

LOCAL – DEVELOPING BUSINESS PROGRAM

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA

LOCAL – DEVELOPING BUSINESS PROGRAM

PROCEDURES

Rev 3a

April 1, 2005

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I. OBJECTIVE

The Orange County School Board (the “School Board”) recognizes the importance of small businesses to the economic vitality of the Orlando Standard Metropolitan Statistical Area (“Orlando SMSA”). The School Board further recognizes the contribution of small businesses to employment opportunities in the Local Area. The School Board is undertaking an unprecedented expansion project within its district to construct and rehabilitate physical assets of the School Board. This Local Developing-Business (“LDB”) Program (“Program”) of the School Board is designed to promote the development of local businesses and facilitate the availability of firms to compete for upcoming projects at the School Board. This Program will promote economic growth and enhance employment opportunities within the Orlando SMSA, will also diversify the pool of qualified contractors vying for contracts to be let by the School Board for construction contracting, procurement and professional service. This Program will increase the competitiveness for such contracts. This Program will seek to provide full and equal business opportunities to all LDBs in the School Board’s construction contracting, procurement, and professional services activities.

II. DEFINITIONS.

- A. “Affiliates” means: Any entity, 1) having the ability to exercise control over the firm under review, 2) under control by the firm being reviewed, or 3) under the common control with the firm under review. The affiliation ruled promulgated by the Small Business Administration under 13 C.F.R. 121.103 may be used as a basis for affiliation analysis under this Program.
- B. “Business Opportunity Administrator” means: That person who is authorized by the Superintendent to supervise and coordinate the implementation of the Program.
- C. “Certification” means: The process by which an applicant is determined to be a bona fide LDB.
- D. “Contract” means: Any agreement with the School Board for construction projects or for the purchase, lease or disposal of supplies or other goods, or maintenance, installation or other services, including professional services, but not including leases of real property, space use permits, employee benefits, taxes, judgments, agreements for travel, dues, pensions, utilities, subscriptions, auto allowances, debt service requirements, purchases from governmental entities or postage.
- E. “Domicile” means: A firm whose principal place of business is within the Orlando SMSA or a firm which is at least fifty percent (50%) owned by a person or persons whose primary residence is within the Orlando SMSA.

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- F. “Goods” means: Personal property of all types, including, without limitation, equipment, tools, vehicles, materials and office supplies.
- G. “Local Area” means: The Orlando Standard Metropolitan Statistical Area (“Orlando SMSA”). This area, according to the United States Department of Census, includes the counties of Orange, Seminole, Osceola and Lake.
- H. “Local Developing-Business” or “LDB” means: A business concern that is domiciled in the Local Area and that meets the Revenue Limitations, and that is owned and controlled by one or more individuals whose personal net worth does not exceed the Net Worth Limitation.
- I. “LDB” Direct Contract” means: A request or invitation for bids or proposals which is limited exclusively to LDBs.
- J. “Net Worth” means: The sum of the fair market value of the assets owned by each individual owner of the business seeking LDB status (if an asset is owned jointly as husband and wife, then fifty percent (50%) of the fair market value for that asset will be counted if only one spouse participates in the firm being reviewed) minus the debt of the individual (if debt is attributable to an asset owned jointly as husband and wife then fifty percent (50%) of the debt will be counted if only one spouse participates in the firm being reviewed). For purposes of establishing Net Worth, the following items will be excluded: 1) the equity in the individual’s primary residence; and 2) the equity of the individual in any businesses in which the individual is actively involved in the management and day to day operation which may include the business seeking LDB status.
- K. “Net Worth Limitation” means: Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00). The Net Worth Limitation will be reviewed annually by the School Board’s Business Opportunity Administrator and recommendations for any adjustment to the Net Worth requirement shall be presented to the School Board.
- L. “Ownership and Control” means: Individuals who do not exceed the Net Worth Limitation, must own at least fifty-one percent (51%) of the business, and they must control and manage the operations of the business on a daily basis.
- M. “Primary Residence” means: A place of abode which is recognized and intended to be maintained as the person’s whole principal residence. Persons maintaining other places of abode in some other state, or county other than Orange County, Florida, may manifest evidence of their primary residence to the School Board by submitting a certified copy of a sworn statement, filed pursuant to §222.17, Florida Statutes, as to what residence constitutes their predominant and principal residence and that they intent to continue it permanently as such.

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N. “Principal place of business” means: The LDB’s headquarters, or the place where the chief or principle affairs and business of the firm are transacted as of the date the Request for Proposal, Request for Qualifications, Request for Bids or Request for Letters of Interest is published. This is the office where the LDB’s books are kept and where the partners, directors, officers, or managers assemble to discuss and transact the important day-to-day business of the firm.

O. “Revenue Limitations” means:

1. Construction contracting services and consulting services related to planning, design, and construction related improvements and architectural and engineering services – \$7,500,000 in annual gross revenues averaged over the preceding three (3) years.
2. Professional Services – \$2,000,000 annual gross revenues averaged over the preceding three (3) years.
3. Procurement of goods and services not including professional services included in 1. and 2. above - \$1,000,000 annual gross profit averaged over the preceding three (3) years.

The revenue limitation amount will be reviewed annually by the Business Opportunity Administrator and recommendations for adjustments presented to the School Board.

P. “Services” means: The furnishing of labor, time, expertise or effort, but does not include the rendering of professional services, employment or collective bargaining agreements, or the providing of a tangible end product

Q. “Superintendent” means: The Superintendent of the School Board or the person or persons designated by the Superintendent to act on his behalf with respect to issues delegated to the Superintendent under this Program.

III. ESTABLISHMENT OF GOALS.

In order to promote the utilization of LDBs, the School Board has set annual percentage goals for the dollar value of work to be awarded to LDBs. In addition to the annual overall Program goals established by the School Board, the Superintendent may set contract goals for individual projects. The School Board’s overall goals within this Program shall be reviewed annually. However, the Superintendent has the discretion to initiate a more frequent review of the overall goals established hereunder, if warranted.

The initial annual overall goals are as follows:

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- a. Construction Work and Construction Materials – 10%;
- b. Procurement of Goods and Non-Professional Services – 10%;
and
- c. Professional Services of Architects, Engineers, Landscape Architects, Land Surveyors, Attorneys, etc. – 10%

IV. DESIGNATION OF RESPONSIBILITY FOR LDB PROGRAM

A Business Opportunity Administrator (“the Administrator”) shall be designated by the Superintendent. The Administrator will be responsible for managing the Program. The Business Opportunity Administrator will conduct periodic surveys to determine whether the Program is achieving its objectives. Reports of surveys will be the basis for action to correct deficiencies, where appropriate. Where action is prescribed, the Business Opportunity Administrator will make appropriate recommendations to the Superintendent.

The Business Opportunity Administrator will also be charged with:

1. Providing information to LDBs on the School Board’s needs for goods and services, professional services, construction project and future plans;
2. Providing assistance in resolving major procurement and contracting issues affecting LDBs;
3. Organizing and scheduling seminars to acquaint LDBs with information on School Board bid specifications, procurement policies, and general bidding requirements;
4. Evaluating the effectiveness of the Program;
5. Ensuring that only entities meeting the requirements of the Program benefit from the Program;
6. Developing, where reasonable, technical assistance and participation programs for LDBs;
7. Monitoring contractors’ and subcontractors’ compliance with LDB commitments throughout the performance period of Contracts;
8. Attending and encouraging LDBs to attend pre-bid, pre-proposal, and pre-construction conferences to explain M/WBE and LDB requirements and respond to questions;
9. Participating in bid and proposal review committees;
10. Monitoring mentoring relationships;
11. Developing and monitoring working capital initiatives program;

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12. Prepare reports as required of the percentages of participation by M/WBEs and LDBs for goods and services, professional services and construction services. Manage the means and methods for compilation of accurate data for reporting.
13. Performing related duties, as assigned.

V. PROCEDURES TO ENSURE THAT LDBs HAVE AN EQUITABLE OPPORTUNITY TO COMPETE FOR CONTRACTS AND SUBCONTRACTS

In order to ensure that LDBs have an equitable opportunity to compete for contracts and subcontracts, the School Board shall take affirmative steps to encourage their involvement. These steps include:

1. Communicate to LDB contractor and business organizations as to the availability of contracting and subcontracting opportunities with the School Board.
2. Ensure that approved LDB organizations are provided access to plans and specifications related to contracting and subcontracting opportunities with the School Board.
3. Participate in pre-bid/pre-proposal conferences to provide firms with ample opportunity to ask questions about LDB requirements;
4. Encourage LDBs to participate in pre-bid and pre-proposal conferences;
5. Initiate and coordinate specific and continual efforts to recruit eligible firms into this Program;
6. Dissemination of the existence and details of this Program by advertising in media, specifically including small business newsletters and other publications, and by notifying and discussing this Program with all firms who seek to be awarded contracts by the School Board.
7. Provide recommendations to divide large projects into small contractual work elements, where prudent, so smaller LDBs are able to compete for the projects
8. Assist bidders/proposers in efforts to obtain the names and addresses of LDB firms that may be utilized as subcontractors.

VI. PROCEDURES TO ASCERTAIN THE ELIGIBILITY OF LDBs.

1. Construction Bids

In order to ensure that only bona fide LDBs, and joint ventures involving LDB, benefit from the Program, certain information must be provided to the School Board prior to award of a bid, and updated upon request during contract performance. This information will be used to certify the eligibility of LDBs who are named as the apparent successful bidders. Specifically, proposed

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subcontractors who are identified as LDBs must submit to the School Board a completed application for certification promulgated by the School Board's Business Opportunity Department and upon request, submit such additional information and documentation as the Business Opportunity Department may request. Financial information to verify personal Net Worth Limitation compliance will only be requested from the apparent low bidder. Firms who enter into contracts with the School Board should note that the School Board reserves the right to approve all substitutions of subcontractors before award and during contract performance.

The Business Opportunity Department will determine prior to the award of each bid which is subject to the procedures set forth herein whether each firm claiming LDB status and submitting its bid to the School Board shall be recognized as a LDB firm.

Any firm which believes that it has been wrongfully denied certification as a LDB or joint venture involving LDBs, may file an appeal in accordance with Section IX below.

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2. Construction Management, Design Build and Program Management Contracts

Utilization of LDBs by construction managers, program managers and design builders will be included in each monthly pay application submitted by the Contractor. The utilization shall be submitted using the form provided by the Business Opportunity Department. Specifically, proposed subcontractors who are identified as LDBs must submit to the School Board a completed application for certification promulgated by the School Board's Business Opportunity Department and upon request, submit such additional information and documentation as the Business Opportunity Department may request. Firms who enter into contracts with the School Board should note that the School Board reserves the right to approve all substitutions of subcontractors before award and during contract performance.

The Business Opportunity Department will determine prior to the award of each contract which is subject to the procedures set forth herein, whether each firm claiming LDB status and submitting its bid, proposal or quotation to the School Board shall be recognized as a LDB firm.

Any firm which believes that it has been wrongfully denied certification as a LDB or joint venture involving LDBs, may file an appeal in accordance with Section IX below.

3. Professional Services

Utilization of LDBs by professional service providers will be included in each monthly pay application submitted by the firm. The utilization shall be submitted using the form provided by the Business Opportunity Section. Specifically, proposed subconsultants who are identified as LDBs must submit to the School Board a completed application for certification promulgated by the School Board's Business Opportunity Department and upon request, submit such additional information and documentation as the Business Opportunity Department may request. Firms who enter into contracts with the School Board should note that the School Board reserves the right to approve all substitutions of subconsultants before award and during contract performance.

The Business Opportunity Department will determine prior to the award of each contract which is subject to the procedures set forth herein, whether each firm claiming LDB status and submitting its bid, proposal or quotation to the School Board shall be recognized as a LDB firm.

Any firm which believes that it has been wrongfully denied certification as a LDB or joint venture involving LDBs, may file an appeal in accordance with Section IX below.

3. Goods and Services

In order to ensure that only bona fide LDBs, and joint ventures involving LDB, benefit from the Program, certain information must be provided to the School Board prior to award of a bid, and updated upon request during contract

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performance. This information will be used to certify the eligibility of the LDB who is the apparent successful bidder. Specifically, the apparent successful LDB bidder must submit to the School Board a completed application for certification promulgated by the School Board's Business Opportunity Department and upon request, submit such additional information and documentation as the Business Opportunity Department may request. Financial information to verify personal Net Worth Limitation compliance will only be requested from the apparent low bidder. Firms who enter into contracts with the School Board should note that the School Board reserves the right to approve all substitutions of subcontractors before award and during contract performance.

The Business Opportunity Department will determine prior to the award of each bid which is subject to the procedures set forth herein whether each firm claiming LDB status and submitting its bid to the School Board shall be recognized as a LDB firm.

Any firm which believes that it has been wrongfully denied certification as a LDB or joint venture involving LDBs, may file an appeal in accordance with Section IX below.

VII. LDB PARTICIPATION; GOOD FAITH EFFORTS

1. Construction Bids

A. A bidder/proposer must submit to the School Board at bid opening all LDB information requested by the School Board in the bid documents in order to be eligible for bid award.

B. Contractors meeting the LDB participation contract goal need not submit good faith documentation. If the bidder fails to meet the LDB goal, the School Board will require bidder to submit evidence of good faith efforts to reach the goal, which evidence includes, but is not limited to, the following;

1. Indicating the name and title of the person responsible for the Contractor's good faith efforts to reach the goal;
2. Providing evidence of attendance at pre-bid meeting related to a given bid, if any, scheduled by the School Board;
3. Providing a list of LDBs contacted;
4. Providing copies of written correspondence to LDBs that their bid is being solicited, as well as certified return receipts to prove receipt or the reason for non-delivery;
5. Providing evidence of information provided to the LDBs about the specific work the contractor intends to subcontract. Prime Contractors shall identify commercially useful portions of the work which are consistent with normal industry practice, that

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may be performed by LDBs. Prime Contractors shall make reasonable efforts to divide the work elements into bid packages which are well-suited to LDB participation;

6. Providing evidence of information provided to LDBs on bonding and insurance requirements;

7. Providing copies of advertisements in general circulation media, trade association publications, and minority focus media at least twenty (20) days before bids or proposals are due. If twenty (20) days are not available, publication for a shorter reasonable time is acceptable;

8. Providing evidence that bidder provided interested LDBs with assistance in reviewing the contract plans, specifications, and the terms and conditions of the general contract, subcontract, and addenda;

9. Providing evidence that the bidder provided LDBs prompt notice of addenda affecting specific trade contractors;

10. Provide evidence that bidder made follow-up inquiries after initial solicitations of interest from LDBs. Bidder shall maintain documentation of the date, time and name of individuals contacted (a telephone log is acceptable documentation of this activity);

11. Providing a list of quotes submitted by LDBs contacted;

12. Providing documentation as to why LDBs were not utilized;

13. For those instances where a non-LDB subcontractor is selected for a scope of work for which LDB bids were submitted, the prime contractor shall submit records of all quotations received from LDBs and from the selected non-LDB subcontractor, and provide an explanation of the reasons why the LDBs will not be used during the course of the contract. Receipt of a lower price quotation from a non-LDB prior to or at the time of bid opening will not in itself excuse a prime contractor's failure to meet contract goals. It is incumbent upon the prime contractor to demonstrate that LDBs were not rejected as unqualified without a thorough and documented investigation of their capabilities and capacity.

C. The School Board will require a contractor to make good faith efforts to replace a LDB that is terminated or has otherwise failed to complete its work on a contract with another certified LDB. The School Board will require the contractor to notify the Business Opportunity Administrator immediately of the LDB's inability or unwillingness to perform and provide documentation as to the replacement firm's LDB status or as to the contractor's good faith efforts to utilize a LDB to replace the non-performing LDB. Acceptance of the proposed

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replacement LDB subcontractor will require the prior written approval of the Business Opportunity Administrator.

D. If the Contractor fails to meet the LDB participation level, the School Board will require the contractor to submit evidence of good faith efforts utilized to reach the desired LDB participation level. Evidence of good faith efforts submitted by the bidder can include, but is not limited to, the efforts described in Section B, 1-13.

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2. Professional Services, Construction Management, Program Management and Design Build Contracts

A. Utilization of LDB's by construction managers and design builders will be included in each monthly pay application submitted by the Contractor. The utilization shall be submitted using the form provided by the Business Opportunity Department.

B. If the Contractor fails to meet the LDB participation level, the School Board will require the contractor to submit evidence of good faith efforts utilized to reach the desired LDB participation level. Evidence of good faith efforts submitted by the contractor can include, but is not limited to, the efforts described in Section VII, 1,B, 1-13.

VIII. EVALUATION OF GOOD FAITH EFFORTS

1. Construction Bids

A. In order to assure that contractors comply with the letter and spirit of this Program, successful contractors must either meet the LDB participation goal established by the School Board for a specific bid or demonstrate good faith efforts to meet such goals. Within forty-eight (48) hours after receipt of a request from the School Board, bidders failing to meet the LDB contract goal must submit documentation of the good faith effort they made before submission of their bid. In evaluating good faith efforts, the School Board determines whether the contractor made reasonable efforts, prior to submission of the bid, to achieve LDB contract goals. The School Board may evaluate not only the different kinds of efforts made by a bidder, but also the quantity and intensity of those efforts. However, efforts made by the contractor after submission of the bid to meet the LDB contract goal will not be considered by the School Board.

B. In addition to the documentation listed in Section VII above the School Board may consider the following information in evaluation of the bidder's good faith efforts:

1. Efforts made by bidder to select portions of the work proposed to be performed by LDBs in order to increase the likelihood of achieving the stated goal.
2. Whether other bidders met the contract goals relating to the utilization of LDB subcontractors.
3. Whether the bidder has established a bona fide program to assist LDBs in acquiring skills and experience which will foster the growth of LDB firms.

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4. The extent to which a bidder utilizes LDBs in private sector work.
 - C. Bids submitted which do not meet the LDB contract goals and which do not show that good faith was made to achieve the stated goals will be considered non-responsive and the bidder will not be eligible for award of the bid.
2. Professional Service, Construction Management, Program Management and Design Build Contracts
 - A. Professional service firms, Construction Managers and Design builders shall submit documentation of good faith efforts within 48 hours of receipt of request from the School Board
 - B. When a professional service firm, construction manager or design builder fails to meet or exceed the desired level of LDB participation, and does not demonstrate that good faith efforts were utilized to include LDBs, they will be subject to suspension from future work with OCPS in accordance with OCPS Policy.

IX. APPEALS

- A. In the event the Business Opportunity Administration recommends that a bid/proposal be rejected or that a contractor be suspended for failing to meet the School Board's participation goals and failing to demonstrate a good faith effort, and the committee recommending award of such bid/proposal to the Superintendent or the School Board concurs in such recommendation, such bidder/proposer may appeal the recommendation to the Superintendent or his designee. The appeal must be filed within the time frame established by the recommending committee. The appeal shall be submitted in writing to the Superintendent.
- B. In the event a firm is denied LDB certification, the Business Opportunity Administrator shall promptly provide a written explanation of the basis for denial. A firm denied certification may appeal the determination to the Business Opportunity Administrator. The appeal must be filed in writing and within five (5) working days after receipt of the written explanation of the basis for rejection.

X. PROCEDURES BY WHICH THE SCHOOL BOARD MAY IMPLEMENT LDB DIRECT CONTRACTS.

The School Board may endeavor to increase LDB participation by direct contracts exclusively for LDB participation for construction work and construction materials, procurement of goods and non-professional services and procurement professional services that will or are likely to attract meaningful competition from LDBs firms capable of meeting the contract specifications. Consequently, the School Board may use direct contracting techniques when necessary to meet LDB goals provided that the following conditions exist:

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1. At least three LDBs capable of performing the contract are available;
2. The School Board has determined that the contract should be a direct contract in order to meet LDB goals.

The School Board will state in its solicitation if a particular contract is intended to be a direct contract with LDBs.

LDBs interested in bidding or proposing on School Board direct contracts must submit LDB status verification in accordance with the instructions provided in the contract documents.

XI. COUNTING LDB PARTICIPATION TOWARD MEETING LDB GOALS.

- A. In non-direct contracts bids/proposals, all bidders/proposers including LDB bidders/proposers, but excluding LDB joint ventures, shall meet the LDB participation goal through second tier participation.
- B. In direct contracts no second tier LDB participation shall be required. However, in the procurement of goods and services and professional services, the LDB bidder/proposer may not subcontract more than forty nine percent (49%) of the total dollar amount of the contract to a firm or firms that are not LDBs.
- C. The degree of goal attainment by joint ventures between LDB firms, and between LDB and majority firms shall be calculated as follows:
 1. A joint venture, consisting of a LDB and majority firm functioning as a prime contractor, will be credited with LDB participation on the basis of percentage of the dollar amount of the work to be performed by the LDB.

XII. WORKING CAPITAL INITIATIVES.

The School Board recognizes that LDBs may experience limited access to working capital. In order to further promote the development of LDBs, the School Board will evaluate the need to make available certain retainers to LDB professional services firms and designated mobilization payments to LDB firms.

XIII. TECHNICAL ASSISTANCE INITIATIVES.

- A. The School Board has established cooperative working relationships with local contracting trade associations and other entities/individuals who shall assist in providing technical assistance and other useful information regarding the successful operation of a construction business. The School Board shall be authorized to participate in a centralized technical

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assistance program in conjunction with the City of Orlando and Orange County.

B. The School Board has determined that technical assistance efforts shall be focused in the following areas:

1. Coordinating the formation of emergency/immediate response teams composed of construction industry representatives who will be available to assist LDBs to promptly resolve problems that may arise during the performance of School Board contracts.
2. Promoting working and other marketing opportunities in order to encourage and facilitate the utilization of LDBs in non-public sector contracting opportunities.
3. Providing industry specific and general information education programs which include, but are not limited to the following areas:
 - a. Estimating the cost of performance and preparing schedules for completion;
 - b. Submitting accurate and timely bids/proposals;
 - c. Contract law and contract requirements;
 - d. Money management and projecting cash flow requirements;
 - e. Obtaining access to and maintaining credit relationships with lending institutions;
 - f. Obtaining access to and maintaining relationships with corporate sureties for contract bonds;
 - g. Securing rights to payment;
 - h. Risk management and obtaining adequate insurance coverage;
 - i. Project management controls and percentage of completion analysis;
 - j. Efficient processing of contract close-out requirements; and
 - k. Managing the growth of a small business.

XV. OTHER INITIATIVES FOR PROCUREMENT OF GOODS AND SERVICES.

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- A. Discretionary purchasing limits shall be increased to permit small purchases of goods and services in an amount up to a maximum of \$14,999 annually from LDBs without requiring competitive bidding by the Procurement Department. The Procurement Department or designee and users of the School Board's procurement cards shall have the School Board to issue purchase orders to LDBs through this non-competitive method when the dollar value of the purchase order does not exceed \$14,999 annually and a properly executed and authorized requisition is received. All such requisitions and purchase orders must be clearly marked as being non-competitive to facilitate audit and good record keeping practices.
- B. At the discretion of the Superintendent, direct contracts may be utilized to increase LDB participation in the procurement of goods and services.

XVI. EFFECTIVE DATE.

This Program shall become effective upon adoption by the School Board.

THE LDB APPLICATION CAN BE FOUND ON THE CERTIFICATION LINK OF THE HOMEPAGE.