

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; 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.

21  
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 contracting;  
27 contract bundling; set-asides for small businesses; bonding and  
28 reporting requirements.-

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

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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 has  
53 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  
56 investments but does not include the proprietor's primary  
57 residence.

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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 the  
83 vendor to use small businesses in the state as subcontractors or  
84 subvendors. The percentage of funds, in terms of gross contract  
85 amount and revenues, that must be expended for subcontracting  
86 with small businesses in the state shall be determined by the  
87 agency before the solicitation for the contract is issued;

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88 however, the contract may not allow a vendor to expend less than  
89 10 percent of the gross contract amount for subcontracting with  
90 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  
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,

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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 to  
131 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.