

CHAPTER 98-105

Committee Substitute for Senate Bill No. 846

An act relating to the Department of Transportation (RAB); amending s. 334.044, F.S.; authorizing the department to regulate the transfer of storm water to the right-of-way as a result of changes to adjacent property; amending s. 337.105, F.S.; authorizing the department to suspend a consultant from awards of department contracts for specified good cause; amending s. 337.18, F.S.; providing incentives or damages for contractors for early completion of projects that provide substantial benefits to the public; amending s. 339.0805, F.S.; authorizing the department to suspend or revoke the certification of a disadvantaged business enterprise for specified good cause; providing an effective date.

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

Section 1. Present subsections (15) through (30) of section 334.044, Florida Statutes, are renumbered as subsections (16) through (31), respectively, and a new subsection (15) is added to that section, to read:

334.044 Department; powers and duties.—The department shall have the following general powers and duties:

(15) To regulate and prescribe conditions for the transfer of storm water to the state right-of-way as a result of man-made changes to adjacent properties.

(a) Such regulation shall be through a permitting process designed to ensure the safety and integrity of the Department of Transportation facilities and to prevent an unreasonable burden on lower properties.

(b) Issuance of a permit under this subsection will not exempt a property owner from compliance with otherwise applicable federal, state, local, or regional regulations governing pollution control, water quality, surface-water management, or land use. The permittee will reimburse the department for any expenses, including fines, abatement, and cleanup costs incurred by the department as a result of the permittee's discharge to the right-of-way failing to meet, or contributing to a violation of, the applicable local, state, or regional water-quality standards or minimum design and performance standards.

(c) The department may revoke or suspend a permit for failure to construct, operate, or maintain the facilities authorized by the permit in accordance with the permit, for failure to comply with permit conditions, for failure to reimburse the department in accordance with the provisions of paragraph (b), or for submission of false or misleading information to the department with regard to the permitting, construction, operation, or maintenance of the facilities.

Section 2. Subsection (1) of section 337.105, Florida Statutes, is amended to read:

337.105 Qualifications of professional consultants and other providers of contractual services; performance bonds; and audits of indirect costs.—

(1) Before the employment of a professional consultant or other provider of service, the department shall make a finding that the person to be employed is fully qualified to render the desired service. Among the factors to be considered in making this finding are the professional reputation, past performance record, and experience of the candidate and the adequacy of the personnel making up his or her organization. The department may, for good cause, deny or suspend for a specified period of time a person or firm from consideration for award of a professional service contract for a particular type of work because of unsatisfactory performance of a previously awarded professional service contract. The department shall adopt rules to administer ~~implement~~ this section. As used in this subsection, the term “good cause,” includes, but is not limited to, circumstances in which a consultant or other provider of service or its official representative:

(a) Makes or submits false, deceptive, or fraudulent statements in any bid or proposal to the department, in any application for certification of qualification, or in any administrative or judicial proceeding;

(b) Becomes insolvent or is the subject of a bankruptcy petition;

(c) Has been qualified by the department based on a license or registration issued by the state which has subsequently been revoked or suspended or has been denied;

(d) Has been qualified by the department based on the employment of personnel no longer employed by the consultant or other provider of service;

(e) Fails to maintain adequate professional liability insurance for the certified areas of work;

(f) Fails to satisfactorily perform contract requirements;

(g) Wrongfully employs or otherwise provides compensation to any employee or officer of the department, or willfully offers an employee or officer of the department any pecuniary or other benefit, with the intent to influence the employee's or officer's official action or judgment;

(h) Is affiliated with a consultant or other provider of service whose qualification to render professional services has been denied or suspended by the department and is dependent upon such consultant or other provider of service for personnel, equipment, or finances; or

(i) Has been barred or suspended from consideration for work with any other governmental entity.

Section 3. Paragraph (a) of subsection (4) of section 337.18, Florida Statutes, is amended to read:

337.18 Surety bonds; requirement with respect to contract award; defaults; damage assessments.—

(4)(a) If the department determines and adequately documents that the timely completion of any project ~~will provide a substantial benefit is essential to the public health, safety, or welfare; will limit the disruptive effect of construction on the community;~~ or is cost beneficial on a revenue-producing project, the contract for such project may provide for an incentive payment payable to the contractor for early completion of the project or critical phases of the work and for additional damages to be assessed against the contractor for the completion of the project or critical phases of the work in excess of the time specified. All contracts containing such provisions shall be approved by the head of the department or his or her designee. The amount of such incentive payment or such additional damages shall be established in the contract but shall not exceed \$10,000 per calendar day, except that for revenue-producing projects the amounts and periods of the incentive may be greater if an analysis indicates that additional revenues projected to be received upon completion of the project will exceed the cost of the incentive payments. Any liquidated damages provided for under subsection (2) and any additional damages provided for under this subsection shall be payable to the department because of the contractor's failure to complete the contract work within the time stipulated in the contract or within such additional time as may have been granted by the department.

Section 4. Subsection (2) of section 339.0805, Florida Statutes, is amended to read:

339.0805 Funds to be expended with certified disadvantaged business enterprises; specified percentage to be expended; construction management development program; bond guarantee program.—It is the policy of the state to meaningfully assist socially and economically disadvantaged business enterprises through a program that will provide for the development of skills through construction and business management training, as well as by providing contracting opportunities and financial assistance in the form of bond guarantees, to primarily remedy the effects of past economic disparity.

(2) The department shall revoke the certification of a disadvantaged business enterprise upon receipt of notification of any change in ownership which results in the disadvantaged individual or individuals used to qualify the business as a disadvantaged business enterprise, no longer owning at least 51 percent of the business enterprise. Such notification shall be made to the department by certified mail within 10 days after the change in ownership, and such business shall be removed from the certified disadvantaged business list until a new application is submitted and approved by the department. Failure to notify the department of the change in the ownership which qualifies the business as a disadvantaged business enterprise will result in revocation of certification and subject the business to the provisions of s. 337.135. In addition, the department may, for good cause, deny or suspend the certification of a disadvantaged business enterprise. As used in this subsection, the term "good cause" includes, but is not limited to, the disadvantaged business enterprise:

- (a) No longer meeting the certification standards set forth in department rules;
- (b) Making a false, deceptive, or fraudulent statement in its application for certification or in any other information submitted to the department;
- (c) Failing to maintain the records required by department rules;
- (d) Failing to perform a commercially useful function on projects for which the enterprise was used to satisfy contract goals;
- (e) Failing to fulfill its contractual obligations with contractors;
- (f) Failing to respond with a statement of interest to requests for bid quotations from contractors for three consecutive lettings;
- (g) Subcontracting to others more than 49 percent of the amount of any single subcontract that was used by the prime contractor to meet a contract goal;
- (h) Failing to provide notarized certification of payments received on specific projects to the prime contractor when required to do so by contract specifications;
- (i) Failing to schedule an on-site review upon request of the department;
or
- (j) Becoming insolvent or the subject of a bankruptcy proceeding.

Section 5. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.