



## *Florida Department of Transportation*

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### **POLICY**

Effective: June 17, 2010  
Office: State Highway Engineer  
Topic No.: 001-375-020-b

## **PUBLIC PRIVATE PARTNERSHIP CONFLICTS OF INTEREST**

### **AUTHORITY:**

Sections 20.23(3)(a) and 334.048(3), Florida Statutes

### **REFERENCES:**

Sections 334.30 and 337.164, Florida Statutes

## **1. INTRODUCTION**

It is the intent of the Florida Department of Transportation (“FDOT”) to maximize competition on Public Private Partnership (“PPP”) Projects while ensuring that the procurement of each project is open and fair. In addition, FDOT believes that professional consultants representing FDOT must be free of conflicting professional or personal interests. Such competing interests have the potential to make it difficult for consultants to discharge their contractual obligations impartially, and otherwise create an appearance of impropriety, even if none exists, that can undermine confidence in FDOT’s procurement program. To this end, FDOT has developed the following ***Conflicts of Interest Policy*** to provide guidance to firms and individuals directly or indirectly performing services for FDOT in connection with PPP Projects either solicited or unsolicited. All firms and individuals performing work or contemplating the performance of work for FDOT on PPP Projects are also expected to understand and comply with existing FDOT conflicts of interest policies and Florida law, including laws related to conflicts of interest.

This **Conflicts of Interest Policy** shall not be applicable to Build-Finance (BF) or Design-Build-Finance (DBF) Projects. BF and DBF Projects are governed by **Procedure No. 375-030-006, Restriction on Consultants' Eligibility to Compete for Department Contracts**.

It is the responsibility of each firm and individual to understand and comply with this policy. As a tool to assist in such compliance, FDOT will include in the **Request for Qualification (RFQ)** for each PPP Project a list of firms and individuals that FDOT believes, at the time of issuance of the **RFQ**, to have a conflict of interest for that PPP Project pursuant to this policy (the "**RFQ List**"). The **RFQ List** will be as inclusive as possible based on the information reasonably available to FDOT at the time the **RFQ List** is published. However, it remains the responsibility of each firm and individual to be both knowledgeable of this policy and to comply with the policy regardless of whether listed on the **RFQ List**. If a firm otherwise subject to this policy is not on the **RFQ List**, such non-inclusion shall not excuse a failure to comply with this policy.

FDOT will reasonably consider requests for exceptions to this policy on a case-by-case basis upon a showing of good cause for the exception. Please see **Section 7** below for further details.

## 2. DEFINITIONS

### 2.1 AFFILIATE

The definition of "affiliate" is as provided in **Section 337.165(1)(a), Florida Statutes**.

## 3. OWNER'S REPRESENTATIVES

### 3.1 FIRMS

A firm serving as one of FDOT's primary technical consultants in the development of procurement documents, evaluation criteria, or technical criteria for an FDOT PPP Project (collectively, "Owner's Representative") is prohibited from participating in any capacity on a proposer team for that PPP Project or any other PPP Project under procurement by FDOT. This prohibition extends to the Owner's Representative's affiliates and shall remain in place for a period up to and including, and in limited instances beyond, from the date FDOT executes a **Concession Agreement** for that PPP Project (the "Financial Closing Date") or until the FDOT determines that any such conflicts no longer exist.

A firm continuing to serve as one of FDOT's Owner's Representatives for a PPP Project after the Financial Closing Date is prohibited from participating on a proposer's team for that PPP Project or any other PPP Project unless and until FDOT grants an exception.

It is the intent of FDOT to separately procure an Owner's Representative for each PPP Project. Generally a District General Engineering Consultant (GEC) is eligible to

participate in such procurement, but FDOT will not allocate an Owner's Representative's scope of work to a GEC unless the GEC consents to serve as an Owner's Representative and agrees to be bound by this **Conflicts of Interest Policy**.

### **3.2 INDIVIDUALS**

Any individual who works or has worked for an Owner's Representative or FDOT and was involved in the development of procurement documents, evaluation criteria, or technical criteria for the PPP Project is prohibited from participating in any capacity on a proposer team for that PPP Project or any other PPP Project under procurement by FDOT. This prohibition shall remain in place until the Financial Closing Date for the PPP Project that the individual was involved in, and in limited instances beyond, or until the FDOT determines that any such conflict no longer exists.

An individual who works or has worked for one of FDOT's Owner's Representative or for FDOT on a PPP Project after the Financial Closure Date is prohibited from participating on a proposer's team for that PPP Project or any other PPP Project unless FDOT grants an exception.

## **4. SUBCONSULTANTS**

### **4.1 FIRMS**

A firm serving as a subconsultant to an Owner's Representative (a "Subconsultant") for a PPP Project is prohibited from participating in any capacity on a proposer team for that PPP Project until after the Financial Closing Date or until the FDOT determines that any such conflict no longer exists. This prohibition extends to the affiliates of the Subconsultant.

### **4.2 INDIVIDUALS**

An individual who works or has worked for a Subconsultant and was involved in the development of procurement documents, evaluation criteria, or technical criteria for a PPP Project is prohibited from participating in any capacity on a proposer team for that PPP Project until the Financial Closing Date and, in limited instances beyond, or until FDOT determines that any such conflict no longer exists.

An individual who works or has worked for a Subconsultant to FDOT on a PPP Project after the Financial Closing Date is prohibited from participating on a proposer's team for another PPP Project unless FDOT grants an exception prior to the submittal of **RFQ**.

## **5. FDOT PRIMARY TECHNICAL CONSULTANTS FOR NON-PPP PROJECTS CONVERTED TO PPP PROJECTS**

A firm serving or who has served as one of FDOT's primary technical consultants for one or more projects in a corridor under development that is converted to a PPP Project

may participate on a proposer team with the approval of the FDOT Secretary. A firm may seek approval by submitting a written request to the applicable District Procurement Office. The request shall describe the facts and circumstances of the requestor's involvement on the project including level of design (percent complete, the number of component design plans by other firms, etc.) and the nature of its proposed participation for a proposer team on the PPP Project under procurement by FDOT.

A firm serving or who has served as one of FDOT's primary technical consultants for a project is prohibited from participating on a proposal team submitting an unsolicited proposal for that project. A firm serving or who has served as one of FDOT's primary technical consultants for a project is prohibited from participating on a proposal team should FDOT elect to advertise the project as a PPP Project as a result of an unsolicited proposal.

## **6.0 TRAFFIC AND REVENUE CONSULTANTS**

### **6.1 FIRMS**

No Traffic and Revenue Consultant or Subconsultant working or who has worked for FDOT on a PPP Project may directly or indirectly serve in any capacity for a proposer team on that PPP Project until after the Financial Closing Date or until FDOT determines that any such conflict no longer exists. This prohibition extends to the affiliates of such Traffic and Revenue Consultants and Subconsultants.

A Traffic and Revenue Consultant or Subconsultant who is working for FDOT on a PPP Project may be allowed to participate on a proposer team for another PPP Project with the approval of FDOT by granting of an exception.

### **6.2 INDIVIDUALS**

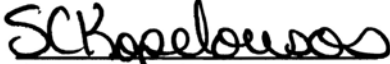
An individual who works for or who has worked for a FDOT Traffic and Revenue Consultant or Subconsultant and who had a role during such employment involving an FDOT PPP Project may not directly or indirectly serve in any capacity for a proposer team on that PPP Project until after the Financial Closing Date for the PPP Project with which the individual was involved or until the FDOT determines that any such conflict no longer exists.

An individual who works for or who has worked for a FDOT Traffic and Revenue Consultant or Subconsultant and who had a role during such employment involving an FDOT PPP Project may be allowed to participate on a proposer team for another PPP Project with the approval of FDOT by granting an exception prior to the submission of the **RFQ**.

## 7.0 REQUESTS FOR EXCEPTIONS

A firm or an individual may seek an exception to the above policy by submitting a written request for exception to the applicable District Procurement Office. The decision to approve or deny a request shall be made by the FDOT Secretary or his/her designee within a reasonable time after submission of a complete request.

The request shall describe the facts and circumstances of the requestor's involvement on the PPP Project and the nature of its proposed participation for a proposer team on other PPP Project under procurement by FDOT. The request shall specifically disclose whether the requestor at any time **(a)** was involved in the preparation of procurement documents, technical criteria, or evaluation criteria for the PPP Project or any other PPP Project; **(b)** participated in PPP Project-related meetings or conference calls with an Owner's Representative or with FDOT's legal advisors or financial advisors; or **(c)** works or has worked for one of FDOT's Owner's Representatives or for FDOT on a PPP Project after the Financial Closure Date for such PPP Project. FDOT retains the right to accept or deny any request for exception to this policy in its sole and absolute discretion and any delays or costs resulting from the failure to request an exception in a timely manner shall be the responsibility of the firm or individual.

  
Stephanie C. Kopelousos  
Secretary