

By Senator Campbell

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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"; specifying circumstances under which
6 agencies must avoid contract bundling; 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:

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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 contracting;
29 contract bundling; set-asides for small businesses; bonding and
30 reporting requirements.-

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

32 (a) "Contract bundling" means the consolidation of

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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 which is independently owned and operated, not dominant
40 within the business entity's industry, and:

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.

60
61 The term includes any such business entity organized as any form

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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 which 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
90 gross contract amount for subcontracting with small businesses.

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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 subconsultant 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, 2020.

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 must maintain
115 information and statistics on small business participation,
116 awards, dollar volume of expenditures, and other appropriate
117 types of information to analyze progress in small businesses'
118 access to state contracts and to monitor agency compliance with
119 this section. Such reporting must include, but is not limited

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120 to, the identification of all subcontracts in this state
121 contracting by dollar amount and by number of subcontracts and
122 identification of the use of small businesses as prime
123 contractors and subcontractors by dollar amounts of contracts
124 and subcontracts, number of contracts and subcontracts,
125 industry, and any conditions or circumstances that significantly
126 affected the performance of subcontractors. An agency shall
127 report its compliance with the reporting system at least
128 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, 2017.