

FLORIDA DEPARTMENT OF TRANSPORTATION

***BUSINESS DEVELOPMENT INITIATIVE
BDI***



UNLOCKING PRIME OPPORTUNITIES

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I. PURPOSE

The Business Development Initiative (BDI) was designed to support the Department's efforts to increase competition, lower prices, and to increase support to meet its contracting needs over the next 10 years. Also, the BDI was designed to provide more opportunities and support for small businesses to move from subcontracting and subconsulting to prime contracting and consulting roles.

During the course of a two year period, the Department implemented the BDI to determine if such a BDI has the potential to accomplish the goal as stated above. The Department implemented this BDI in part as a prudent business decision and also through the authority provided by Section 337.025 Florida Statutes for innovative contracting. The BDI was deemed successful, House Bill 7027 included the establishment of a Business Development Program to assist small businesses in obtaining contracts with the department (see [FS 337.027](#)).

II. HISTORY & PRACTICES

History

Between 1983 and 2000, the Department implemented a race-conscious Disadvantaged Business Enterprise (DBE) Program where goals were placed on contracts that required, unless a good faith effort was documented, prime contractors to spend a specified percentage of the contract with Certified DBEs. For professional services, additional points were given to those who used DBEs or who were DBEs. These practices allowed DBEs to get their "foot in the door" and to establish themselves as a business that could perform. Those who could perform continued to get contracts and many of them eventually graduated from the DBE Program because they were no longer considered a small business. The Department had identified at least 44 businesses that have either graduated because of business size or the personal net worth of the owners. Businesses such as *Community Asphalt*, *DeMoya Group*, *D.A.B. Constructors*, *General Asphalt*, *Kissinger Campo & Associates*, *Metric Engineering*, and *Corzo, Castella, Carballo* once were small businesses and are now competing for our large contracts because the DBE Program gave them the opportunity to prove they can perform. The Department is optimistic the BDI will have the similar results.

Practices

The \$250,000 threshold for prequalification has been in place well over 20 years with no adjustments made for inflation. In 2007, The Department proposed

legislation that would increase the prequalification threshold to \$500,000 for projects that are of a “non-critical nature”.

The Department also has the statutory authority (Section 337.18 (1) (a), F.S.) to waive surety bonds for contracts less than \$150,000. After some discussions with the districts, we found that the bonds are usually only waived for fast-response contracts. In 2007, The Department proposed legislation that increased this amount to \$250,000.

Barriers to Small Businesses

In April 2004, the Department conducted a survey of Disadvantaged Business Enterprises (DBEs) that by definition are a small business as defined by the U.S. Department of Transportation (USDOT) found in 49 CFR Part 26.65. The primary purpose of the survey was to gather information on businesses bidding on DOT projects as subcontractors to help determine the number of ready, willing and able DBEs for the Department’s annual DBE goal setting process. In this survey that consisted of 100 responses, small businesses identified contract size, bonding and financing as major barriers that hinder their participation on DOT projects. Discussions with the Department’s Supportive Services Providers, DBEs and others confirm that these are major barriers for DBEs as well as other small businesses. The Department’s prequalification process for those bidding on contracts that exceed \$250,000 is also seen as a barrier. Included in the prequalification process is an audited financial statement that can cost between \$15,000 and \$20,000 per year. Another barrier that was frequently mentioned is the myriad of paperwork that is required by the Department. The Department is reviewing various options to assist small businesses that include the use of our existing supportive services providers or a formal training program.

The Department currently uses existing funds in a contract with [Construction Estimating Institute](#) (CEI) to pay for the audited financial statements for DBEs making application for prequalification. The Department pays for the full amount the first year and half the amount the second year for DBEs that have not been prequalified during the previous 12 months.

Other Governmental Entities

As a part of research for the BDI, 29 entities (27 state DOTs, an aviation authority, and a transit authority) were contacted. Of these, five agencies responded that they have some form of a small business program. Both Oregon DOT and Colorado DOT have Emerging Small Business Programs. These programs were created to assist experienced small businesses and small businesses that had no prior work history. Neither requires any form of prequalification or bonding on contracts under \$150,000 reserved for small businesses. The Greater Orlando Aviation Authority (GOAA) has a Local Developing Business (LDB) program. GOAA has established agency wide LDB

goals and reserves contracts to ensure they meet their goals. The Texas DOT has a certified Small Business Enterprise (SBE) program and has mandatory SBE goals on some of their contracts. North Carolina DOT also has a small business program with contracts being reserved that are under \$500,000.

III. SMALL BUSINESS DEFINITION & ELIGIBILITY CRITERIA

Small Business Definition

A small business is defined in [FS 337.027\(2\)](#) as a “business with yearly average gross receipts of less than \$15 million for road and bridge contracts and less than \$6.5 million for professional and nonprofessional services contracts. A business’ average gross receipts is determined by averaging its annual gross receipts over the last 3 years, including the receipts of any affiliate as defined in s. [337.165](#).”

Eligibility Criteria

To participate in the BDI, small businesses must meet the eligibility criteria listed below.

1. Meet the small business definition as defined by FS 337.027.
2. The contractor/consultant will submit a notarized affidavit on a form provided by the Department attesting to meeting the definition of a small business.
3. Provide a listing of contracts on a form provided by the Department on which the firm has performed either as a prime or subcontractor or subconsultant with the firm’s bid for FDOT contract. This is part of the modified prequalification requirement for small contractors, not consultants.

IV. IMPLEMENTATION PLAN

The implementation of the BDI was a multi-year approach that included three overlapping phases. Phase One began in July 2006 that included District Two as the pilot for implementation. In the second year of Phase One, implementation was expanded to all districts. Strategies used in Phase One included reserving contracts for small businesses, waiving bonds and modifying the qualification requirements. Phase Two involved gathering information from the transportation industry and supporting industries to identify other strategies that the Department could implement to achieve the purpose of the BDI. Focus groups and other meetings were planned throughout the state. In Phase Three, the Department reviewed the results from Phase One and the information gathered in Phase Two to identify and implement the strategies that would best achieve the purpose of

this program. Also, the Department drafted language for any statutory changes that may be necessary concerning the program.

Phase One

The initial phase was implemented during fiscal years 2006-07 and 2007-08, with the first six months using District Two as the pilot followed by the remaining districts in January 2007. Each district identified one project in 2006-2007 and at least two projects in 2007-2008. During this phase, different strategies were implemented to determine the increased competition without adversely affecting the end product. These strategies were only used on state funded projects. At the time, the Department was waiting for approval from the Federal Highway Administration to utilize these strategies on federally funded projects. Federal funded projects were identified in the 2007-2008 state fiscal year as candidates for this BDI.

The strategies listed were identified that would provide an opportunity for businesses who would not typically bid on DOT contracts. Districts were encouraged to select the strategies on an individual basis or in combination. For example, a district may (1) reserve a contract for small businesses, (2) use the modified qualification requirement, and (3) waive the bonding requirements for the same project. Other strategies derived from the Focus Group sessions during Phase Two were implemented during this two-year period in order to test the feasibility of different ideas. The strategies to achieve our purpose were not confined to the strategies listed below; districts may use other strategies or revise these strategies to accomplish the intended results of this BDI.

- 1. Reserving construction and maintenance contracts for small businesses** - The districts will identify a combination of construction and maintenance projects up to \$500,000 that will be reserved for small businesses to compete among themselves. During Phase One, District Two had identified two projects during the first year that were reserved for small businesses. One was let in March for Duval County with an advertising estimate of \$139,000 and the other in May in Alachua County for \$28,000. The specification change in Article 2-1, shown below in *italics* defines a small business and is being used for the contracts in District Two.

NOTE: As of February 2014, the Department has increased the project size to \$1,500,000 for construction and maintenance projects.

ARTICLE 2-1 (Page 10) is deleted and the following substituted:

2-1 Qualification of Bidders.

This project is reserved for bidding by “Small Businesses”. Bidders must be a “Small Business” as defined by the Department. A listing of the small business size standards can be found at

<http://www.dot.state.fl.us/equalopportunityoffice/sizeStandards.shtm> . The Department reserves the right to make such inquiries as it deems necessary relative to bidders desiring to participate in this type of project. The bidder shall submit a notarized affidavit on a form provided by the Department prior to the receipt of bid documents attesting to meeting these requirements. This Initiative is being performed under the Department's Alternative Contracting authority provided by Section 337.025 Florida Statutes.

Pursuant to Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit the following:

(a) A bid on a contract to provide any goods or services to a public entity.

(b) A bid on a contract with a public entity for the construction or repair of a public building or public work.

(c) Bids on leases of real property to a public entity.

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 F.S., for Category Two. All restrictions apply for a period of 36 months from the date of placement on the convicted vendor list.

The Department is provided broad authority to insure the integrity of its public contracting process pursuant to Chapter 337 F.S. Therefore, the conviction of a contractor or its affiliate for a contract crime with respect to a public contract; contract cancellations for cause by owners; debarment or suspension of a contractor or an affiliate; unsatisfactory contract performance by a contractor including default or assumption of a contract by a contract surety; or notices of non-payment filed by subcontractors and suppliers shall result in the Department denying the contractor the privilege to participate as a bidder in this Initiative.

2. Using modified qualification requirements for construction and maintenance contracts – Currently construction contractors must be prequalified for contracts over \$250,000. For projects between \$250,000 and \$1,500,000 that are being reserved for small businesses, this strategy would allow the use of modified qualification requirements instead of the standard prequalification process. The modified qualification requirement will allow businesses to bid on a project over \$250,000 without being prequalified.

a. This modified qualification requirement could also be used on projects under \$1.5 million that are not being reserved for small businesses.

Waiving performance bonds and not using the standard prequalification process puts the Department at a greater risk of a business defaulting on the contract, therefore, the Department needs to still review the qualifications of the business before award to assure the successful

completion of the contract. The specification change shown below in *italics* is being used for the contracts in District Two for this purpose.

SUBARTICLE 3-2.1 (Page 16) is deleted and the following is substituted:

3-2.1 General: At the time of submission of its bid the bidder shall provide to the Department, on a form available from the Department, information and documentation demonstrating that it has competently performed, as a prime contractor or subcontractor, on 3 contracts/projects involving work similar to the subject contract/project during a 24 month period prior to the date of letting of the subject project. All bidders satisfying this criteria will be deemed a responsible bidder for the purposes of the subject letting. The information and documentation provided regarding each of the prior contracts/projects shall include, but is not limited to the following: the name and contact information for the Owner or prime contractor; the date, duration and location of the work; and the scope, type and cost of the work performed by the bidder. If the Department decides to award the Contract, the Department will award the Contract to the lowest responsible bidder whose proposal complies with all the Contract Document requirements. If awarded, the Department will award the Contract within 50 days after the opening of the proposals, unless the Special Provisions change this time limit or the bidder and the Department extend the time period by mutual consent. Prior to award of the Contract by the Department, a contractor must provide proof of authorization to do business in the State of Florida.

SUBARTICLE 3-2.2 (Page 16) is deleted.

ARTICLE 3-6 (Page 18) is deleted and the following substituted:

3-6 Execution of Contract.

Within 10 calendar days, excluding Saturdays, Sundays and state holidays, after receipt of the Contract award, execute the necessary agreements to enter into a contract with the Department and return the agreement and documentation evidencing all insurance required by 7-13 to the Department's Contracts Office that awarded the Contract. For each calendar day that the successful bidder is late in delivering to the Department's Contracts Office all required documents in properly executed form, the Department will deduct one day from the allowable Contract Time as specified in 8-7.1. The Department will not be bound by any proposal until it executes the associated Contract. The Department will execute the Contract in the manner stipulated in 2-5.1. The Department will execute the Contract within 5 days, excluding Saturdays, Sundays and state holidays, after receipt of the necessary agreements from the Contractor.

ARTICLE 3-7 (Page 18) is deleted and the following substituted:

3-7 Failure by Contractor to Execute Contract.

In the event that the bidder fails to execute the awarded Contract within 10 calendar days, excluding Saturdays, Sundays and state holidays, of receipt of the Contract award, the Department may annul the award, causing the bidder to forfeit the proposal guaranty to the Department; not as a penalty but in liquidation of damages sustained. The

Department may then award the Contract to the next lowest responsible bidder, re-advertise, or accomplish the work using day labor.

3. **Waiving bond requirements** - The specification language in 3-2.1, shown above, would be used when the bonds are waived. The Department typically only waives bonds for emergency contracts. If the Department does not experience major problems with this strategy, waiving bonds would become the norm instead of the exception for those non-critical projects. The bid bonds can also be reduced to a specific dollar amount, such as \$500, and can be in the form of a certified check, cashier's check, trust company treasurer's check, bank draft of any national or state bank. The specification change in Article 2-7, shown below in *italics*, is being used for the contracts in District 2.

ARTICLE 2-7 (Pages 13 and 14) is deleted and the following substituted:

2.7 Guaranty to Accompany Proposals: On contracts over \$150,000, a Proposal Guaranty of \$500.00 must accompany each bid. This Guaranty shall be in the form of either a bid bond, certified check, cashier's check, trust company treasurer's check, bank draft of any national or state bank made payable to the Department of Transportation. A check or draft in an amount less than \$500.00 will invalidate the bid.

4. **Reserving professional services contracts under \$500,000 for small businesses** - The districts will identify professional services contracts that could be reserved for competition among small businesses. The consultant firms that are small businesses must comply with the professional services prequalification process.

NOTE: As of February 2014, the contract amount has increased to \$1,500,000

5. **Providing special assistance to businesses that are awarded a contract and who do not have experience working with the Department as a prime contractor** - The Department's long-term goal is for small businesses to become primes. In order to familiarize small businesses in working with the Department, the Department will provide specialized assistance to these businesses. This may involve using Department staff or a consultant. The assistance will include, but not be limited to:

- Execution and progress of the work;
- Contract specifications, requirements and conditions;
- Documentation requirements;
- Obtaining appropriate permit(s), license(s) and insurance(s);
- Payroll checking procedures; and

- Final project records.

6. **Revising liability insurance requirements** – Reducing the liability insurance of the contractor has also been suggested as a strategy that may result in an increase in the number of bidders. The specification change in Subarticle 7-13, shown below in *italics*, is being used for the contracts in District 2.

SUBARTICLE 7-13.2 (page 74) is deleted and the following is substituted:

7-13.2 Contractors’ Protective Public Liability and Property Damage Liability Insurance: Furnish evidence to the Department that, with respect to the operations performed, regular Contractors’ Protective Public Liability Insurance providing for a limit of not less than \$100,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$300,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular Contractors’ Protective Property Damage Liability Insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to, or destruction of, property during the policy period is carried. Cause the Department to be an additional insured party on the Contractor’s Protective Public Liability and Property Damage Liability Insurance policies that insure the Contractor for the described work that it performs under the Contract.

SUBARTICLE 7-13.3 (page 74) is deleted and the following is substituted:

7-13.3 Contractors’ Protective Public Liability and Property Damage Liability Insurance: Furnish evidence to the Department that, with respect to the operations performed by subcontractors, regular Contractors’ Protective Public Liability Insurance providing for a limit of not less than \$100,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$300,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular Contractors’ Protective Property Damage Liability Insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to, or destruction of, property during the policy period is carried. Cause the Department to be an additional insured party on the Contractor’s Protective Public Liability and Property Damage Liability Insurance policies that insure the Contractor for the described work that it performs under the Contract.

7. **Reducing the cost of CTQP training for small businesses** – The Construction Training Qualification Program (CTQP) training providers for the Department may offer CTQP training at reduced rates to the employees of small businesses. The training cost reduction amount and the number of reduced rate seats available in any scheduled course

session or exam are determined by the individual CTQP Training Providers participating in the program.

8. **Subcontracting opportunities for small businesses** – Any contractor or consultant that has a BDI reserved contract **must** subcontract with an approved small business.

ARTICLE 8-1 (Pages 79) is deleted and the following substituted:

8-1 Subletting or Assigning of Contracts.

Do not, sell, transfer, assign or otherwise dispose of the Contract or Contracts or any portion thereof, or of the right, title, or interest therein, without written consent of the Department. If the Contractor chooses to sublet any portion of the Contract, the Contractor must provide a written request to sublet work on the Certification of Sublet Work form developed by the Department for this purpose. With the Engineer's acceptance of the request, the Contractor may sublet a portion of the work, but shall perform with his own organization work amounting to not less than 40% of the total Contract amount. For contracts reserved for small businesses in accordance with the Department's Business Development Initiative Plan the sublet work must be contracted to a small business or businesses as defined by the Department. The subcontractor must also submit a notarized affidavit on a form provided by the Department prior to the start of work. The Certification of Sublet Work request will be deemed acceptable by the Department, for purposes of the Department's consent, unless the Engineer notifies the Contractor within 5 business days of receipt of the Certification of Sublet Work that the Department is not consenting to the requested subletting.

Include in the total Contract amount the cost of materials and manufactured component products, and their transportation to the project site. For the purpose of meeting this requirement the Department will not consider off-site commercial production of materials and manufactured component products that the Contractor purchases, or their transportation to the project, as subcontracted work.

If the Contractor sublets a part of a Contract item, the Department will use only the sublet proportional cost in determining the percentage of subcontracted normal work.

Execute all agreements to sublet work in writing and include all pertinent provisions and requirements of the Contract. Upon request, furnish the Department with a copy of the subcontract. The subletting of work does not relieve the Contractor or the surety of their respective liabilities under the Contract.

The Department recognizes a subcontractor only in the capacity of an employee or agent of the Contractor, and the Engineer may require the Contractor to remove the subcontractor as in the case of an employee.

Phase Two

Throughout the implementation of the BDI, the Department will continuously solicit feedback and input from the construction, consultant and small business partners on how this BDI may be most successful. The Department will also identify those firms that are working as subcontractors or subconsultants and

mail them information about the BDI and solicit feedback from them on how it may be most successful.

Additionally, the Department conducted a series of Focus Group sessions in each district over a six month period in January 2007. The purpose of the Focus Group sessions was to gather information identifying strategies that the Department could implement in moving from a subcontractor or subconsultant to a prime contractor or consultant. As a precursor to the Focus Group sessions, the Department administered a survey of businesses by district to identify businesses that were interested in growing from a sub to a prime and discussed the barriers that need to be addressed. Participants included businesses that want to become primes, primes that have recently become primes, established primes, representatives from the surety industry, representatives from the small business assistance community, and project managers within the Department. The format of the Focus Group sessions was similar to the Focus Groups conducted by the Office of Construction on how to improve trust between FDOT/CCEI and Contractors. Evaluations of each Focus Group session were conducted as well.

Phase Three

The Department has reviewed and evaluated both the experiences learned from implementing various strategies and information gathered from the Focus Group sessions. The purpose of the evaluation was to determine if the concept and purpose of the BDI is a viable approach that will lead to increased competition, lower prices, and increased support to meet the Department's needs over the next 10 years. The program was determined to be beneficial and the Department will take the necessary steps to 'institutionalize' the best strategies and proposed legislation necessary for full implementation.

To date, the Department has included the establishment of a Business Development Program to assist small businesses in obtaining contracts with the department. As a result to meet the strategies set forth, the Department will use the following special provisions for BDI contracts:

1. SP0020100BDI- PROPOSAL REQUIREMENTS AND CONDITIONS.
2. SP0030201BDI- AWARD AND EXECUTION OF CONTRACT.
3. SP0071302BDI- LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC - INSURANCE.
4. SP0080100BDI- PROSECUTION AND PROGRESS.

V. Marketing Communications Plan

To achieve the purpose of this BDI, it is vital that the Department communicate the BDI to as many small businesses as possible. This marketing communications plan will serve as the framework to promote and create awareness in the transportation industry and community. The Marketing Communications Plan will be conducted, in coordination with the Department's Public Information Office, throughout all phases of the Implementation Plan. The marketing communications, objectives, and the strategies identified to achieve the objectives are listed below.

Objective 1

Develop a Business Development BDI awareness campaign.

- Task 1.1:** Write and get approval for a Business Development BDI **plan**.
- Task 1.2:** Create a Business Development BDI **logo** to build recognition to promote and create awareness in the transportation industry and community to separate the intent of the program from other small business BDIs.
- Task 1.3:** Develop a "**catch phrase**" identifiable with the logo to build recognition to promote and create awareness in the transportation industry and community and to separate the intent of the program from other small business BDIs.
- Task 1.4:** Write a standard **press release** and disseminate to the local media.
- Task 1.5:** Develop and distribute a **brochure** to communicate the BDI and strategies to be deployed.

Objective 2

Disseminate and communicate the BDI to small businesses.

- Task 2.1:** Create a standard advertisement for local newspapers and trade publications.
- Task 2.2:** Contact all transportation related businesses (small and large) that are on our vendor files educating them about this BDI.
- Task 2.3:** Contact all transportation related businesses in Florida that are listed with the Small Business Administration.
- Task 2.4:** Contact the major cities and counties in Florida to obtain their business listings and disseminate information to them.

- Task 2.5:** Identify all small business and economic development organizations, i.e., Small Business Development Center Network, local chambers of commerce, minority chambers of commerce, National Association of Minority Contractors, Florida Black Business Investment Board, etc. and partner with them to disseminate information about the BDI.
- Task 2.6:** Work with FTBA and FICE to disseminate information to their members.
- Task 2.7:** Develop a centralized web site location for all small businesses to obtain information about the how to locate reserved contracts, how to do business with the Department, and that includes links to other Department web sites.
- Task 2.8:** Utilize the services of the Department's Supportive Services Providers, to disseminate information about the Business Development BDI to small businesses.

VI. EVALUATION PLAN

This solution is primarily long term among strategies the Department is implementing to help increase competition and reduce prices. It will take a few years to determine if the BDI will achieve its stated purpose. There are some indicators, however, that can be reviewed over the two-year implementation period to determine if success is likely. Some of the indicators that will need to be reviewed during this evaluation period include:

1. What specific action(s) were identified that the Department could implement or continue to help small businesses increase their capacity to bid as a prime?
2. Which of the identified strategies resulted in new businesses becoming interested in a long term partnership with the Department as a prime?
3. What are the success stories?
4. How many businesses that were identified have the desire and ability to grow from a sub to a prime?
5. How many businesses are bidding on reserved contracts compared to those that are not reserved?
6. How many businesses that never bid as primes are now bidding on reserved contracts as primes?
7. How many businesses that were subcontractors or subconsultants have been awarded contracts as a prime?

8. How many businesses, awarded a reserved contract, bid on contracts that were not reserved?
9. How many businesses were able to take advantage of the waiver of the bonding requirements? What is the size of the businesses that took advantage of the waiver?
10. How many contracts resulted in a default? What was the dispute?
11. How many 'problem' contracts adversely affected the end product? What was the issue, i.e., product, time or cost?
12. How many protests were filed? What was the protest issue?