

HB 1041

2012

1 A bill to be entitled
2 An act relating to small business participation in
3 state contracting; creating s. 287.0577, F.S.;
4 defining the terms "contract bundling" and "small
5 business"; directing that agencies avoid contract
6 bundling under certain circumstances; requiring
7 agencies to conduct market research and include
8 written summaries and analyses of such research in
9 solicitations for bundled contracts; requiring
10 agencies to award a specified percentage of contracts
11 to small businesses; requiring contract vendors to use
12 small businesses in the state as subcontractors or
13 subvendors; requiring the timely payment of
14 subcontractors; prohibiting agencies from requiring
15 certain bonds or other sureties for certain contracts;
16 requiring the Florida Small Business Advocate to
17 establish a system for reporting small business
18 participation in state contracting; requiring agencies
19 to cooperate with such reporting; requiring specified
20 annual reports; providing an effective date.

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

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24 Section 1. Section 287.0577, Florida Statutes, is created
25 to read:

26 287.0577 Small business participation in state
27 contracting; contract bundling; set-asides for small businesses;
28 bonding and reporting requirements.-

29 (1) DEFINITIONS.—As used in this section, the term:
 30 (a) "Contract bundling" means the consolidation of
 31 contracts for the procurement of commodities or contractual
 32 services, at least part of which may be provided or performed by
 33 one or more small businesses, into a single contract that is not
 34 appropriate for award to a small business as the prime
 35 contractor.

36 (b) "Small business" means a business entity organized for
 37 profit that is independently owned and operated, that is not
 38 dominant within the business entity's industry, and that:

39 1. Currently is, and for at least the previous 3 years has
 40 been, domiciled in the state.

41 2. Has a workforce of 25 or fewer permanent full-time
 42 positions, whether employees, independent contractors, or other
 43 contractual personnel.

44 3. Has had, for at least the previous 3 years, average
 45 annual gross sales that do not exceed the following:

46 a. For a contractor licensed under chapter 489, \$3 million
 47 per year.

48 b. For a sole proprietorship performing contractual
 49 services within the scope of the proprietor's professional
 50 license or certification, \$500,000 per year.

51 c. For any other business entity, \$1 million per year.

52 4. Currently has, and for at least the previous 3 years
 53 has had, together with its affiliates, a net worth that does not
 54 exceed \$5 million. For a sole proprietorship, the net worth
 55 limit of \$5 million includes both personal and business

HB 1041

2012

56 investments but does not include the proprietor's primary
57 residence.

58
59 The term includes any such business entity organized as any form
60 of corporation, partnership, limited liability company, sole
61 proprietorship, joint venture, association, trust, cooperative,
62 or other legal entity.

63 (2) CONTRACT BUNDLING; SOLICITATION.—

64 (a) An agency, to the maximum extent practicable, shall
65 structure agency contracts to facilitate competition by and
66 among small businesses in the state, taking all reasonable steps
67 to eliminate obstacles to their participation and avoiding the
68 unnecessary and unjustified contract bundling that may preclude
69 small businesses' participation as prime contractors.

70 (b) Before issuing a solicitation for a bundled contract,
71 an agency must conduct market research to determine whether
72 contract bundling is necessary and justified. If the agency
73 determines that contract bundling is necessary and justified,
74 the agency must include in the solicitation a written summary of
75 the agency's market research and a written analysis of the
76 research that explains why contract bundling is necessary and
77 justified.

78 (3) SET-ASIDES FOR SMALL BUSINESSES.—

79 (a) An agency shall annually award to small businesses,
80 either directly or indirectly as subcontractors, at least 25
81 percent of the total dollar amount of contracts awarded.

82 (b) Each contract awarded under s. 287.057 must require
83 the vendor to use small businesses in the state as

HB 1041

2012

84 subcontractors or subvendors. The percentage of funds, in terms
85 of gross contract amount and revenues, that must be expended for
86 subcontracting with small businesses in the state shall be
87 determined by the agency before the solicitation for the
88 contract is issued; however, the contract may not allow a vendor
89 to expend less than 10 percent of the gross contract amount for
90 subcontracting with small businesses in the state.

91 (c) Each contract must include specific requirements for
92 the timely payment of subcontractors by the prime contractor and
93 specific terms and conditions applicable if a prime contractor
94 does not pay a subcontractor within the time limits specified in
95 the contract.

96 (4) BONDING REQUIREMENTS.—Notwithstanding any provision of
97 law, an agency may not require a vendor to post a bid bond,
98 performance bond, or other surety for a contract that does not
99 exceed \$500,000. This subsection does not apply to any
100 requirement for posting a bond pending the protest of a
101 solicitation; the protest of a rejected bid, proposal, or reply;
102 or the protest of a contract award.

103 (5) REPORTING REQUIREMENTS.—The Florida Small Business
104 Advocate selected under s. 288.7002 shall:

105 (a) Establish a system to measure and report the use of
106 small businesses in state contracting. This system shall
107 maintain information and statistics on small business
108 participation, awards, dollar volume of expenditures, and other
109 appropriate types of information to analyze progress in small
110 businesses access to state contracts and to monitor agency
111 compliance with this section. Such reporting must include, but

HB 1041

2012

112 is not limited to, the identification of all subcontracts in
113 state contracting by dollar amount and by number of subcontracts
114 and identification of the use of small businesses as prime
115 contractors and subcontractors by dollar amounts of contracts
116 and subcontracts, number of contracts and subcontracts,
117 industry, and any conditions or circumstances that significantly
118 affected the performance of subcontractors. An agency shall
119 report its compliance with the reporting system at least
120 annually and at the request of the Florida Small Business
121 Advocate. All agencies shall cooperate with the Florida Small
122 Business Advocate in establishing this reporting system.

123 (b) Report agency compliance with paragraph (a) for the
124 preceding fiscal year to the Governor and Cabinet, the President
125 of the Senate, the Speaker of the House of Representatives, and
126 the Small Business Regulatory Advisory Council created under s.
127 288.7001 on or before February 1 of each year. The report must
128 contain, at a minimum, the following:

- 129 1. Total expenditures of each agency by industry.
- 130 2. The dollar amount and percentage of contracts awarded
131 to small businesses by each state agency.
- 132 3. The dollar amount and percentage of contracts awarded
133 indirectly to small businesses as subcontractors by each state
134 agency.
- 135 4. The total dollar amount and percentage of contracts
136 awarded to small businesses, whether directly or indirectly as
137 subcontractors.

138 Section 2. This act shall take effect July 1, 2012.