

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB 1872

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Gibson

SUBJECT: State Contracting/Small Business

DATE: February 2, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill requires state executive branch agencies to accept as responsive a bid by a small business for a portion of a bundled contract. The bill also provides definitions.

This bill creates section 287.0577 of the Florida Statutes.

II. Present Situation:

Existing Small Business Efforts

Part IV of Chapter 288, F.S., specifies a number of efforts directed towards helping the success of small businesses. The Small Business Regulatory Advisory Council is created in s. 288.7001, F.S., largely to review administrative rules of state agencies in order to reduce the impact of rules on small businesses. The council is established and administratively housed within the Florida Small Business Development Center Network, which is established in s. 288.001, F.S., as the “principal business assistance organization for small businesses in the state.” The Florida Small Business Development Center Network also houses the Office of Small Business Advocate,

which is physically located at the University of West Florida. A September 2010 report¹ by the office recommended, among other things, a 20 percent Set-aside for state contracts for FL-based small and medium enterprises (SME) located in the state for at least 3 years, and a 10 percent “FL-based SME” subcontracting clause in state contracts awarded to large vendors and suppliers.

Some of the duties of the Office of Supplier Diversity of the Department of Management Services, established in s. 287.09451, F.S., include communicating on a monthly basis with the Small and Minority Business Advisory Council to keep the council informed on issues relating to minority enterprise procurement, serving as an advocate for minority business enterprises, and coordinating with the small and minority business ombudsman, as defined in s. 288.703, F.S.

Public Procurement

Procurement laws govern the manner in which a government receives goods and services. In Florida, Chapter 287, F.S., broadly governs the public procurement of personal property and services, and s. 287.012, F.S., provides definitions used in the chapter.² The following definitions are specified:

- “Agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government, but does not include the university and college boards of trustees or the state universities and colleges.
- “Responsive bid,” “responsive proposal,” or “responsive reply” means a bid, or proposal, or reply submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation.
- “Responsive vendor” means a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation.
- “Responsible vendor” means a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.

When using requests for proposals or invitations to negotiate, agencies are to award contracts to “the responsible and responsive vendor” vendor that provides the proposal most advantageous to the state, or provides the best value to the state.³

III. Effect of Proposed Changes:

The bill creates section 287.0577, F.S., which provides definitions, and requires that “an agency must accept as responsive a bid by a small business for a portion of a bundled contract.”

The bill defines a “bundled contract” as the “consolidation of contracts for the procurement of commodities or contractual services, at least part of which may be provided or performed by one

¹ Last visited on January 27 at

<http://www.floridaosba.org/docs/100110%20Small%20Business%20Issues%20and%20Recommendations.pdf>

² These definitions do not apply in s. 287.055, F.S., the Consultants’ Competitive Negotiation Act, which specifies the procedures to be used in procuring the services of certain professionals involved in construction contracting.

³ Section 287.057(1)(b) and (c), F.S.

or more small businesses, into a single contract that is not appropriate for award to a small business as a the prime contractor.”

A “small business,” is a business entity organized for profit that is independently owned and operated, that is not dominant within the business entity’s industry, and that:

- Currently is, and for at least the previous 3 years has been, domiciled in the state.
- Has a workforce of 25 or fewer permanent full-time positions, whether employees, independent contractors, or other contractual personnel.
- Has had, for at least the previous 3 years, average annual gross sales that do not exceed the following:
 - For a contractor licensed under chapter 489, \$3 million per year.
 - For a sole proprietorship performing contractual services within the scope of the proprietor’s professional license or certification, \$500,000 per year.
 - For any other business entity, \$1 million per year.
- Currently has, and for at least the previous 3 years has had, together with its affiliates, a net worth that does not exceed \$5 million. For a sole proprietorship, the net worth limit of \$5 million includes both personal and business investments but does not include the proprietor’s primary residence.

The term includes any such business entity organized as any legal entity.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could have the effect of shifting some contracting dollars towards smaller businesses.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The provision requiring an agency to “accept as responsive” a bid by a small business potentially conflicts with agency duties to evaluate whether vendors are responsible and responsive. By definition, a responsive bid supposes a responsible and responsive vendor. The bill would appear to deem a bid by a small business responsive, regardless of whether the small business submits a bid that conformed to the solicitation, or whether the small business has the capability to perform the contract requirements.

The phrase “not appropriate for award to a small business” is used in lines 19-20, but is not defined, which could lead to uncertainty in applying the definition of “bundled contract.”

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on February 1, 2012:

The CS removed all the bill provisions except the definitions, and added a requirement that an agency must accept as responsive a bid by a small business for a portion of a bundled contract.

B. Amendments:

None.