapter 120. The business case shall include, but
5 not be limited to, the information in paragraphs (a)-(1). For
6 procurements not subject to commission review, the agency
7 shall provide a copy of the business case to the President of
8 the Senate and the Speaker of the House at least 14 days prior
9 to releasing a solicitation. For procurements subject to
10 commission review, the business case shall be in such detail
11 as is appropriate given the current phase of the procurement
12 but shall contain sufficient information to enable the
13 commission to determine at that gate whether the procurement
14 may proceed to the next procurement phase:

15 (a)1. A detailed description of the function or
16 responsibility for which the procurement is proposed;

17 2. If the agency is currently performing the function
18 or responsibility, a description and analysis of the agency's
19 current performance, including, but not limited to, baseline
20 costs and performance metrics;

21 3. The goals desired to be achieved through the
22 procurement and the rationale for such goals; and

23 4. A citation of the existing or proposed legal
24 authority for contracting for the function or responsibility.

25 (b)1. A description of available options for achieving
26 the goals. If state employees are currently performing the
27 function or responsibility, at least one option involving
28 maintaining state provision of the function or responsibility
29 shall be included.

30
31

1 2. A description of the current market for the
2 contractual services which are under consideration for
3 procurement.

4 3. An analysis of the advantages and disadvantages of
5 each option, including, at a minimum, potential performance
6 improvements and risks.

7 (c) A cost-benefit analysis documenting the direct and
8 indirect specific baseline costs, savings, and qualitative and
9 quantitative benefits involved in or resulting from the
10 implementation of the recommended option or options. Such
11 analysis shall specify the schedule that, at a minimum, must
12 be adhered to in order to achieve the estimated savings. All
13 elements of cost shall be clearly identified in the
14 cost-benefit analysis, described in the business case, and
15 supported by applicable records and reports. The agency head
16 shall attest that, based on the data and information
17 underlying the business case, to the best of his or her
18 knowledge, all projected costs, savings, and benefits are
19 valid and achievable. "Cost" means the reasonable, relevant,
20 and verifiable cost which may include, but not be limited to,
21 elements such as personnel costs, materials and supplies,
22 services, equipment, capital depreciation costs, rent,
23 maintenance and repairs, utilities, insurance, personnel
24 travel, overhead, and interim and final payments. The
25 appropriate elements shall depend on the nature of the
26 specific initiative. "Savings" means the difference between
27 the direct and indirect actual annual baseline costs compared
28 to the projected annual cost for the contracted functions or
29 responsibilities in any succeeding state fiscal year during
30 the term of the contract.

31

1 (d) A description of variance among agency policies
2 and processes and, as appropriate, a discussion of options for
3 or a plan to standardize, consolidate, or revise current
4 policies and processes, if any, to reduce the customization of
5 any proposed solution that would otherwise be required.

6 (e) A description of the specific performance
7 standards that must, at a minimum, be met to ensure adequate
8 performance.

9 (f) A statement of the potential impact on federal,
10 state, and local revenues and expenditures. The statement
11 shall specifically describe the effect on general revenue,
12 trust funds, general revenue service charges, and interest on
13 trust funds together with the potential direct or indirect
14 effect on federal funding and cost allocations.

15 (g) The projected timeframe for key events, from the
16 beginning of the procurement process through the expiration of
17 a contract.

18 (h) A plan to ensure compliance with public records
19 law which must include components that:

20 1. Provide public access to public records at a cost
21 that does not exceed that provided in chapter 119.

22 2. Ensure the confidentiality of records that are
23 exempt or confidential under law.

24 3. Meet all legal requirements for record retention
25 provided by law.

26 4. Require transfer to the state, at no cost, of all
27 public records in possession of the contractor upon
28 termination of the contract.

29 (i) A specific and feasible contingency plan
30 addressing contractor nonperformance and a description of the
31 tasks involved in and costs required for its implementation.

1 (j) An agency transition plan for addressing changes
2 in the number of agency personnel, affected business
3 processes, employee transition issues, and communication with
4 affected stakeholders, such as agency clients and the public.
5 The transition plan shall contain a reemployment and
6 retraining assistance plan for employees who are not retained
7 by the agency or employed by the contractor.

8 (k) A listing of any assets proposed for surplus or
9 use by a contractor. For those assets proposed to be used by a
10 contractor, the business case shall include a description of
11 the proposed requirements for maintaining those assets by the
12 contractor or the agency in accordance with chapter 273, a
13 plan for the transitioning of the assets upon termination of
14 the contract, and a description of how the planned use by a
15 contractor is in the best interest of the agency and state.

16 (l) A plan for ensuring access by persons with
17 disabilities in compliance with applicable state and federal
18 law.

19
20 If a contractual services procurement meets the criteria for
21 submission of feasibility study documentation as required by
22 the legislative budget request instructions established
23 pursuant to s. 216.023, the agency shall submit such
24 documentation.

25 (2) SOLICITATION REQUIREMENTS.--The solicitation for a
26 contractual services procurement shall include, at a minimum:

27 (a) A detailed description of the function or
28 responsibility under consideration for contracting and, if the
29 function or responsibility is currently being performed by an
30 agency, a description and analysis of the agency's current
31 performance.

1 (b) Requirements that are achievable, unambiguous,
2 measurable, meaningful, and complete.

3 (c) The criteria that after contract execution will be
4 used to assess contractor performance and the minimum
5 acceptable contractor performance levels.

6 (3) CONTRACT.--Each contract must include, but need
7 not be limited to:

8 (a) A detailed scope of work that clearly specifies
9 each service or deliverable to be provided, including a
10 description of each deliverable or activity that is
11 quantifiable, measurable, and verifiable.

12 (b) All service-level agreements describing all
13 services to be provided under the terms of the agreement, the
14 agency's service requirements and performance objectives, and
15 specific responsibilities of the agency and the contractor.

16 (c) Associated costs and savings, specific payment
17 terms and payment schedule, including incentive and
18 disincentive provisions, criteria governing payment, and a
19 clear and specific implementation schedule that will be
20 implemented in order to complete all required activities
21 needed to transfer the service from the agency to the
22 contractor and operate the service successfully.

23 (d) Clear and specific identification of all required
24 performance standards, which must include, at a minimum:

25 1. Detailed measurable acceptance criteria for each
26 deliverable and service to be provided to the agency under the
27 terms of the contract which document the required performance
28 level.

29 2. A method for monitoring and reporting progress in
30 achieving specified performance standards and levels.

31

1 3. The sanctions or disincentives that shall be
2 assessed for nonperformance by the contractor or agency.

3 (e) A requirement that the contractor maintain
4 adequate accounting records that comply with all applicable
5 federal and state laws and generally accepted accounting
6 principles.

7 (f) A requirement authorizing state access to and
8 audit of all records related to the contract or any
9 responsibilities or functions under the contract for state
10 audit and legislative oversight purposes and a requirement for
11 service organization audits in accordance with professional
12 auditing standards, if appropriate.

13 (g) A requirement describing the timing and substance
14 of all plans and status or progress reports that are to be
15 provided. All plans and status or progress reports must comply
16 with any relevant state and federal standards.

17 (h) A requirement that the contractor comply with
18 public records laws. The contractor must:

19 1. Keep and maintain the public records that
20 ordinarily and necessarily would be required by the state
21 agency in order to perform the function or service.

22 2. Provide the public with access to such public
23 records on the same terms and conditions that the state agency
24 would and at a cost that does not exceed that provided in
25 chapter 119.

26 3. Ensure the confidentiality of records that are
27 exempt from public disclosure or made confidential under law.

28 4. Meet all requirements for retaining records and
29 transfer to the state, at no cost, all public records in
30 possession of the contractor upon termination of the contract
31 and destroy any duplicate public records which are exempt and

1 confidential. All records stored electronically must be
2 provided to the state in a format that is compatible with
3 information technology systems of the state.

4 (i) A requirement that any state funds provided for
5 the purchase of or improvements to real property be made
6 contingent upon the contractor granting to the state a
7 security interest in the property which is at least equal to
8 the amount of the state funds provided for the most recent
9 years following the date of purchase or the completion of
10 improvements, or as otherwise required by law. The contract
11 must include a provision that, if the contractor disposes of
12 the property before the agency's interest is vacated, the
13 contractor will refund the proportionate share of the state's
14 initial investment, as adjusted by depreciation.

15 (j) If a contract involves the development or creation
16 of intellectual property, the contract must specify the
17 ownership of such intellectual property and any rights of the
18 state to use, modify, reproduce, or disseminate the
19 intellectual property.

20 (k) A provision that the contractor annually submit
21 and verify, pursuant to s. 92.525, all required financial
22 statements.

23 (l) A requirement that the contractor shall interview
24 and consider for employment with the contractor each displaced
25 state employee who is interested in such employment.

26 (m) Provisions requiring that venue for any action
27 regarding the contract shall be in Leon County and that the
28 contract shall be interpreted according to the laws of this
29 state.

30 (4) AMENDMENTS.--An agency may not amend a contract
31 without first submitting the proposed contract amendment to

1 the Executive Office of the Governor for approval and
2 notifying the chairs of the legislative appropriations
3 committees of such submission if the effect of the amendment
4 would be to:

5 (a) Increase the value of the contract by \$1 million
6 or more for those contracts with a total value of at least \$1
7 million but less than \$10 million; or

8 (b) Increase the value of the contract by 10 percent
9 or more for those contracts with a total value of \$10 million
10 or more.

11
12 An agency shall not divide a contract amendment so as to avoid
13 the requirements of this section.

14 (5) In addition to the requirements of subsections
15 287.057(13) and (14), prior to the renewal or extension of a
16 contract, an agency shall document whether all specific direct
17 and indirect costs, savings, performance standards, and
18 qualitative and quantitative benefits identified in the
19 contract have been met by the contractor and the agency. If
20 the actual performance of the contractor does not meet the
21 required performance as identified in the contract, the agency
22 shall explain the reasons why and provide justification for
23 the extensions or renewal of the contract. This documentation
24 shall be included in the official contract file.

25 Section 8. Section 287.0578, Florida Statutes, is
26 created to read:

27 287.0578 Subsequent inconsistent laws.--Subsequent
28 inconsistent laws shall supersede this act only to the extent
29 they do so by express reference to this section.

30 Section 9. Paragraph (b) of subsection (17) of section
31 287.057, Florida Statutes, is amended to read:

1 287.057 Procurement of commodities or contractual
2 services.--

3 (17) For a contract in excess of the threshold amount
4 provided in s. 287.017 for CATEGORY FOUR, the agency head
5 shall appoint:

6 (b) At least three persons to conduct negotiations
7 during a competitive sealed reply procurement who collectively
8 have experience and knowledge in negotiating contracts,
9 contract procurement, and the program areas and service
10 requirements for which commodities or contractual services are
11 sought. When the annual value of a contract is in excess of \$1
12 million, at least one of the persons conducting negotiations
13 must be certified as a contract negotiator based upon rules
14 adopted by the Department of Management Services.

15 Section 10. Section 215.4211, Florida Statutes, is
16 created to read:

17 215.4211 Review of contracts for state agencies.--The
18 Chief Financial Officer may request, as he or she deems
19 necessary, the option to review and provide comments prior to
20 the execution of any contract that is required to be in
21 compliance with the provisions of s. 287.0577(3).

22 Section 11. Section 216.1817, Florida Statutes, is
23 created to read:

24 216.1817 Placement of positions in reserve;
25 reestablishment of positions.--If a procurement of contractual
26 services involves the performance of functions or
27 responsibilities that are being shifted from state employees
28 to a contractor, the agency shall identify within the business
29 case prepared pursuant to s. 287.0577 all resources which are
30 affected, including full-time equivalent positions. All
31 full-time equivalent positions identified in the business case

1 shall be placed in reserve by the Executive Office of the
2 Governor until the end of the second year of the
3 contract. However, in the business case, the agency may
4 account for any savings from the full-time equivalent
5 positions identified and held in reserve. Notwithstanding the
6 provisions of s. 216.262, the Executive Office of the Governor
7 shall request authority from the Legislative Budget Commission
8 to reestablish full-time equivalent positions above the number
9 fixed by the Legislature if a contract is terminated and the
10 performance of the functions or responsibilities must be
11 returned to the agency.

12 Section 12. This act shall not apply to
13 administrative, examination, licensing, investigative, and
14 prosecutorial services for any board, commission, or council
15 created within the Department of Business and Professional
16 Regulation pursuant to chapter 20, Florida Statutes, as the
17 privatization of such services is governed by sections 455.32
18 and 471.038, Florida Statutes.

19 Section 13. Section 287.074, Florida Statutes, is
20 created to read:

21 287.074 Actions reserved to public officers or
22 employees.--

23 (1) Only a public officer or a public employee upon
24 whom the public officer has delegated authority shall,
25 consistent with law, take actions including, but not limited
26 to:

27 (a) Selecting state employees;

28 (b) Approving position descriptions, performance
29 standards, or salary adjustments for state employees; and

30 (c) Hiring, promoting, disciplining, demoting, and
31 dismissing a state employee.

1 (2) Only a public officer shall, consistent with law,
2 commission and appoint state officers.

3 Section 14. A contractor, as defined in chapter 287,
4 Florida Statutes, or its employees, agents, or subcontractors,
5 may not knowingly participate, through decision, approval,
6 disapproval, preparation of any part of a purchase request,
7 investigation, or auditing, in the procurement of contractual
8 services by an agency from an entity in which the contractor,
9 or its employees, agents, or subcontractors has a material
10 interest.

11 Section 15. The Center for Efficient Government and
12 the Commission on Efficient Government shall terminate on July
13 1, 2010, unless reenacted by the Legislature prior to that
14 date. It is the intent of the Legislature that, beginning July
15 1, 2010, the various state agencies shall perform the review
16 functions required under this act for procurements of
17 contractual services under their jurisdiction. It is also the
18 intent of the Legislature that beginning July 1, 2010, the
19 positions authorized by this act shall remain with the
20 Department of Management Services, which shall continue
21 providing technical assistance as required in this act.

22 Section 16. Section 287.0572, Florida Statutes, is
23 renumbered as section 287.0579, Florida Statutes:

24 287.0579 ~~287.0572~~ Present-value methodology.--

25 (1) The cost of bids, proposals, or replies for state
26 contracts that include provisions for unequal payment streams
27 or unequal time payment periods shall be evaluated using
28 present-value methodology. Each agency, as defined in s.
29 287.012(1), shall perform the evaluation using the
30 present-value discount rate supplied by the department. The
31 present-value discount rate shall be the rate for United

1 States Treasury notes and bonds published in the Interest
2 Rates: Money and Capital Markets section of the most recent
3 copy of the Federal Reserve Bulletin published at the time of
4 issuance of the request for proposals, the invitation to
5 negotiate, or the invitation to bid.

6 (2) The department may adopt rules to administer
7 subsection (1).

8 Section 17. Subsection (3) of section 119.0721,
9 Florida Statutes, is amended to read:

10 119.0721 Social security number exemption.--

11 (3) An agency shall not deny a commercial entity
12 engaged in the performance of a commercial activity, which,
13 for purposes of this subsection, means an activity that
14 provides a product or service that is available from a private
15 source ~~as defined in s. 14.203~~ or its agents, employees, or
16 contractors access to social security numbers, provided the
17 social security numbers will be used only in the normal course
18 of business for legitimate business purposes, and provided the
19 commercial entity makes a written request for social security
20 numbers, verified as provided in s. 92.525, legibly signed by
21 an authorized officer, employee, or agent of the commercial
22 entity. The verified written request must contain the
23 commercial entity's name, business mailing and location
24 addresses, business telephone number, and a statement of the
25 specific purposes for which it needs the social security
26 numbers and how the social security numbers will be used in
27 the normal course of business for legitimate business
28 purposes. The aggregate of these requests shall serve as the
29 basis for the agency report required in subsection (7). An
30 agency may request any other information as may be reasonably
31 necessary to verify the identity of the entity requesting the

1 social security numbers and the specific purposes for which
2 such numbers will be used; however, an agency has no duty to
3 inquire beyond the information contained in the verified
4 written request. A legitimate business purpose includes
5 verification of the accuracy of personal information received
6 by a commercial entity in the normal course of its business;
7 use in a civil, criminal, or administrative proceeding; use
8 for insurance purposes; use in law enforcement and
9 investigation of crimes; use in identifying and preventing
10 fraud; use in matching, verifying, or retrieving information;
11 and use in research activities. A legitimate business purpose
12 does not include the display or bulk sale of social security
13 numbers to the general public or the distribution of such
14 numbers to any customer that is not identifiable by the
15 distributor.

16 Section 18. Section 14.203, Florida Statutes, is
17 repealed.

18 Section 19. There is hereby appropriated \$1,023,554
19 recurring budget authority to the Department of Management
20 Services from the General Revenue Fund, and nine full-time
21 equivalent positions are authorized, to carry out the
22 activities of the Center for Efficient Government and the
23 Commission on Efficient Government as provided in this act.

24 Section 20. This act shall take effect July 1, 2005.
25
26
27
28
29
30
31