



## **Georgia Department of Transportation Public-Private Partnership Guidelines**

**Dated: February 2, 2010**

### **Appendices**

Appendix 1	Definitions
Appendix 2	Procurement Confidentiality Disclosure Agreement
Appendix 3	Project Data Request Form
Appendix 4	Project Screening and Evaluation Form
Appendix 5	Project Risk Assessment Chart
Appendix 6	Project Risk Allocation Chart
Appendix 7	Conflicts of Interest and Ethics Policy

## **1. DEFINITIONS**

## DEFINITIONS

**Alternative Finance Committee** or **P3 Committee** means the committee for Public-Private Partnerships of the State Transportation Board.

**Board** means the State Transportation Board of the Georgia Department of Transportation.

**Commissioner** means the commissioner of the Georgia Department of Transportation.

**Conflicts of Interest and Ethics Policy** means the document attached as Appendix 7 to the Guidelines.

**Department** means the Georgia Department of Transportation.

**Director of Planning** means the director of planning of the Georgia Department of Transportation.

**Final Project Screening List** has the meaning set forth in Section 4.3 of the Guidelines.

**Guidelines** means the Public-Private Partnership Guidelines of the Georgia Department of Transportation.

**Initial Project Screening List** has the meaning set forth in Section 4.2 of the Guidelines.

**Notice of Intent to Issue RFQ** means the notice referenced in Section 7.2.1 of the Guidelines.

**Notice of Intent to Issue RFP** means the notice referenced in Section 9.3.2 of the Guidelines.

**P3 Legislation** means Sections 32-2-78 through 32-2-80 of the Official Code of Georgia Annotated.

**P3 Rules** means Chapter 672-17 of the Rules of State Department of Transportation.

**Procurement Confidentiality and Disclosure Agreement** means the document attached as Appendix 2 to the Guidelines.

**Project Manager** means the individual described in Section 3.1.7 of the Guidelines.

**Procurement Team** means the team described in Section 3.1.11 of the Guidelines.

**Program Director** means the individual described in Section 1.2 of the Guidelines.

**Project** has the meaning set forth in Section 32-2-78(2) of the Official Code of Georgia Annotated.

**Project Data Request Form** means the document attached as Appendix 3 to the Guidelines.

**Project Implementation Team** means the team described in Section 3.1.12 of the Guidelines.

**Project Risk Allocation Chart** means the document attached as Appendix 6 to the Guidelines.

**Project Risk Assessment Chart** means the document attached as Appendix 5 to the Guidelines.

**Project Screening Committee** means the committee described in Section 3.1.9 of the Guidelines.

**Project Screening and Evaluation Form** means the document attached as Appendix 4 to the Guidelines.

**Proposer** has the meaning set forth in Rule 672-17-.02(j) of Chapter 672-17 of the Rules of State Department of Transportation.

**Proposal** means a written submission for a Public-Private Partnership from a Proposer to the Department in response to a Request for Proposals.

**Public-Private Partnership** or **P3** has the meaning set forth in Rule 672-17-.02(k) of Chapter 672-17 of the Rules of State Department of Transportation.

**Request for Qualifications** or **RFQ** has the meaning set forth in Rule 672-17-.02(m) of Chapter 672-17 of the Rules of State Department of Transportation.

**Request for Proposals** or **RFP** has the meaning set forth in Rule 672-17-.02(l) of Chapter 672-17 of the Rules of State Department of Transportation.

**Selection Recommendation Committee** means the committee responsible for performing the evaluation and scoring of Statements of Qualification and/or Proposals as set forth in the Guidelines.

**Selection Recommendation Subcommittees** means the subcommittees responsible for assisting and advising the Selection Recommendation Committee as set forth in the Guidelines.

**State** means the State of Georgia.

**Statement of Qualifications** or **SOQ** means a written submission for a Public-Private Partnership from a Proposer to the Department in response to a Request for Qualifications.

**Steering Committee** means the committee described in Section 3.1.8 of the Guidelines.

**2. PROCUREMENT CONFIDENTIALITY AND DISCLOSURE  
AGREEMENT**

**Georgia Department of Transportation**  
**[PROJECT NAME]**  
**PROCUREMENT CONFIDENTIALITY AND DISCLOSURE AGREEMENT**

---

I, \_\_\_\_\_, hereby agree as follows:

1. Confidentiality of Information. I will maintain the confidentiality of: (i) all procurement materials, including, but not limited to, all draft documents and internal communications and correspondence regarding the procurement; (ii) all financial, technical and legal materials supporting or created in connection with the procurement or the Project (as defined below); and (iii) all confidential proposer evaluation and selection-related information I gain access to as a result of my work in connection with the \_\_\_\_\_ (the "Project"). This includes proprietary information; information designated confidential by the Georgia Department of Transportation ("GDOT") or by teams submitting qualifications submittals ("SOQs") and/or proposals ("Proposals") for the Project; information regarding project cost estimates, Proposal prices, alternative technical concepts, alternative financial concepts, Project development or financing plans, or proposer qualifications; or any other information that might be considered sensitive, which I have heard, seen or reviewed ("Confidential Information"). However, Confidential Information does not include information that I can demonstrate: (a) was in my possession prior to it being furnished to me under the terms of this Agreement, provided the source of that information was not known by me to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to disclosing party; (b) is now, or hereafter becomes, through no act or failure to act on the part of myself, generally known to the public; (c) is rightfully obtained by me from a third party, without breach of any obligation to the disclosing party; or (d) is independently developed by me without use of or reference to the Confidential Information.

2. Use of Confidential Information. I will use the Confidential Information solely for the purpose of evaluating a proposal and shall not in any way use the Confidential Information to the detriment of the disclosing party. Nothing in this Agreement shall be construed as granting any rights to me, by license or otherwise, to any Confidential Information.

3. Disclosure of Confidential Information. Unless so ordered by a court of competent jurisdiction or an opinion of the Office of the Attorney General, I will not divulge any Confidential Information to the media or any member of the public. Internal Confidential Information exchange may be conducted as necessary and appropriate to facilitate my review and analysis of the Proposal(s) provided that I will only communicate such information to individuals who have executed a Confidentiality and Disclosure Agreement in this same or substantially similar form or who are covered under similar confidentiality agreements for GDOT's public-private partnership program. I understand that a list of the signatories to this type of agreement shall be maintained by GDOT. If contacted by any member of the public or the media with a request for Confidential Information, I will promptly forward such requests to the GDOT [Insert reference to appropriate GDOT official].

4. Maintenance and Return of Confidential Information. I will maintain security and control over all documents containing such Confidential Information in my custody, and will return all such documents upon request by GDOT.

5. Conflicts of Interest. Furthermore, I have disclosed any potential conflicts of interest on the attached Disclosure Statement Form, or alternatively, I hereby certify that to the best of my knowledge, I do not have a conflict of interest, either real or apparent, as a result of a direct or indirect financial interest on my part or that of any member of my immediate family, nor of my employer, partner(s), or joint venture members, in any firm under consideration for the public-private partnership contract associated with the Project. I agree not to solicit or accept gratuities, unwarranted privileges or exemptions, favors, or anything of value from any firm under consideration for the public-private partnership contract associated with the Project, and I recognize that doing so may be contrary to statutes, ordinances and rules governing or applicable to GDOT or may otherwise be a violation of the law.

No Disclosure Statement Form Required

See Attached Disclosure Statement Form

Signed: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Name and Title: \_\_\_\_\_

Representing: \_\_\_\_\_

**DISCLOSURE STATEMENT FORM**

This Disclosure Statement outlines potential conflicts of interest, either real or apparent, as a result of a direct or indirect financial interest on my part or that of any member of my immediate family, or of my employer, partner(s), or joint venture members, in any firm under consideration for the public-private partnership contract associated with the Project. See Schedule 1 to this Disclosure Statement Form. Section I of this Disclosure Statement Form describes the potential conflicts of interest. Section II of this Disclosure Statement Form describes the management plan for dealing with the potential conflicts of interests as described in Section I of this form. I acknowledge that GDOT may require revisions to the management plan described in Section II of this form prior to approving it and that GDOT has the right, in its sole discretion, to limit or prohibit my involvement in the Project as a result of the potential conflicts of interest described in Section I of this form. Attach additional pages as necessary.

**SECTION I – DESCRIPTION OF POTENTIAL CONFLICTS OF INTEREST**

**SECTION II – MANAGEMENT PLAN FOR DEALING WITH POTENTIAL CONFLICTS OF INTEREST**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_, 20\_\_

Name and Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Approved by the Georgia Department of Transportation:

Signed: \_\_\_\_\_ Date: \_\_\_\_\_, 20\_\_

Name and Title: \_\_\_\_\_

Representing: \_\_\_\_\_

**Schedule 1**

**List of Proposer Teams**

[Proposer Name]

[Proposer Contact Name And Address]

- [Proposer Team Member] (Equity Owner)
- [Proposer Team Member] (Equity Owner)
- [Proposer Team Member]
- [Proposer Team Member]

[Proposer Name]

[Proposer Contact Name and Address]

- [Proposer Team Member] (Equity Owner)
- [Proposer Team Member] (Equity Owner)
- [Proposer Team Member]
- [Proposer Team Member]

### **3. PROJECT DATA REQUEST FORM**

**GEORGIA DEPARTMENT OF TRANSPORTATION  
SOLICITED P3 PROJECT PROCUREMENT DATA REQUEST FORM**

**General Project Information**

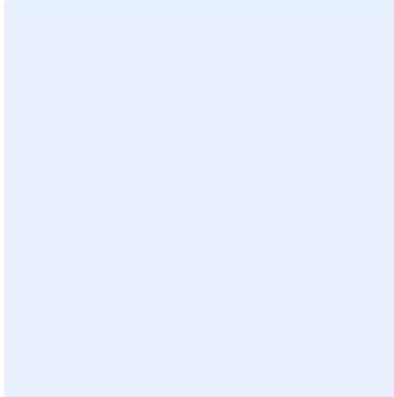
001. Date Prepared	Click here to enter a date.
002. Project Title	Click here to enter text.
003. GDOT Project Number	Click here to enter text.
004. GDOT P.I. Number	Click here to enter text.
005. Applicable MPO	Click here to enter text.
006. MPO Project Number	Click here to enter text.
007. GDOT Project Sponsor Office	Click here to enter text.
008. GDOT Project Manager	Click here to enter text.
009. GDOT PM Phone Number	Click here to enter text.
010. GDOT PM E-mail Address	Click here to enter text.

**Project Details**

011. Project Description and Termini:	Click here to enter text.
012. Project Length (mi)	Click here to enter text. miles
013. Project Need and Purpose:	Click here to enter text.
014. Average Daily Traffic (ADT)	Existing (20 ): Opening Year (20 ): Design Year (20 ):
015. Ridership Forecasts (Transit):	
016. GDOT Districts(s):	
<input type="checkbox"/> 1 – Gainesville	<input type="checkbox"/> 5 - Jesup
<input type="checkbox"/> 2 - Tennille	<input type="checkbox"/> 6 - Cartersville
<input type="checkbox"/> 3 - Thomaston	<input type="checkbox"/> 7 - Chamblee
<input type="checkbox"/> 4 - Tifton	
017. Congressional Districts(s) and GDOT Board Representative(s):	
<input type="checkbox"/> 1 – Southeast Georgia - Roy Herrington	
<input type="checkbox"/> 2 – Southwest Georgia - Johnny Floyd	
<input type="checkbox"/> 3 – West Central Georgia - Sam Wellborn	
<input type="checkbox"/> 4 – Metro Atlanta Region - Robert Brown	
<input type="checkbox"/> 5 – Metro Atlanta Region - Emory McClinton	
<input type="checkbox"/> 6 – Metro Atlanta Region - Brandon Beach	
<input type="checkbox"/> 7 – Metro Atlanta Region - Rudy Bowen	
<input type="checkbox"/> 8 – Central Georgia – Sidney Ross	
<input type="checkbox"/> 9 – North Georgia - Vacant	
<input type="checkbox"/> 10 – Northeast Georgia - Bill Kuhlke	
<input type="checkbox"/> 11 – Northwest Georgia - David Doss	
<input type="checkbox"/> 12 – East Central Georgia - Bobby Parham	
<input type="checkbox"/> 13 – Metro Atlanta Region - Dana Lemon	
018. Greenfield or Brownfield Project?	Choose an item.
019. Toll or Non-Toll Project?	Choose an item.
020. Stand Alone, System, Managed Lane	Choose an item.
021. Is the Project Federalized?	Choose an item.
022. Is the Project Part of the Statewide Plan?	Choose an item.
023. Is the Project in the TIP? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, TIP Number: Click here to enter text.	
If yes, <input type="checkbox"/> PE <input type="checkbox"/> RW <input type="checkbox"/> CST	

**GEORGIA DEPARTMENT OF TRANSPORTATION  
SOLICITED P3 PROJECT PROCUREMENT DATA REQUEST FORM**

**024. Project Location Map**



**GEORGIA DEPARTMENT OF TRANSPORTATION  
SOLICITED P3 PROJECT PROCUREMENT DATA REQUEST FORM**

**Project Development Status /Schedule**

025. Vetted Planning – List and Provide Source Click here to enter text.	
026. Concept Development Click here to enter text.	Choose an item. Completion Date: Click here to enter a date.
027. Database & Surveys Click here to enter text.	Choose an item. Completion Date: Click here to enter a date.
028. Level of Environmental Analysis	Choose an item.
029. Environmental Activity Click here to enter text.	
030. Expected FONSI/ROD Date	Click here to enter a date.
031. Preliminary Design Click here to enter text.	Choose an item. Completion Date: Click here to enter a date.
032. Traffic & Revenue Studies Click here to enter text.	Choose an item. Completion Date: Click here to enter a date.
033. Transit Area Development Studies Click here to enter text.	Choose an item. Completion Date: Click here to enter a date.
034. Right-of-Way Estimates Click here to enter text.	Choose an item. Completion Date: Click here to enter a date.
035. Utility Estimates Click here to enter text.	Choose an item. Completion Date: Click here to enter a date.
036. Cost Estimates Click here to enter text.	Choose an item. Completion Date: Click here to enter a date.
037. Benefit/Cost Studies Click here to enter text.	Choose an item. Completion Date: Click here to enter a date.
038. Operations & Maintenance Cost Forecasts Click here to enter text.	Choose an item. Completion Date: Click here to enter a date.
039. Expected Financial Close Date	Click here to enter a date.
040. Expected Begin Construction Date	Click here to enter a date.
041. Expected Opening Date	Click here to enter a date.
042. PDA Timeline	
043. Hard Bid Timeline	

**GEORGIA DEPARTMENT OF TRANSPORTATION  
SOLICITED P3 PROJECT PROCUREMENT DATA REQUEST FORM**

--

**Project Support, Policies, and/or Issues**

044. Does the Project have a Political Sponsor or Champion?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, List: <a href="#">Click here to enter text.</a>		
045. Description of Public/Political Support	<a href="#">Click here to enter text.</a>	
046. Outstanding & Applicable Legal Issues	<a href="#">Click here to enter text.</a>	
047. Environmental Issues	<a href="#">Click here to enter text.</a>	
048. Applicable Policy Issues and/or Decisions to be Made	<a href="#">Click here to enter text.</a>	

**Project Financing/Proposed Funding**

049. Project Cost (if Available)	\$	Estimate Date: <a href="#">Click here to enter a date.</a>	
050. Project Cost Assumptions: <a href="#">Click here to enter text.</a>			
051. Public Sector – Programmed Funds			
	TIP (Present-2013)	Long Range (2014+)	Aspirational (2031+)
PE	\$	\$	\$
RW	\$	\$	\$
CST	\$	\$	\$
052. Debt Term	years		
053. Gross Revenues	\$	Estimate Date: <a href="#">Click here to enter a date.</a>	
054. Net Revenues	\$	Estimate Date: <a href="#">Click here to enter a date.</a>	
055. Financeable Revenues	\$	Estimate Date: <a href="#">Click here to enter a date.</a>	
056. Project Revenues Assumptions: <a href="#">Click here to enter text.</a>			
057. Funding Gap, Neutral, Surplus?	Choose an item.	Amount: \$	
058. Is 3 <sup>rd</sup> Party Funding Applicable? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If yes, Briefly Describe: <a href="#">Click here to enter text.</a>			
059. Are 3 <sup>rd</sup> Party R/W Donations Applicable? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If yes, Briefly Describe: <a href="#">Click here to enter text.</a>			
060. Does the Project Have an Existing Earmark or Grant? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If yes, Briefly Describe (including amount): <a href="#">Click here to enter text.</a>			

**GEORGIA DEPARTMENT OF TRANSPORTATION  
SOLICITED P3 PROJECT PROCUREMENT DATA REQUEST FORM**

061. Candidate for a Grant, Subsidy or Earmark?  Yes  No  
If yes, Briefly Describe: [Click here to enter text.](#)

**062. Project Risks/Concerns**

[Click here to enter text.](#)

## **4. PROJECT SCREENING AND EVALUATION FORM**

**P3 Project Screening Criteria and Evaluation Form  
PROJECT •**

[DATE]

	Actual score	Maximum score
<b>1. Potential for Value Added From Private Sector Involvement</b>	0	15

No.	Criterion	Comments (including any critical concerns)
1	To what extent can life cycle efficiencies and facility performance be optimized over time?	
2	To what extent can the design benefit from private sector innovation?	
3	To what extent can the construction benefit from private sector innovation?	
4	To what extent can operations and maintenance benefit from private sector innovation?	
5	What is the potential for integration issues/problems if the design, construction, operation and/or maintenance are performed by separate entities?	
6	To what extent will expedited project delivery benefit the State's mobility needs?	

	Actual score	Maximum score
<b>2. Institutional / Political Support</b>	0	25

No.	Criterion	Comments (including any critical concerns)
1	Does the project have support from the general public / elected officials?	
2	To what extent does the project address a critical transportation need?	
3	Is the project consistent with, as relevant, the Statewide Strategic Plan or MPO Long Range Plans?	
4	Is there consensus among the various local and regional authorities to pursue the project?	

	Actual score	Maximum score
<b>3. Project Maturity</b>	0	15

No.	Criterion	Comments (including any critical concerns)
1	To what extent have the environmental documents been developed?	
2	What is the probability that the project can achieve environmental clearance within [3] years?	

	Actual score	Maximum score
<b>4. Financial Feasibility</b>	0	25

No.	Criterion	Comments (including any critical concerns)
1	To what extent does the project have committed public funding?	
2	To what extent can public funding be leveraged by private financing/funding?	
3	To what extent can dedicated funds (i.e. tolls, taxes) be made available for the project?	

	Actual score	Maximum score
<b>5. Project Scope Suitability</b>	0	10

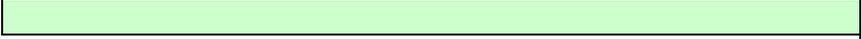
No.	Criterion	Comments (including any critical concerns)
1	To what extent does the project's technical complexity invite potential for innovation and risk transfer?	
2	How well is the project scope defined?	
3	To what extent does the project facilitate multiple modes of travel?	

	Actual score	Maximum score
<b>6. Market Interest</b>	0	10

No.	Criterion	Comments (including any critical concerns)
1	To what extent will the project be attractive to investors?	

<b>RESULTS</b>	
Is there a potential critical concern that limits the project's ability to be procured as a PPP in the near term?	

**Recommended P3 delivery method**



	<b>Actual score</b>	<b>Maximum score</b>	
1. Potential for Value Added From Private Sector Involvement	0	15	
2. Institutional / Political Support	0	25	
3. Project Maturity	0	15	
4. Financial Feasibility	0	25	
5. Project Scope Suitability	0	10	
6. Market Interest	0	10	
<b>Total project score</b>	<b>0</b>	<b>100</b>	Total maximum score must = 100
		<b>OK</b>	Check that maximum score = 100

## **5. PROJECT RISK ASSESSMENT CHART**

**GEORGIA DEPARTMENT OF TRANSPORTATION**

*[Project]*

**Risk Assessment Chart**

Draft – \_\_\_\_\_

<b>Risk</b>	<b>Prob.</b> (1 – 3)	<b>Impact</b> (1 – 3)	<b>Rating</b> (1 – 9)	<b>Comment</b>	<b>Action</b>
<b>Protest</b>					
Scope Increase by adding O&M, ROW and/or Financial Services post-RFQ					
<b>Design</b>					
Third Party Design Approvals					
Pavement Design Surface Roadways Subsurface Roadways					
Basic Configuration					
Identification of Right of Way Limits / Acquisition of additional parcels					
<b>Railroads</b>					
Coordination Approval					
<b>Utilities</b>					
Misidentified Utility locations, types, sizes					

<b>Risk</b>	<b>Prob.</b> (1 – 3)	<b>Impact</b> (1 – 3)	<b>Rating</b> (1 – 9)	<b>Comment</b>	<b>Action</b>
Utility design reviews / construction by utilities					
Utility owner coordination / utility owner delays					
Not enough ROW to relocate utilities along the corridor.					
<b>Construction</b>					
Coordination with other projects GDOT Toll systems Others?					
Traffic Management / Incident Management (during construction)					
Damage to adjacent structures					
Community Impacts					
<b>Governmental Approvals and Permits</b>					
Obtain EA and FONSI					
Need to go outside EA R/W – drainage easements, utility easements, construction easements, life systems					
Obtain 404 Permit					
Obtain 401 Permit					

<b>Risk</b>	<b>Prob.</b> (1 – 3)	<b>Impact</b> (1 – 3)	<b>Rating</b> (1 – 9)	<b>Comment</b>	<b>Action</b>
EPA					
Obtain Other Governmental Approvals and Permits					
Changes to governmental approvals and permits					
SEP-14/SEP-15					
Tolling the Interstate					
<b>Contaminated Materials</b>					
Contaminated Soil					
Quantities Unexpected Types Unexpected Locations					
Asbestos/Lead					
Contaminated Groundwater					
<b>Differing Site Conditions</b>					
Surface portion					
Groundwater level					
<b>Force Majeure and Other Conditions</b>					
Weather					
Archeological/Cultural Resources					
Biological Recourses / Endangered Species					
Third Party Litigation					

<b>Risk</b>	<b>Prob.</b> (1 – 3)	<b>Impact</b> (1 – 3)	<b>Rating</b> (1 – 9)	<b>Comment</b>	<b>Action</b>
<b>Schedule</b>					
Outside date to issue NTP					
Completion Deadlines					
<b>Owner Payment</b>					
Toll Revenue Bonds					
Price adjustment – steel, fuels					
<b>Tunnel and ITS Systems</b>					
Tunnel System					
ITS System					
<b>Bonds</b>					
Performance and Payment Bond					
Warranty Bonds					
<b>Insurance</b>					
Insurance program costs					
<b>Operations and Maintenance</b>					

## **6. PROJECT RISK ALLOCATION CHART**

\_\_\_\_\_ Project  
**Working Group Recommendations for Risk Allocation**  
**Design and Construction Phase**

<b>Risk</b>	<b>Developer Risk</b>	<b>GDOT risk</b>	<b>Relief Event</b>	<b>Compensation Event</b>	
A. Right of Way					
i. Acquisition – parcels designated in RFP to be acquired by Agency by specified deadlines					
ii. Acquisition – parcels designated in RFP to be acquired by Developer (up to condemnation)					
iii. Sufficiency					
iv. Drainage easements and required ancillary properties					
v. Developer-designated right of way					
vi. Temporary right of way					
vii. ROW Cost					
B. Geotech					
i. Accuracy of information supplied					
ii. Differing Subsurface Conditions					

Risk	Developer Risk	GDOT risk	Relief Event	Compensation Event	
C. Groundwater					
D. Hazardous Materials					
i. Known/Identified as of Proposal Date					
ii. Unknown as of Proposal Date					
iii. Occuring During Design and Construction					
iv. Generator Status					
E. Existing Defects					
i. Existing road incorporated into project					
ii. Reconstructed Portions					
iii. Others					
F. Governmental Approvals					
i. RODs					
ii. 404					
iii. 401					
iv. Tolling					
v. All other Governmental Approvals/Permits					
vi. Offsite Mitigation					
G. Third Party Approvals					
i. Railroad					

Risk	Developer Risk	GDOT risk	Relief Event	Compensation Event	
ii. Others					
H. Utilities					
i. Accuracy of information supplied					
ii. Delay by utility					
iii. Unidentified/misidentified utilities					
iv. Reimbursement					
v. Insufficient right of way					
vi. New utilities coming in during design and construction (not previously disclosed)					
vii. Acquiring Utility Easements					
viii. Master Utility Agreements					
I. Design					
i. Design Review					
ii. Design QC/QA; Independent Engineer					
J. Construction					
i. Construction Review					
ii. Construction QC/QA; Independent Engineer					
iii. Maintenance/ Security During Construction					

Risk	Developer Risk	GDOT risk	Relief Event	Compensation Event	
iv. Coordination with other Contractors (D/B work)					
K. Tolling System					
i. Meeting Performance Requirements					
ii. Interoperability					
L. Change in Law					
i. Discriminatory					
ii. General					
M. Change in Standards					
i. Discriminatory					
ii. General					
N. Litigation					
i. Permits/Approvals					
O. Force Majeure					

\_\_\_\_\_ Project  
**Working Group Recommendations for Risk Allocation**  
**O&M Phase**

<b>Risk</b>	<b>Developer Risk</b>	<b>GDOT Risk</b>	<b>Relief Event</b>	<b>Compensation Event</b>	<b>Comments</b>
A. Hazardous Materials					
i. Occuring During O&M Phase					
ii. Occuring as a result of accidents					
B. Existing Defects					
i. Existing road					
ii. Reconstructed Portions					
iii. Others?					
C. Governmental Approvals					
i. Operating Permits?					
ii. Offsite Mitigation					
D. Third Party Approvals (other than utilities)					
i. Railroad					
ii. Others					
E. Utilities					

Risk	Developer Risk	GDOT Risk	Relief Event	Compensation Event	Comments
i. New utilities during O&M phase					
ii. Needed for operations					
F. Renewal Work					
i. Cost					
ii. Impact on revenues					
G. Upgrade Work – Agency initiated					
i. Cost					
ii. Impact on revenues					
H. Upgrade Work – Developer initiated					
i. Cost					
ii. Impact on revenues					
I. Upgrade Work – Mandated					
i. Cost					
ii. Impact on revenues					
J. Handback Work					
i. Cost					
ii. Impact on revenues					

Risk	Developer Risk	GDOT Risk	Relief Event	Compensation Event	Comments
K. Rehab/Renewal Work - Design					
i. Design Review					
ii. Design QC/QA; Independent Engineer					
L. Upgrade Work – Design					
i. Design Review					
ii. Design QC/QA; Independent Engineer					
M. Handback/ Renewal Work - Design					
i. Design Review					
ii. Design QC/QA; Independent Engineer					
N. Renewal Work Construction					
i. Construction Review					
ii. Construction QC/QA; Independent Engineer					
iii. Maintenance/ Security During Construction					

Risk	Developer Risk	GDOT Risk	Relief Event	Compensation Event	Comments
O. Upgrade Work – Agency Initiated -- Construction					
i. Construction Review					
ii. Construction QC/QA; Independent Engineer					
iii. Maintenance/ Security During Construction					
P. Upgrade Work – Developer Initiated -- Construction					
i. Construction Review					
ii. Construction QC/QA; Independent Engineer					
iii. Maintenance/ Security During Construction					
Q. Upgrade Work – Mandated - Construction					
i. Construction Review					

Risk	Developer Risk	GDOT Risk	Relief Event	Compensation Event	Comments
ii. Construction QC/QA; Independent Engineer					
iii. Maintenance/ Security During Construction					
R. Handback Work -- Construction					
i. Construction Review					
ii. Construction QC/QA; Independent Engineer					
iii. Maintenance/ Security During Construction					
S. Tolling System					
i. Meeting Performance Requirements					
ii. Interoperability					
iii. Technological Updates/Advances					
T. Change in Law					
i. Discriminatory					
ii. General					

<b>Risk</b>	<b>Developer Risk</b>	<b>GDOT Risk</b>	<b>Relief Event</b>	<b>Compensation Event</b>	<b>Comments</b>
U. Change in Standards					
i. Discriminatory					
ii. General					
V. Force Majeure					
W. Tolls					
i. Insufficiency					
ii. Less than projections					
iii. Collection					
iv. Enforcement re: Violators					
v. Collection of other Operator's Customers					
X. Road Enforcement					
Y. Connector/Access Roads					
i. Maintenance responsibility					
ii. Impact on revenues for poor maintenance					

## **7. CONFLICTS OF INTEREST AND ETHICS POLICY**

# *Principles Governing Conflicts of Interest* *Public Private Partnerships (P3)*

## *Commissioner's Policy*

---

---

### A. Purpose.

This Conflict of Interest policy prescribes ethical standards of conduct applicable to private entities, including Proposers and Consultants, participating in the department's public-private partnerships (P3) programs for the purpose of:

1. avoiding circumstances where a private entity obtains, or appears to obtain, an unfair competitive advantage as a result of work performed for the department;
2. providing clear guidance to private entities so they may assess, and make informed business decisions concerning their participation in the project(s);
3. creating a transparent environment where private entities can compete fairly to either work for the department or the developers of a project;
4. protecting the department's interests including confidential and sensitive project-specific and programmatic information;
5. ensuring that private entities can perform their services free from actual or apparent conflicts of interest;
6. ensuring that the department complies with all Conflict of Interest standards contained within current Environmental Processes;
7. ensuring that Conflict of Interest considerations do not preclude the department from having the necessary and appropriate resources needed in the timely delivery of its program; and
8. promoting the integrity, competitiveness and fairness of the P3 program and the department's P3 procurement processes.

### B. Definitions.

1. **"Affiliate"** means any entity which directly or indirectly controls, or is controlled by, or is under common control with, the business entity.
2. **"Conflict of Interest"** means a circumstance arising out of existing or past activities, business interests, familial relationships, contractual relationships and/or organizational structure (i.e., parent entities, subsidiaries, affiliates, subconsultants, etc.) wherein (i) the Consultant is or may be unable to render

impartial assistance or advice to the department, (ii) the Consultant's objectivity in performing the scope of work sought by the department is or might be otherwise impaired, (iii) the Proposer or Consultant has an unfair competitive advantage; (iv) the Consultant's performance of services on behalf of the department does or may provide an unfair competitive advantage to a third party; or (v) whether or not accurate, there is a perception of or appearance of impropriety or unfair competitive advantage benefiting the Proposer, Consultant or a third party as a result of Proposer's or Consultant's participation in a project.

3. **“Consultant”** means any person or business entity (including any individual employee of such entity or division of such entity and any Affiliate of such entity) retained by the department or on behalf of the department to provide professional consulting services in connection with the P3 program or a P3 project, including any Subconsultants and individual employees of Subconsultants.
4. **“Subconsultant”** includes those that have performed or will perform work on behalf of a Consultant to the department in the performance of the Consultant's work for the department.
5. **“Proposer”** means any person or business entity (including any division of such entity and any Affiliate of such entity) that submits a letter of interest, statement of qualifications, solicited proposal, technical proposal or other submission in order to participate in a project for the development, planning, design, construction, financing, operation and/or maintenance of a P3 project. This term may include participation as an equity owner, contractor, team consultant, or subconsultant of or to a proposer for that project, or an individual or business entity having a financial interest in any of the foregoing entities with respect to that project.
6. **“Environmental Process”** means the procedures and actions required to address federal and/or state requirements relating to environmental regulation. For federal aid projects, this means the National Environmental Policy Act (NEPA) process. For state-funded projects which are within the sole jurisdiction of state environmental laws and regulation, this means the Georgia Environmental Policy Act (GEPA).

C. Applicability.

This Conflict of Interest policy applies to all P3 projects undertaken by the department. This policy applies to Consultants and their individual employees who participated in the performance of services for the department.

To the extent that the department has previously consented to a Consultant's performance of services that may be in conflict with this policy, this policy does not modify or alter the prior consent. The foregoing does not prevent, however, the application of this policy to the Consultant for other projects, including taking into account the performance of services on the project for which consent was obtained. This subsection may by extension prohibit or restrict the ability of a Proposer to have a Consultant participate on

the Proposer team as an equity owner or team member, act as a consultant or subconsultant to the Proposer, or have a financial interest in the Proposer or an equity owner or team member of the Proposer.

D. Period in which a Conflict of Interest applies.

If the department's Commissioner or his designee determines that the performance of services by a Consultant raises a Conflict of Interest, the resulting prohibition continues for one year after the date the performance of services ends.

1. Application to an individual. The Conflict of Interest applies to an employee of or an individual who was formally employed by the Consultant and who materially participated in the performance of services for the department.
2. Application to new firm. If a Conflict of Interest is determined to apply to an individual pursuant to paragraph (1) of this subsection, the Conflict of Interest and prohibition shall not apply to the individual's new place of employment. If the new employer is otherwise eligible to participate as a Consultant in the P3 program, the department may, after consideration of the factors set forth in Section J and subject to implementation of mitigative measures as described in Section K, permit the new employer to remain eligible despite the employment of the individual. The Conflict of Interest and prohibition with respect to the individual, however, will apply to an Affiliate of the individual's previous employer.

E. Federal requirements.

For federal-aid projects, the department must comply with all applicable federal requirements related to conflicts of interests, including the Federal Highway Administration's organizational conflict of interest regulations (found in 23 CFR §636.116). The requirements of this subsection do not limit, modify, or otherwise alter the effect of those regulations, and will be applied consistent with those regulations.

F. Gifts and Benefits.

A Proposer or Consultant participating in the P3 program, or an Affiliate of any of those entities, may not offer, give, or agree to give a gift or benefit to a department employee or member of the Commission whose work for the department includes the performance of procurement services relating to a P3 project under this policy, or who participates in the administration of a P3 procurement under this policy. Notwithstanding this prohibition, a Consultant (unless a member of a Proposer team) may:

1. Pay for an ordinary business meal; and
2. Offer, give, or agree to give a token item that does not exceed an estimated value of \$25 (excluding cash, checks, stocks, bonds, or similar items), where the item is distributed generally as a normal means of advertising.

G. Conflict of Interest disclosure.

Proposers and Consultants participating in the P3 program shall arrange their affairs so as to prevent a Conflict of Interest from arising. Any Proposer or Consultant having or foreseeably having a Conflict of Interest shall disclose the matter to the department at:

Office of the Commissioner, Department of Transportation, One Georgia Center, 22nd Floor, 600 W. Peachtree Street, NW, Atlanta, Georgia 30308.

The department will review the matter and make a determination in accordance with the provisions below, as the case may be, as to whether the particular Proposer or Consultant has a Conflict of Interest with respect to participation in the P3 program.

The obligation to disclose is ongoing. Proposers and Consultants should undertake reasonable due diligence, including necessary conflict searches, to determine whether new actual, perceived or potential Conflicts of Interest arise. Due diligence should extend to investigation of past relationships and, for corporate entities, to officers and directors. If a Proposer or Consultant becomes aware of an actual, perceived or potential Conflict of Interest at any time during its participation in the P3 program, such entity shall disclose the matter as described herein.

The failure to comply with these above guidelines or otherwise disclose an actual, perceived or potential Conflict of Interest, may, in the department's sole discretion, result in the Proposer or Consultant being:

1. precluded and/or disqualified from participation in a P3 project, including any competitive process associated therewith,
2. required to implement mitigative measures, and/or
3. segregated or terminated from a P3 project, as the case may be.

H. Proposer's general Conflict of Interest standards.

Proposers shall require its proposed team members to identify potential conflicts of interest (real or perceived) relative to a P3 project. Proposers are notified that prior or existing contractual obligations between a company and the department relative to a specific P3 project may present a Conflict of Interest. If a potential Conflict of Interest is identified, the Proposer shall present the pertinent information to the department. The department, in its sole discretion, will make a determination relative to potential organizational Conflicts of Interest. An organization on a Proposer team found to have a Conflict of Interest that cannot be mitigated in the sole discretion of the department, shall not be allowed to participate on the P3 project.

The department, in its sole discretion, will make a determination relative to potential organizational Conflicts of Interest for a Proposer team or a real or perceived competitive advantage, and its ability to mitigate such a conflict. A Proposer team member determined to have a Conflict of Interest or competitive advantage relative to a specific P3 project that cannot be mitigated, shall not be allowed to participate as a Proposer team member for the project. Failure to abide by the department's determination in this matter may result in a proposal being declared non-responsive. The department reserves the right, in its sole discretion, to make determinations relative to potential conflicts of interest on a project specific basis.

A Conflict of Interest for a Proposer team member may include the following:

1. A Consultant hired by the department to provide assistance in the development of instructions to proposers or evaluation criteria for a P3 project.
2. A Consultant by the department to provide assistance in development of instructions to proposers or evaluation criteria as part of the programmatic guidance or procurement documents for the department's P3 program, and as a result has a unique competitive advantage relative to a project.
3. A Consultant with a present or former contract with the department to prepare planning, environmental, engineering, or technical work product for the subject project, and such organization has a potential competitive advantage because such work product is not available to all potential Proposers in a timely manner prior to the procurement process.

The department may, in its sole discretion, determine that a Conflict of Interest or a real or perceived competitive advantage by a Proposer team member may be mitigated by disclosing all or a portion of the work product produced by the Consultant subject to review under this section.

I. Consultant's general Conflict of Interest standards.

1. Providing Services for the Same Project
  - A. Except as provided in subsection B below, no Consultant providing services with respect to a P3 project may be a Proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a Proposer for that project, or have a financial interest in any of the foregoing entities with respect to that project.
  - B. The department, after consideration of the factors set forth in Section J and subject to implementation of mitigative measures as described in Section K, may in its sole discretion permit a Consultant that is actively providing or has provided preliminary engineering and architectural services to the department with respect to a P3 project, or that performed and completed environmental or traffic and

revenue services for a P3 project, to be a Proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a Proposer for that same project, or have a financial interest in any of the foregoing entities with respect to that project.

2. Providing Services on a Different Project

A. Except as provided in subsection B below and subject to the department's consideration of the factors set forth in Section J and/or implementation of the mitigative measures described in Section K, a Consultant performing services or that has completed services on a P3 project will not be prohibited from participating on a different P3 project as a Proposer or participating as an equity owner, team member, consultant, or subconsultant of or to a Proposer for a different P3 project, or having a financial interest in any of the foregoing entities with respect to a different P3 project.

B. A Consultant actively engaged and performing procurement services or financial services for the department with respect to a P3 project may not be a Proposer or participate as an equity owner, team member, consultant, or subconsultant of or to a Proposer for that project or any other P3 project, or have a financial interest in any of the foregoing entities with respect to any P3 project.

J. Conflict of Interest Factors to Consider for Consultants.

The department shall consider the following relevant factors, including case-specific factors, in determining whether a Consultant should be permitted to participate or to continue to participate in a P3 project:

1. Relevance or Materiality of Subject Information

A. This factor may include considering whether or not the Consultant or prospective Consultant has in its possession information that will not and should not be made public or disclosed to other P3 project participants, as the case may be, or that will give an unfair advantage to the Consultant or prospective Consultant or to a Proposer or prospective Proposer, including the following:

(i) Planning, budgetary, or business information

(ii) The department's strategies, tactics, plans, alternatives or other inside information concerning the P3 procurement; or

(iii) Information prepared for use by the department for the purpose of evaluating proposals, for defining the scope of the work, or for determining terms, conditions or specifications.

- B. This factor may include considering the “age” of the information, including regarding whether the length of time between the acquisition of the information, combined with interim developments within a project (e.g., transaction structure, design, etc.), is sufficient to render the information irrelevant, immaterial, or of little or no value.
  - C. This factor may include considering the extent to which the information is or will be available to other Proposers and the time other Proposers had or will have to analyze and assimilate the information.
2. Materiality of the Relationship
- A. This factor may involve considering whether the subject relationship involves branch offices or a parent company of the Consultant or the prospective Consultant, and the degree of separation of work teams and information between the offices and companies.
  - B. This factor may include considering the substance of a subject relationship, including whether the relationship is so indirect or remote that an actual or perceived Conflict of Interest is sufficiently mitigated (e.g., no effective risk of passing or use of confidential information or bias in the discharge of functions).
3. Resources and Expertise
- A. This factor may include considering the expertise required to undertake the subject work and the availability of suitably qualified and skilled Consultants.
  - B. This factor may include considering the magnitude of the resources required to deliver a P3 project in a timely manner.
  - C. This factor may include disclosing these exigencies in a competitive process, including to any relevant governing association or body to obtain its concurrence, and requiring the participation of prospective Consultants in the process to be conditioned on their acknowledgement of and acceptance of the participation of Consultants that might otherwise be excluded due to actual or perceived Conflicts of Interest.
4. Professional Governing Body Rules - Common Law
- A. This factor may include considering the rules that are put in place by professional or other governing bodies regarding actual and perceived Conflicts of Interest and determining whether delivery of a certification or acknowledgement by a prospective Consultant or Consultant of its compliance with any such rules would be sufficient mitigation.

- B. This factor may include obtaining the advice of any such professional or governing body to the participation of a prospective Consultant or the continued participation of a Consultant, as the case may be.
- C. This factor may include considering the case law relevant to Conflicts of Interest matters.

K. Suitable Safeguards and Mitigation Efforts for Consultants.

1. If the department, on consideration of the relevant factors set forth in Section J above, including case-specific factors, is of the view that a Consultant should be permitted to participate or to continue to participate in a P3 project, then the department, in its sole discretion, may require the Consultant to implement suitable safeguards, as described below in subsection 2, to mitigate any Conflict of Interest.
2. Ethical walls and related safeguards and procedures may include the segregation of individuals and information within a prospective Consultant firm or company, thereby allowing the prospective Consultant firm or company to participate or continue to participate in a P3 project.
  - A. Segregated individuals may include those persons who were involved in an earlier phase of a project or in work associated with or relevant to a project.
  - B. Segregated information may include confidential information obtained as a result of a Consultant's or prospective Consultant's former contracts with the department or a project or confidential information obtained from former or current department employees.
3. The department may require assurances or demonstration of the type of ethical walls and the effectiveness of the ethical walls.
4. The department may require information (including in affidavit form) as to when ethical walls were put into place, how they operate, and whether there is any form of notification within the subject firm or company of their existence.
5. The department may audit for compliance with ethical walls and related safeguards and procedures.

L. Other Relevant Legislation, Rules and Regulations.

Nothing contained in this policy is intended to limit, modify or otherwise alter the applicability or effect of other relevant (federal, state and local) law, rules and regulations pertaining to conflicts of interest.

M. Provisions are nonexclusive.

The provisions in this policy neither purport to address every situation that may arise in the context of the department's P3 initiatives nor to mandate a particular decision or determination by the department. The department retains the ultimate and sole discretion to determine on a case-by-case basis whether a Conflict of Interest exists and what actions may be appropriate to avoid, neutralize, or mitigate any actual or potential conflict, or the appearance of any conflict. The provisions of this policy shall not be construed to preclude or condone any conduct with regard to projects.

---