

HB 985

2013

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

23
24 Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

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

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

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

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

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

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

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

54 | 4. Currently has, and for at least the previous 3 years
55 | has had, together with its affiliates, a net worth that does not

56 exceed \$5 million. For a sole proprietorship, the net worth
57 limit of \$5 million includes both personal and business
58 investments but does not include the proprietor's primary
59 residence.

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

65 (2) CONTRACT BUNDLING; SOLICITATION.—

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

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

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

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

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84 (b) Each contract awarded under s. 287.057 must require
85 the vendor to use small businesses in the state as
86 subcontractors or subvendors. The percentage of funds, in terms
87 of gross contract amount and revenues, that must be expended for
88 subcontracting with small businesses in the state shall be
89 determined by the agency before the solicitation for the
90 contract is issued; however, the contract may not allow a vendor
91 to expend less than 35 percent of the gross contract amount for
92 subcontracting with small businesses in the state.

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

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

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

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

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

110 (a) Establish a system to measure and report the use of
111 small businesses in state contracting. This system shall

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112 maintain information and statistics on small business
113 participation, awards, dollar volume of expenditures, and other
114 appropriate types of information to analyze progress in small
115 businesses access to state contracts and to monitor agency
116 compliance with this section. Such reporting must include, but
117 is not limited to, the identification of all subcontracts in
118 state contracting by dollar amount and by number of subcontracts
119 and identification of the use of small businesses as prime
120 contractors and subcontractors by dollar amounts of contracts
121 and subcontracts, number of contracts and subcontracts,
122 industry, and any conditions or circumstances that significantly
123 affected the performance of subcontractors. An agency shall
124 report its compliance with the reporting system at least
125 annually and at the request of the rules ombudsman in the
126 Executive Office of the Governor. All agencies shall cooperate
127 with the rules ombudsman in the Executive Office of the Governor
128 in establishing this reporting system.

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

- 135 1. Total expenditures of each agency by industry.
- 136 2. The dollar amount and percentage of contracts awarded
137 to small businesses by each state agency.
- 138 3. The dollar amount and percentage of contracts awarded
139 indirectly to small businesses as subcontractors by each state

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140 | agency.

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

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