



Florida Department of TRANSPORTATION

Office of Inspector General

Kristofer B. Sullivan, Interim Inspector General

A handwritten signature in black ink that reads "KSullivan".

Audit Report No. 17P-1003

July 5, 2018

Audit of the Disadvantaged Business Enterprise Program's Commercially Useful Function and the Equal Opportunity Compliance System Data

What We Did

The Office of Inspector General (OIG) conducted an audit of the Disadvantaged Business Enterprise (DBE) Program's adherence to the Department of Transportation's (department) requirements for the proper accountability and reporting of the DBE Commercially Useful Function (CUF) and the Prompt Payment process and procedures.

What We Found

We determined the Equal Opportunity Office (EOO) DBE Program verification status process was 100% compliant with federal regulations. **We also determined** the CUF¹ reports were completed according to Chapter 2, Section 7 of the Equal Opportunity Construction Contract Compliance Manual (Manual); however, our testing of the data reported in the Equal Opportunity Compliance (EOC) system by the prime contractors indicated six contracts (26%) did not reach the 30% CUF workforce requirement from a tested sample of 23 contracts.

We also tested the monthly and final payment transactions for timeliness between prime contractors and subcontractors recorded in the EOC system by the prime contractor. We identified issues with the data in the EOC system and provided opportunities for improvement.

What We Recommend

We recommend the department Equal Opportunity Office Manager clarify the responsibilities of the District Contract Compliance Manager (DCCM) and the Project Administrator (PA) as it applies to the CUF Report in the Manual. Additionally, the EOO Manager should conduct quality assurance of the EOC system data.

¹ CUF— According to Title 49, Part 26.55, Code of Federal Regulations, a DBE is responsible for performing at least 30% of the total value of the contract with the DBE's own workforce and carries out the responsibilities by actually performing, managing, and supervising the work involved.

**Office of Inspector General
Florida Department of Transportation**

TABLE OF CONTENTS

BACKGROUND AND INTRODUCTION	3
RESULTS OF REVIEW	4
Finding 1 – EOC System Data Reliability	5
Finding 2 – EOC System Monthly and Final Payment Data Reliability	6
APPENDIX A – Purpose, Scope, and Methodology	8
APPENDIX B – Management Response	9
APPENDIX C – Commitment Entries Table	11
DISTRIBUTION	14
PROJECT TEAM	15
STATEMENT OF ACCORDANCE	15

BACKGROUND AND INTRODUCTION

In 1983, Congress enacted the first Disadvantaged Business Enterprise (DBE) statutory provision requiring the United States Department of Transportation (USDOT) ensure at least 10% of the funds authorized for highway and transit Federal financial assistance programs be expended with DBEs. In 1987, Congress re-authorized and amended the statutory DBE program to include women to the groups presumed to be disadvantaged. Since then, the USDOT has established a single DBE goal encompassing both firms owned by women and minority group members.

There are three major USDOT Operating Administrations (OAs) involved in the DBE programs; the Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA), and the Federal Transit Administration (FTA). The USDOT DBE program is carried out by state and local transportation agencies under the rules and guidelines in Title 49, Part 26, Code of Federal Regulations (C.F.R.), and airport concessions under 49 C.F.R. 23. The integrity of USDOT's DBE program depends upon systematic procedures to ensure that only true small firms, owned and controlled by a socially and economically disadvantaged individual(s), are certified to participate as DBEs in federally assisted programs.

The objectives of the USDOT DBE program are:

- to ensure nondiscrimination in the award and administration of USDOT assisted contracts in the departments highway, transit, and airport financial assistance program;
- to create a level playing field on which DBEs can compete fairly for USDOT assisted contracts;
- to ensure the department's DBE program is narrowly tailored in accordance with applicable law;
- to ensure only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBEs;
- to help remove barriers to the participation of DBEs in USDOT assisted contracts;
- to assist the development of firms that can compete successfully in the market place outside the DBE program; and
- to provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

The Florida Department of Transportation's (department) Equal Opportunity Office (EOO) was created to administer the department's Disadvantaged Business Enterprise, Small Business Development, and Civil Rights Programs. The department provides assistance to DBEs seeking or conducting business with the department. This assistance is designed to help those businesses grow, become more self-sufficient, and successfully compete for contracts with the department.

RESULTS OF REVIEW

We conducted an audit of the department's compliance with the Disadvantaged Business Enterprise (DBE) Program's Commercially Useful Function (CUF) requirements with associated federal regulations and internal policies and procedures. We identified findings and recommendations related to the CUF requirements detailed in the following section.

We determined the EEO DBE Program verification status process was 100% compliant with federal regulations. 49 C.F.R. 26 establishes the DBE certification standards and procedures and Chapter 2 of the Manual provides guidance on the certification of DBEs. We sampled 23 contracts and verified the DBE membership status for each vendor listed; all 23 contracts were compliant.

We also tested the monthly and final payment transactions for timeliness between prime contractors and subcontractors recorded in the Equal Opportunity Compliance (EOC) system by the prime contractor. We identified issues with the data in the EOC system and provided opportunities for improvement which are detailed in the following section.

Finding 1 – EOC System Data Reliability

We determined the CUF reports were completed according to Chapter 2, Section 7 of the Manual; however, our testing indicated six contracts did not reach the 30% CUF workforce requirement according to the data recorded by the prime contractor in the EOC system.

Chapter 2.5.2 of the Manual states, prime contractors on federal and state-funded construction, design-build, and other types of contracts are required to report and maintain information about planned and actual utilization on DBEs and progress payments made to DBEs.

49 C.F.R 26.55(c)(3) states, “If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.”

The EOC system data indicated, of the 23 DBE construction contracts tested:

- 17 contracts (74%) met the 30% workforce CUF requirement; and
- 6 contracts (26%) did not meet the 30% workforce CUF requirement in the EOC system.

Commitment amounts not adjusted to reflect actual commitment

Chapter 2.7.2 of the Manual, District Responsibilities, states that contractors should be contacted for verification that the DBE commitment reported in the EOC system is accurate. The Manual does not provide guidance or list district responsibilities pertaining to DBE Professional Services.

We tested 76 commitment entries in the EOC system entered by the prime contractors. We observed 50 (66%) commitment entries were not adjusted to reflect the actual commitment amount completed resulting in a difference of \$1,725,860.² Additionally, four (5%) of these 50 commitment entries were listed as Professional Services, which do not receive a CUF and are not addressed in the Manual.

TABLE 1

	COMMITMENT AMOUNT	AMOUNT OF COMMITMENT PAID	DIFFERENCE
Totals	\$ 5,631,731	\$ 3,905,871	\$ 1,725,860

² See Appendix C

The accuracy of some EOC data is questionable due to the lack of controls and quality assurance surrounding the data. Prime contractors input payment dates in the EOC system; however, they are not required to input any exceptions pertaining to late payments in the EOC system.

The district Resident Compliance Specialist (RCS), who reports to the District Contract Compliance Manager (DCCM), is responsible for ensuring the prime contractors input information pertaining to the commitments and payments for these contracts into the EOC system. The RCS then submits the CUF reports to the DCCM and the Project Administrator (PA) for review and approval. Until the prime contractors update the EOC system with the commitment and payment information, the CUF reports are incomplete and should not be approved. The Manual does not specify the responsibilities of the DCCM or the PA.

We recommend the department EOO Manager clarify the responsibilities of the DCCM and the PA as it applies to the CUF Report in the Manual. Additionally, the EOO Manager should conduct quality assurance of the EOC system data.

Finding 2 – EOC System Monthly and Final Payment Data Reliability

49 C.F.R. 26.29(a), states, “You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.”

1. DBE Monthly Payments made within 30 days

We sampled 364 monthly payment transactions that are self-reported by the prime contractor and observed the following:

- 268 (74%) monthly payment transactions were reported as being paid within 30 days;
- 84 (23%) monthly payment transactions exceeded 30 days;
- 3 (1%) monthly payment transactions recorded were for non-DBE subcontractors; and
- 9 (2%) monthly payment transactions were made prior to the service end date.

2. DBE Final Payments made within 30 days

We sampled 45 final payment transactions that are self-reported by the prime contractor and observed the following:

- 23 (51%) final payment transactions, \$164,816.73, were reported as being paid within 30 days;
- 19 (42%) final payment transactions, \$166,554.46, exceeded 30 days; and

**Office of Inspector General
Florida Department of Transportation**

- 3 (7%) final payment transactions recorded were made prior to the service end date.

This data is self-reported by the prime contractors and the EOO Office does not conduct any quality review, so the accuracy of this data is questionable.

The department's Construction Office is responsible for the prompt payment process. The Construction Office has a system that tracks prompt payment; their system and the EOC system do not interface with one another. The prompt payment process is not monitored through the EOC system; therefore, EOO uses the payment data collected from prime contractors to track if DBE subcontractors were paid. The data in the EOC system is not verified with the department's Construction Office payment exception reports.

We recommend the department EOO Manager develop a quality assurance mechanism to ensure data reliability of payment data.

APPENDIX A – Purpose, Scope, and Methodology

Section 20.055, Florida Statutes, requires the OIG to conduct audits, examinations, investigations, and management reviews related to programs and operations of the department. This audit was performed as part of the OIG’s mission to promote accountability, integrity, and efficiency for the citizens of Florida by providing objective and timely audit and investigative services.

The **purpose** of this engagement was to conduct an operational audit of the Disadvantaged Business Enterprise program to ensure compliance with the Equal Opportunity Construction Contract Compliance Manual (Manual), Commercially Useful Function requirements, and 49 C.F.R. 26 requirements.

The **scope** of this audit included the processes and responsibilities of the department for the CUF requirements and prompt payment of the DBE program as detailed in the EOO Manual for the state fiscal years 2015/2016 and 2016/2017.

The **methodology** included:

- reviewing applicable federal, state, and department laws, rules, and regulations;
- reviewing internal manuals, procedures, and processes;
- interviewing the EOO Manager, DBE Manager, Construction Manager and selected staff in Districts 2,4, and 5; and
- selecting a sample of completed contract projects to test for Prompt Payment and CUF reporting.

APPENDIX B – Management Response

The Equal Opportunity Office Manager, Victoria Smith, provided the following responses by email on June 19, 2018:

Finding 1 – System Data Reliability

Finding: We determined the Commercially Useful Function (CUF) reports were completed according to Chapter 2 Section 7 of the Equal Opportunity Construction Contract Compliance Manual (Manual); however, our testing indicated six contracts did not reach the 30% CUF workforce requirement according to the data recorded by the prime contractor in the Equal Opportunity Compliance (EOC) system.

Recommendation: We recommend the department Equal Opportunity Office (EOO) Manager clarify the responsibilities of the District Contract Compliance Manager (DCCM) and the Project Administrator (PA) as it applies to the CUF Report in the Manual. Additionally, the EOO Manager should conduct quality assurance of the EOC system data.

Response to Finding: We concur with the finding and recommendation.

Corrective Action: The Equal Opportunity Office is responsible for the development of the Construction Contract Compliance Manual. The manual is being updated under Section 2.7.2 District Responsibilities to include the roles and responsibilities of the DCCMs and PAs for CUF monitoring. In addition, EOC system data will be included as part of the DCCMs annual Quality Assurance Reviews.

Estimated Completion Date: Revisions to Construction Contract Compliance Manual have been made and are under review. The QAR checklist has been updated to include the EOC system review.

Finding 2 – EOC System Monthly and Final Payment Data Reliability

3. Finding: DBE Monthly Payments made within 30 days

We sampled 364 monthly payment transactions that are self-reported by the prime contractor and observed the following:

- 268 (74%) monthly payment transactions were reported as being paid within 30 days;
- 84 (23%) monthly payment transactions exceeded 30 days;
- 3 (1%) monthly payment transactions recorded were for non-DBE subcontractors; and
- 9 (2%) monthly payment transactions were made prior to the service end date.

4. DBE Final Payments made within 30 days

We sampled 45 final payment transactions that are self-reported by the prime contractor and observed the following:

- 23 (51%) final payment transactions, \$164,816.73, were reported as being paid within 30 days;
- 19 (42%) final payment transactions, \$166,554.46, exceeded 30 days; and
- 3 (7%) final payment transactions recorded were made prior to the service end date.

Recommendation: We recommend the department EOO Manager develop a quality assurance mechanism to ensure data reliability of payment data.

Response to Finding: We concur with the finding and recommendation.

Corrective Action: The Equal Opportunity Office is responsible for the development of the Construction Contract Compliance Manual. Section 1.2.3 District Construction Office states the DCCMs schedule, conduct, and prepare compliance reviews of contractors as prescribed in Section 4.6.5. Section 4.6.5 has been revised to include Assurance of Prompt Payment as defined in Title 49, Code of Federal Regulations, Part 26.29(a). In addition, EOC system data will be included as part of the DCCMs annual Quality Assurance Reviews to monitor the payment data.

Estimated Completion Date: Revisions to the Construction Contract Compliance Manual have been made and are under review. The QAR checklist has been updated to include the EOC system review.

**Office of Inspector General
Florida Department of Transportation**

APPENDIX C – Commitment Entries Table

There are 50 vendor commitment entries in the EOC system totaling \$1,725,860 that were not adjusted to reflect the actual commitment amount completed.

VENDOR NAME	COMMITMENT AMOUNT	AMOUNT OF COMMITMENT PAID	DIFFERENCE	
ABSOLUTE EROSION CONTROL LLC	\$ 6,294	\$ 0	\$ 6,294	1
	\$ 2,508	\$ 2,508	\$ 0	
	\$ 7,030	\$ 0	\$ 7,030	2
ADVANCED CABLING SOLUTIONS, INC	\$ 4,107	\$ 4,107	\$ 0	
AERIAL INNOVATIONS INC	\$ 1,136	\$ 0	\$ 1,136	3
ALERS HAULING, INC.	\$ 54,000	\$ 0	\$ 54,000	4
AMROAD LLC	\$ 235,982	\$ 82,156	\$ 153,827	5
	\$ 10,832	\$ 0	\$ 10,832	6
	\$ 35,992	\$ 25,317	\$ 10,675	7
ARC ELECTRIC INC	\$ 58,030	\$ 52,963	\$ 5,067	8
	\$ 531,420	\$ 0	\$ 531,420	9
	\$ 454,972	\$ 437,917	\$ 17,055	10
BENSATEC GEOSCIENCES, INC	\$ 6,000	\$ 1,527	\$ 4,474	11
	\$ 7,999	\$ 7,535	\$ 464	12
BIG ISLAND CONSTRUCTION COMPANY, INC.	\$ 33,880	\$ 33,860	\$ 20	13
BLACKTIP SERVICES INC	\$ 13,725	\$ 0	\$ 13,725	14
BV GROUP & ASSOCIATES, INC	\$ 16,900	\$ 8,471	\$ 8,429	15
C & F HYATT CONSTRUCTION INC	\$ 16,742	\$ 16,742	\$ 0	
C. SLAGTER CONSTRUCTION, INC.	\$ 61,001	\$ 61,001	\$ 0	
CAL-TECH TESTINGS, INC	\$ 115,000	\$ 112,849	\$ 2,151	16
	\$ 67,500	\$ 5,093	\$ 62,408	17
COMPLETE HIGHWAY IDENTITY, INC	\$ 11,345	\$ 9,097	\$ 2,248	18
	\$ 3,075	\$ 0	\$ 3,075	19
D&J EROSION CONTROL SPECIALISTS	\$ 11,555	\$ 8,344	\$ 3,211	20
DENSON CONSTRUCTION, INC.	\$ 37,233	\$ 37,233	\$ 0	

**Office of Inspector General
Florida Department of Transportation**

VENDOR NAME	COMMITMENT AMOUNT	AMOUNT OF COMMITMENT PAID	DIFFERENCE	
DOWNSTREAM COMPANY INC	\$ 16,829	\$ 16,309	\$ 520	21
	\$ 7,509	\$ 7,335	\$ 174	22
	\$ 1,652	\$ 1,652	\$ 0	
ELEGUAS TRUCKING	\$ 109,467	\$ 109,467	\$ 0	
FLORIDA GEODYNAMICS, INC	\$ 72,109	\$ 64,309	\$ 7,800	23
FUTUREWORKS COMMUNICATIONS INC.	\$ 27,101	\$ 26,761	\$ 340	24
GEOMATICS CORPORATION	\$ 42,927	\$ 41,247	\$ 1,680	25
GOSALIA CONCRETE CONSTRUCTORS, INC.	\$ 15,336	\$ 15,336	\$ 0	
GRADING & BUSH HOG SERVICES, INC.	\$ 21,188	\$ 21,188	\$ 0	
HOMESTEAD CONCRETE & DRAINAGE, INC	\$ 59,158	\$ 0	\$ 59,158	26
HORIZON CONTRACTORS, INC	\$ 763,043	\$ 427,973	\$ 335,070	27
HRUSTIC' BROTHERS, INC.	\$ 13,650	\$ 13,538	\$ 113	28
	\$ 12,900	\$ 12,900	\$ 0	
J M J HAULING, INC	\$ 3,250	\$ 0	\$ 3,250	29
JASON'S HAULING, INC	\$ 84,000	\$ 89,848	\$ (5,848)	30
	\$ 118,477	\$ 118,477	\$ 0	
JENKINS PAINTING, INC.	\$ 188,266	\$ 119,415	\$ 68,851	31
	\$ 188,800	\$ 188,800	\$ 0	
	\$ 154,442	\$ 67,616	\$ 86,826	32
LV CONCRETE, INC	\$ 140,323	\$ 140,323	\$ 0	
MIAMI STRIPING, INC	\$ 69,680	\$ 22,193	\$ 47,487	33
	\$ 80,613	\$ 0	\$ 80,613	34
NATURE'S KEEPER INC.	\$ 24,100	\$ 23,008	\$ 1,092	35
OKB ROSETTA CONSTRUCTION LLC	\$ 7,491	\$ 7,491	\$ 0	
	\$ 52,973	\$ 52,973	\$ 0	
PALMA PAVING AND CONCR	\$ 3,370	\$ 0	\$ 3,370	36
PETECO, INC.	\$ 21,335	\$ 21,335	\$ 0	
	\$ 57,630	\$ 57,630	\$ 0	

**Office of Inspector General
Florida Department of Transportation**

VENDOR NAME	COMMITMENT AMOUNT	AMOUNT OF COMMITMENT PAID	DIFFERENCE	
PRECISION CONTRACTING SERVICES, INC.	\$ 2,696	\$ 2,696	\$ 0	
RAM-TECH CONSTRUCTION	\$ 23,815	\$ 20,155	\$ 3,660	37
ROADWAY CONSTRUCTION, LLC	\$ 284,695	\$ 299,465	\$ (14,769)	38
CONSULTING OF FLORIDA,	\$ 132,800	\$ 125,991	\$ 6,809	39
ROGERS ENVIRONMENTAL, INC.	\$ 7,300	\$ 7,300	\$ 0	
	\$ 1,930	\$ 1,930	\$ 0	
SAFETY CONTRACTORS, INC.	\$ 58,883	\$ 52,513	\$ 6,370	40
	\$ 81,016	\$ 61,275	\$ 19,742	41
	\$ 28,872	\$ 27,341	\$ 1,532	42
	\$ 43,018	\$ 43,018	\$ 0	
SANCHO TRUCKING, INC	\$ 32,096	\$ 32,096	\$ 0	
SCHERER QUALITY FARMS, INC.	\$ 18,826	\$ 11,946	\$ 6,880	43
SMITH & SON'S SOD COMPANY, INC.	\$ 66,364	\$ 44,809	\$ 21,555	44
	\$ 4,294	\$ 4,294	\$ 0	
	\$ 37,029	\$ 17,284	\$ 19,745	45
SOUTHEAST SOD & SEED, LLC	\$ 151,906	\$ 109,889	\$ 42,017	46
TIERRA, INC	\$ 19,810	\$ 19,810	\$ 0	
TORRES ELECTRIC SUPPLY CO INC	\$ 46,243	\$ 32,334	\$ 13,908	47
PRODUCTS OF FLORIDA INC	\$ 13,070	\$ 4,454	\$ 8,615	48
	\$ 301,225	\$ 301,225	\$ 0	
TRAFFIC CONTROL PRODUCTS OF FLORIDA, INC.	\$ 19,000	\$ 17,763	\$ 1,237	49
	\$ 6,469	\$ 6,469	\$ 0	
WRANGLER CONSTRUCTION, INC	\$ 88,500	\$ 87,975	\$ 525	50
Totals	\$ 5,631,731	\$ 3,905,871	\$ 1,725,860	

**Office of Inspector General
Florida Department of Transportation**

DISTRIBUTION

Responsible Manager:

Stephanie Iliff, Director of Administration
Victoria Smith, Manager, Equal Opportunity Office

Internal Distribution:

Mike Dew, Secretary, Department of Transportation
Shannan Schuessler, Chief of Staff and Legislative Programs
Brian Blanchard, P.E., Assistant Secretary for Engineering and Operations
Courtney Drummond, P.E., Chief Engineer
David Sadler, P.E., Director, Office of Construction
April Blackburn, Acting Assistant Secretary for Finance and Administration
Tom Byron, P.E., Assistant Secretary for Strategic Development
L.K. Nandam, P.E., District One Secretary
Greg Evans, P.E., District Two Secretary
Phillip Gainer, P.E., District Three Secretary
Stacy Miller, P.E., Acting District Four Secretary
Mike Shannon, P.E., District Five Secretary
Jim Wolfe, P.E., District Six Secretary
David Gwynn, P.E., District Seven Secretary
Paul Wai, Executive Director, Turnpike Enterprise

External Distribution:

Eric Miller, Chief Inspector General, Executive Office of the Governor
Sherrill Norman, Auditor General, State of Florida
James Christian, Florida Division Administrator, Federal Highway Administration
Teddi Pitts, Executive Director, Florida Transportation Commission

**Office of Inspector General
Florida Department of Transportation**

PROJECT TEAM

Engagement was conducted by:
Shannel Gordon, Auditor

Under the supervision of:
Amy Furney, Senior Audit Supervisor
Joseph W. Gilboy, Audit Manager
Kristofer B. Sullivan, Director of Audit

Approved by:
Kristofer B. Sullivan, Interim Inspector General

STATEMENT OF ACCORDANCE

The department's mission is to provide a safe transportation system that ensures the mobility of people and goods, enhances economic prosperity, and preserves the quality of our environment and communities.

The Office of Inspector General's mission is to promote integrity, accountability, and process improvement in the Department of Transportation by providing objective, fact-based assessments to the DOT team.

This work product was prepared pursuant to section 20.055, Florida Statutes, in accordance with the Association of Inspectors General *Principles and Standards for Offices of Inspector General*, and conforms with The Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing*.

Please address inquiries regarding this report to the department's Office of Inspector General at (850) 410-5800.