

By Senator Gibson

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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; providing requirements with respect to
14 payment of subcontractors, owners, and general
15 contractors; prohibiting agencies, general
16 contractors, or prime contractors from requiring
17 certain bonds or other sureties for certain contracts;
18 requiring the rules ombudsman in the Executive Office
19 of the Governor to establish a system for reporting
20 small business participation in state contracting;
21 requiring agencies to cooperate with such reporting;
22 requiring specified annual reports; providing an
23 effective date.

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

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27 Section 1. Section 287.0577, Florida Statutes, is created
28 to read:

29 287.0577 Small business participation in state contracting;

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30 contract bundling; set-asides for small businesses; bonding and
31 reporting requirements.-

32 (1) DEFINITIONS.-As used in this section, the term:

33 (a) "Contract bundling" means the consolidation of
34 contracts for the procurement of commodities or contractual
35 services, at least part of which may be provided or performed by
36 one or more small businesses, into a single contract that is not
37 appropriate for award to a small business as the prime
38 contractor.

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

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

44 2. Has a workforce of 50 or fewer permanent full-time
45 positions, whether employees, independent contractors, or other
46 contractual personnel.

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

49 a. For a contractor licensed under chapter 489, \$5 million
50 per year.

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

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

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

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59 investments but does not include the proprietor's primary
60 residence.

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

66 (2) CONTRACT BUNDLING; SOLICITATION.-

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

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

81 (3) SET-ASIDES FOR SMALL BUSINESSES.-

82 (a) An agency shall annually award to small businesses,
83 either directly or indirectly as subcontractors, at least 35
84 percent of the total dollar amount of contracts awarded.

85 (b) Each contract awarded under s. 287.057 must require the
86 vendor to use small businesses in the state as subcontractors or
87 subvendors. The percentage of funds, in terms of gross contract

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88 amount and revenues, that must be expended for subcontracting
89 with small businesses in the state shall be determined by the
90 agency before the solicitation for the contract is issued;
91 however, the contract may not allow a vendor to expend less than
92 35 percent of the gross contract amount for subcontracting with
93 small businesses in the state.

94 (c) Each contract must include specific requirements for:

95 1. The timely payment of subcontractors by the prime
96 contractor and specific terms and conditions applicable if a
97 prime contractor does not pay a subcontractor within the time
98 limits specified in the contract.

99 2. Payment from the owner and general contractor shall be
100 paid to subcontractors within 15 calendar days after receipt of
101 a subcontractor's invoice and pay application.

102 (4) BONDING REQUIREMENTS.—Notwithstanding any provision of
103 law, an agency, a general contractor, or a prime contractor may
104 not require a vendor to post a bid bond, performance bond, or
105 other surety for a contract that does not exceed \$500,000. This
106 subsection does not apply to any requirement for posting a bond
107 pending the protest of a solicitation; the protest of a rejected
108 bid, proposal, or reply; or the protest of a contract award.

109 (5) REPORTING REQUIREMENTS.—The rules ombudsman in the
110 Executive Office of the Governor shall:

111 (a) Establish a system to measure and report the use of
112 small businesses in state contracting. This system shall
113 maintain information and statistics on small business
114 participation, awards, dollar volume of expenditures, and other
115 appropriate types of information to analyze progress in small
116 businesses access to state contracts and to monitor agency

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117 compliance with this section. Such reporting must include, but
118 is not limited to, the identification of all subcontracts in
119 state contracting by dollar amount and by number of subcontracts
120 and identification of the use of small businesses as prime
121 contractors and subcontractors by dollar amounts of contracts
122 and subcontracts, number of contracts and subcontracts,
123 industry, and any conditions or circumstances that significantly
124 affected the performance of subcontractors. An agency shall
125 report its compliance with the reporting system at least
126 annually and at the request of the rules ombudsman in the
127 Executive Office of the Governor. All agencies shall cooperate
128 with the rules ombudsman in the Executive Office of the Governor
129 in establishing this reporting system.

130 (b) Report agency compliance with paragraph (a) for the
131 preceding fiscal year to the Governor and Cabinet, the President
132 of the Senate, the Speaker of the House of Representatives, and
133 the rules ombudsman in the Executive Office of the Governor on
134 or before February 1 of each year. The report must contain, at a
135 minimum, the following:

136 1. Total expenditures of each agency by industry.

137 2. The dollar amount and percentage of contracts awarded to
138 small businesses by each state agency.

139 3. The dollar amount and percentage of contracts awarded
140 indirectly to small businesses as subcontractors by each state
141 agency.

142 4. The total dollar amount and percentage of contracts
143 awarded to small businesses, whether directly or indirectly as
144 subcontractors.

145 Section 2. This act shall take effect July 1, 2013.