

CHAPTER 2018-52

House Bill No. 545

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

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

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

287.135 Prohibition against contracting with scrutinized companies.—

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

(a) “Awarding body” means, for purposes of state contracts, an agency or the department, and for purposes of local contracts, the governing body of the local governmental entity.

(b) “Boycott of Israel” has the same meaning as defined in s. 215.4725.

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

(d) “Local governmental entity” means a county, municipality, special district, or other political subdivision of the state.

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

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

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

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

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

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

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

2.(b) July 1, 2012, through September 30, 2016, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5), been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria.

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

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

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

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

d.4- Has been engaged in business operations in Cuba or Syria.

4. July 1, 2018, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification as provided under subsection (5), been

placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria.

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

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

(a)1. With respect to a company on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, all of the following occur:

- a. The scrutinized business operations were made before July 1, 2011.
- b. The scrutinized business operations have not been expanded or renewed after July 1, 2011.
- c. The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.
- d. The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.

2. With respect to a company engaged in business operations in Cuba or Syria, all of the following occur:

- a. The business operations were made before July 1, 2012.
- b. The business operations have not been expanded or renewed after July 1, 2012.
- c. The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.

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

3. With respect to a company on the Scrutinized Companies that Boycott Israel List, all of the following occur:

- a. The boycott of Israel was initiated before October 1, 2016.
- b. The company certifies in writing that it has ceased its boycott of Israel.
- c. The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company.
- d. The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.

(b) One of the following occurs:

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

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

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

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

(a) If, after the agency or the local governmental entity determines, using credible information available to the public, that the company has submitted a false certification, the agency or local governmental entity shall provide the company with written notice of its determination. The company shall have 90 days following receipt of the notice to respond in writing and to demonstrate that the determination of false certification was made in error.

If the company does not make such demonstration within 90 days after receipt of the notice, the agency or the local governmental entity shall bring a civil action against the company. If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay the penalty described in subparagraph 1. and all reasonable attorney fees and costs, including any costs for investigations that led to the finding of false certification.

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

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

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

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

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

(a) One million dollars ~~Of \$1 million~~ or more with a company engaged in scrutinized business operations.

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

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

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

Approved by the Governor March 21, 2018.

Filed in Office Secretary of State March 21, 2018.