

House Bill No. 785

An act relating to Hillsborough County; authorizing the waiver of payment and performance bonds for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work when the cost of the project is \$500,000 or less and the contract for the construction, completion, or repair is awarded pursuant to an economic development program established to encourage local small businesses to participate in county procurement programs; providing for a committee to determine suitable projects; providing requirements for the economic development program for local small businesses; providing procedures for waiver of the payment and performance bond; requiring a report; providing for repeal of the act; providing an effective date.

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

Section 1. Notwithstanding section 255.05, Florida Statutes, Hillsborough County may waive payment and performance bonds on construction contracts for the construction of a public building, for the prosecution and completion of a public work, or for repairs on a public building or public work which has a cost of \$500,000 or less and the project is awarded pursuant to a race and gender neutral economic development program for the encouragement of local small businesses which has been adopted by the governing body of the county pursuant to a resolution or ordinance.

Section 2. The county's adopted criteria for participation in the economic development program for local small businesses requires that a participant:

- (1) Be an independent business.
- (2) Be principally domiciled in Hillsborough County unless a reciprocal program is established with another jurisdiction pursuant to an interlocal agreement.
- (3) Have been in business for at least 1 year.
- (4) Employ 25 or fewer full-time employees.
- (5) Have gross annual sales averaging over the previous 3-year period of \$2 million or less, with regard to any construction element of the program.
- (6) Participate in an educational curriculum which will assist the small business in becoming eligible for bonding.

Section 3. The county's adopted procedures for waiving payment and performance bonds on projects with values not less than \$200,000 and not exceeding \$500,000 shall provide that payment and performance bonds may only be waived on projects that have been set aside to be competitively bid on by participants in an economic development program for local small

businesses. A committee of county staff from affected departments shall determine if specific construction projects are suitable to be set aside for bidding by registered local small businesses and waiver of the payment and performance bond. The committee's decision to waive the payment and performance bond shall be in writing and shall include a determination that there exists sufficient competition so that the county receives a fair price and that the project lacks any unusual risk to the county.

Section 4. For any contract for which a payment and performance bond has been waived pursuant to the authority in section 1 of this act, the county shall pay all persons defined in section 713.01, Florida Statutes, who furnish labor, services, or materials for the prosecution of the work provided for in the contract to the same extent and upon the same conditions that a surety on the payment bond under section 255.05, Florida Statutes, would have been obligated to pay such persons if the payment and performance bond has not been waived. The county shall record notice of this obligation in the manner and location that surety bonds are recorded. The notice shall include the information describing the contract which section 255.05(1), Florida Statutes, requires be stated on the front page of the bond. Section 255.05(9), Florida Statutes, shall apply to any contract on which performance or payment bonds are waived pursuant to this act, and any claim to payment under this section shall be treated as a contract claim pursuant to section 255.05(9), Florida Statutes.

Section 5. A small business that has been the successful bidder on three projects where the payment and performance bond were waived pursuant to section 1 shall be ineligible to bid on additional projects where the payment and performance bond has been waived on projects with an estimated value of not less than \$200,000 and not exceeding \$500,000. The local small business may continue to participate in other elements of the economic development program for local small business so long as otherwise eligible.

Section 6. The county shall prepare a report on the activities every 2 years which shall be provided to the county's legislative delegation. The initial report shall be due December 31, 2006.

Section 7. This act shall stand repealed on September 30, 2009.

Section 8. This act shall take effect on October 1, 2004.

Approved by the Governor June 17, 2004.

Filed in Office Secretary of State June 17, 2004.