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HB 545

2018 Legislature

1
2 An act relating to the prohibition against contracting
3 with scrutinized companies; amending s. 287.135, F.S.;
4 prohibiting a company that is on the Scrutinized
5 Companies that Boycott Israel List or that is engaged
6 in a boycott of Israel from bidding on, submitting a
7 proposal for, or entering into or renewing a contract
8 with an agency or local governmental entity for goods
9 or services of any amount; providing exceptions;
10 requiring such contracts entered into or renewed on or
11 after July 1, 2018, to include a provision authorizing
12 termination in specified circumstances; requiring a
13 company to provide a specified certification before
14 submitting a bid or proposal for or entering into or
15 renewing such contracts; providing for preemption of
16 agency or local governmental entity ordinances and
17 rules involving such contracts; conforming provisions
18 to changes made by the act; providing an effective
19 date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 287.135, Florida Statutes, is amended
24 to read:

25 287.135 Prohibition against contracting with scrutinized

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26 | companies.—

27 | (1) In addition to the terms defined in ss. 287.012 and
28 | 215.473, as used in this section, the term:

29 | (a) "Awarding body" means, for purposes of state
30 | contracts, an agency or the department, and for purposes of
31 | local contracts, the governing body of the local governmental
32 | entity.

33 | (b) "Boycott of Israel" has the same meaning as defined in
34 | s. 215.4725.

35 | (c) "Business operations" means, for purposes specifically
36 | related to Cuba or Syria, engaging in commerce in any form in
37 | Cuba or Syria, including, but not limited to, acquiring,
38 | developing, maintaining, owning, selling, possessing, leasing,
39 | or operating equipment, facilities, personnel, products,
40 | services, personal property, real property, military equipment,
41 | or any other apparatus of business or commerce.

42 | (d) "Local governmental entity" means a county,
43 | municipality, special district, or other political subdivision
44 | of the state.

45 | (2) A company is ineligible to, and may not, bid on,
46 | submit a proposal for, or enter into or renew a contract with an
47 | agency or local governmental entity for goods or services of \$1
48 | ~~million or more if at the time of bidding or submitting a~~
49 | ~~proposal for a new contract or renewal of an existing contract,~~
50 | ~~the company:~~

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51 (a) Any amount if, at the time of bidding on, submitting a
52 proposal for, or entering into or renewing such contract, the
53 company is on the Scrutinized Companies that Boycott Israel
54 List, created pursuant to s. 215.4725, or is engaged in a
55 boycott of Israel; or

56 (b) One million dollars or more if, at the time of bidding
57 on, submitting a proposal for, or entering into or renewing such
58 contract, the company:

59 1. Is on the Scrutinized Companies with Activities in
60 Sudan List or the Scrutinized Companies with Activities in the
61 Iran Petroleum Energy Sector List, created pursuant to s.
62 215.473; or

63 2.~~(e)~~ Is engaged in business operations in Cuba or Syria.

64 (3) (a) Any contract with an agency or local governmental
65 entity for goods or services of \$1 million or more entered into
66 or renewed on or after:

67 1.~~(a)~~ July 1, 2011, through June 30, 2012, must contain a
68 provision that allows for the termination of such contract at
69 the option of the awarding body if the company is found to have
70 submitted a false certification as provided under subsection (5)
71 or been placed on the Scrutinized Companies with Activities in
72 Sudan List or the Scrutinized Companies with Activities in the
73 Iran Petroleum Energy Sector List.

74 2.~~(b)~~ July 1, 2012, through September 30, 2016, must
75 contain a provision that allows for the termination of such

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76 | contract at the option of the awarding body if the company is
 77 | found to have submitted a false certification as provided under
 78 | subsection (5), been placed on the Scrutinized Companies with
 79 | Activities in Sudan List or the Scrutinized Companies with
 80 | Activities in the Iran Petroleum Energy Sector List, or been
 81 | engaged in business operations in Cuba or Syria.

82 | 3.(e) October 1, 2016, through June 30, 2018, must contain
 83 | a provision that allows for the termination of such contract at
 84 | the option of the awarding body if the company:

85 | a.1. Is found to have submitted a false certification as
 86 | provided under subsection (5);

87 | b.2. Has been placed on the Scrutinized Companies that
 88 | Boycott Israel List, or is engaged in a boycott of Israel;

89 | c.3. Has been placed on the Scrutinized Companies with
 90 | Activities in Sudan List or the Scrutinized Companies with
 91 | Activities in the Iran Petroleum Energy Sector List; or

92 | d.4. Has been engaged in business operations in Cuba or
 93 | Syria.

94 | 4. July 1, 2018, must contain a provision that allows for
 95 | the termination of such contract at the option of the awarding
 96 | body if the company is found to have submitted a false
 97 | certification as provided under subsection (5), been placed on
 98 | the Scrutinized Companies with Activities in Sudan List or the
 99 | Scrutinized Companies with Activities in the Iran Petroleum
 100 | Energy Sector List, or been engaged in business operations in

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101 Cuba or Syria.

102 (b) Any contract with an agency or local governmental
 103 entity for goods or services of any amount entered into or
 104 renewed on or after July 1, 2018, must contain a provision that
 105 allows for the termination of such contract at the option of the
 106 awarding body if the company is found to have been placed on the
 107 Scrutinized Companies that Boycott Israel List or is engaged in
 108 a boycott of Israel.

109 (4) Notwithstanding subsection (2) or subsection (3), an
 110 agency or local governmental entity, on a case-by-case basis,
 111 may permit a company on ~~the Scrutinized Companies that Boycott~~
 112 ~~Israel List,~~ the Scrutinized Companies with Activities in Sudan
 113 List or the Scrutinized Companies with Activities in the Iran
 114 Petroleum Energy Sector List, or a company engaged in with
 115 business operations in Cuba or Syria, to be eligible for, bid
 116 on, submit a proposal for, or enter into or renew a contract for
 117 goods or services of \$1 million or more, or may permit a company
 118 on the Scrutinized Companies that Boycott Israel List to be
 119 eligible for, bid on, submit a proposal for, or enter into or
 120 renew a contract for goods or services of any amount, under the
 121 conditions set forth in paragraph (a) or the conditions set
 122 forth in paragraph (b):

123 (a)1. With respect to a company on the Scrutinized
 124 Companies with Activities in Sudan List or the Scrutinized
 125 Companies with Activities in the Iran Petroleum Energy Sector

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126 List, all of the following occur:
 127 a. The scrutinized business operations were made before
 128 July 1, 2011.
 129 b. The scrutinized business operations have not been
 130 expanded or renewed after July 1, 2011.
 131 c. The agency or local governmental entity determines that
 132 it is in the best interest of the state or local community to
 133 contract with the company.
 134 d. The company has adopted, has publicized, and is
 135 implementing a formal plan to cease scrutinized business
 136 operations and to refrain from engaging in any new scrutinized
 137 business operations.
 138 2. With respect to a company engaged in business
 139 operations in Cuba or Syria, all of the following occur:
 140 a. The business operations were made before July 1, 2012.
 141 b. The business operations have not been expanded or
 142 renewed after July 1, 2012.
 143 c. The agency or local governmental entity determines that
 144 it is in the best interest of the state or local community to
 145 contract with the company.
 146 d. The company has adopted, has publicized, and is
 147 implementing a formal plan to cease business operations and to
 148 refrain from engaging in any new business operations.
 149 3. With respect to a company on the Scrutinized Companies
 150 that Boycott Israel List, all of the following occur:

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151 a. The boycott of Israel was initiated before October 1,
152 2016.

153 b. The company certifies in writing that it has ceased its
154 boycott of Israel.

155 c. The agency or local governmental entity determines that
156 it is in the best interest of the state or local community to
157 contract with the company.

158 d. The company has adopted, has publicized, and is
159 implementing a formal plan to cease scrutinized business
160 operations and to refrain from engaging in any new scrutinized
161 business operations.

162 (b) One of the following occurs:

163 1. The local governmental entity makes a public finding
164 that, absent such an exemption, the local governmental entity
165 would be unable to obtain the goods or services for which the
166 contract is offered.

167 2. For a contract with an executive agency, the Governor
168 makes a public finding that, absent such an exemption, the
169 agency would be unable to obtain the goods or services for which
170 the contract is offered.

171 3. For a contract with an office of a state constitutional
172 officer other than the Governor, the state constitutional
173 officer makes a public finding that, absent such an exemption,
174 the office would be unable to obtain the goods or services for
175 which the contract is offered.

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176 (5) At the time a company submits a bid or proposal for a
177 contract or before the company enters into or renews a contract
178 with an agency or local governmental entity for goods or
179 services of \$1 million or more, the company must certify that
180 the company is not ~~participating in a boycott of Israel,~~ on the
181 Scrutinized Companies with Activities in Sudan List or the
182 Scrutinized Companies with Activities in the Iran Petroleum
183 Energy Sector List and, ~~or~~ that it does not have business
184 operations in Cuba or Syria. At the time a company submits a bid
185 or proposal for a contract or before the company enters into or
186 renews a contract with an agency or local governmental entity
187 for goods or services of any amount, the company must certify
188 that the company is not participating in a boycott of Israel.

189 (a) If, after the agency or the local governmental entity
190 determines, using credible information available to the public,
191 that the company has submitted a false certification, the agency
192 or local governmental entity shall provide the company with
193 written notice of its determination. The company shall have 90
194 days following receipt of the notice to respond in writing and
195 to demonstrate that the determination of false certification was
196 made in error. If the company does not make such demonstration
197 within 90 days after receipt of the notice, the agency or the
198 local governmental entity shall bring a civil action against the
199 company. If a civil action is brought and the court determines
200 that the company submitted a false certification, the company

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201 shall pay the penalty described in subparagraph 1. and all
 202 reasonable attorney fees and costs, including any costs for
 203 investigations that led to the finding of false certification.

204 1. A civil penalty equal to the greater of \$2 million or
 205 twice the amount of the contract for which the false
 206 certification was submitted shall be imposed.

207 2. The company is ineligible to bid on any contract with
 208 an agency or local governmental entity for 3 years after the
 209 date the agency or local governmental entity determined that the
 210 company submitted a false certification.

211 (b) A civil action to collect the penalties described in
 212 paragraph (a) must commence within 3 years after the date the
 213 false certification is submitted.

214 (6) Only the agency or local governmental entity that is a
 215 party to the contract may cause a civil action to be brought
 216 under this section. This section does not create or authorize a
 217 private right of action or enforcement of the penalties provided
 218 in this section. An unsuccessful bidder, or any other person
 219 other than the agency or local governmental entity, may not
 220 protest the award of a contract or contract renewal on the basis
 221 of a false certification.

222 (7) This section preempts any ordinance or rule of any
 223 agency or local governmental entity involving public contracts
 224 for goods or services of:

225 (a) One million dollars ~~of \$1 million~~ or more with a

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226 | company engaged in scrutinized business operations.

227 | (b) Any amount with a company that has been placed on the
228 | Scrutinized Companies that Boycott Israel List or is engaged in
229 | a boycott of Israel.

230 | (8) The contracting prohibitions in this section
231 | applicable to companies on the Scrutinized Companies with
232 | Activities in Sudan List or the Scrutinized Companies with
233 | Activities in the Iran Petroleum Energy Sector List or to
234 | companies engaged in business operations in Cuba or Syria become
235 | inoperative on the date that federal law ceases to authorize the
236 | states to adopt and enforce such contracting prohibitions.

237 | Section 2. This act shall take effect July 1, 2018.