

HB 211

2016

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

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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. Is currently, 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
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.

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

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

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

97 2. The prompt payment by an owner of a prime contractor
98 within 12 calendar days, and payment by a prime contractor of a
99 subcontractor, subvendor, or sub-consultant within 2 calendar
100 days, after receipt of a proper pay application or invoice. All
101 contracts shall include twice a month billing.

102 (4) BONDING REQUIREMENTS.—Notwithstanding any other
103 provision of law, an agency, a general contractor, or a prime
104 contractor may not require a vendor to post a bid bond,

105 performance bond, or other surety for a contract that does not
 106 exceed \$500,000. This subsection does not apply to any
 107 requirement for posting a bond pending the protest of a
 108 solicitation; the protest of a rejected bid, proposal, or reply;
 109 or the protest of a contract award.

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

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

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

136 1. Total expenditures of each agency by industry.

137 2. The dollar amount and percentage of contracts awarded
138 to small businesses by each agency.

139 3. The dollar amount and percentage of contracts awarded
140 indirectly to small businesses as subcontractors by each 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, 2016.