

1 A bill to be entitled

2 An act relating to procurement of contractual services by
3 an agency; amending s. 20.22, F.S.; placing the Center for
4 Efficient Government in the Department of Management
5 Services; creating s. 287.0571, F.S.; providing that
6 procurements of specified commodities and services are not
7 subject to the act; creating s. 287.0573, F.S.; providing
8 definitions; creating s. 287.0574, F.S.; providing
9 criteria for the procurement of contractual services by an
10 agency; creating s. 287.0575, F.S.; creating the
11 Commission on Efficient Government within the Department
12 of Management Services; providing for purpose, membership,
13 and organization of the commission; providing duties and
14 responsibilities of the commission; creating the Center
15 for Efficient Government; providing purpose and
16 organization of the center; providing duties and
17 responsibilities of the center; requiring the center to
18 create a centralized gate process for reviewing,
19 evaluating, and approving agency procurements; providing
20 that the commission, the center, and activities related to
21 the implementation of the centralized gate process are not
22 subject to the rulemaking requirements of ch. 120, F.S.;
23 requiring state agencies to submit specified information,
24 documents, and other materials required under policies of
25 the commission or the center; creating s. 287.0576, F.S.;
26 specifying procurements which must be reviewed and
27 evaluated under the centralized gate process; providing
28 minimum requirements for the centralized gate process;

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29 providing for specified determinations by the commission
30 at each gate; providing procedure with respect to a
31 recommendation by the commission of denial of a
32 procurement required by law; providing that agencies under
33 the individual control of the Attorney General, Chief
34 Financial Officer, or Commissioner of Agriculture are
35 subject to the act, with specified exceptions; providing
36 authority of the agency head with respect to procurements
37 by such agencies; establishing the gates within the
38 centralized gate process; requiring agencies to submit
39 specified documents for commission review; providing for
40 nullification of executed contracts for procurement under
41 specified circumstances; creating s. 287.0577, F.S.;
42 providing requirements for procurement of certain
43 contractual services; requiring an agency to develop a
44 business case which describes and analyzes a contractual
45 services procurement under consideration; providing
46 required components of a business case; defining "cost"
47 and "savings"; providing requirements with respect to the
48 solicitation for a contractual services procurement;
49 providing contract requirements for a contractual services
50 procurement; requiring the submission of specified annual
51 reports; creating s. 216.1817, F.S.; permitting budgetary
52 changes for a contractual services procurement only under
53 specified conditions; requiring the placement of full-time
54 equivalent positions in reserve under certain conditions;
55 providing for the reestablishment of full-time equivalent
56 positions upon termination of a contract and reversion of

57 functions and responsibilities to the agency; providing
58 for future termination of the Center for Efficient
59 Government and the Commission on Efficient Government;
60 providing legislative intent with respect to the
61 performance of review functions and assistance to agencies
62 for procurements of contractual services by state agencies
63 after a specified date; providing that positions
64 authorized under the act shall remain with the Department
65 of Management Services after a specified date; repealing
66 s. 14.203, F.S., which creates the State Council on
67 Competitive Government and provides duties and authority
68 of the council; providing an appropriation; providing
69 full-time equivalent positions; amending s. 119.0721,
70 F.S.; removing a cross reference; clarifying the meaning
71 of "commercial activity" to conform to the removal of the
72 reference; providing an effective date.

73
74 WHEREAS, the private sector can often perform services with
75 greater efficiency and effectiveness at a lower cost than the
76 state, and

77 WHEREAS, the state has long been a leader in innovative
78 practices, in part because of its partnerships with the private
79 sector, and

80 WHEREAS, the state desires to continue to reap the benefits
81 of lower costs, high quality, and innovation by working closely
82 with the private sector, and

83 WHEREAS, the state still maintains responsibility for
84 ensuring that the services performed by the private sector on

85 | behalf of the state are of high quality, provided cost-
 86 | effectively, and appropriate for private provision, and

87 | WHEREAS, leading businesses have developed best practices
 88 | to determine what to obtain from the market and how to ensure
 89 | that such services are provided at the desired quality and at
 90 | the appropriate cost, and

91 | WHEREAS, the executive branch has made great progress in
 92 | promoting the use of such best practices, and the citizens of
 93 | the state could benefit by the increased adoption across state
 94 | government of such best practices, NOW, THEREFORE,

95 |

96 | Be It Enacted by the Legislature of the State of Florida:

97 |

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

100 | 20.22 Department of Management Services.--There is created
 101 | a Department of Management Services.

102 | (2) The following divisions and programs within the
 103 | Department of Management Services are established:

104 | (i) Center for Efficient Government.

105 | Section 2. Section 287.0571, Florida Statutes, is created
 106 | to read:

107 | 287.0571 Applicability of ss. 287.0571-287.0577.--
 108 | Procurements of commodities and contractual services listed in
 109 | s. 287.057(5)(e), (f), and (g) shall not be subject to ss.
 110 | 287.0571-287.0577.

111 | Section 3. Section 287.0573, Florida Statutes, is created
 112 | to read:

113 287.0573 Definitions.--For the purposes of ss. 287.0571-
 114 287.0577:

115 (1) "Center" means the Center for Efficient Government
 116 established under s. 287.0575(2).

117 (2) "Centralized gate process" means the system of review
 118 phases established under s. 287.0576 for a proposed procurement
 119 of contractual services, the conclusion of each phase being a
 120 "gate" or decision point at which the commission determines
 121 whether the procurement under consideration may proceed to the
 122 next phase.

123 (3) "Commission" means the Commission on Efficient
 124 Government established under s. 287.0575(1).

125 (4) "Inherently governmental function or responsibility"
 126 means a function or responsibility which entails the exercise of
 127 sovereign power and is therefore so intimately related to the
 128 public interest that it mandates performance by a public officer
 129 or a public employee upon whom the public officer has delegated
 130 authority for the performance of such acts. Inherently
 131 governmental functions or responsibilities include those
 132 activities which require either the exercise of discretion in
 133 applying governmental authority or the use of value judgment in
 134 making decisions for the government. Inherently governmental
 135 functions or responsibilities are categorized as follows:

136 (a) The act of governing or discretionary exercise of
 137 governmental authority which includes, but is not limited to,
 138 such activities as criminal investigations, prosecutions, and
 139 other judicial functions; management of government programs
 140 requiring value judgments; selection of program priorities;

141 regulation of natural resources; regulation of industry and
 142 commerce; determination of agency policy, including, but not
 143 limited to, determining the content and application of
 144 regulations; binding the state by contract, policy, regulation,
 145 authorization, order, or otherwise; commissioning, appointing,
 146 directing, selecting, or controlling state officers or
 147 employees; approval of position descriptions and performance
 148 standards for state employees; exertion of ultimate control over
 149 the acquisition, use, or disposition of the real, personal,
 150 tangible, or intangible property of the state, including the
 151 collection, control, or disbursement of state funds; awarding,
 152 administering, and terminating contracts; determining whether
 153 contract costs are reasonable, allocable, and allowable;
 154 approval of contractual documents; approval of state licensing
 155 actions and inspections; determination of budget policy,
 156 guidance, and strategy.

157 (b) Monetary transactions and entitlements which include,
 158 but are not limited to, tax collection and revenue
 159 disbursements; control of state funds; and the administration of
 160 public trusts.

161
 162 Inherently governmental functions or responsibilities do not
 163 include gathering information for or providing advice, opinions,
 164 recommendations, or ideas to state officials. They do not
 165 include functions that are primarily ministerial and internal in
 166 nature, such as building security, mail operations, operation of
 167 cafeterias, housekeeping, facilities operations and maintenance,
 168 warehouse operations, motor vehicle fleet management operations,

169 or other routine electrical or mechanical services.

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

172 287.0574 Criteria for procurement of contractual
 173 services.--An agency may procure a contractual service only if:

174 (1) The procurement does not involve the performance by a
 175 contractor of an inherently governmental function or
 176 responsibility; and

177 (2) Upon full implementation of a procurement in which the
 178 performance of functions or responsibilities are shifted from
 179 state employees to a contractor, the implementation results in
 180 reasonable cost savings while maintaining at least the same
 181 quality of service or reasonably increases the quality of
 182 service while not exceeding the same level of cost.

183 Section 5. Section 287.0575, Florida Statutes, is created
 184 to read:

185 287.0575 Commission on Efficient Government; membership;
 186 duties; Center for Efficient Government; duties.--

187 (1) The Commission on Efficient Government is created
 188 within the Department of Management Services to oversee the
 189 Center for Efficient Government and carry out the
 190 responsibilities specified in this section.

191 (a) The commission shall consist of seven members
 192 appointed by the Governor:

193 1. Four members shall be heads of executive branch
 194 agencies.

195 2. Three members shall be from the private sector and have
 196 significant relevant business experience but shall not be

197 employed by or have a business relationship with any entity that
 198 seeks to contract with or has a contract with the state during
 199 the member's term on the commission. If feasible, the three
 200 private-sector members shall collectively have experience with
 201 procurement, successfully increasing operational efficiency, and
 202 implementing complex projects.

203 (b) By August 1, 2005, the Governor shall appoint two
 204 private sector members and two agency heads for terms of 3 years
 205 and one private sector member and two agency heads for terms of
 206 4 years. Thereafter, each member shall serve for a term of 4
 207 years. The private sector members shall serve without
 208 compensation but shall be entitled to reimbursement for per diem
 209 and travel expenses pursuant to s. 112.061.

210 (c) No member of the commission who is the head of an
 211 executive branch agency shall be disqualified from participating
 212 in commission review of a procurement because his or her agency
 213 is involved in the procurement.

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

216 (e) A quorum shall consist of at least four members,
 217 including at least one private-sector member. At least one
 218 private-sector member must vote on the prevailing side.

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

224 (g) At the first meeting of the commission after August 1,
225 2005, the members of the commission shall elect, by majority
226 vote of those in attendance, a member to serve as chair of the
227 commission. No later than September 1 of each succeeding year,
228 the commission shall elect a new chair.

229 (h) The commission shall:

230 1. Oversee the Center for Efficient Government.

231 2. Review and approve the centralized gate process created
232 by the center under subsection (2).

233 3. Review, evaluate, and grant approval of, withhold
234 approval of, or deny approval of a proposed procurement at the
235 gates established within the centralized gate process. The
236 commission shall determine the criteria regarding which
237 procurements must pass through the centralized gate process.
238 Such procurements shall include, at a minimum, those subject to
239 the requirements of s. 287.0576.

240 4. Approve standards, processes, templates, and guidelines
241 for use by agencies during the procurement process which shall,
242 at a minimum, include the requirements under s. 287.0577 for
243 procurements of contractual services.

244 5. Implement a plan for providing information and
245 documentation to the Legislature and the Governor on behalf of
246 agencies and in compliance with the provisions of this chapter.
247 The system shall include, at a minimum, providing copies of
248 documents to be reviewed by the commission to the President of
249 the Senate, the Speaker of the House of Representatives, the
250 Governor, and the chairs of the relevant appropriations and
251 substantive legislative committees at least 14 days prior to the

252 meeting of the commission at which the proposed procurement will
 253 be discussed.

254 6. Review the performance of procurements which have
 255 advanced through the full centralized gate process.

256 (2) The Center for Efficient Government is created in the
 257 department to establish and promote best business practices so
 258 that the delivery of services to citizens of the state may be
 259 provided in the most effective and cost-efficient manner
 260 possible. The secretary of the department shall appoint a
 261 director of the center. The center shall have the following
 262 duties and responsibilities:

263 (a) Create a centralized gate process for reviewing,
 264 evaluating, and approving agency procurements which, at a
 265 minimum, shall include the requirements contained in s. 287.0576
 266 for contractual services procurements.

267 (b) Provide information, training, and technical
 268 assistance to agencies on the use of the standards, processes,
 269 templates, and guidelines developed for use by agencies during
 270 the procurement process.

271 (c) Provide support and assistance to the commission,
 272 including, but not limited to, reviewing and validating agency
 273 business cases, developing standards, processes, templates, and
 274 guidelines for use by agencies during the procurement process
 275 and providing information and documentation as requested or
 276 required by law.

277 (d) Assist agencies directly in the procurement process as
 278 needed to ensure a high-quality procurement, including, but not
 279 limited to, developing and updating business cases, drafting

280 solicitation and contract documents, participating in contract
281 negotiations, identifying performance measures, and advising
282 agencies on performance measurement, contract management, and
283 change management. To carry out this responsibility, the
284 department shall employ an adequate number of highly skilled,
285 credentialed staff who collectively possess significant
286 expertise and experience in these areas.

287 (e) Collect data and information from agencies on an
288 ongoing basis with regard to the status and results of
289 procurements which have advanced completely through the
290 centralized gate process and recommend incorporation of any
291 lessons learned from such projects into center standards,
292 processes, templates, and guidelines, as appropriate, and
293 identify and disseminate to agencies information regarding best
294 practices in procurement, particularly contractual services
295 procurements.

296 (f) Develop and implement, in consultation with the Agency
297 for Workforce Innovation, guidelines for assisting employees
298 whose jobs are eliminated as a result of procurements.

299 (3) The center and commission and the activities conducted
300 by the department pursuant to this act to implement the
301 centralized gate process and provide assistance and information
302 shall not be subject to the rulemaking requirements of chapter
303 120.

304 (4) Agencies shall submit to the center all information,
305 documents, or other materials required by center or commission
306 policy or this chapter.

307 Section 6. Section 287.0576, Florida Statutes, is created
308 to read:

309 287.0576 Review and analysis of proposed procurement of
310 contractual services; centralized gate process.--

311 (1) At a minimum, the following procurements shall be
312 required to undergo review and analysis through the centralized
313 gate process established by the Center for Efficient Government:

314 (a) Contractual services procurements which have a total
315 cost of \$10 million or more.

316 (b) New contractual services procurements that will
317 require adjustments to the agency's budget in accordance with
318 chapter 216. Amendments to existing contracts are excluded.

319 (c) Contractual services procurements that do not involve
320 an outlay of state funds totaling \$10 million or more because of
321 the provision of services by the contractor at a rate
322 significantly below market rate, the significant investment of
323 other resources by the agency, or other reason, but in which the
324 total value of the services performed by the agency and
325 contractor under the contract is estimated to total \$10 million
326 or more. Examples of such procurements include, but are not
327 limited to, free, no-cost, or codevelopment contracts.

328 (d) Contractual services procurements for which the sum of
329 gross revenues or shared savings to be generated for the state
330 and contractor over the term of the contract plus the sum of any
331 payments to the contractor by the agency over the term of the
332 contract, if any, totals \$10 million or more.

333 (e) Contractual services procurements which the
 334 Legislature has directed to advance through the centralized gate
 335 process.

336 (2) Extensions and renewals of procurements in paragraphs
 337 (1)(a)-(e) shall be required to undergo review and analysis
 338 through the centralized gate process established by the Center
 339 for Efficient Government though, notwithstanding any law to the
 340 contrary, such procurements shall only be required to pass
 341 through such gates as the commission determines are appropriate.

342
 343 For purposes of determining whether a procurement meets the
 344 requirements of this subsection, multiple contractual services
 345 procurements for substantially similar or related functions or
 346 responsibilities occurring in a coordinated fashion or in close
 347 time proximity to one another shall be considered a single
 348 contractual services procurement for purposes of meeting the
 349 thresholds for this section.

350 (3) If the volume of projects required to pass through the
 351 centralized gate process pursuant to subsection (1) exceeds the
 352 capacity of the commission and center to process them, the
 353 commission shall prioritize the projects for commission review
 354 and center assistance based upon criteria it shall determine,
 355 which shall, at a minimum, include consideration of the
 356 estimated contract cost, impact on the public, impact on state
 357 employees, complexity, and potential risk of the procurement.
 358 For projects required to pass through the centralized gate
 359 process that the commission does not prioritize for review, the
 360 agency shall instead conduct its own review based upon the

361 standards, processes, templates, and guidelines of the
362 commission and shall provide information to the Legislature at
363 least 14 days prior to agency approval at each gate in
364 accordance with s. 287.0575(1)(h)5. The commission shall report
365 to the President of the Senate, the Speaker of the House of
366 Representatives, and the Governor if it is required to
367 prioritize projects pursuant to this subsection.

368 (4) The centralized gate process shall require, at a
369 minimum, review of the procurement by the commission at the
370 conclusion of important stages, or gates, in the procurement
371 process, as specified in subsection (5), for those procurements
372 subject to review under this act. At each gate, the commission
373 shall determine by majority vote whether:

374 (a) The agency has sufficiently met the requirements of
375 the current phase such that the procurement may advance through
376 the gate, at which point the commission shall grant approval and
377 the procurement shall advance to the next phase;

378 (b) Additional work must be completed in order to satisfy
379 the requirements of the center for the phase under consideration
380 before the procurement may advance through the gate to the next
381 phase, at which point the commission shall withhold approval and
382 the procurement shall not advance; or

383 (c) The procurement is not a good business decision and
384 should not be made, at which point the commission shall deny the
385 procurement and the procurement shall be removed from
386 consideration.

387
388 Notwithstanding the provisions of this section, the commission

389 may not deny procurements which are required by law. If the
 390 commission believes that a denial would be appropriate for such
 391 a procurement, the commission shall withhold approval and
 392 transmit to the President of the Senate, the Speaker of the
 393 House of Representatives, and the Governor the reasons why the
 394 procurement should not be completed and any recommendation for
 395 legislative action. If the President of the Senate or the
 396 Speaker of the House of Representatives has not responded in 14
 397 days, the commission shall proceed at its discretion.

398
 399 Notwithstanding any law to the contrary, agencies under the
 400 individual control of the Attorney General, the Chief Financial
 401 Officer, or the Commissioner of Agriculture are subject to the
 402 provisions of ss. 287.0571-287.0577, except that the commission
 403 shall not grant, withhold, or deny approval of a procurement by
 404 such agency but instead may only provide recommendations to the
 405 agency, and the approval of the commission shall not be required
 406 for the agency to take any action in regard to the procurement.
 407 The respective agency head shall have sole authority to grant,
 408 withhold, or deny approval of such procurement.

409 (5) The gates comprising the centralized gate process
 410 shall be established and designated as provided in paragraphs
 411 (a)-(e) and shall require, at a minimum, submission by the
 412 agency and review by the commission of the following documents:

413 (a) The proposal identification gate, which shall include
 414 the business case.

415 (b) The procurement preparation gate, which shall include
 416 the updated business case and the solicitation documents prior

417 to the issuance of such documents. An agency may not release
 418 solicitation documents without the commission's approval at this
 419 gate.

420 (c) The contract development gate, which shall include the
 421 updated business case and the proposed unexecuted contract. An
 422 agency may not execute the contract without the commission's
 423 approval at this gate.

424 (d) The transition management gate, which shall include
 425 the updated business case and, for a procurement of contractual
 426 services, an analysis of the agency's and contractor's readiness
 427 for the contractor to perform the proposed responsibility or
 428 function. An agency may not transition to contractor
 429 performance without the commission's approval at this gate.

430 (e) The post-implementation gate, which shall include the
 431 updated business case and a report on the adequacy of contractor
 432 performance.

433 (6) If the commission withholds approval of a proposed
 434 procurement, the agency may request that the review of the
 435 procurement be repeated at a future commission meeting.

436 (7) Any executed contract for a procurement required to
 437 pass through the centralized gate process pursuant to this
 438 section shall be null and void if:

439 (a) The procurement does not pass through the centralized
 440 gate process; or

441 (b) The agency executes a contract without the
 442 commission's approval at the contract development gate.

443

444 This subsection does not apply to procurements which the
445 commission does not prioritize for review pursuant to subsection
446 (3).

447 Section 7. Section 287.0577, Florida Statutes, is created
448 to read:

449 287.0577 Requirements for procurement of certain
450 contractual services.--In addition to the other applicable
451 requirements of this chapter, an agency shall comply with the
452 requirements of subsections (1)-(4) for a procurement of
453 contractual services subject to review under s. 287.0576:

454 (1) BUSINESS CASE.--The agency shall develop a business
455 case which describes and analyzes the procurement. The business
456 case is not subject to challenge or protest pursuant to ch. 120.
457 The business case shall include, but not be limited to, the
458 following information:

459 (a)1. A detailed description of the function or
460 responsibility for which the procurement is proposed, including
461 the reasons why the function or responsibility is not inherently
462 governmental;

463 2. If the agency is currently performing the function or
464 responsibility, a description and analysis of the agency's
465 current performance, including, but not limited to, baseline
466 costs and performance metrics;

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

469 4. A citation of the existing or proposed legal authority
470 for contracting for the function or responsibility.

471 (b)1. A description of available options for achieving the
472 goals. If state employees are currently performing the function
473 or responsibility, an option involving maintaining state
474 provision of the function or responsibility shall be included.

475 2. For options involving procurement of a contractual
476 service, a description of the current market for such service.

477 3. An analysis of the advantages and disadvantages of each
478 option, including, at a minimum, potential performance
479 improvements and risks.

480 (c) A cost-benefit analysis documenting the direct and
481 indirect specific baseline costs, savings, and qualitative and
482 quantitative benefits involved in or resulting from the
483 implementation of the recommended option or options. Such
484 analysis shall specify the schedule that, at a minimum, must be
485 adhered to in order to achieve the estimated savings. All
486 elements of cost shall be clearly identified in the cost-benefit
487 analysis, described in the business case, and supported by
488 applicable records and reports. The agency head shall certify
489 that all projected costs, savings, and benefits are valid and
490 achievable. "Cost" means the reasonable, relevant, and
491 verifiable cost which may include, but not be limited to,
492 elements such as personnel costs, materials and supplies,
493 services, equipment, capital depreciation costs, rent,
494 maintenance and repairs, utilities, insurance, personnel travel,
495 overhead, and interim and final payments. The appropriate
496 elements shall depend on the nature of the specific initiative.
497 "Savings" means the difference between the direct and indirect
498 actual annual baseline costs compared to the projected annual

499 cost for the contracted functions or responsibilities in any
500 succeeding state fiscal year during the term of the contract.

501 (d) A description of variance among agency policies and
502 processes and a plan to standardize, consolidate, or revise
503 current policies and processes, if any, to reduce the
504 customization of any proposed solution that would otherwise be
505 required.

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

508 (f) A statement of the potential impact on state revenues
509 and expenditures for the period beginning with the execution of
510 a contract and extending for 5 years after full implementation
511 of the contract or for the term of the contract, whichever is
512 longer. The statement shall specifically describe the effect on
513 general revenue, trust funds, general revenue service charges,
514 and interest on trust funds together with the potential direct
515 or indirect effect on federal funding and cost allocations.

516 (g) The projected timeframe for key events, from the
517 beginning of the procurement process through the expiration of a
518 contract.

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

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

523 2. Ensure the confidentiality of records that are exempt
524 or confidential under law.

525 3. Meet all legal requirements for record retention
526 provided by law.

527 4. Require transfer to the state, at no cost, of all
 528 public records in possession of the contractor upon termination
 529 of the contract.

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

533 (j) An agency transition plan for addressing changes in
 534 organizational structure, affected business processes, employee
 535 transition issues, and communication with affected stakeholders,
 536 such as agency clients and the public. The transition plan shall
 537 contain a reemployment and retraining assistance plan for
 538 employees who are not retained by the agency or employed by the
 539 contractor.

540 (k) A listing of any assets proposed for surplus.

541 (l) A plan for ensuring access by persons with
 542 disabilities in compliance with applicable state and federal
 543 law.

544
 545 If a contractual services procurement would require integration
 546 with or would in any way impact other state information
 547 technology systems, the agency shall submit the feasibility
 548 study documentation as required by the legislative budget
 549 request instructions established pursuant to s. 216.023.

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

552 (a) A detailed description of the function or
 553 responsibility under consideration for contracting and, if the
 554 function or responsibility is currently being performed by an

555 agency, a description and analysis of the agency's current
556 performance.

557 (b) Requirements that are achievable, unambiguous,
558 measurable, meaningful, and complete.

559 (c) The criteria that after contract execution will be
560 used to assess contractor performance and the minimum acceptable
561 contractor performance levels.

562 (3) CONTRACT REQUIREMENTS.-- At a minimum, the written
563 contract shall include:

564 (a) Specific terms and conditions providing a clearly
565 defined scope of work that is directly related to the goals and
566 objectives of the procurement. The terms must include:

567 1. A detailed scope of work that clearly specifies each
568 service and deliverable to be provided.

569 2. All service-level agreements describing all necessary
570 performance requirements and responsibilities of the state and
571 the contractor.

572 3. Associated costs and savings, specific payment terms,
573 including incentive, disincentive, and penalty provisions,
574 criteria governing payment, and a clear and specific project
575 schedule.

576 (b) Specific identification of all required performance
577 measures and levels that shall include, but not be limited to:

578 1. Acceptance criteria for each deliverable and service to
579 be provided to the state under the terms of the contract, which
580 document to the greatest extent possible the required
581 performance level. Acceptance criteria must be detailed, clear,
582 and unambiguous and shall be used to measure deliverables and

583 services under the contract. Payment shall be tied to successful
584 production of deliverables.

585 2. A method for monitoring and reporting progress in
586 achieving specified performance outcomes and associated
587 performance incentives.

588 3. The sanctions or penalties that shall be assessed for
589 nonperformance by the contractor.

590 (c) A description of deliverables, activities, or events
591 that are directly related to the scope of work which must be
592 quantifiable, measurable, and verifiable.

593 (d) A management plan for organizational change that
594 clearly identifies any changes in organizational structure,
595 including staffing and personnel changes in all affected
596 agencies. Such plan must specify a feasible mechanism for
597 continuing the operation of the service if the contractor fails
598 to comply with the performance standards in the contract.

599 (e) A requirement that the contractor maintain adequate
600 accounting records that comply with all applicable federal and
601 state laws and generally accepted accounting principles.

602 (f) A requirement authorizing state access to and audit of
603 all records related to the contract or any responsibilities or
604 functions under the contract for state audit and legislative
605 oversight purposes and a requirement for service organization
606 audits in accordance with professional auditing standards, if
607 appropriate.

608 (g) A requirement that ownership of any intellectual
609 property critical for the assumption of the contracted function
610 or responsibility by the state or another contractor shall

611 revert to the state in the event the contractor ceases to
 612 provide the contracted function or responsibility.

613 (h) A requirement describing the timing and substance of
 614 all status or progress reports that are to be provided under the
 615 contract. All such reports must comply with any relevant state
 616 and federal standards for planning, implementation, operations,
 617 and oversight.

618 (i) A requirement that the contractor comply with the
 619 public records law. The contractor shall:

620 1. Keep and maintain the public records that an agency
 621 would ordinarily and necessarily be required to keep and
 622 maintain in the performance of the function or responsibility.

623 2. Provide public access to such public records on the
 624 same terms and conditions required of an agency at a cost that
 625 does not exceed that provided in chapter 119.

626 3. Ensure the confidentiality of records which are exempt
 627 or confidential under law.

628 4. Meet all legal requirements for record retention.

629 5. Transfer to the state, at no cost to the state, all
 630 public records in the possession of the contractor upon
 631 termination of the contract and destroy at a minimum any
 632 duplicate public records which are exempt and confidential. All
 633 records that are stored electronically must be provided to the
 634 state in a format compatible with state information technology
 635 systems.

636 (j) A requirement that the contractor shall interview and
 637 consider for employment with the contractor each impacted state
 638 employee who is interested in such employment.

639 (k) Provisions requiring that venue for any action
 640 regarding the contract shall be in Leon County and that the
 641 contract shall be interpreted according to the laws of this
 642 state.

643 (4) REPORTS.--During the term of the contract, the agency
 644 shall annually submit with its legislative budget request a
 645 project status report for each procurement which has passed
 646 through at least the first three gates of the centralized gate
 647 process, describing the progress made to date, actual completion
 648 dates in comparison to planned completion dates, actual costs
 649 incurred in comparison to projected costs incurred, current
 650 issues requiring resolution, planned project milestones,
 651 deliverables, and expenditures for the next reporting period and
 652 any other information relating to the contractual services that
 653 may be requested.

654 Section 8. Section 216.1817, Florida Statutes, is created
 655 to read:

656 216.1817 Limitation on budgetary changes for contractual
 657 services procurement; placement of positions in reserve; re-
 658 establishment of positions.--

659 (1) Any budgetary changes for a contractual services
 660 procurement that are inconsistent with the agency's approved
 661 budget may not be made to existing programs unless such changes
 662 are recommended to the Legislative Budget Commission by the
 663 Governor, and the Legislative Budget Commission expressly
 664 approves such program changes.

665 (2) If a procurement of contractual services involves the
 666 performance of functions or responsibilities that are being

667 shifted from state employees to a contractor, the agency shall
668 identify within the business case prepared pursuant to s.
669 287.0577 all resources which are affected, including full-time
670 equivalent positions. All full-time equivalent positions
671 identified in the business case shall be placed in reserve by
672 the Executive Office of the Governor until the end of the second
673 year of the contract. Notwithstanding the provisions of s.
674 216.262, the Executive Office of the Governor shall request
675 authority from the Legislative Budget Commission to reestablish
676 full-time equivalent positions above the number fixed by the
677 Legislature when a contract is terminated and the performance of
678 the functions or responsibilities must be returned to the
679 agency.

680 Section 9. The Center for Efficient Government and the
681 Commission on Efficient Government shall terminate on July 1,
682 2010, unless reenacted by the Legislature prior to that date. It
683 is the intent of the Legislature that, beginning July 1, 2010,
684 the various state agencies shall perform the review functions
685 required under this act for procurements of contractual services
686 under their jurisdiction. It is also the intent of the
687 Legislature that beginning July 1, 2010, the positions
688 authorized by this act shall remain with the Department of
689 Management Services, which shall continue providing technical
690 assistance as required in this act.

691 Section 10. Section 14.203, Florida Statutes, is repealed.

692 Section 11. There is hereby appropriated \$2 million
693 recurring budget authority to the Department of Management
694 Services from the General Revenue Fund, and 16 full-time

695 equivalent positions are authorized, to carry out the activities
 696 of the Center for Efficient Government and the Commission on
 697 Efficient Government as provided in this act.

698 Section 12. Section 287.0572, Florida Statutes, is
 699 renumbered as section 287.0579, Florida Statutes:

700 287.0579 ~~287.0572~~ Present-value methodology.--

701 (1) The cost of bids, proposals, or replies for state
 702 contracts that include provisions for unequal payment streams or
 703 unequal time payment periods shall be evaluated using present-
 704 value methodology. Each agency, as defined in s. 287.012(1),
 705 shall perform the evaluation using the present-value discount
 706 rate supplied by the department. The present-value discount rate
 707 shall be the rate for United States Treasury notes and bonds
 708 published in the Interest Rates: Money and Capital Markets
 709 section of the most recent copy of the Federal Reserve Bulletin
 710 published at the time of issuance of the request for proposals,
 711 the invitation to negotiate, or the invitation to bid.

712 (2) The department may adopt rules to administer
 713 subsection (1).

714 Section 13. Subsection (3) of section 119.0721, Florida
 715 Statutes, is amended to read:

716 119.0721 Social security number exemption.--

717 (3) An agency shall not deny a commercial entity engaged
 718 in the performance of a commercial activity, which for purposes
 719 of this subsection means an activity that provides a product or
 720 service that is available from a private source, as defined in
 721 ~~s. 14.203~~ or its agents, employees, or contractors access to
 722 social security numbers, provided the social security numbers

723 will be used only in the normal course of business for
724 legitimate business purposes, and provided the commercial entity
725 makes a written request for social security numbers, verified as
726 provided in s. 92.525, legibly signed by an authorized officer,
727 employee, or agent of the commercial entity. The verified
728 written request must contain the commercial entity's name,
729 business mailing and location addresses, business telephone
730 number, and a statement of the specific purposes for which it
731 needs the social security numbers and how the social security
732 numbers will be used in the normal course of business for
733 legitimate business purposes. The aggregate of these requests
734 shall serve as the basis for the agency report required in
735 subsection (7). An agency may request any other information as
736 may be reasonably necessary to verify the identity of the entity
737 requesting the social security numbers and the specific purposes
738 for which such numbers will be used; however, an agency has no
739 duty to inquire beyond the information contained in the verified
740 written request. A legitimate business purpose includes
741 verification of the accuracy of personal information received by
742 a commercial entity in the normal course of its business; use in
743 a civil, criminal, or administrative proceeding; use for
744 insurance purposes; use in law enforcement and investigation of
745 crimes; use in identifying and preventing fraud; use in
746 matching, verifying, or retrieving information; and use in
747 research activities. A legitimate business purpose does not
748 include the display or bulk sale of social security numbers to
749 the general public or the distribution of such numbers to any
750 customer that is not identifiable by the distributor.

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Section 14. This act shall take effect July 1, 2005.