

Approved:

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Office: Construction
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Department of Transportation

INNOVATIVE CONTRACTING TECHNIQUES

PURPOSE:

This procedure is meant to provide a process and guidance for administering innovative contracting techniques by the Florida Department of Transportation (Department).

AUTHORITY:

Sections 20.23(3)(a), 334.048(3), Florida Statutes (F.S.)

REFERENCE:

Sections 337.025, 337.11(7) and 339.135, F.S.

SCOPE:

This procedure affects all offices associated with the design and construction of transportation or building projects.

BACKGROUND:

The *Florida Statutes* address ***Innovative Contracting***. The primary goal of ***Innovative Contracting*** is to provide timely delivery of a quality project or facility with limited user or social impacts.

The Department has established a program to demonstrate the use of innovative techniques of highway construction and finance that control time and cost increases on construction projects. The methods chosen under this program are not required to adhere to those provisions of law that would prevent, preclude, or in any way prohibit the Department from using the innovative techniques. The ***Innovative Contracting*** statute pertains to the Bid Averaging Method (BAM), Construction and Maintenance contracts reserved for the Business Development Initiative (BDI), Construction Management at Risk (CM@Risk), and Design-Build Minor contracts. If a District wishes to experiment with a new innovative contracting technique, the new technique would need to be submitted to the Director, Office of Construction for review and submittal to

the Chief Engineer for approval. An annual contracting cap of \$120 million requires the Department to monitor all contracts using these techniques. The Department may enter into no more than \$120 million in contracts annually for the purposes authorized by this section. The annual cap on contracts provided in this section shall not apply to those projects listed as exclusions in **Section 337.025, F.S.**

DEFINITIONS:

Bid Averaging Method: The goal of the Bid Averaging Method (BAM) is to get contractors to bid a true and reasonable cost for a project. This method allows the contractor to bid what the actual project will cost without “needing” to be the lowest bidder. The Legislature amended the **Innovative Contracting** law, **Section 337.025, F.S.**, to allow BAM to be used for maintenance contracts, as well as, construction.

If 5 or more bids are received, the Department excludes the high and low, then averages the rest and selects the contractor closest to the average.

If 3 or 4 bids are received, the Department averages all bids and selects the contractor closest to the average. If fewer than 3 bids are received, the Department rejects all bids and re-advertises the project.

Currently, the Federal Highway Administration (FHWA) has elected NOT to participate in BAM projects; therefore, only 100% state-funded projects or locally funded projects should be chosen for BAMs.

Business Development Initiative: Business Development Initiative (BDI) is designed to support the Department's efforts to boost competition, lower prices, and increase support to meet its contracting needs. The BDI is designed to provide more opportunities and support for small businesses to move from a subcontracting role to the role of a prime contractor. Construction and Maintenance contracts reserved for BDI must have an estimated contract amount less than \$1,500,000. Additional information about BDI may be obtained at the Department's Equal Opportunity Office website: <http://www.dot.state.fl.us/equalopportunityoffice/bdi.shtm>

Construction Management at Risk: Construction Management at Risk is defined as an integrated team approach applying modern management techniques to the planning, design and construction of a project in order to control time and cost, and to assure quality for the project owner.

Design-Build Minor: Design-Build Minor refers to those projects not previously allowed under **Section 337.11(7), F.S.** This would exclude Design-Build Major projects (buildings, major bridges, limited access facilities, or rail corridor projects).

1. APPROVAL AND AMENDMENTS TO THE INITIAL PROJECT APPROVAL

All innovative projects proposed by the Districts shall be approved as required by **Section 339.135, F.S.** and programmed in the Department's work program as set forth in Part III of the **Department's Work Program Instructions**.

If a District wishes to add an innovative contract technique for a project to the initial approved work program, a request must be submitted to the Director, Office of Construction for review and submittal to the Chief Engineer for approval to ensure statutory compliance prior to programming.

Prior to programming an innovative technique the following information needs to be submitted to the Director, Office of Construction electronically for the Chief Engineer's approval:

- a) Project information – Estimated construction cost, letting date, and scope of work, and
- b) Justification for the use of the proposed innovative contracting technique.

2. PROJECT MONITORING

2.1 The monitoring process is by project and there is no dollar cap allocated among the Districts. The Office of Construction tracks the amount of innovative projects that fall under the Innovative Cap through a five year work program report and ensures that the \$120 million dollar cap is not exceeded in each fiscal year. This is verified on a quarterly basis (January, April, July, and October) each year.

2.2 The Office of Construction monitors compliance with the \$120 million cap. The results are reported annually to the Office of Work Program and the Florida Transportation Commission.

2.3 The Department will forecast the Innovative Cap based on estimated construction project amounts for present and future fiscal years, which is documented through the 10 year work program report.

2.4 Per **Section 337.025, F.S.**, the Innovative Cap applies to contracts entered into by the Department. The current fiscal year of innovative contracts will be the actual value of the contracts entered into by the Department during the fiscal year. Any amendments to the cost of the contracts during construction are to be included in the fiscal year cap. The 10 year work program report calculates the actual cost of the contracts entered into plus any amendments to the cost of the contracts during construction. The Department does not anticipate the actual contract costs would exceed the \$120 million cap in any fiscal year.

3. REQUEST TO USE A NEW DEPARTMENT INNOVATIVE CONTRACTING TECHNIQUE

3.1 Prior to using a new innovative technique that is inconsistent with another provision of law, the Department must document, in writing, the need for the exception and identify what benefits the traveling public and the affected communities are anticipated to receive. If a District wishes to use a new innovative contracting technique, the following information needs to be submitted to the Director, Office of Construction electronically for the Chief Engineer's approval:

- a) Project information – Estimated construction cost, letting date, and scope of work,
- b) Description of the standard process for letting this type of project,
- c) Justification as to why this new process is being used rather than the standard process,
- d) Description of the new process being proposed, and
- e) Identify the intended benefits to the public (i.e. cost, time, and/or quality).

3.2 The Office of Construction may also need to coordinate with FHWA to verify if an approval is needed for a request for Special Experimental Project No. 14 or 15 on any new innovative contracting technique being proposed.

4. EVALUATION

4.1 The Project Manager shall document the benefits gained from using the innovative contracting technique. Innovative contracts can provide timely delivery of a quality project or facility with limited user or social impacts.

4.2 Evaluations of the innovative contracting techniques are to be performed by an assessment of the results compared to traditional contracts (i.e., original cost, final cost, construction engineering and inspection costs, and time). These evaluations are to be conducted periodically by the Office of Construction to determine if the innovative technique is worth continuing as an innovative technique or could become an alternative contracting technique. The results of such evaluations are to be communicated to the Districts electronically by the Office of Construction.

5. TRAINING

None required.

6. FORMS

None required.