

Overview of 2013 Florida Public Private Partnership Legislation

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The Florida State Legislature on May 3, 2013 passed Public Private Partnership (“P3”) Legislation that authorizes P3s for certain qualifying projects. The law also includes limitations and specific requirements for this alternative procurement process.

This is exciting news intended to spur investment in the State, assist public entities in meeting their project delivery needs, and to create jobs.

Key Components

The Law, once signed by the Governor, has an effective date of July 1, 2013. Key components of the Law are that it:

- Establishes an alternative procurement process and requirements for public-private partnerships to facilitate the construction of public-purpose projects.
- Establishes a New Task Force to recommend guidelines for the Legislature to consider with the objective of creating a uniform process for establishing P3s.
- Authorizes the use of P3s for purposes of county road projects, and permits, if certain requirements are met, counties to both receive or solicit proposals and enter into agreements with private entities to construct, extend, or improve a county road.

The Need: Spur Investment

An alternative method of procurement is being sought for governments and jurisdictions to meet its objectives. The State Legislature acknowledges that there is a public need for timely and cost effective public projects. Moreover, it has been demonstrated that P3s can meet these objectives in a timely and cost effective manner.

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The intent of the Legislation is to spur investment in the State by private entities and other funding sources for the development and operation of qualifying projects. The Legislature wants to also provide greater flexibility to public and private entities in providing public services.

The Florida Department of Transportation has seen an increase in P3 projects since the State Legislature passed prior P3 legislation specifically for transportation projects. Florida now follows other states, notably Virginia and Texas that recently implemented similar legislation also intended to expand P3s for non-transportation projects.

Unsolicited Proposals

A unique feature of this law is that the responsible public entity (“RPE”) may receive *unsolicited* proposals for qualifying projects - as well as solicit proposals. The RPE can charge a fee for the submission of the unsolicited proposal. That fee, under the law, must be reasonable. If the RPE is moving forward with an unsolicited proposal, the RPE must publish notice of receipt of the unsolicited proposal and can determine an appropriate time frame for accepting other proposals. The law states that the timeframe must be no less than 21 days and no more than 120 days.

The RPE may also charge reasonable fees to cover the costs of reviewing and evaluating requests including, among other costs, fees for financial review and analysis and for other consultants.

The results can be dynamic as well as dramatic for Florida. Private entities can utilize their creativity and local knowledge to propose qualifying projects. In some cases, unsolicited proposals may be for opportunities the RPE may have yet to even consider. But more importantly, the private entity will bring funding or a plan for financing as part of the proposal. This is indeed, exciting news for the State of Florida.

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