

CHAMBER ACTION

1 The State Administration Appropriations Committee recommends the
2 following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6
7 A bill to be entitled
8 An act relating to procurement of contractual services by
9 an agency; amending s. 20.22, F.S.; placing the Center for
10 Efficient Government in the Department of Management
11 Services; creating s. 287.0571, F.S.; providing that
12 procurements of specified commodities and services are not
13 subject to the act; creating s. 287.0573, F.S.; providing
14 definitions; creating s. 287.0574, F.S.; providing
15 criteria for the procurement of contractual services by an
16 agency; creating s. 287.0575, F.S.; creating the
17 Commission on Efficient Government within the Department
18 of Management Services; providing for purpose, membership,
19 and organization of the commission; providing duties and
20 responsibilities of the commission; creating the Center
21 for Efficient Government; providing purpose and
22 organization of the center; providing duties and
23 responsibilities of the center; requiring the center to

24 create a centralized gate process for reviewing,
25 evaluating, and approving agency procurements; providing
26 that the commission, the center, and activities related to
27 the implementation of the centralized gate process are not
28 subject to the rulemaking requirements of ch. 120, F.S.;
29 requiring state agencies to submit specified information,
30 documents, and other materials required under policies of
31 the commission or the center; creating s. 287.0576, F.S.;
32 specifying procurements which must be reviewed and
33 evaluated under the centralized gate process; providing
34 minimum requirements for the centralized gate process;
35 providing for specified determinations by the commission
36 at each gate; providing procedure with respect to a
37 recommendation by the commission of denial of a
38 procurement required by law; providing that agencies under
39 the individual control of the Attorney General, Chief
40 Financial Officer, or Commissioner of Agriculture are
41 subject to the act, with specified exceptions; providing
42 authority of the agency head with respect to procurements
43 by such agencies; establishing the gates within the
44 centralized gate process; requiring agencies to submit
45 specified documents for commission review; providing for
46 nullification of executed contracts for procurement under
47 specified circumstances; providing for legislative review
48 of an agency's appropriations upon a determination that
49 the agency has violated the provisions of the act;
50 creating s. 287.0577, F.S.; providing requirements for
51 procurement of certain contractual services; requiring an

52 | agency to develop a business case which describes and
53 | analyzes a contractual services procurement under
54 | consideration; providing required components of a business
55 | case; defining "cost" and "savings"; providing
56 | requirements with respect to the solicitation for a
57 | contractual services procurement; providing contract
58 | requirements for a contractual services procurement;
59 | requiring the submission of specified annual reports;
60 | creating s. 216.1817, F.S.; permitting budgetary changes
61 | for a contractual services procurement only under
62 | specified conditions; requiring the placement of full-time
63 | equivalent positions in reserve under certain conditions;
64 | providing for the reestablishment of full-time equivalent
65 | positions upon termination of a contract and reversion of
66 | functions and responsibilities to the agency; providing
67 | for future termination of the Center for Efficient
68 | Government and the Commission on Efficient Government;
69 | providing legislative intent with respect to the
70 | performance of review functions and assistance to agencies
71 | for procurements of contractual services by state agencies
72 | after a specified date; providing that positions
73 | authorized under the act shall remain with the Department
74 | of Management Services after a specified date; repealing
75 | s. 14.203, F.S., which creates the State Council on
76 | Competitive Government and provides duties and authority
77 | of the council; providing an appropriation; providing
78 | full-time equivalent positions; amending s. 119.0721,
79 | F.S.; removing a cross reference; clarifying the meaning

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80 | of "commercial activity" to conform to the removal of the
81 | reference; providing an effective date.

82 |
83 | WHEREAS, the private sector can often perform services with
84 | greater efficiency and effectiveness at a lower cost than the
85 | state, and

86 | WHEREAS, the state has long been a leader in innovative
87 | practices, in part because of its partnerships with the private
88 | sector, and

89 | WHEREAS, the state desires to reap the benefits of lower
90 | costs, high quality, and innovation by working closely with the
91 | private sector, and

92 | WHEREAS, the state still maintains responsibility for
93 | ensuring that the services performed by the private sector on
94 | behalf of the state are of high quality, provided cost-
95 | effectively, and appropriate for private provision, and

96 | WHEREAS, leading businesses have developed best practices
97 | to determine what to obtain from the market and how to ensure
98 | that such services are provided at the desired quality and at
99 | the appropriate cost, and

100 | WHEREAS, the executive branch has made great progress in
101 | promoting the use of such best practices, and the citizens of
102 | the state could benefit by the increased adoption across state
103 | government of such best practices, NOW, THEREFORE,

104 |
105 | Be It Enacted by the Legislature of the State of Florida:

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

109 20.22 Department of Management Services.--There is created
110 a Department of Management Services.

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

113 (i) Center for Efficient Government.

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

116 287.0571 Applicability of ss. 287.0571-287.0577.--
117 Procurements of commodities and contractual services listed in
118 s. 287.057(5)(e), (f), and (g) shall not be subject to ss.
119 287.0571-287.0577.

120 Section 3. Section 287.0573, Florida Statutes, is created
121 to read:

122 287.0573 Definitions.--For the purposes of ss. 287.0571-
123 287.0577:

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

126 (2) "Centralized gate process" means the system of review
127 phases established under s. 287.0576 for a proposed procurement
128 of contractual services, the conclusion of each phase being a
129 "gate" or decision point at which the commission determines
130 whether the procurement under consideration may proceed to the
131 next phase.

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

134 (4) "Inherently governmental function or responsibility"
 135 means a function or responsibility which entails the exercise of
 136 sovereign power and is therefore so intimately related to the
 137 public interest that it mandates performance by a public officer
 138 or a public employee upon whom the public officer has delegated
 139 authority for the performance of such acts. Inherently
 140 governmental functions or responsibilities include those
 141 activities which require either the exercise of discretion in
 142 applying governmental authority or the use of value judgment in
 143 making decisions for the government. Inherently governmental
 144 functions or responsibilities are categorized as follows:

145 (a) The act of governing or discretionary exercise of
 146 governmental authority which includes, but is not limited to,
 147 such activities as criminal investigations, prosecutions, and
 148 other judicial functions; management of government programs
 149 requiring value judgments; selection of program priorities;
 150 regulation of natural resources; regulation of industry and
 151 commerce; determination of agency policy, including, but not
 152 limited to, determining the content and application of
 153 regulations; binding the state by contract, policy, regulation,
 154 authorization, order, or otherwise; commissioning, appointing,
 155 directing, selecting, or controlling state officers or
 156 employees; approval of position descriptions and performance
 157 standards for state employees; exertion of ultimate control over
 158 the acquisition, use, or disposition of the real, personal,
 159 tangible, or intangible property of the state, including the
 160 collection, control, or disbursement of state funds; awarding,
 161 administering, and terminating contracts; determining whether

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162 contract costs are reasonable, allocable, and allowable;
 163 approval of contractual documents; approval of state licensing
 164 actions and inspections; determination of budget policy,
 165 guidance, and strategy.

166 (b) Monetary transactions and entitlements which include,
 167 but are not limited to, tax collection and revenue
 168 disbursements; control of state funds; and the administration of
 169 public trusts.

170
 171 Inherently governmental functions or responsibilities do not
 172 include gathering information for or providing advice, opinions,
 173 recommendations, or ideas to state officials. They do not
 174 include functions that are primarily ministerial and internal in
 175 nature, such as building security, mail operations, operation of
 176 cafeterias, housekeeping, facilities operations and maintenance,
 177 warehouse operations, motor vehicle fleet management operations,
 178 or other routine electrical or mechanical services.

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

181 287.0574 Criteria for procurement of contractual
 182 services.--An agency may procure a contractual service only if:

183 (1) The procurement does not involve the performance by a
 184 contractor of an inherently governmental function or
 185 responsibility; and

186 (2) Upon full implementation of a procurement in which the
 187 performance of functions or responsibilities are shifted from
 188 state employees to a contractor, the implementation results in
 189 reasonable cost savings while maintaining at least the same

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190 quality of service or reasonably increases the quality of
 191 service while not exceeding the same level of cost.

192 Section 5. Section 287.0575, Florida Statutes, is created
 193 to read:

194 287.0575 Commission on Efficient Government; membership;
 195 duties; Center for Efficient Government; duties.--

196 (1) The Commission on Efficient Government is created
 197 within the Department of Management Services to oversee the
 198 Center for Efficient Government and carry out the
 199 responsibilities specified in this section.

200 (a) The commission shall consist of seven members
 201 appointed by the Governor:

202 1. Three members shall be heads of executive branch
 203 agencies.

204 2. Four members shall be from the private sector and have
 205 significant relevant business experience but shall not be
 206 employed by or have a business relationship with any entity that
 207 seeks to contract with or has a contract with the state during
 208 the member's term on the commission. If feasible, the four
 209 private-sector members shall collectively have experience with
 210 procurement, successfully increasing operational efficiency, and
 211 implementing complex projects.

212 (b) By August 1, 2005, the Governor shall appoint two
 213 private-sector members and two agency heads for terms of 3 years
 214 and two private-sector members and one agency head for terms of
 215 4 years. Thereafter, each member shall serve for a term of 4
 216 years. The private-sector members shall serve without

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217 compensation but shall be entitled to reimbursement for per diem
 218 and travel expenses pursuant to s. 112.061.

219 (c) No member of the commission who is the head of an
 220 executive branch agency shall be disqualified from participating
 221 in commission review of a procurement because his or her agency
 222 is involved in the procurement.

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

225 (e) A quorum shall consist of at least four members,
 226 including at least one member who is an agency head.

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

232 (g) At the first meeting of the commission after August 1,
 233 2005, the members of the commission shall elect, by majority
 234 vote of those in attendance, a member to serve as chair of the
 235 commission. No later than September 1 of each succeeding year,
 236 the commission shall elect a new chair.

237 (h) The commission shall:

238 1. Oversee the Center for Efficient Government.

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

241 3. Review, evaluate, and grant approval of, withhold
 242 approval of, or deny approval of a proposed procurement at the
 243 gates established within the centralized gate process. The
 244 commission shall determine the criteria regarding which

245 procurements must pass through the centralized gate process.
 246 Such procurements shall include, at a minimum, those subject to
 247 the requirements of s. 287.0576.

248 4. Approve standards, processes, templates, and guidelines
 249 for use by agencies during the procurement process which shall,
 250 at a minimum, include the requirements under s. 287.0577 for
 251 procurements of contractual services.

252 5. Implement a plan for providing information and
 253 documentation to the Legislature and the Governor on behalf of
 254 agencies and in compliance with the provisions of this chapter.
 255 The system shall include, at a minimum, providing copies of
 256 documents to be reviewed by the commission to the President of
 257 the Senate, the Speaker of the House of Representatives, the
 258 Governor, and the chairs of the relevant appropriations and
 259 substantive legislative committees at least 14 days prior to the
 260 meeting of the commission at which the proposed procurement will
 261 be discussed.

262 6. Review the performance of procurements which have
 263 advanced through the full centralized gate process.

264 7. Beginning October 15, 2005, submit to the Executive
 265 Office of the Governor, the President of the Senate, the Speaker
 266 of the House of Representatives, and the chairs of the
 267 legislative appropriations committees a quarterly report
 268 describing the activities of the center and the actions taken by
 269 the commission during the previous quarter.

270 (2) The Center for Efficient Government is created in the
 271 department to establish and promote best business practices so
 272 that the delivery of services to citizens of the state may be

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273 provided in the most effective and cost-efficient manner
274 possible. The secretary of the department shall appoint a
275 director of the center. The center shall have the following
276 duties and responsibilities:

277 (a) Create a centralized gate process for reviewing,
278 evaluating, and approving agency procurements which, at a
279 minimum, shall include the requirements contained in s. 287.0576
280 for contractual services procurements.

281 (b) Provide information, training, and technical
282 assistance to agencies on the use of the standards, processes,
283 templates, and guidelines developed for use by agencies during
284 the procurement process.

285 (c) Provide support and assistance to the commission,
286 including, but not limited to, reviewing and validating agency
287 business cases, developing standards, processes, templates, and
288 guidelines for use by agencies during the procurement process
289 and providing information and documentation as requested or
290 required by law.

291 (d) Assist agencies directly in the procurement process as
292 needed to ensure a high-quality procurement, including, but not
293 limited to, developing and updating business cases, drafting
294 solicitation and contract documents, participating in contract
295 negotiations, identifying performance measures, and advising
296 agencies on performance measurement, contract management, and
297 change management. To carry out this responsibility, the
298 department shall employ an adequate number of highly skilled,
299 credentialed staff who collectively possess significant
300 expertise and experience in these areas.

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301 (e) Collect data and information from agencies on an
 302 ongoing basis with regard to the status and results of
 303 procurements which have advanced completely through the
 304 centralized gate process and recommend incorporation of any
 305 lessons learned from such projects into center standards,
 306 processes, templates, and guidelines, as appropriate, and
 307 identify and disseminate to agencies information regarding best
 308 practices in procurement, particularly contractual services
 309 procurements.

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

313 (3) The center and commission and the activities conducted
 314 by the department pursuant to this act to implement the
 315 centralized gate process and provide assistance and information
 316 shall not be subject to the rulemaking requirements of chapter
 317 120.

318 (4) Agencies shall submit to the center all information,
 319 documents, or other materials required by center or commission
 320 policy or this chapter.

321 Section 6. Section 287.0576, Florida Statutes, is created
 322 to read:

323 287.0576 Review and analysis of proposed procurement of
 324 contractual services; centralized gate process.--

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

328 (a) Contractual services procurements which have a total
 329 cost of \$10 million or more annually.

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

333 (c) Contractual services procurements that do not involve
 334 an outlay of state funds totaling \$10 million or more annually
 335 because of the provision of services by the contractor at a rate
 336 significantly below market rate, the significant investment of
 337 other resources by the agency, or other reason, but in which the
 338 total value of the services performed by the agency and
 339 contractor under the contract is estimated to total \$10 million
 340 or more annually. Examples of such procurements include, but are
 341 not limited to, free, no-cost, or codevelopment contracts.

342 (d) Contractual services procurements for which the sum of
 343 gross revenues or shared savings to be generated for the state
 344 and contractor over the term of the contract plus the sum of any
 345 payments to the contractor by the agency over the term of the
 346 contract, if any, totals \$10 million or more annually.

347 (e) Contractual services procurements which the
 348 Legislature has directed to advance through the centralized gate
 349 process.

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

356
357 For purposes of determining whether a procurement meets the
358 requirements of this subsection, multiple contractual services
359 procurements for substantially similar or related functions or
360 responsibilities occurring in a coordinated fashion or in close
361 time proximity to one another shall be considered a single
362 contractual services procurement for purposes of meeting the
363 thresholds for this section.

364 (3) If the volume of projects required to pass through the
365 centralized gate process pursuant to subsection (1) exceeds the
366 capacity of the commission and center to process them, the
367 commission shall prioritize the projects for commission review
368 and center assistance based upon criteria it shall determine,
369 which shall, at a minimum, include consideration of the
370 estimated contract cost, impact on the public, impact on state
371 employees, complexity, and potential risk of the procurement.
372 For projects required to pass through the centralized gate
373 process that the commission does not prioritize for review, the
374 agency shall instead conduct its own review based upon the
375 standards, processes, templates, and guidelines of the
376 commission and shall provide information to the Legislature at
377 least 14 days prior to agency approval at each gate in
378 accordance with s. 287.0575(1)(h)5. The commission shall report
379 to the President of the Senate, the Speaker of the House of
380 Representatives, and the Governor if it is required to
381 prioritize projects pursuant to this subsection.

382 (4) The centralized gate process shall require, at a
383 minimum, review of the procurement by the commission at the

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384 conclusion of important stages, or gates, in the procurement
385 process, as specified in subsection (5), for those procurements
386 subject to review under this act. At each gate, the commission
387 shall determine by unanimous vote whether:

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

392 (b) Additional work must be completed in order to satisfy
393 the requirements of the center for the phase under consideration
394 before the procurement may advance through the gate to the next
395 phase, at which point the commission shall withhold approval and
396 the procurement shall not advance; or

397 (c) The procurement is not a good business decision and
398 should not be made, at which point the commission shall deny the
399 procurement and the procurement shall be removed from
400 consideration.

401
402 Notwithstanding the provisions of this section, the commission
403 may not deny procurements which are required by law. If the
404 commission believes that a denial would be appropriate for such
405 a procurement, the commission shall withhold approval and
406 transmit to the President of the Senate, the Speaker of the
407 House of Representatives, and the Governor the reasons why the
408 procurement should not be completed and any recommendation for
409 legislative action. If the President of the Senate or the
410 Speaker of the House of Representatives has not responded in 14
411 days, the commission shall proceed at its discretion.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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412
413 Notwithstanding any law to the contrary, agencies under the
414 individual control of the Attorney General, the Chief Financial
415 Officer, or the Commissioner of Agriculture are subject to the
416 provisions of ss. 287.0571-287.0577, except that the commission
417 shall not grant, withhold, or deny approval of a procurement by
418 such agency but instead may only provide recommendations to the
419 agency, and the approval of the commission shall not be required
420 for the agency to take any action in regard to the procurement.
421 The respective agency head shall have sole authority to grant,
422 withhold, or deny approval of such procurement.

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

427 (a) The proposal identification gate, which shall include
428 the business case.

429 (b) The procurement preparation gate, which shall include
430 the updated business case and the solicitation documents prior
431 to the issuance of such documents. An agency may not release
432 solicitation documents without the commission's approval at this
433 gate.

434 (c) The contract development gate, which shall include the
435 updated business case and the proposed unexecuted contract. An
436 agency may not execute the contract without the commission's
437 approval at this gate.

438 (d) The transition management gate, which shall include
439 the updated business case and, for a procurement of contractual

440 services, an analysis of the agency's and contractor's readiness
 441 for the contractor to perform the proposed responsibility or
 442 function. An agency may not transition to contractor
 443 performance without the commission's approval at this gate.

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

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

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

453 (a) The procurement does not pass through the centralized
 454 gate process; or

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

457
 458 This subsection does not apply to procurements which the
 459 commission does not prioritize for review pursuant to subsection
 460 (3).

461 (8) Unless otherwise exempted from the provisions of this
 462 act, any agency that violates the provisions of this act shall
 463 be subject to a review by the Auditor General of actions taken
 464 by the agency. The Auditor General shall provide a report of
 465 findings to the Speaker of the House, the President of the
 466 Senate, the chairs of the legislative appropriations committees,
 467 and the Executive Office of the Governor. If the Auditor

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468 General finds that the agency has violated the recommendations
 469 of the commission or the provisions of this act, the Legislature
 470 shall conduct an immediate review of the agency's appropriations
 471 to determine the appropriate actions to be taken for placing the
 472 agency's funds in mandatory reserve.

473 Section 7. Section 287.0577, Florida Statutes, is created
 474 to read:

475 287.0577 Requirements for procurement of certain
 476 contractual services.--In addition to the other applicable
 477 requirements of this chapter, an agency shall comply with the
 478 requirements of subsections (1)-(4) for a procurement of
 479 contractual services subject to review under s. 287.0576:

480 (1) BUSINESS CASE.--The agency shall develop a business
 481 case which describes and analyzes the procurement. The business
 482 case is not subject to challenge or protest pursuant to ch. 120.
 483 The business case shall include, but not be limited to, the
 484 following information:

485 (a)1. A detailed description of the function or
 486 responsibility for which the procurement is proposed, including
 487 the reasons why the function or responsibility is not inherently
 488 governmental;

489 2. If the agency is currently performing the function or
 490 responsibility, a description and analysis of the agency's
 491 current performance, including, but not limited to, baseline
 492 costs and performance metrics;

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

495 4. A citation of the existing or proposed legal authority
 496 for contracting for the function or responsibility.

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

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

503 3. An analysis of the advantages and disadvantages of each
 504 option, including, at a minimum, potential performance
 505 improvements and risks.

506 (c) A cost-benefit analysis documenting the direct and
 507 indirect specific baseline costs, savings, and qualitative and
 508 quantitative benefits involved in or resulting from the
 509 implementation of the recommended option or options. Such
 510 analysis shall specify the schedule that, at a minimum, must be
 511 adhered to in order to achieve the estimated savings. All
 512 elements of cost shall be clearly identified in the cost-benefit
 513 analysis, described in the business case, and supported by
 514 applicable records and reports. The agency head shall certify
 515 that all projected costs, savings, and benefits are valid and
 516 achievable. "Cost" means the reasonable, relevant, and
 517 verifiable cost which may include, but not be limited to,
 518 elements such as personnel costs, materials and supplies,
 519 services, equipment, capital depreciation costs, rent,
 520 maintenance and repairs, utilities, insurance, personnel travel,
 521 overhead, and interim and final payments. The appropriate
 522 elements shall depend on the nature of the specific initiative.

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523 "Savings" means the difference between the direct and indirect
524 actual annual baseline costs compared to the projected annual
525 cost for the contracted functions or responsibilities in any
526 succeeding state fiscal year during the term of the contract.

527 (d) A description of variance among agency policies and
528 processes and a plan to standardize, consolidate, or revise
529 current policies and processes, if any, to reduce the
530 customization of any proposed solution that would otherwise be
531 required.

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

534 (f) A statement of the potential impact on state revenues
535 and expenditures for the period beginning with the execution of
536 a contract and extending for 5 years after full implementation
537 of the contract or for the term of the contract, whichever is
538 longer. The statement shall specifically describe the effect on
539 general revenue, trust funds, general revenue service charges,
540 and interest on trust funds together with the potential direct
541 or indirect effect on federal funding and cost allocations.

542 (g) The projected timeframe for key events, from the
543 beginning of the procurement process through the expiration of a
544 contract.

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

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

549 2. Ensure the confidentiality of records that are exempt
550 or confidential under law.

551 3. Meet all legal requirements for record retention
552 provided by law.

553 4. Require transfer to the state, at no cost, of all
554 public records in possession of the contractor upon termination
555 of the contract.

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

559 (j) An agency transition plan for addressing changes in
560 organizational structure, affected business processes, employee
561 transition issues, and communication with affected stakeholders,
562 such as agency clients and the public. The transition plan shall
563 contain a reemployment and retraining assistance plan for
564 employees who are not retained by the agency or employed by the
565 contractor.

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

567 (l) A plan for ensuring access by persons with
568 disabilities in compliance with applicable state and federal
569 law.

570
571 If a contractual services procurement would require integration
572 with or would in any way impact other state information
573 technology systems, the agency shall submit the feasibility
574 study documentation as required by the legislative budget
575 request instructions established pursuant to s. 216.023.

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

578 (a) A detailed description of the function or
 579 responsibility under consideration for contracting and, if the
 580 function or responsibility is currently being performed by an
 581 agency, a description and analysis of the agency's current
 582 performance.

583 (b) Requirements that are achievable, unambiguous,
 584 measurable, meaningful, and complete.

585 (c) The criteria that after contract execution will be
 586 used to assess contractor performance and the minimum acceptable
 587 contractor performance levels.

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

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

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

595 2. All service-level agreements describing all necessary
 596 performance requirements and responsibilities of the state and
 597 the contractor.

598 3. Associated costs and savings, specific payment terms,
 599 including incentive, disincentive, and penalty provisions,
 600 criteria governing payment, and a clear and specific project
 601 schedule.

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

604 1. Acceptance criteria for each deliverable and service to
 605 be provided to the state under the terms of the contract, which

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606 document to the greatest extent possible the required
607 performance level. Acceptance criteria must be detailed, clear,
608 and unambiguous and shall be used to measure deliverables and
609 services under the contract. Payment shall be tied to successful
610 production of deliverables.

611 2. A method for monitoring and reporting progress in
612 achieving specified performance outcomes and associated
613 performance incentives.

614 3. The sanctions or penalties that shall be assessed for
615 nonperformance by the contractor.

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

619 (d) A management plan for organizational change that
620 clearly identifies any changes in organizational structure,
621 including staffing and personnel changes in all affected
622 agencies. Such plan must specify a feasible mechanism for
623 continuing the operation of the service if the contractor fails
624 to comply with the performance standards in the contract.

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

628 (f) A requirement authorizing state access to and audit of
629 all records related to the contract or any responsibilities or
630 functions under the contract for state audit and legislative
631 oversight purposes and a requirement for service organization
632 audits in accordance with professional auditing standards, if
633 appropriate.

634 (g) A requirement that ownership of any intellectual
 635 property critical for the assumption of the contracted function
 636 or responsibility by the state or another contractor shall
 637 revert to the state in the event the contractor ceases to
 638 provide the contracted function or responsibility.

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

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

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

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

652 3. Ensure the confidentiality of records which are exempt
 653 or confidential under law.

654 4. Meet all legal requirements for record retention.

655 5. Transfer to the state, at no cost to the state, all
 656 public records in the possession of the contractor upon
 657 termination of the contract and destroy at a minimum any
 658 duplicate public records which are exempt and confidential. All
 659 records that are stored electronically must be provided to the
 660 state in a format compatible with state information technology
 661 systems.

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

665 (k) Provisions requiring that venue for any action
 666 regarding the contract shall be in Leon County and that the
 667 contract shall be interpreted according to the laws of this
 668 state.

669 (4) REPORTS.--During the term of the contract, the agency
 670 shall annually submit with its legislative budget request a
 671 project status report for each procurement which has passed
 672 through at least the first three gates of the centralized gate
 673 process, describing the progress made to date, actual completion
 674 dates in comparison to planned completion dates, actual costs
 675 incurred in comparison to projected costs incurred, current
 676 issues requiring resolution, planned project milestones,
 677 deliverables, and expenditures for the next reporting period and
 678 any other information relating to the contractual services that
 679 may be requested.

680 Section 8. Section 216.1817, Florida Statutes, is created
 681 to read:

682 216.1817 Limitation on budgetary changes for contractual
 683 services procurement; placement of positions in reserve; re-
 684 establishment of positions.--

685 (1) Any budgetary changes for a contractual services
 686 procurement that are inconsistent with the agency's approved
 687 budget may not be made to existing programs unless such changes
 688 are recommended to the Legislative Budget Commission by the

689 Governor, and the Legislative Budget Commission expressly
 690 approves such program changes.

691 (2) If a procurement of contractual services involves the
 692 performance of functions or responsibilities that are being
 693 shifted from state employees to a contractor, the agency shall
 694 identify within the business case prepared pursuant to s.
 695 287.0577 all resources which are affected, including full-time
 696 equivalent positions. All full-time equivalent positions
 697 identified in the business case shall be placed in reserve by
 698 the Executive Office of the Governor until the end of the second
 699 year of the contract. Notwithstanding the provisions of s.
 700 216.262, the Executive Office of the Governor shall request
 701 authority from the Legislative Budget Commission to reestablish
 702 full-time equivalent positions above the number fixed by the
 703 Legislature when a contract is terminated and the performance of
 704 the functions or responsibilities must be returned to the
 705 agency.

706 Section 9. The Center for Efficient Government and the
 707 Commission on Efficient Government shall terminate on July 1,
 708 2010, unless reenacted by the Legislature prior to that date. It
 709 is the intent of the Legislature that, beginning July 1, 2010,
 710 the various state agencies shall perform the review functions
 711 required under this act for procurements of contractual services
 712 under their jurisdiction. It is also the intent of the
 713 Legislature that beginning July 1, 2010, the positions
 714 authorized by this act shall remain with the Department of
 715 Management Services, which shall continue providing technical
 716 assistance as required in this act.

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

718 Section 11. There is hereby appropriated \$1,023,554
 719 recurring budget authority to the Department of Management
 720 Services from the General Revenue Fund, and 9 full-time
 721 equivalent positions are authorized, to carry out the activities
 722 of the Center for Efficient Government and the Commission on
 723 Efficient Government as provided in this act.

724 Section 12. Section 287.0572, Florida Statutes, is
 725 renumbered as section 287.0579, Florida Statutes:

726 287.0579 ~~287.0572~~ Present-value methodology.--

727 (1) The cost of bids, proposals, or replies for state
 728 contracts that include provisions for unequal payment streams or
 729 unequal time payment periods shall be evaluated using present-
 730 value methodology. Each agency, as defined in s. 287.012(1),
 731 shall perform the evaluation using the present-value discount
 732 rate supplied by the department. The present-value discount rate
 733 shall be the rate for United States Treasury notes and bonds
 734 published in the Interest Rates: Money and Capital Markets
 735 section of the most recent copy of the Federal Reserve Bulletin
 736 published at the time of issuance of the request for proposals,
 737 the invitation to negotiate, or the invitation to bid.

738 (2) The department may adopt rules to administer
 739 subsection (1).

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

742 119.0721 Social security number exemption.--

743 (3) An agency shall not deny a commercial entity engaged
 744 in the performance of a commercial activity, which for purposes

745 | of this subsection means an activity that provides a product or
 746 | service that is available from a private source, as defined in
 747 | ~~s. 14.203~~ or its agents, employees, or contractors access to
 748 | social security numbers, provided the social security numbers
 749 | will be used only in the normal course of business for
 750 | legitimate business purposes, and provided the commercial entity
 751 | makes a written request for social security numbers, verified as
 752 | provided in s. 92.525, legibly signed by an authorized officer,
 753 | employee, or agent of the commercial entity. The verified
 754 | written request must contain the commercial entity's name,
 755 | business mailing and location addresses, business telephone
 756 | number, and a statement of the specific purposes for which it
 757 | needs the social security numbers and how the social security
 758 | numbers will be used in the normal course of business for
 759 | legitimate business purposes. The aggregate of these requests
 760 | shall serve as the basis for the agency report required in
 761 | subsection (7). An agency may request any other information as
 762 | may be reasonably necessary to verify the identity of the entity
 763 | requesting the social security numbers and the specific purposes
 764 | for which such numbers will be used; however, an agency has no
 765 | duty to inquire beyond the information contained in the verified
 766 | written request. A legitimate business purpose includes
 767 | verification of the accuracy of personal information received by
 768 | a commercial entity in the normal course of its business; use in
 769 | a civil, criminal, or administrative proceeding; use for
 770 | insurance purposes; use in law enforcement and investigation of
 771 | crimes; use in identifying and preventing fraud; use in
 772 | matching, verifying, or retrieving information; and use in

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773 | research activities. A legitimate business purpose does not
774 | include the display or bulk sale of social security numbers to
775 | the general public or the distribution of such numbers to any
776 | customer that is not identifiable by the distributor.

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