

CHAMBER ACTION

1 The State Administration Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5
6 A bill to be entitled

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

24 requiring the center to recommend and implement a
25 centralized gate process for reviewing, evaluating, and
26 approving agency projects; requiring state agencies to
27 submit specified information, documents, and other
28 materials required under commission rules; creating s.
29 287.0576, F.S.; specifying procurements which must be
30 reviewed and evaluated under the centralized gate process;
31 providing minimum requirements for the centralized gate
32 process; providing for specified determinations by the
33 commission at each gate; providing procedure with respect
34 to an unfavorable finding by the commission with respect
35 to a procurement required by law; providing that agencies
36 under the individual control of the Attorney General,
37 Chief Financial Officer, or Commissioner of Agriculture
38 are subject to the act, with specified exceptions;
39 providing authority of the agency head with respect to
40 procurements by such agencies; establishing the gates
41 within the centralized gate process; requiring agencies to
42 submit specified documents for commission review at each
43 gate; providing for nullification of executed contracts
44 for procurement under specified circumstances; requiring
45 the commission to take action at each gate within a
46 specified time period; providing procedure if the
47 commission does not take action within such time period;
48 requiring the submission of annual project status reports;
49 creating s. 287.0577, F.S.; providing requirements for
50 procurement of certain contractual services; requiring an
51 agency to develop a business case which describes and

52 | analyzes a contractual services procurement under
53 | consideration; providing that the business case is not
54 | subject to challenge or protest under the Administrative
55 | Procedure Act; providing required components of a business
56 | case; defining "cost" and "savings"; providing
57 | requirements with respect to the solicitation for a
58 | contractual services procurement; providing contract
59 | requirements for a contractual services procurement;
60 | providing requirements with respect to contract
61 | amendments; providing that specified contract amendments
62 | must be submitted to the Executive Office of the Governor
63 | for approval; prohibiting the division of a contract
64 | amendment to avoid specified requirements; requiring
65 | documentation of contractor performance prior to renewal
66 | or extension of a contract; creating s. 287.0578, F.S.;
67 | providing for conditional supersession of the act;
68 | amending s. 287.057, F.S.; providing a requirement with
69 | respect to the composition of persons chosen to conduct
70 | negotiations during a specified competitive sealed reply
71 | procurement; creating s. 215.4211, F.S.; authorizing the
72 | Chief Financial Officer to review contracts for state
73 | agencies; creating s. 216.1817, F.S.; permitting budgetary
74 | changes for a contractual services procurement only under
75 | specified conditions; requiring the placement of full-time
76 | equivalent positions in reserve under certain conditions;
77 | providing for the reestablishment of full-time equivalent
78 | positions upon termination of a contract and reversion of
79 | functions and responsibilities to the agency; providing

80 that only public officers or employees must perform
 81 certain functions; providing restrictions on contractor
 82 involvement in the procurement of contractual services;
 83 providing applicability; providing for future termination
 84 of the Center for Efficient Government and the Commission
 85 on Efficient Government; providing legislative intent with
 86 respect to the performance of review functions and
 87 assistance to agencies for procurements of contractual
 88 services by state agencies after a specified date;
 89 providing that positions authorized under the act shall
 90 remain with the Department of Management Services after a
 91 specified date; repealing s. 14.203, F.S., which creates
 92 the State Council on Competitive Government and provides
 93 duties and authority of the council; providing an
 94 appropriation; providing full-time equivalent positions;
 95 amending s. 119.0721, F.S.; removing a cross reference;
 96 clarifying the meaning of "commercial activity" to conform
 97 to the removal of the reference; providing an effective
 98 date.

99
 100 WHEREAS, the private sector can often perform services with
 101 greater efficiency and effectiveness at a lower cost than the
 102 state, and

103 WHEREAS, the state has long been a leader in innovative
 104 practices, in part because of its partnerships with the private
 105 sector, and

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106 WHEREAS, the state desires to reap the benefits of lower
107 costs, high quality, and innovation by working closely with the
108 private sector, and

109 WHEREAS, the state still maintains responsibility for
110 ensuring that the services performed by the private sector on
111 behalf of the state are of high quality, cost-effective, and
112 appropriate functions for the private sector, and

113 WHEREAS, leading businesses have developed best practices
114 to determine what to obtain from the market and how to ensure
115 that such services are provided at the desired quality and at
116 the appropriate cost, and

117 WHEREAS, the executive branch has made great progress in
118 promoting the use of such best practices, and the citizens of
119 the state could benefit by the increased adoption across state
120 government of such best practices, NOW, THEREFORE,

121
122 Be It Enacted by the Legislature of the State of Florida:

123
124 Section 1. Paragraph (i) is added to subsection (2) of
125 section 20.22, Florida Statutes, to read:

126 20.22 Department of Management Services.--There is created
127 a Department of Management Services.

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

130 (i) Center for Efficient Government.

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

133 287.0571 Applicability of ss. 287.0571-287.0578.--

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

136 (2) It is the intent of the Legislature that state
 137 agencies focus on their core missions and deliver services
 138 effectively and efficiently by leveraging resources and
 139 contracting with the private sector for services that can be
 140 more effectively provided by the private sector and that reduce
 141 the cost of government for all citizens of the state.

142 (3) The provisions of this act shall not apply to:

143 (a) Procurements of commodities and contractual services:

144 1. Listed in s. 287.057(5)(e), (f), and (g) and (22).

145 2. Subject to s. 287.055, F.S.

146 (b) Contracts in support of the planning, development,
 147 implementation, operation, or maintenance of the road, bridge,
 148 and public transportation construction program of the Department
 149 of Transportation.

150 (4) Only the provisions of ss 287.0571-287.0576 and
 151 section 13 of this act shall apply to procurements governed by
 152 the provisions of HB 1827 or SB 1476, 2005 Regular Session of
 153 the Legislature, or similar legislation, if adopted in the same
 154 legislative session or an extension thereof and enacted into
 155 law.

156 Section 3. Section 287.0573, Florida Statutes, is created
 157 to read:

158 287.0573 Definitions.--For the purposes of this act:

159 (1) "Center" means the Center for Efficient Government.

160 (2) "Centralized gate process" means the system of review
 161 phases for a proposed procurement of contractual services, the

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162 conclusion of each phase being a "gate" or decision point at
 163 which the commission determines whether the procurement under
 164 consideration may proceed to the next phase.

165 (3) "Commission" means the Commission on Efficient
 166 Government.

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

169 287.0574 Criteria for procurement of contractual
 170 services.--When compared to the cost and quality of service
 171 performed by state employees, an agency may procure a
 172 contractual service currently or previously provided by state
 173 employees only if, upon full implementation of a procurement,
 174 it:

175 (1) Results in reasonable cost savings while maintaining
 176 at least the same quality of service;

177 (2) Reasonably increases the quality of service while not
 178 exceeding the same level of cost; or

179 (3) Minimally increases the cost while significantly
 180 increasing the quality by introducing specific new service
 181 elements that address quantifiable needs of the state or by
 182 substantially improving performance of existing service elements
 183 over current performance by the state or contractor. Only
 184 projects with an annual cost below \$10 million in each fiscal
 185 year may meet this criterion. This subsection shall expire on
 186 July 1, 2006.

187 Section 5. Section 287.0575, Florida Statutes, is created
 188 to read:

189 287.0575 Commission on Efficient Government; membership;
 190 duties; Center for Efficient Government; duties.--

191 (1) The Commission on Efficient Government is created
 192 within the Department of Management Services to oversee the
 193 Center for Efficient Government and carry out the
 194 responsibilities specified in this section.

195 (a) The commission shall consist of seven members
 196 appointed by the Governor:

197 1. Four members shall be heads of executive branch
 198 agencies appointed by the Governor.

199 2. Three members shall be from the private sector and,
 200 collectively, shall have experience with procurement,
 201 successfully increasing operational efficiency, and implementing
 202 complex projects in the private sector business environment. No
 203 private sector member of the commission may at any time during
 204 his or her appointment to the commission be registered to lobby
 205 the executive or legislative branch.

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

213 (c) No member of the commission shall participate in
 214 commission review of a procurement when his or her agency is
 215 involved in the procurement or, in the case of a private sector
 216 member, he or she has a business relationship with an entity

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217 that is involved or reasonably could potentially be involved in
218 the procurement.

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

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

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

230 (g) At the first meeting of the commission after August 1,
231 2005, the members of the commission shall elect, by majority
232 vote of those in attendance, a member to serve as chair of the
233 commission. No later than September 1 of each succeeding year,
234 the commission shall elect a new chair.

235 (h) The commission shall:

236 1. Oversee the Center for Efficient Government.

237 2. Adopt the centralized gate process.

238 3. Review, evaluate, grant approval of, withhold approval
239 of, or deny approval of a proposed procurement at each gate
240 established within the centralized gate process. The commission
241 shall adopt rules regarding the procurements that must pass
242 through the centralized gate process. Such procurements shall
243 include, at a minimum, those subject to the requirements of s.
244 287.0576(1).

245 4. Approve templates and guidelines and adopt rules
 246 prescribing standards and procedures for use by agencies during
 247 the procurement process which shall, at a minimum, include the
 248 requirements under ss. 287.0576-287.0577 for procurements of
 249 contractual services.

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

260 6. Review the performance of procurements which have
 261 advanced through the full centralized gate process.

262 (2) The Center for Efficient Government is created in the
 263 department to establish and promote best business practices so
 264 that the delivery of services to citizens of the state are
 265 provided in the most effective and cost-efficient manner
 266 possible. The secretary of the department shall appoint a
 267 director of the center. The duties and responsibilities of the
 268 center are:

269 (a) Recommending and implementing a centralized gate
 270 process for reviewing, evaluating, and approving agency
 271 procurements which, at a minimum, shall include the requirements

272 contained in s. 287.0576(1) and (2) for contractual services
 273 procurements.

274 (b) Providing support and assistance to the commission,
 275 including, but not limited to, reviewing and validating agency
 276 business cases, recommending standards, processes, templates,
 277 and guidelines for use by agencies during the procurement
 278 process and providing information and documentation as requested
 279 or required by law.

280 (c) Assisting agencies directly in the procurement process
 281 as needed to ensure a high-quality procurement, including, but
 282 not limited to, developing and updating business cases, drafting
 283 solicitation and contract documents, participating in contract
 284 negotiations, identifying performance measures, and advising
 285 agencies on performance measurement, contract management, and
 286 change management. The center shall also provide information,
 287 training, and technical assistance to agencies on the use of the
 288 standards, processes, templates, and guidelines developed for
 289 use by agencies during the procurement process.

290 (d) Collecting data and information from agencies on an
 291 ongoing basis with regard to the status and results of
 292 procurements that have advanced completely through the
 293 centralized gate process, recommending incorporation of any
 294 lessons learned from such projects into commission standards,
 295 procedures, templates, and guidelines, as appropriate, and
 296 identifying and disseminating to agencies information regarding
 297 best practices in procurement, particularly contractual services
 298 procurements.

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

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

306 (4) Agencies shall submit to the center all information,
 307 documents, or other materials required by commission rule or
 308 this chapter.

309 Section 6. Section 287.0576, Florida Statutes, is created
 310 to read:

311 287.0576 Review and analysis of proposed procurement of
 312 contractual services; centralized gate process.--

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

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

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

321 (c) Contractual services procurements that do not involve
 322 an outlay of state funds estimated to total \$10 million or more
 323 in any fiscal year because of the provision of services by the
 324 contractor at a rate significantly below market rate, the
 325 significant investment of other resources by the agency, or
 326 other reason, but in which the total value of the services

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327 performed by the agency and contractor under the contract is
328 estimated to total \$10 million or more in any fiscal year.
329 Examples of such procurements include, but are not limited to,
330 free, no-cost, or codevelopment contracts.

331 (d) Contractual services procurements for which the sum of
332 gross revenues or shared savings to be generated for the state
333 and contractor over the term of the contract plus the sum of any
334 payments to the contractor by the agency over the term of the
335 contract, if any, is estimated to total \$10 million or more in
336 any fiscal year.

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

340 (2) Extensions and renewals of contracts resulting from
341 procurements in subsection (1) and extensions and renewals of
342 contracts meeting the criteria identified in paragraphs (1)(a),
343 (c), and (d) which did not pass through the center and were in
344 effect on the effective date of this act shall undergo review
345 and analysis through the centralized gate process implemented by
346 the center, through, notwithstanding any law to the contrary,
347 such contracts shall pass only through such gates as the
348 commission determines are appropriate based on the legislative
349 intent of this act.

350
351 For purposes of determining whether a procurement meets the
352 requirements of this section, multiple contractual services
353 procurements for substantially similar or related functions or
354 responsibilities occurring in a coordinated fashion or in close

355 time proximity to one another are considered a single
 356 contractual services procurement for purposes of meeting the
 357 thresholds set forth in this section.

358 (3) The centralized gate process shall require, at a
 359 minimum, review of the procurement by the commission at each
 360 gate. At each gate, the commission shall determine by majority
 361 vote to:

362 (a) Approve the procurement, if the agency has
 363 sufficiently met the requirements of the current gate, and
 364 advance the procurement to the next phase;

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

368 (c) Deny the procurement, if the procurement is not a good
 369 business decision, and remove the procurement from
 370 consideration.

371
 372 Notwithstanding the provisions of this section, the commission
 373 may not deny procurements which are required by law. If the
 374 commission determines that a procurement required by law is not
 375 a good business decision, the commission shall withhold approval
 376 and transmit to the President of the Senate, the Speaker of the
 377 House of Representatives, and the Governor the reasons why the
 378 procurement should not be completed and any recommendation for
 379 legislative action. If the President of the Senate or the
 380 Speaker of the House of Representatives has not responded within
 381 14 business days of receipt of the communication, the commission
 382 shall proceed at its discretion.

383
384 Notwithstanding any law to the contrary, agencies under the
385 individual control of the Attorney General, the Chief Financial
386 Officer, or the Commissioner of Agriculture are subject to the
387 provisions of this act, except that the commission shall not
388 grant, withhold, or deny approval of a procurement by such
389 agency but instead may only provide recommendations to the
390 agency. The respective agency head shall have sole authority to
391 grant, withhold, or deny approval of such procurement.

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

394 (a) The proposal identification gate, which shall include
395 the business case.

396 (b) The procurement preparation gate, which shall include
397 the updated business case and the solicitation documents prior
398 to the issuance of such documents. An agency may not release
399 solicitation documents without the commission's approval at this
400 gate. The commission must review and approve the written
401 determination of the agency required pursuant to s.

402 287.057(3)(a) before granting approval for the use of an
403 invitation to negotiate, or withhold approval pending submission
404 by the agency of an acceptable alternative solicitation method.

405 (c) The contract development gate, which shall include the
406 final business case and the proposed unexecuted contract. An
407 agency may not execute the contract without the commission's
408 approval at this gate.

409 (d) The transition management gate, which shall include
410 updates to the final business case and, for a procurement of

411 contractual services, an analysis of the agency's and
 412 contractor's readiness for the contractor to perform the
 413 proposed responsibility or function. An agency may not
 414 transition to contractor performance without the commission's
 415 approval at this gate.

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

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

424 (b) Failure to comply with any other requirements of this
 425 act or implementing rules shall not affect the validity of the
 426 competitive solicitation and award process or any contract.

427 (6) The commission shall take action at each gate within
 428 60 days of the submission of a procurement by an agency. If the
 429 commission does not take action within this timeframe, the
 430 agency head shall determine whether to grant, withhold, or deny
 431 approval of the procurement at that gate based on the rules and
 432 guidelines of the commission for that gate and shall notify the
 433 Governor, the President of the Senate, the Speaker of the House
 434 of Representatives, and the commission of such action and the
 435 circumstances thereof.

436 (7) During the term of the contract, the agency shall
 437 annually submit with its legislative budget request a project
 438 status report for each procurement that has passed through at

439 least the first three gates of the centralized gate process
 440 describing the progress made to date, actual completion dates in
 441 comparison to planned completion dates, actual costs incurred in
 442 comparison to projected costs incurred, current issues requiring
 443 resolution, planned project milestones, deliverables, and
 444 expenditures for the next reporting period, and any other
 445 information relating to the contractual services that may be
 446 requested.

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 following requirements for, at a minimum, procurements of
 453 contractual services estimated to total \$1 million or more in
 454 any fiscal year and those subject to review under s.
 455 287.0576(1)(b), (c), (d), and (e) and (2):

456 (1) BUSINESS CASE.--The agency shall develop a business
 457 case which describes and analyzes the procurement. The business
 458 case is not subject to challenge or protest pursuant to chapter
 459 120. The business case shall include, but not be limited to, the
 460 information in paragraphs (a)-(1). For procurements subject to
 461 commission review, the business case shall be in such detail as
 462 is appropriate given the current phase of the procurement but
 463 shall contain sufficient information to enable the commission to
 464 determine at that gate whether the procurement may proceed to
 465 the next procurement phase:

466 (a)1. A detailed description of the function or
 467 responsibility for which the procurement is proposed;
 468 2. If the agency is currently performing the function or
 469 responsibility, a description and analysis of the agency's
 470 current performance, including, but not limited to, baseline
 471 costs and performance metrics;
 472 3. The goals desired to be achieved through the
 473 procurement and the rationale for such goals; and
 474 4. A citation of the existing or proposed legal authority
 475 for contracting for the function or responsibility.
 476 (b)1. A description of available options for achieving the
 477 goals. If state employees are currently performing the function
 478 or responsibility, at least one option involving maintaining
 479 state provision of the function or responsibility shall be
 480 included.
 481 2. A description of the current market for the contractual
 482 services which are under consideration for procurement.
 483 3. An analysis of the advantages and disadvantages of each
 484 option, including, at a minimum, potential performance
 485 improvements and risks.
 486 (c) A cost-benefit analysis documenting the direct and
 487 indirect specific baseline costs, savings, and qualitative and
 488 quantitative benefits involved in or resulting from the
 489 implementation of the recommended option or options. Such
 490 analysis shall specify the schedule that, at a minimum, must be
 491 adhered to in order to achieve the estimated savings. All
 492 elements of cost shall be clearly identified in the cost-benefit
 493 analysis, described in the business case, and supported by

494 applicable records and reports. The agency head shall attest
 495 that, based on the data and information underlying the business
 496 case, to the best of his or her knowledge, all projected costs,
 497 savings, and benefits are valid and achievable. "Cost" means the
 498 reasonable, relevant, and verifiable cost which may include, but
 499 not be limited to, elements such as personnel costs, materials
 500 and supplies, services, equipment, capital depreciation costs,
 501 rent, maintenance and repairs, utilities, insurance, personnel
 502 travel, overhead, and interim and final payments. The
 503 appropriate elements shall depend on the nature of the specific
 504 initiative. "Savings" means the difference between the direct
 505 and indirect actual annual baseline costs compared to the
 506 projected annual cost for the contracted functions or
 507 responsibilities in any succeeding state fiscal year during the
 508 term of the contract.

509 (d) A description of variance among agency policies and
 510 processes and, as appropriate, a discussion of options for or a
 511 plan to standardize, consolidate, or revise current policies and
 512 processes, if any, to reduce the customization of any proposed
 513 solution that would otherwise be required.

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

516 (f) A statement of the potential impact on federal, state,
 517 and local revenues and expenditures. The statement shall
 518 specifically describe the effect on general revenue, trust
 519 funds, general revenue service charges, and interest on trust
 520 funds together with the potential direct or indirect effect on
 521 federal funding and cost allocations.

522 (g) The projected timeframe for key events, from the
523 beginning of the procurement process through the expiration of a
524 contract.

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

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

529 2. Ensure the confidentiality of records that are exempt
530 or confidential under law.

531 3. Meet all legal requirements for record retention
532 provided by law.

533 4. Require transfer to the state, at no cost, of all
534 public records in possession of the contractor upon termination
535 of the contract.

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

539 (j) An agency transition plan for addressing changes in
540 the number of agency personnel, affected business processes,
541 employee transition issues, and communication with affected
542 stakeholders, such as agency clients and the public. The
543 transition plan shall contain a reemployment and retraining
544 assistance plan for employees who are not retained by the agency
545 or employed by the contractor.

546 (k) A listing of any assets proposed for surplus or use by
547 a contractor. For those assets proposed to be used by a
548 contractor, the business case shall include a description of the
549 proposed requirements for maintaining those assets by the

550 contractor or the agency in accordance with chapter 273, a plan
 551 for the transitioning of the assets upon termination of the
 552 contract, and a description of how the planned use by a
 553 contractor is in the best interest of the agency and state.

554 (1) A plan for ensuring access by persons with
 555 disabilities in compliance with applicable state and federal
 556 law.

557
 558 If a contractual services procurement meets the criteria for
 559 submission of feasibility study documentation as required by the
 560 legislative budget request instructions established pursuant to
 561 s. 216.023, the agency shall submit such documentation.

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

564 (a) A detailed description of the function or
 565 responsibility under consideration for contracting and, if the
 566 function or responsibility is currently being performed by an
 567 agency, a description and analysis of the agency's current
 568 performance.

569 (b) Requirements that are achievable, unambiguous,
 570 measurable, meaningful, and complete.

571 (c) The criteria that after contract execution will be
 572 used to assess contractor performance and the minimum acceptable
 573 contractor performance levels.

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

576 (a) A detailed scope of work that clearly specifies each
 577 service or deliverable to be provided, including a description

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578 of each deliverable or activity that is quantifiable,
579 measurable, and verifiable.

580 (b) All service-level agreements describing all services
581 to be provided under the terms of the agreement, the agency's
582 service requirements and performance objectives, and specific
583 responsibilities of the agency and the contractor.

584 (c) Associated costs and savings, specific payment terms
585 and payment schedule, including incentive and disincentive
586 provisions, criteria governing payment, and a clear and specific
587 implementation schedule that will be implemented in order to
588 complete all required activities needed to transfer the service
589 from the agency to the contractor and operate the service
590 successfully.

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

593 1. Detailed measurable acceptance criteria for each
594 deliverable and service to be provided to the agency under the
595 terms of the contract which document the required performance
596 level.

597 2. A method for monitoring and reporting progress in
598 achieving specified performance standards and levels.

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

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

604 (f) A requirement authorizing state access to and audit of
605 all records related to the contract or any responsibilities or

606 functions under the contract for state audit and legislative
 607 oversight purposes and a requirement for service organization
 608 audits in accordance with professional auditing standards, if
 609 appropriate.

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

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

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

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

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

624 4. Meet all requirements for retaining records and
 625 transfer to the state, at no cost, all public records in
 626 possession of the contractor upon termination of the contract
 627 and destroy any duplicate public records which are exempt and
 628 confidential. All records stored electronically must be provided
 629 to the state in a format that is compatible with information
 630 technology systems of the state.

631 (i) A requirement that any state funds provided for the
 632 purchase of or improvements to real property be made contingent
 633 upon the contractor granting to the state a security interest in

634 the property which is at least equal to the amount of the state
 635 funds provided for the most recent years following the date of
 636 purchase or the completion of improvements, or as otherwise
 637 required by law. The contract must include a provision that, if
 638 the contractor disposes of the property before the agency's
 639 interest is vacated, the contractor will refund the
 640 proportionate share of the state's initial investment, as
 641 adjusted by depreciation.

642 (j) If a contract involves the development or creation of
 643 intellectual property, the contract must specify the ownership
 644 of such intellectual property and any rights of the state to
 645 use, modify, reproduce, or disseminate the intellectual
 646 property.

647 (k) A provision that the contractor annually submit and
 648 verify, pursuant to s. 92.525, all required financial
 649 statements.

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

653 (m) Provisions requiring that venue for any action
 654 regarding the contract shall be in Leon County and that the
 655 contract shall be interpreted according to the laws of this
 656 state.

657 (4) AMENDMENTS.--An agency may not amend a contract
 658 without first submitting the proposed contract amendment to the
 659 Executive Office of the Governor for approval if the effect of
 660 the amendment would be to:

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

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

667
 668 An agency shall not divide a contract amendment so as to avoid
 669 the requirements of this section.

670 (5) In addition to the requirements of subsections
 671 287.057(13) and (14), prior to the renewal or extension of a
 672 contract, an agency shall document whether all specific direct
 673 and indirect costs, savings, performance standards, and
 674 qualitative and quantitative benefits identified in the contract
 675 have been met by the contractor and the agency. If the actual
 676 performance of the contractor does not meet the required
 677 performance as identified in the contract, the agency shall
 678 explain the reasons why and provide justification for the
 679 extensions or renewal of the contract. This documentation shall
 680 be included in the official contract file.

681 Section 8. Section 287.0578, Florida Statutes, is created
 682 to read:

683 287.0578 Subsequent inconsistent laws.--Subsequent
 684 inconsistent laws shall supersede this act only to the extent
 685 they do so by express reference to this section.

686 Section 9. Paragraph (b) of subsection (17) of section
 687 287.057, Florida Statutes, is amended to read:

688 287.057 Procurement of commodities or contractual
689 services.--

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

693 (b) At least three persons to conduct negotiations during
694 a competitive sealed reply procurement who collectively have
695 experience and knowledge in negotiating contracts, contract
696 procurement, and the program areas and service requirements for
697 which commodities or contractual services are sought. When the
698 annual value of a contract is in excess of \$1 million, at least
699 one of the persons conducting negotiations must be certified as
700 a contract negotiator based upon rules adopted by the Department
701 of Management Services.

702 Section 10. Section 215.4211, Florida Statutes, is created
703 to read:

704 215.4211 Review of contracts for state agencies.--The
705 Chief Financial Officer may request, as he or she deems
706 necessary, the option to review and provide comments prior to
707 the execution of any contract that is required to be in
708 compliance with the provisions of s. 287.0577(3).

709 Section 11. Section 216.1817, Florida Statutes, is created
710 to read:

711 216.1817 Limitation on budgetary changes for contractual
712 services procurement; placement of positions in reserve; re-
713 establishment of positions.--Notwithstanding s. 216.351:

714 (1) Any budgetary changes for a contractual services
715 procurement that are inconsistent with the agency's approved

716 budget may not be made to existing programs unless such changes
 717 are recommended to the Legislative Budget Commission by the
 718 Governor, and the Legislative Budget Commission expressly
 719 approves such program changes.

720 (2) If a procurement of contractual services involves the
 721 performance of functions or responsibilities that are being
 722 shifted from state employees to a contractor, the agency shall
 723 identify within the business case prepared pursuant to s.
 724 287.0577 all resources which are affected, including full-time
 725 equivalent positions. All full-time equivalent positions
 726 identified in the business case shall be placed in reserve by
 727 the Executive Office of the Governor until the end of the second
 728 year of the contract. However, in the business case, the agency
 729 may account for any savings from the full-time equivalent
 730 positions identified and held in reserve. Notwithstanding the
 731 provisions of s. 216.262, the Executive Office of the Governor
 732 shall request authority from the Legislative Budget Commission
 733 to reestablish full-time equivalent positions above the number
 734 fixed by the Legislature if a contract is terminated and the
 735 performance of the functions or responsibilities must be
 736 returned to the agency.

737 Section 12. Only a public officer or a public employee
 738 upon whom the public officer has delegated authority shall,
 739 consistent with law, take actions including, but not limited to:

740 (1) Commissioning, appointing, or selecting state officers
 741 or employees;

742 (2) Approving position descriptions, performance
 743 standards, or salary adjustments for state employees; and

744 (3) Hiring, promoting, disciplining, demoting, and
 745 dismissing a state employee.

746 Section 13. A contractor, as defined in chapter 287,
 747 Florida Statutes, or its employees, agents, or subcontractors,
 748 may not knowingly participate, through decision, approval,
 749 disapproval, preparation of any part of a purchase request,
 750 investigation, or auditing, in the procurement of contractual
 751 services by an agency from an entity in which the contractor, or
 752 its employees, agents, or subcontractors has a material
 753 interest. This section shall not apply to pre-bid conferences
 754 or requests for information conducted pursuant to chapter 287,
 755 Florida Statutes.

756 Section 14. The Center for Efficient Government and the
 757 Commission on Efficient Government shall terminate on July 1,
 758 2010, unless reenacted by the Legislature prior to that date. It
 759 is the intent of the Legislature that, beginning July 1, 2010,
 760 the various state agencies shall perform the review functions
 761 required under this act for procurements of contractual services
 762 under their jurisdiction. It is also the intent of the
 763 Legislature that beginning July 1, 2010, the positions
 764 authorized by this act shall remain with the Department of
 765 Management Services, which shall continue providing technical
 766 assistance as required in this act.

767 Section 15. Section 287.0572, Florida Statutes, is
 768 renumbered as section 287.0579, Florida Statutes:

769 287.0579 ~~287.0572~~ Present-value methodology.--

770 (1) The cost of bids, proposals, or replies for state
 771 contracts that include provisions for unequal payment streams or

772 unequal time payment periods shall be evaluated using present-
 773 value methodology. Each agency, as defined in s. 287.012(1),
 774 shall perform the evaluation using the present-value discount
 775 rate supplied by the department. The present-value discount rate
 776 shall be the rate for United States Treasury notes and bonds
 777 published in the Interest Rates: Money and Capital Markets
 778 section of the most recent copy of the Federal Reserve Bulletin
 779 published at the time of issuance of the request for proposals,
 780 the invitation to negotiate, or the invitation to bid.

781 (2) The department may adopt rules to administer
 782 subsection (1).

783 Section 16. Subsection (3) of section 119.0721, Florida
 784 Statutes, is amended to read:

785 119.0721 Social security number exemption.--

786 (3) An agency shall not deny a commercial entity engaged
 787 in the performance of a commercial activity, which, for purposes
 788 of this subsection, means an activity that provides a product or
 789 service that is available from a private source ~~as defined in s.~~
 790 ~~14.203~~ or its agents, employees, or contractors access to social
 791 security numbers, provided the social security numbers will be
 792 used only in the normal course of business for legitimate
 793 business purposes, and provided the commercial entity makes a
 794 written request for social security numbers, verified as
 795 provided in s. 92.525, legibly signed by an authorized officer,
 796 employee, or agent of the commercial entity. The verified
 797 written request must contain the commercial entity's name,
 798 business mailing and location addresses, business telephone
 799 number, and a statement of the specific purposes for which it

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800 needs the social security numbers and how the social security
801 numbers will be used in the normal course of business for
802 legitimate business purposes. The aggregate of these requests
803 shall serve as the basis for the agency report required in
804 subsection (7). An agency may request any other information as
805 may be reasonably necessary to verify the identity of the entity
806 requesting the social security numbers and the specific purposes
807 for which such numbers will be used; however, an agency has no
808 duty to inquire beyond the information contained in the verified
809 written request. A legitimate business purpose includes
810 verification of the accuracy of personal information received by
811 a commercial entity in the normal course of its business; use in
812 a civil, criminal, or administrative proceeding; use for
813 insurance purposes; use in law enforcement and investigation of
814 crimes; use in identifying and preventing fraud; use in
815 matching, verifying, or retrieving information; and use in
816 research activities. A legitimate business purpose does not
817 include the display or bulk sale of social security numbers to
818 the general public or the distribution of such numbers to any
819 customer that is not identifiable by the distributor.

820 Section 17. Section 14.203, Florida Statutes, is repealed.

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

827 Section 19. This act shall take effect July 1, 2005.

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