

By the Committee on Governmental Oversight and Accountability;  
and Senator Bullard

585-01986-16

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

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

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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 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  
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 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, which must be expended for subcontracting with small  
87 businesses shall be determined by the agency before the  
88 solicitation for the contract is issued; however, the contract  
89 may not allow a vendor to expend less than 35 percent of the

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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. The prompt payment by an agency to the prime contractor  
97 within 12 calendar days, and payment by a prime contractor of a  
98 subcontractor, subvendor, or sub-consultant within 2 calendar  
99 days, after receipt of a proper pay application or invoice. All  
100 contracts must include twice a month billing. Each contract must  
101 conform to the requirements of this subparagraph by no later  
102 than July 1, 2019.

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

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

113 (a) Establish a system to measure and report the use of  
114 small businesses in state contracting. This system shall  
115 maintain information and statistics on small business  
116 participation, awards, dollar volume of expenditures, and other  
117 appropriate types of information to analyze progress in small  
118 businesses' access to state contracts and to monitor agency

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119 compliance with this section. Such reporting must include, but  
120 is not limited to, the identification of all subcontracts in  
121 this state contracting by dollar amount and by number of  
122 subcontracts and identification of the use of small businesses  
123 as prime contractors and subcontractors by dollar amounts of  
124 contracts and subcontracts, number of contracts and  
125 subcontracts, industry, and any conditions or circumstances that  
126 significantly affected the performance of subcontractors. An  
127 agency shall report its compliance with the reporting system at  
128 least annually and at the request of the rules ombudsman in the  
129 Executive Office of the Governor. All agencies shall cooperate  
130 with the rules ombudsman in the Executive Office of the Governor  
131 in establishing this reporting system.

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

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

145 Section 2. This act shall take effect July 1, 2016.