

2011444er

1
2 An act relating to scrutinized companies; creating s.
3 287.135, F.S.; providing definitions; prohibiting a
4 state agency or local governmental entity from
5 contracting for goods and services of more than a
6 certain amount with a company that is on the
7 Scrutinized Companies with Activities in Sudan List or
8 the Scrutinized Companies with Activities in the Iran
9 Petroleum Energy Sector List; providing for a contract
10 provision that allows for termination of the contract
11 if the company is found to have been placed on such
12 list; providing exceptions; providing for a civil
13 action; providing penalties, including attorney's fees
14 and costs; providing a statute of repose; prohibiting
15 a private right of action; requiring the Department of
16 Management Services to notify the Attorney General
17 after the act becomes law; providing that the act
18 becomes inoperative if federal law ceases to authorize
19 states to enact such contracting prohibitions;
20 providing an effective date.

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

23
24 Section 1. Section 287.135, Florida Statutes, is created to
25 read:

26 287.135 Prohibition against contracting with scrutinized
27 companies.—

28 (1) In addition to the terms defined in ss. 287.012 and
29 215.473, as used in this section, the term:

2011444er

30 (a) "Awarding body" means, for purposes of state contracts,
31 an agency or the department, and for purposes of local
32 contracts, the governing body of the local governmental entity.

33 (b) "Local governmental entity" means a county,
34 municipality, special district, or other political subdivision
35 of the state.

36 (2) A company that, at the time of bidding or submitting a
37 proposal for a new contract or renewal of an existing contract,
38 is on the Scrutinized Companies with Activities in Sudan List or
39 the Scrutinized Companies with Activities in the Iran Petroleum
40 Energy Sector List, created pursuant to s. 215.473, is
41 ineligible for, and may not bid on, submit a proposal for, or
42 enter into or renew a contract with an agency or local
43 governmental entity for goods or services of \$1 million or more.

44 (3) Any contract with an agency or local governmental
45 entity for goods or services of \$1 million or more entered into
46 or renewed on or after July 1, 2011, must contain a provision
47 that allows for the termination of such contract at the option
48 of the awarding body if the company is found to have submitted a
49 false certification as provided under subsection (5) or been
50 placed on the Scrutinized Companies with Activities in Sudan
51 List or the Scrutinized Companies with Activities in the Iran
52 Petroleum Energy Sector List.

53 (4) Notwithstanding subsection (2) or subsection (3), an
54 agency or local governmental entity, on a case-by-case basis,
55 may permit a company on the Scrutinized Companies with
56 Activities in Sudan List or the Scrutinized Companies with
57 Activities in the Iran Petroleum Energy Sector List to be
58 eligible for, bid on, submit a proposal for, or enter into or

2011444er

59 renew a contract for goods or services of \$1 million or more
60 under either of the following conditions:

61 (a) All of the following occur:

62 1. The scrutinized business operations were made before
63 July 1, 2011.

64 2. The scrutinized business operations have not been
65 expanded or renewed after July 1, 2011.

66 3. The agency or local governmental entity determines that
67 it is in the best interest of the state or local community to
68 contract with the company.

69 4. The company has adopted, has publicized, and is
70 implementing a formal plan to cease scrutinized business
71 operations and to refrain from engaging in any new scrutinized
72 business operations.

73 (b) One of the following occurs:

74 1. The local governmental entity makes a public finding
75 that, absent such an exemption, the local governmental entity
76 would be unable to obtain the goods or services for which the
77 contract is offered.

78 2. For a contract with an executive agency, the Governor
79 makes a public finding that, absent such an exemption, the
80 agency would be unable to obtain the goods or services for which
81 the contract is offered.

82 3. For a contract with an office of a state constitutional
83 officer other than the Governor, the state constitutional
84 officer makes a public finding that, absent such an exemption,
85 the office would be unable to obtain the goods or services for
86 which the contract is offered.

87 (5) At the time a company submits a bid or proposal for a

2011444er

88 contract or before the company enters into or renews a contract
89 with an agency or governmental entity for goods or services of
90 \$1 million or more, the company must certify that the company is
91 not on the Scrutinized Companies with Activities in Sudan List
92 or the Scrutinized Companies with Activities in the Iran
93 Petroleum Energy Sector List.

94 (a) If, after the agency or the local governmental entity
95 determines, using credible information available to the public,
96 that the company has submitted a false certification, the agency
97 or local governmental entity shall provide the company with
98 written notice of its determination. The company shall have 90
99 days following receipt of the notice to respond in writing and
100 to demonstrate that the determination of false certification was
101 made in error. If the company does not make such demonstration
102 within 90 days after receipt of the notice, the agency or the
103 local governmental entity shall bring a civil action against the
104 company. If a civil action is brought and the court determines
105 that the company submitted a false certification, the company
106 shall pay the penalty described in subparagraph 1. and all
107 reasonable attorney's fees and costs, including any costs for
108 investigations that led to the finding of false certification.

109 1. A civil penalty equal to the greater of \$2 million or
110 twice the amount of the contract for which the false
111 certification was submitted shall be imposed.

112 2. The company is ineligible to bid on any contract with an
113 agency or local governmental entity for 3 years after the date
114 the agency or local governmental entity determined that the
115 company submitted a false certification.

116 (b) A civil action to collect the penalties described in

2011444er

117 paragraph (a) must commence within 3 years after the date the
118 false certification is submitted.

119 (6) Only the agency or local governmental entity that is a
120 party to the contract may cause a civil action to be brought
121 under this section. This section does not create or authorize a
122 private right of action or enforcement of the penalties provided
123 in this section. An unsuccessful bidder, or any other person
124 other than the agency or local governmental entity, may not
125 protest the award of a contract or contract renewal on the basis
126 of a false certification.

127 (7) This section preempts any ordinance or rule of any
128 agency or local governmental entity involving public contracts
129 for goods or services of \$1 million or more with a company
130 engaged in scrutinized business operations.

131 (8) The department shall submit to the Attorney General of
132 the United States a written notice describing this section
133 within 30 days after July 1, 2011. This section becomes
134 inoperative on the date that federal law ceases to authorize the
135 states to adopt and enforce the contracting prohibitions of the
136 type provided for in this section.

137 Section 2. This act shall take effect July 1, 2011.