

By Senator Bullard

39-00713-15

2015508\_\_

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 certain  
10      agencies to award a percentage of contracts to small  
11      businesses; requiring contract vendors to use small  
12      businesses as subcontractors or subvendors; providing  
13      requirements with respect to payment of  
14      subcontractors; prohibiting agencies, general  
15      contractors, or prime contractors from requiring  
16      certain bonds or other sureties for certain contracts;  
17      requiring the rules ombudsman in the Executive Office  
18      of the Governor to establish a system for reporting  
19      small business participation in state contracting;  
20      requiring agencies to cooperate with such reporting;  
21      requiring specified annual reports; providing an  
22      effective date.

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

25  
26       Section 1. Section 287.0577, Florida Statutes, is created  
27 to read:

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

39-00713-15

2015508\_\_

30 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 contract 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 has  
55 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

39-00713-15

2015508\_\_

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, taking all reasonable steps to eliminate  
69 obstacles to participation and avoiding unnecessary contract  
70 bundling that may preclude small businesses' participation as  
71 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. If the agency determines that  
75 contract bundling is necessary, the agency must include in the  
76 solicitation a written summary of the agency's market research  
77 and a written analysis of the research that explains why  
78 contract bundling is necessary.

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

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

83 (b) Each contract awarded under s. 287.057 must require the  
84 vendor to use small businesses as subcontractors or subvendors.  
85 The percentage of funds, in terms of gross contract amount and  
86 revenues, that must be expended for subcontracting with small  
87 businesses shall be determined by the agency before the

39-00713-15

2015508

88 solicitation for the contract is issued; however, the contract  
89 may not allow a vendor to expend less than 35 percent of the  
90 gross contract amount for subcontracting with small businesses.

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

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

96 2. Payment from the owner and general contractor to  
97 subcontractors within 14 calendar days after receipt of an  
98 invoice or other proper claim for payment.

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

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

109 (a) Establish a system to measure and report the use of  
110 small businesses in state contracting. This system shall  
111 maintain information and statistics on small business  
112 participation, awards, dollar volume of expenditures, and other  
113 appropriate types of information to analyze progress in small  
114 businesses access to state contracts and to monitor agency  
115 compliance with this section. Such reporting must include, but  
116 is not limited to, the identification of all subcontracts in

39-00713-15

2015508\_\_

117 this state by dollar amount and by number of subcontracts and  
118 identification of the use of small businesses as prime  
119 contractors and subcontractors by dollar amounts of contracts  
120 and subcontracts, number of contracts and subcontracts,  
121 industry, and any conditions or circumstances that significantly  
122 affected the performance of subcontractors. An agency shall  
123 report its compliance with the reporting system at least  
124 annually and at the request of the rules ombudsman in the  
125 Executive Office of the Governor. All agencies shall cooperate  
126 with the rules ombudsman in the Executive Office of the Governor  
127 in establishing this reporting system.

128 (b) Report agency compliance with paragraph (a) for the  
129 preceding fiscal year to the Governor and Cabinet, the President  
130 of the Senate, and the Speaker of the House of Representatives  
131 by February 1 of each year. The report must contain, at a  
132 minimum, the following:

- 133 1. Total expenditures of each agency by industry.
- 134 2. The dollar amount and percentage of contracts awarded to  
135 small businesses by each agency.
- 136 3. The dollar amount and percentage of contracts awarded  
137 indirectly to small businesses as subcontractors by each agency.
- 138 4. The total dollar amount and percentage of contracts  
139 awarded to small businesses, whether directly or indirectly as  
140 subcontractors.

141 Section 2. This act shall take effect July 1, 2015.