

## Public Private Partnerships: The Future of Public Construction in Florida?

**T**he recent economic downturn and limited funding for construction projects has caused state and local governments to turn to alternatives for financing public projects. Florida, for example, was forced to cut its five-year projected spending plan by \$7.3 billion.<sup>1</sup> Many contractors have also shifted their focus from private projects to available public sector jobs in order to remain viable during the aftermath of the “great recession.”

Government and contractor interests can align in specialized project delivery systems called public private partnerships, or P3s. Under these unique agreements, a private entity (often called a concessionaire) will assume the costs and financing for the project. The private entity may be entitled to revenue-generating activities related to the project or potentially lucrative bonuses for efficient completion.<sup>2</sup> P3s are structured to encourage direct private investments in these projects through the promise of revenue, and the government is able to shift the risk and funding burdens onto the contractor.<sup>3</sup>

The definition of a P3 is elusive and often depends on the degree of risk, financial obligations, and funding provided by the private entity.<sup>4</sup> The Florida Department of Transportation (FDOT) defines a P3 as a “contractual agreement between a public agency (federal, state, or local and a private sector entity)” whereby “the skills and assets of each sector (public and private) are shared in delivering a facility for the use of the general public.”<sup>5</sup> There are several different types of P3 delivery sys-

tems including build-own-operate (BOO), build-own-operate-transfer (BOOT), build-transfer-operate (BTO), design-build-finance-operate (DBFO), and design-build-operate-maintain (DBOM).<sup>6</sup>

P3s are common throughout the world, and use in the United States is gaining traction.<sup>7</sup> Currently, 23 states have enacted P3 legislation.<sup>8</sup> In 1991, Florida recognized the need to infuse private resources into its highway construction projects, as well as the need to provide “safe, convenient, and economical transportation facilities” to the general public.<sup>9</sup>

Florida has recently renewed its interest in public private partnerships. As a result of limited resources, FDOT entered into a \$1.3-1.8 billion DBFO P3 contract with I-595 Express, LLC (the concessionaire) for the improvement of the I-595 roadway in Broward County.<sup>10</sup> I-595 Express is comprised of a consortium of entities led by ACS Infrastructure Development, Inc., an affiliate of the Spanish-based Actividades de Construcción & Servicios SA.<sup>11</sup> The project involves the expansion of a 12-mile stretch of the road between SR 7 and the I-75 Sawgrass Expressway junction and will include reversible lanes.<sup>12</sup> In addition to the I-595 project, Florida has also recently entered into several other P3 projects.<sup>13</sup>

The project has understandably drawn a wide amount of attention because it is one of the largest P3 transportation projects in the United States and is representative of a unique financial model involving annual performance-based “availability payments.”<sup>14</sup> Availability payments

are a means of payment whereby the government makes regular distributions to the private entity based on the availability and operation of the P3 facility.<sup>15</sup>

Many parties are interested to see whether the project’s predicted benefits can actually be realized. These benefits include cost savings (for governments and Florida residents), profitability for the concessionaire, and most importantly, a functioning, safe roadway for Florida drivers completed in a much shorter period of time. The project is also projected to inject nearly \$1 million per day into the local South Florida economy and create approximately 30,000 jobs.<sup>16</sup>

Legitimate questions have been raised as to the viability of P3s. There is a belief that P3s are more beneficial to foreign conglomerates than Florida-based businesses. Adopting a protectionist attitude, these critics insist that the dollars spent on P3 projects should remain in-state.<sup>17</sup> This question and other related issues must be considered in order to determine the lasting effectiveness and continued viability of P3 projects in Florida.

Part one of this article will address Florida’s comprehensive, yet flexible statutory scheme related to P3s for transportation projects. Part two will examine Florida’s use of the P3 framework in the context of the I-595 project. Part three will analyze the issues, rewards, and risks of pursuing P3s through the lens of the contracting parties. Finally, part four will assess the future of P3 projects in Florida, including recent legislative activity concerning this topic.

## Part I: Florida's Statutory Framework for P3 Transportation Projects

Florida P3s are governed by a series of statutes that demonstrate a strong legislative endorsement of these projects. F.S. §334.30, the comprehensive statute authorizing P3s for transportation projects, is explicit that such projects are vital to the "public need for the rapid construction of safe and efficient transportation facilities."<sup>18</sup> Recognizing the benefits P3s can provide to the state's interest in "safe, convenient, and economical transportation facilities," the statute is friendly to both the government and private entities.<sup>19</sup> However, no more than 15 percent of the total annual state and federal funding for the state transportation trust fund can be obligated to P3 projects.<sup>20</sup>

F.S. §334.30 grants FDOT explicit authority to enter into both solicited and unsolicited P3s. FDOT is required to submit the P3 into either its five-year work plan, or, in cases of projects of more than \$500 million dollars, the 10-year strategic intermodal system

plan.<sup>21</sup> If FDOT solicits proposals from private entities for FDOT-developed public private transportation projects, then FDOT will request that each proposer submit a statement of qualifications.<sup>22</sup> FDOT will then grade these submissions and create a short list of usually three to four proposers.<sup>23</sup>

In the event a prospective party would like to submit an unsolicited proposal for a transportation project in the state, the following process is recommended by FDOT<sup>24</sup>:

- 1) Begin "conceptual discussions" with the project finance manager;

- 2) If the proposal meets the basic program requirements, then continue discussions with the district/turnpike authorities to determine the interest for the proposal and seek express direction from the district/turnpike;

- 3) FDOT's central office will then determine if the proposed project involves federal aid or is state funded;

- 4) The proposer will thereafter submit its unsolicited proposal to the project finance manager with an accompanying \$50,000 fee payable to FDOT.<sup>25</sup> FDOT may require additional

fees for evaluation expenses.<sup>26</sup> Failure to pay either the initial or any subsequent fees will result in the automatic rejection of the unsolicited bid<sup>27</sup>;

- 5) If the proposal is accepted, FDOT will begin the 120-day advertisement period, during which no evaluation or analysis is performed on the proposal.<sup>28</sup> The 120-day period is a recent amendment which increases the previous 60-day advertisement period.<sup>29</sup> However, this change does not apply to a Florida expressway, transportation, bridge, or toll authority, which still only have 60 days after publication of the advertisement.<sup>30</sup>

Once the solicitation/public notification period ends for either solicited or unsolicited bids, FDOT begins the evaluation phase of the various entries to determine the best value proposal for negotiation.<sup>31</sup> FDOT has tremendous discretion and is permitted to consider a large array of factors before making its decision, including professional qualifications, general business practices, "innovative engineering or cost-reduction terms," financing options, and the required state funds

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to deliver the final project.<sup>32</sup> F.S. §334.30 also allows FDOT to consider “innovative” finance options, including the aforementioned availability payments.<sup>33</sup> FDOT will then rank the bids in the order of preference based on these factors.<sup>34</sup> FDOT is permitted to reject all proposals at any point up to reaching an agreement, or may terminate negotiations if the discussions are not satisfactory to FDOT.<sup>35</sup>

After the successful submission of a bid, FDOT must still obtain legislative approval.<sup>36</sup> The legislature must find that the public interest is served by the project, that the project will not require state funds unless the project is on the state highway system, that the contractor can implement adequate cost, schedule, and capacity safeguards, that FDOT will be able to take full ownership of the project upon completion or termination of the contract, and that the major cost burdens are properly transferred to the private partner.<sup>37</sup> Once the legislature approves the project, FDOT may enter into an agreement with the private entity.<sup>38</sup> The contractor is required to comply with all federal, state, and local laws and may be subject to additional term-specific requirements.<sup>39</sup>

In exchange for the risks allocated to private parties involved in P3s, F.S. §334.30 grants two major benefits. First, the private entity is exempt from certain taxes such as ad valorem taxes, intangible taxes, and special assessment taxes.<sup>40</sup> Second, §334.30 private contractors may impose tolls or fares for the use of the facility.<sup>41</sup> P3 transportation projects in Florida are limited to a term of 50 years; however, the secretary of transportation has the authority to extend the length of the contract’s terms.<sup>42</sup> Tolls are subject to

regulations, analysis, and approval.

The legislature has passed a number of other laws in addition to F.S. §334.30. One such statute is §337.251, which gives FDOT authority to lease department property for commercial purposes for periods not exceeding 99 years. These leases include solicited and unsolicited commercial leases for the use of areas above or below state highways.<sup>43</sup> FDOT does not need legislative approval to enter into such agreements, but must ensure that the agreement will not interfere with the property’s prime function as a means of transportation.<sup>44</sup>

FDOT is also authorized to enter into partnerships with private entities in order to construct expressways and bridges.<sup>45</sup> Under F.S. §348.0004, FDOT may enter into such agreements, subject to legislative approval.<sup>46</sup> FDOT may also, subject to state regulation, allow its private partner to collect tolls or fares for the use of the property.<sup>47</sup> The statutory regulations regarding the creation of expressways and bridges are similar to the legislature’s regulations on the use of P3 agreements generally, and many of the provisions found in §348.0004 mirror those found in §334.30.

Finally, F.S. §338.222 and other subsequent statutes regulate the state’s Florida Turnpike Enterprise.<sup>48</sup> The Florida Turnpike Enterprise acts as a private entity within FDOT and, in accordance with its statutory scheme, may not be owned, operated, constructed, maintained, or acquired by any government entity besides FDOT.<sup>49</sup> FDOT may, however, partner with any other entity (public or private) to facilitate the construction or improvement of the state’s turnpike system, subject to legislative

approval.<sup>50</sup> In this way the statutory rules governing Florida turnpikes serve as a means of allowing Florida’s turnpike system to be owned and operated by the FDOT alone, while at the same time, and similarly to general P3 projects, allowing the project to be built more efficiently through the use of public and private partners.

It is apparent that Florida’s statutory scheme provides flexibility for FDOT and other transportation authorities to structure agreements for road construction. These statutes provide the structural framework for Florida’s most ambitious attempt in the P3 waters to date — a contract with a private entity for the construction of a highly traveled state roadway. The perceived success of the I-595 experiment will have long-lasting implications for public construction in Florida.

## Part II: I-595 Project

The I-595 project provides an interesting case study as to the future viability of P3s. Construction on the project is currently ongoing and expected to be complete by 2014.<sup>51</sup> Originally, the Florida transportation secretary estimated that it would take the state nearly 20 years to complete the work itself given the estimated \$700 million shortfall for roadway improvements.<sup>52</sup> This lengthy period is a far cry from the estimated five years it is expected to take a private entity to construct the roadway.<sup>53</sup>

FDOT issued a RFQ in October 2007. Six separate teams submitted qualifications for the project, and four teams were invited to bid.<sup>54</sup> More than 100 FDOT employees and consultants spent several weeks reviewing the final two bids for ACS and Express Access Team (EAT) from San Francisco as provided by §334.30(6)(d).<sup>55</sup> FDOT analyzed the bids based on the areas of technical, financial, and projected maximum availability payments.<sup>56</sup> While EAT had a higher technical score, EAT’s projected annual availability payment of \$144.49 million was more than double ACS’s projected availability payment of \$63.98 million per year. ACS’s construction costs were also \$2 billion less than EAT and were actually \$275 million less than the

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FDOT's own internal estimates for the project.<sup>57</sup> FDOT awarded the contract to ACS based on these cost-savings, financial benefits, and availability payments as permitted by §334.30(6), (8), and (9).<sup>58</sup>

The concession agreement thereafter entered into between ACS (the concessionaire) and FDOT represents a unique financial model.<sup>59</sup> Under the 35-year agreement, the concessionaire is solely responsible for the finance, construction, and operation of the I-595 corridor improvements and operation of the toll roads.<sup>60</sup> The state is not required to make any payments to I-595 until substantial completion of the project; however, no payments shall be made prior to March 13, 2013.<sup>61</sup> Until that time, the concessionaire must solely fund the project, and FDOT bears no risk for the concessionaire's failure to attain or maintain financing.<sup>62</sup> Taxpayers are shielded from cost overruns, which are expressly assumed by the concessionaire.<sup>63</sup> This payment structure is a huge incentive and motivating factor for the swift and efficient completion of the project, as the

concessionaire is financing the project with \$210 million of its own equity, 10-year loans totaling \$780 million with 10 to 12 separate banks, and a 35-year Transportation Infrastructure Finance and Innovation Act loan in the amount of approximately \$655-680 million.<sup>64</sup> No stimulus money is being used for the project.<sup>65</sup>

Upon the expected completion in 2014, FDOT will pay the concessionaire \$685 in lump sum payments over the course of five years, and begin the 30 annual estimated availability payments of \$63.98 million.<sup>66</sup> The concessionaire will operate and maintain the toll roads after construction, and Florida will collect the toll revenue and set the rates, avoiding a potentially large dispute over control prevalent on many P3 projects.<sup>67</sup> Although the risk is substantial in delaying payment years after work first begins, some estimates indicate that the concessionaire could earn an approximate 12 percent return on its investment.<sup>68</sup>

It appears that FDOT negotiated and structured an arrangement beneficial to the state. Florida is expected

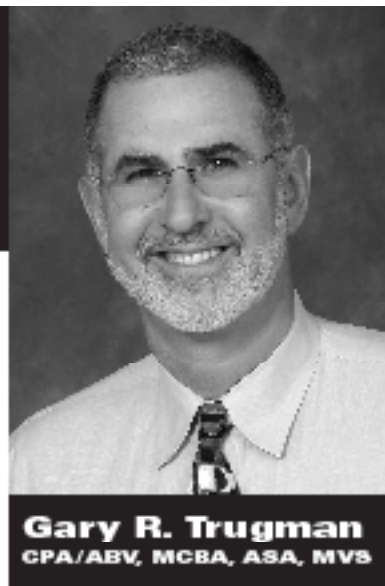
to receive a roadway completed at least 15 years sooner than it would have using only public resources, and the state may save \$275 million in construction costs that would have been incurred using the traditional design-bid-build system.<sup>69</sup> Additionally, the state is not required to spend any money until after completion of the roadway. FDOT chose an alternative resulting in an estimated \$2.4 billion savings in availability payments over the 30-year payback period, and the state and taxpayers are not responsible for any financing issues or cost overruns. At least on paper, it appears that the parties created a true partnership that is a win-win for everyone.

### Part III: Issues Pertaining to P3 Projects

The long-term viability of P3 projects in Florida cannot be fully assessed without examining the potential complications and legal issues that may arise on these projects. There are many issues that the government and private entities should be aware

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of when agreeing to move forward with these arrangements.

For the state, there is always the concern that the project will not be constructed properly, or the private partner will run out of funding for the project.<sup>70</sup> Irrespective of any bonding, the state may be required to take the reins of the project midway through construction. Several P3s suffered this fate in the early 19th century.<sup>71</sup> There is also the justifiable concern that the private entity will cut corners and sacrifice quality for profitability.

There are also a myriad of issues to be considered from the perspective of contractors and subcontractors.<sup>72</sup>

1) *Federal and State Requirements* — Section 334.30(3) is clear that the parties are to comply with “all requirements” of local, state, and federal law.<sup>73</sup> The infusion of state and federal funds can complicate the contractor’s obligations on P3 projects. For example, the use of federal, state, and local funds in a project may subject the project participants to the federal Davis-Bacon Act or other local laws pertaining

to wages that will affect the overall cost, and ultimately, profitability of the project. There may also be additional requirements and obligations tied to the federal funds, such as the “Buy American” provisions of The American Recovery and Reinvestment Act.<sup>74</sup>

2) *Sovereign Immunity* — Parties contracting with the state must also be cognizant of the doctrine of sovereign immunity. Given the substantial investment of time, resources, and capital in a P3 transportation project, a private entity contracting with a governmental authority must have a means to assert claims against the state for payment. Florida courts have held that the state of Florida has waived its right to sovereign immunity in contracting with private entities.<sup>75</sup> Recently, however, this once-thought established principle of Florida law came within one vote of being overturned by the Florida Supreme Court.<sup>76</sup> A prudent contractor must keep abreast of the law on this topic given the large investment required for P3 projects.

3) *Bond and Lien Rights* — Parties must also be aware of the mechanisms to secure payment on a P3 project. Florida law is clear that property owned by the federal, state, or local government cannot be lienied.<sup>77</sup> As the government is the final owner of most if not all transportation projects, the claimant will generally be unable to file a claim of lien on the property. The possibility may exist under certain circumstances, however, for a lien claimant to file a lien on a long-term P3 leasehold interest,<sup>78</sup> or if the project is used for a private purpose.<sup>79</sup>

If there is no right to claim a lien, the contracting party will be forced to look toward the payment bond, if applicable. As noted above, the determination of the ultimate owner of the project and applicable funds will determine whether the Miller Act,<sup>80</sup> Florida’s Little Miller Act,<sup>81</sup> or a common law payment bond applies. Each of these bonds will have their own claim and timeline requirements that must be complied with in order to preserve the right to recover against the bond.

These issues accentuate the fact that there is no such thing as a “slam

dunk” when it comes to the financing and construction of public projects. The rubber literally meets the road on the viability of these transportation projects when these perceived drawbacks and pending issues are substantially outweighed by the rewards and benefits gained by these projects. The rewards appear to be winning.

## Part IV: Future of P3 Projects in Florida

The winds of change are in place for Florida to move forward with P3s as an alternative delivery method. The perceived cost savings, profitability, and efficiency recognized are too substantial to ignore in this time of limited public resources. As noted above, there are still unanswered questions, but Florida has a flexible statutory framework that provides creativity and predictability to P3s that is lacking in other states.

There will likely be an increased push to allow vertical P3s in the state.<sup>82</sup> H.B. 1313 (identical S.B.1956) was introduced in the 2011 legislative session, and provided for the creation of the Public Private Partnership Act (F.S. §287.05712), but ultimately died in committee.<sup>83</sup> Similar to §334.30, the expressed intent of this bill(s) is to encourage private investment in the state, permit creative funding sources for such projects, and provide flexibility in the creation of P3 contracts.<sup>84</sup> The bill allowed state and local governments to enter into P3 agreements with private entities for “qualifying projects,” including public school building and related facilities, waste or wastewater management facilities, building and equipment repairs, and the catch-all any “building or facility that meets a public purpose and is developed or operated by or for any public entity.”<sup>85</sup> The bill also provided for the creation of the Public Private Partnership Advisory Committee to oversee the procurement, negotiation, and execution of P3 agreements.<sup>86</sup> Of particular interest is a provision in the proposed bill providing that sovereign immunity is not waived, a significant concern addressed in the previous section.<sup>87</sup> Recently, H.B. 337 and S.B. 576 were introduced in the 2012 legislative session and were

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identical to the bills introduced in 2011. Although neither bill became law during the 2012 session, H.B. 337 did pass the House before dying in the Senate Governmental Oversight and Accountability Committee. There is no doubt that PPP bills will be introduced again and watched closely by the construction industry during the 2013 legislative session.

The enactment of a new P3 statutory framework for vertical projects would likely open the door to more opportunities for local and Florida-based contractors to bid on smaller-scale, limited capital projects, unlike transportation projects in which large foreign conglomerates have the resources to bid for these projects. It should be noted that the proposed 2012 bills provided for the government agency to base its selection on numerous factors, including the private entity's intended use of local contractors and residents on the project.

FDOT recently issued a press release announcing the "Florida Transportation Vision for the 21st Century."<sup>88</sup> The release does not provide

all the details of the plan, but there are references to "creative financing alternatives" and "going forward with a [p]ublic [p]rivate [p]artnership in expanding the system along I-75 in Broward County" based in part on the "success" of the I-595 project.<sup>89</sup> While the jury will be out on the success of the I-595 project for some time, there can be little doubt that P3 projects will become commonplace in Florida for years to come, with the I-595 project as the harbinger of the successes or failures of these unique contractual relationships. □

<sup>1</sup> Christopher Conkey, *Highway Upgrade Goes Private — Florida Deal With Spanish-Led Group Serves as a Model for Cash-Strapped States*, WALL STREET JOURNAL, March 8, 2009.

<sup>2</sup> Dominique Custos & John Reitz, *Public Private Partnerships*, 58 AM. J. COMP. L. 555 (2010).

<sup>3</sup> Neil J. Sweeney, Patrick D. Harder & Margo E. Bennett, *Public-Private Partnerships for Surface Transportation — Beyond Design-Build*, CONSTRUCTION LAW UPDATE §1.04.

<sup>4</sup> See Julia Paschal Davis, *Public-Private Partnerships*, 44 PROCUREMENT LAW 9 (Fall 2008).

<sup>5</sup> Definition provided by the FDOT per its official website, [http://www.dot.state.fl.us/financialplanning/finance/P3\\_Unsolicited\\_Proposal\\_Process.shtm](http://www.dot.state.fl.us/financialplanning/finance/P3_Unsolicited_Proposal_Process.shtm).

<sup>6</sup> Derek Fusco, Speech, *Public-Private Partnerships (P3s)* (Orlando, FL), July 29, 2008; David W. Gaffey, Student Author, *Outsourcing Infrastructure: Expanding the Use of Public Private Partnerships in the United States*, 39 PUB. CONT. L. J. 351 (Winter 2010).

<sup>7</sup> Gaffey, note 6.

<sup>8</sup> U.S. Department of Transportation, [http://www.fhwa.dot.gov/ipd/p3/state\\_legislation/index.htm](http://www.fhwa.dot.gov/ipd/p3/state_legislation/index.htm).

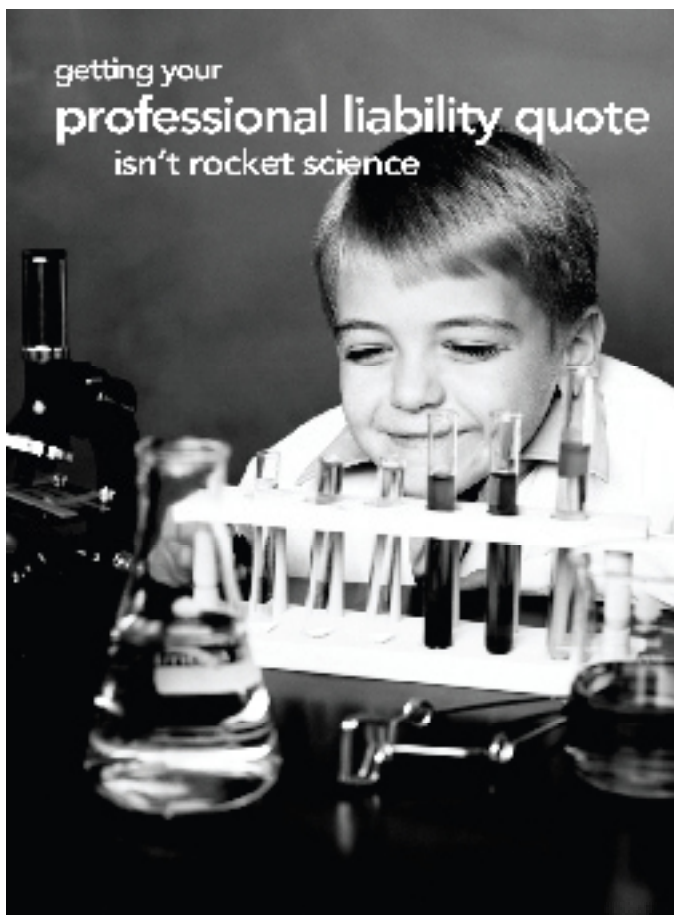
<sup>9</sup> FLA. STAT. §334.30 (2011).

<sup>10</sup> Michael Turnbull, *Consortium Headed by Spanish Company Chosen for \$1.79 Billion Makeover of I-595*, SOUTH FL SUN-SENTINEL, Oct. 25, 2008.

<sup>11</sup> Conkey, *Highway Upgrade Goes Private — Florida Deal With Spanish-Led Group Serves as a Model for Cash-Strapped States*, WALL STREET JOURNAL, March 8, 2009.

<sup>12</sup> Michael Turnbull, *\$1.5 Billion I-595 Project May Go to Private Sector*, SOUTH FL SUN-SENTINEL, April 4, 2007.

<sup>13</sup> These projects include the improvements to the Port of Miami Tunnel, I-95 Express Lanes, improvements to U.S. 1 in the "18-mile stretch," Palmetto Expressway, US 19, I-75, and the I-4 connector, [http://www.dot.state.fl.us/financialplanning/finance/private\\_transportation\\_facilities.shtm](http://www.dot.state.fl.us/financialplanning/finance/private_transportation_facilities.shtm).



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<sup>14</sup> The largest P3 project in the United States as of December 9, 2010, is the Indiana toll road with the contract price of \$3.85 billion. *Nat. Conf. of State Legislatures Report*, Appendix G.

<sup>15</sup> See note 5.

<sup>16</sup> Michael Turnbull, *Florida Signs \$1.2 Billion Construction Contract to Rebuild Interstate 595*, SOUTH FL SUN-SENTINEL, March 9, 2009; Michael Turnbull, *Interstate 595 Project to Create Jobs*, SOUTH FL SUN SENTINEL, March 4, 2009.

<sup>17</sup> Michael Turnbull, *Broward County Officials Want Proof I-595 Will Create Local Jobs*, SOUTH FL SUN-SENTINEL (March 13, 2009).

<sup>18</sup> FLA. STAT. §334.30 (2009).

<sup>19</sup> *Id.*

<sup>20</sup> FLA. STAT. §334.30 (13).

<sup>21</sup> FLA. STAT. §334.30(1)

<sup>22</sup> See Fusco, Speech, *Public-Private Partnerships (P3s)* (Orlando, FL), July 29, 2008.

<sup>23</sup> *Id.*

<sup>24</sup> Florida Department of Transportation, Unsolicited Proposal Process, [http://www.dot.state.fl.us/financialplanning/finance/P3\\_Unsolicited\\_Proposal\\_Process.shtm](http://www.dot.state.fl.us/financialplanning/finance/P3_Unsolicited_Proposal_Process.shtm).

<sup>25</sup> FLA. ADMIN. CODE §14-107.0011(1) (2010).

<sup>26</sup> FLA. ADMIN. CODE §14-107.0011(3).

<sup>27</sup> FLA. ADMIN. CODE §14-107.0011(1)-(3).

<sup>28</sup> See n. 25, *supra*.

<sup>29</sup> D. Joseph Darr, *Current Trends in Public-Private Partnership Laws*, 28 CONSTR. LAW 53 (Summer 2008).

<sup>30</sup> *Id.*

<sup>31</sup> See note 24.

<sup>32</sup> FLA. STAT. §334.30 (6), (8-9).

<sup>33</sup> *Id.*

<sup>34</sup> FLA. STAT. §334.30 (6)(d).

<sup>35</sup> *Id.*

<sup>36</sup> FLA. STAT. §334.30(1).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> FLA. STAT. §334.30(3).

<sup>40</sup> FLA. STAT. §334.30(1)(e).

<sup>41</sup> FLA. STAT. §334.30(2).

<sup>42</sup> FLA. STAT. §334.30(12).

<sup>43</sup> FLA. STAT. §337.251.

<sup>44</sup> *Id.*

<sup>45</sup> FLA. STAT. §348.0004.

<sup>46</sup> FLA. STAT. §348.0004(9)(a).

<sup>47</sup> FLA. STAT. §348.0004(1)(f).

<sup>48</sup> See FLA. STAT. §338.222-251.

<sup>49</sup> FLA. STAT. §338.222(1).

<sup>50</sup> FLA. STAT. §338.222(2).

<sup>51</sup> Michael Turnbull, *Four Win Right to*

*Bid on Major I-595 Project*, SUN SENTINEL, December 4, 2007, [http://articles.sun-sentinel.com/2007-12-04/news/0712030510\\_1\\_lanes-toll-largest-road-construction](http://articles.sun-sentinel.com/2007-12-04/news/0712030510_1_lanes-toll-largest-road-construction).

<sup>52</sup> Turnbull, note 10.

<sup>53</sup> Turnbull, note 51.

<sup>54</sup> Turnbull, note 10.

<sup>55</sup> Deb Wood, *Florida Awards Groundbreaking Highway Contract*, ENGINEERING NEWS-RECORD (November 4, 2008).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Conkey, *Highway Upgrade Goes Private — Florida Deal With Spanish-Led Group Serves as a Model for Cash-Strapped States*, WALL STREET JOURNAL, March 8, 2009.

<sup>60</sup> Wood, *Florida Awards Groundbreaking Highway Contract*, ENGINEERING NEWS-RECORD (November 4, 2008).

<sup>61</sup> See Jeff Parker, *ACS Finances Florida I-595 Availability Pay Project*, 235 PUBLIC WORKS FINANCING (February 2009); Concession Agreement for I-595 Corridor Roadway Improvements Project Between Florida Department of Transportation and I-595 Express, LLC; §12 (Payments to Concessionaire), Contract #E4J69 (March 3, 2009).

<sup>62</sup> See Concession Agreement for I-595 Corridor Roadway Improvements Project Between Florida Department of Transportation and I-595 Express, LLC; §16 (Project Financing and Refinancing), Contract #E4J69 (March 3, 2009).

<sup>63</sup> Conkey, *Highway Upgrade Goes Private — Florida Deal With Spanish-Led Group Serves as a Model for Cash-Strapped States*, WALL STREET JOURNAL, March 8, 2009.

<sup>64</sup> Parker, note 61; Shelly Sigo, *Florida DOT Closes on I-595 P3 in Broward County*, THE BOND BUYER (March 6, 2009); Deb Wood, *Spanish-Led Group Secures \$1.8 Bill in P3 Funds for Fla. Express Lanes*, ENGINEERING NEWS-RECORD (March 5, 2009).

<sup>65</sup> Turnbull, note 51.

<sup>66</sup> Wood, *Florida Awards Groundbreaking Highway Contract*, ENGINEERING NEWS-RECORD (November 4, 2008).

<sup>67</sup> *Id.*

<sup>68</sup> Conkey, *Highway Upgrade Goes Private — Florida Deal With Spanish-Led Group Serves as a Model for Cash-Strapped States*, WALL STREET JOURNAL, March 8, 2009.

<sup>69</sup> Wood, *Florida Awards Groundbreaking*

*Highway Contract*, ENGINEERING NEWS-RECORD (November 4, 2008).

<sup>70</sup> David W. Gaffney, *Outsourcing Infrastructure: Expanding the Use of Public Private Partnerships in the United States*, 39 PUB. CONT. L. J. (Winter 2010).

<sup>71</sup> See note 4.

<sup>72</sup> Peter C. Halls, *Issues for Designer, Contractors and Suppliers to Public Private Partnership Projects*, 30:3 CONSTR. LAW. 22 (Summer 2010); Roland Nikles, "Is it Public, or Is it Not?" What to Watch for When Public and Private Become Entwined, and Why it Matters, 46:3 THE PROC. LAW. 5 (newsletter of ABA Sec. Pub. Contr. Law) (Spring 2011).

<sup>73</sup> FLA. STAT. §334.30 (3).

<sup>74</sup> See note 72.

<sup>75</sup> See *Pan Am Tobacco Corp. v. Department of Corrections*, 461 So. 2d 4 (Fla. 1984); *Florida Department of Environmental Protection v. Contractpoint Florida Parks, LLC*, 986 So. 2d 1260 (Fla. 2008).

<sup>76</sup> *Contractpoint*, 986 So. 2d at 1272; see also Mike Piscitelli & W. Robert Vezina, *Public-Private Contracting in Florida Survives*, 83 FLA. B.J. 41 (Nov. 2009).

<sup>77</sup> FLA. STAT. §713.01(25).

<sup>78</sup> See LARRY LEIBY, 8 FLORIDA CONSTRUCTION LAW MANUAL §8:3 (2010-2011 ed., West Nov. 2010); see also Halls, *Issues for Designer, Contractors and Suppliers to Public Private Partnership Projects*, 30:3 CONSTR. LAW. fn. 35 (Summer 2010).

<sup>79</sup> See Halls, *Issues for Designer, Contractors and Suppliers to Public Private Partnership Projects*, 30:3 CONSTR. LAW. at 25 (Summer 2010).

<sup>80</sup> 40 U.S.C. §§3131 - 3134.

<sup>81</sup> FLA. STAT. §255.05.

<sup>82</sup> Gary Fineout, *Private Toll Road Plan Advances in Legislature*, MIAMI HERALD, March 23, 2007.

<sup>83</sup> Fla. House 1313, 2011 Reg. Sess. (March 7, 2011); and Fla. Sen. 1956, 2011 Reg. Sess. (March 5, 2011).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> FDOT Press Release on Behalf of Florida Transportation Secretary Ananth Prasad, *FDOT Secretary Prasad Announces Major Transportation Plan*, August 5, 2011, [http://www.dot.state.fl.us/financialplanning/finance/private\\_transportation\\_facilities.shtm](http://www.dot.state.fl.us/financialplanning/finance/private_transportation_facilities.shtm).

<sup>89</sup> *Id.*

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