

Florida Intelligence Update

By Michael West

Last Updated: Thursday 11 July 2013

Categories: Florida - PPP

INSP/8baa0dd7-70a6-43ec-a6f6-1f1f6c083984

Executive Summary

Florida has improved its score on the inspiratia intelligence index from 67.35% to 71.40%. Governor Rick Scott has signed new legislation providing a firm basis for public authorities to procure P3 deals. The new statute also mitigates some procurement risks and provides for the creation of a task force to devise better procurement practices. Some local governments have already adopted new measures in line with the legislation.

The state's economy is improving but an increasing population is expected to put higher demands on infrastructure, further boosting the appeal of P3. A trade association has been organised by the P3 industry within the state and has started to promote the wider adoption of the model and spread best practice. FDOT has continued to procure both DBFOM and DDBFOM deals as the department keeps a focus on expanding capacity and looks at the potential of tolling to boost revenues. The index has a positive outlook (73.80%) as new P3 deals are structured and tendered and the task force reports back.

Florida Update

Several developments have taken place since inspiratia last visited Florida's P3 market in October 2012.

Florida's Governor Rick Scott signed HB 85 into law on 27 June 2013 expanding the scope of existing P3 legislation to include the model's use by public authorities for a wide range of infrastructure. The law contained further provisions establishing a taskforce to look into state-wide P3 procurement guidelines, mitigating appropriation risk, allowing for special contracts between P3s and charitable organisations and enabling the Orlando-Orange County Expressway Authority to tender long-term leases.

The legislation was well-supported by business groups and Governor Rick Scott is planning to hold a ceremonial bill signing in Miami signalling his support for the model. Opposition came primarily from organisations that wanted greater flexibility in providing P3 rather than against the model itself. Local authorities and other public sector organisations have already started to bring in new P3 regulations.

The Florida Council for P3 was organised as a state trade association for the P3 industry. It intends to promote the adoption of the model throughout the state and is planning workshops and networking events.

Meanwhile, the Florida Department of Transportation has continued to progress projects. Deals to have closed in Florida recently include the SR 79, I-75, SR 9B and the I-95 DBFOM deals with 4 teams shortlisted on the US\$2 billion I-4 Ultimate which has a 40-year concession.

The state's economy has started to recover, helping to put the government back on to a sound fiscal footing. However, with changing demographics will generate long-term economic growth for the state, it will also require more and better infrastructure. This was underlined by an EPA report that an estimated \$16.5 billion in investment into drinking water infrastructure is needed by 2030.

Table 1: inspiratia intelligence index: breakdown by indicator

	Q4 2012	Q3 2013	Outlook
Index	67.35	71.40	73.80
International	44.00	44.00	44.00
Macro	58.00	62.00	62.00
Debt	76.00	84.00	84.00
Institutions	86.00	86.00	86.00
Political	60.00	70.00	70.00
Legal & Regulatory	71.00	76.00	84.00
Financial	72.00	74.00	74.00

Source: inspiratia | intelligence

Florida has increased its score on the inspiratia intelligence index from 67.35% to 71.40%. Florida has seen an uptick in Legal and Regulatory Indicator from 71% to 76% as the state passed reforms providing a more secure legal basis for the procurement of social infrastructure and other municipal buildings. FDOT has also managed to successfully close several deals [Graph 1] and is currently procuring the I-4 highway.

The state has seen a broad rise in its indicators following the signing of HB 85 and improving macroeconomic conditions. The Political Support Indicator has risen from 60% to 70% following strong backing for HB 85 from public entities, Governor Rick Scott and businesses. The Financial Indicator has improved from 72% to 74% with the new legislation mitigating several risks. The Macroeconomic and Debt Management Indicators have also risen [Table 1].

Florida has a positive outlook of 73.80% with the legal and regulatory indicator set to rise to 84% as the Task Force feeds back proposals to the legislature and the newly empowered public entities build experience with the model.

Graph 1: inspiratia intelligence index: Q3 2012 to present

Legislation

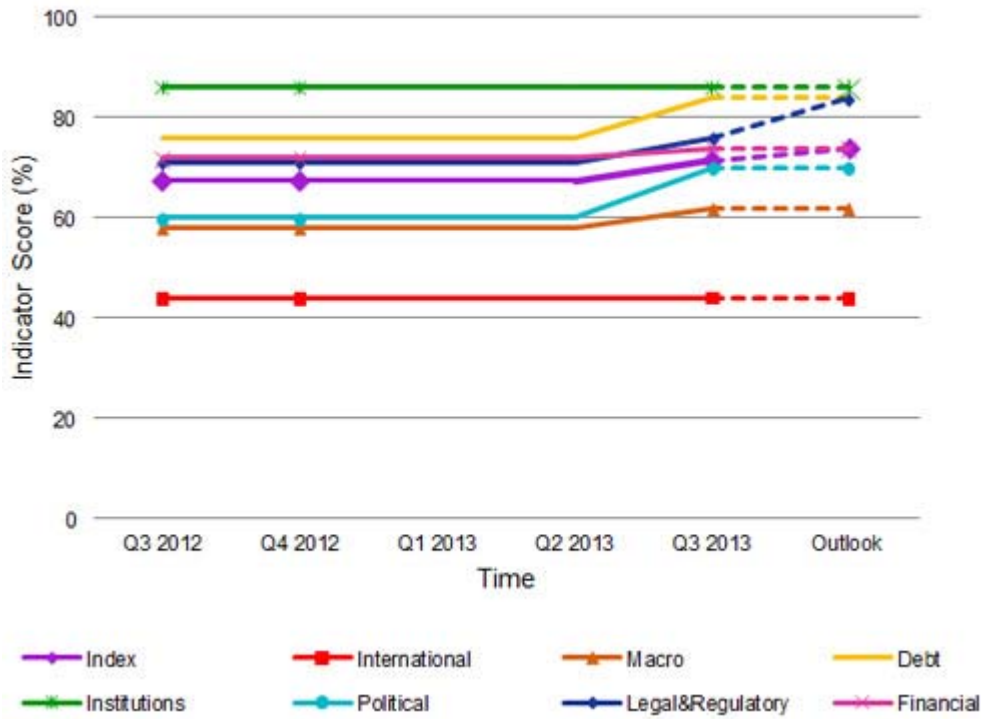
HB 85 was introduced into Florida's House of Representatives on 3 January 2013 by state representative Greg Steube and cross-filed with a senate version – SB 84 – introduced by state senator Miguel Diaz de la Portilla.

Motivation for the bill stemmed from investors' worries over the inconsistency and unpredictability of local government procurement practices as well as to advertise the state's capacity to do P3 deals.

There was also pressure from counties that didn't have Home Rule authority to introduce a solid legal basis to procure P3 projects. Some small-scale P3 projects had been carried out at a municipal level under Home Rule authority but county municipalities employed different approaches to deals. Furthermore, not all counties had this ability with charter and non-charter counties granted differing Home Rule powers. Escambia County was one county that felt it did not have the required home rule authority to procure P3 but wished to use the model for a road project.

The legislation provided a general basis for P3 within the state allowing responsible public entities to solicit deals and to receive unsolicited proposals. The law also ensures the wider industry knows there is a legislative framework available.

After steady progress, the bill was passed on 3 May 2013 with bi-partisan support in both the Senate and the House – passing 37-0 and 111-4 respectively. Governor Rick Scott signed the bill on 27 June and it became effective on 1 July 2013.



[News Story]. The governor's support for P3 is further demonstrated by his intention to hold a ceremonial signing of the law in Miami in mid-July.

The bill was prepared with assistance from Becker-Poliakoff and in close discussion with the Associated Builders and Contractors. It was well supported with the Florida Chamber of Commerce, the Associated Industries of Florida, the Surety & Fidelity Association of America all lobbying for its passage.

Opposition primarily came from the Florida League of Cities, an association of local governments which lobbied against the bill and urged Governor to veto it. The main objection was the limited municipal government's power

to enter into P3 as they already possessed the authority through Home Rule. They also argued that complex deals such as the Port of Miami Tunnel may not be possible under the new framework. Finally they claimed that some aspects were unconstitutional. However, inspiratia understands the League does not intend to mount a challenge against the law instead waiting to see how it works in practice.

The legislation enables the use of P3 for public-purpose facilities and county road projects but also contains a number of innovative measures to lower project risks.

Public-purpose facilities

The list of facilities that can be procured through the new legislation includes:

- water, wastewater, or surface water management
- educational
- airport
- vehicle parking
- medical or nursing care
- recreational
- sporting or cultural
- mass transit
- rail
- ferry
- seaport
- fuel supply
- oil or gas pipeline
- improvements including equipment
- any facility used by the public or in support of an accepted public purpose

The law establishes a basis for public entities to solicit proposals. Notices will need to be published in the Florida Administrative Register after having been assessed to ensure there is:

- public need for the project or a benefit to be derived
- estimated cost is reasonable
- will be carried out in a timely manner

HB 85 also set out the necessary components of comprehensive agreements:

- delivery of performance bond or other security deemed acceptable - these must also be in accordance with the state Little Miller Act
- review of the facility's design by the public entity
- inspection and monitoring of maintenance practices by the responsible public entity
- public liability insurance
- procedures that govern the rights and responsibilities between public and private parties during construction and operation
- fees, lease payments or services payments – this includes the possibility of charging user fees for the facility though revenues will be regulated by the public entity

The legislation also addressed several issues that were direct concerns of investors into P3. Appropriation risk is mitigated with P3s receiving priority in the annual budget allocation though while it does not eliminate the risk it does greatly reduce. Lenders' step-in rights have also been strengthened.

P3 has also been authorised for county road construction, expanding the model's possible use away from just state and interstate highways. Counties will be able to enter into P3 agreements regarding roads or a portion of a road in their territory as long as a public hearing is held and certain safeguards have been met.

Other provisions in the legislation include allowing public-private partnerships to contract public service work to either not-for-profit or charitable youth organisations and extending the time limit on leases awarded by the Orlando-Orange County Expressway Authority from 40 years to 99.

Unsolicited proposals

HB 85 provides for authorities to establish their own practices regarding the acceptance of unsolicited submissions including allowing them to set an application fee. Authorities will be required to publish a notice of the proposal after receiving it but they will be able to set their own time limit between 21 and 120 days to receive alternatives.

Unusually, the bill allows unsolicited proposals to be submitted to authorities that haven't published guidelines on accepting submissions. The provision allows the private sector greater scope in preparing proposed projects ensuring that they will be able to be presented to the relevant authority. The clause was inserted after analysis of other States suggested that few authorities had the resources or knowledge to produce the requisite guidelines. Inspiraia understands that preparation of unsolicited proposals has accelerated since the bill's signing.

Task Force

The legislation also provides for a Partnership for Public Facilities and Infrastructure Act Guidelines Task Force to be established. The task force will look at further ways to reform Florida's P3 procurement practices and what legislative changes might need to be implemented. It will prepare and recommend guidelines to the legislature which will then set a uniform P3 approach for the state. In the meantime, P3 deals will be able to be pursued before any resulting guidelines are put in place.

The task force will be appointed by 31 July 2013 consisting of the Secretary of Management Services and 6 other members appointed by the Governor representing:

- county government
- municipal government
- district school boards
- business

The first meeting will be by 31 August 2013 with a final report due by 1 July the following year [2014]. The task force will terminate on 31 December 2014.

Local Governments

Local governments have already started to express interest in the new law and some have undertaken measures to conform into line with its provisions.

Miami-Dade County Board of Commissioners passed Ordinance 13-72 on 6 July 2013. The resolution was sponsored by commissioners Juan Zapata and Lynda Bell and establishes a roadmap for public-private partnership projects [News Story].

The ordinance declares that the county's infrastructure requires improvement but that state and federal funding is inconsistent. Instead it points to private finance as a possible remedy.

It also instructs the Mayor to develop a P3 plan within 90 days and submit it to the Infrastructure Committee for review and approval. The plan will identify potential PPPs and will be revised every 6 months. The Mayor will also have to simplify identification and solicitation practices.

The ordinance also gives powers to create a P3 task force to improve the county's P3 programme. Miami-Dade has experience with the model having already been involved in the Port of Miami Tunnel [Market Insight].

Other counties considering P3 include Broward which is looking at the model's use for mobility hubs, important freight roads and other infrastructure.

Fort Lauderdale is pursuing a potential P3 deal as it seeks a private partner to build, finance and operate a replacement of the US Federal Building and Courthouse [News Story]. Local officials are developing an RFP seeking a private partner who would recover investment through lease payments and possibly through parking revenue.

Meanwhile the Florida city of Treasure Island is looking into P3 as a potential procurement route to develop its parking facilities [News Story]. A feasibility study was approved on 4 June 2013 and will be carried out by Tim Haas. The resolution for the study was moved by Commissioner Bildz and seconded by Commissioner Collins.

The City of Jacksonville has a P3 office but it was recently moved from the Mayor's Office to under the economic development department.

Other public authorities are also looking at using P3 to develop facilities. Seminole College is looking at procuring a US\$ million campus through P3. The Altamonte Springs Campus has been designed by HuntonBrady Architects and has received planning permission. Further steps are expected to be taken in August 2013.

Smaller projects being considered include Manatee County Port Authority looking at procuring a refrigeration container terminal while Escambia County had prepared an \$8 million road project in preparation of the bill's passage.

FDOT

Florida's Department of Transportation has had P3 authority since 1991 but specific enabling legislation was passed in 2011 [Intelligence Briefing].

Since then FDOT has carried out 14 projects which are either, BF, DBF or DBFOM.

Name	Type	Capex	Sponsor	Status
I-4 Ultimate in Orange & Seminole Counties	DBFOM	\$2.1 billion	N/A	Shortlist in June 2013
I-595 Improvements – 35-year concession	DBFOM	\$1.2 billion	I-595 Express	FC in March 2009, under construction
Port of Miami Tunnel – 35-year concession	DBFOM	\$663 million	MAT Concessionaire	FC in October 2009, under construction
SR 79	DBF	\$98 million	Anderson Columbia Company	FC January 2013, under construction
SR 9B	DBF	\$95 million	Infrastructure Development Partners	FC September 2012, under construction
I-75 North of SR 80 to South of SR78	DBF	\$72 million	DeMoya/Leware	FC September 2012, under construction
I-95 from South of SR 406 to North of SR 44	DBF	\$118 million	Lane Construction	FC August 2012, under construction
Palmetto Expressway Widening and Interchange Improvement Section 2	DBF	\$192 million	Condotte/DeMoya	Completed March 2012
I-95 Widening/ Pineda Causeway Interchange	DBF	\$200 million	Community Asphalt	Completed February 2012
US 1 Improvements in the "18-mile Stretch"	DBF	\$114 million	Community Asphalt	Completed February 2011
I-75 in Lee and Collier Counties	DBF	\$458 million	ACCI/API	Completed September 2010
I-95 Express Lanes (Phase 1)	DBF	\$139 million	FCC co-MCM	Completed April 2010
Palmetto Section 5 - SR 826/836 Interchange	DBF	\$564 million	Community Asphalt /Condotte/DeMoya	FC November 2009, under construction

I-4 Connector	Build-Finance	\$404 million	PCL/Archer Western	FC January 2010, under construction
US 19	Build-Finance	\$114 million	Hubbard Construction Company	FC October 2009, under construction

FDOT shortlisted 4 teams for the I-4 Ultimatum project on 4 June 2013 [News Story] after 7 teams submitted qualifications. The deal attracted great interest with over 1200 attendees at the project's industry forum.

The 4 teams competing represent a wide range of developers, equity providers and operators:

- 4wardPartners – Meridiam, Vinci, Walsh Investment, Archer-Western, Hubbard, The de Moya Group and AECOM
- I-4 Development Partners – Macquarie, OHL, FCC and HNTB
- I-4 Mobility Partners – Skanska Infrastructure Development, Skanska Civil Southeast, John Laing, Granite Construction, Lane Construction, HDR, Jacobs and ICA (Infrastructure Corporations of America)
- Ultimate Mobility Partners – InfraRed Capital Partners, Fluor, Kiewit Infrastructure, Cone & Graham, Parsons Transportation Group, Atkins and DBI Services

The I-4 went through a new project approval process where both the governor and legislature review the deal. The project's easy progression through this new process demonstrated the level of support for P3.

The department doesn't currently have a plan to procure more DBFOM or DBF deals but is continually evaluating possible projects. The main drivers for selecting P3 is the ability to speed completion of work and obtain better VfM while DBF is used when work is carried out over multiple years.

The authority has been considering making greater use of tolls in the state but will most likely retain revenue and procure availability-based deals.

Infrastructure needs

Another motivation behind the recent legislation is the infrastructure deficit that Florida faces. The Environmental Protection Agency released a report in June 2013 estimating that the state required \$16.5 billion investment into drinking water by 2020. The 2013 American Society of Engineers report card rated Florida's infrastructure overall at Grade C-. The society's report recommended better investment into transport and education along with better environmental protection and funding for defences. Inspira understands that several wastewater and water deals are being considered as P3 deals and the sector has often been cited by officials as a key target for the model's use.

Pressure on infrastructure is set to increase as baby boomers retire and move to the Sunshine State, expanding its population. This will place an increasing burden on infrastructure but is also set to drive Florida's long term economic growth. GSP is forecast to have grown by 1.7% in 2012 and expected to accelerate to over 3% in 2013. Longer term it is expected to remain above the national average.

The state's budget has also improved over the past 12 months ending the 2012-13 fiscal year with a surplus. Revenues have been increasing following a collapse due to falling tax income from the housing market. The state is now rebuilding its reserve Budget Stabilisation Fund.

Florida's P3 Trade Association

The Florida Council for Public-Private Partnerships (FCP3) was established in February 2013 following on from a successful workshop run in February 2012 in Fort Lauderdale to:

- educate its members, the public, and policy makers of P3 benefits
- advocate and facilitate private sector involvement in construction and operation of public facilities
- sponsor and support research into the use of P3
- provide a forum for coordinating and exchanging P3 information
- analyse all pertinent legislation

It is not affiliated with the National Council of Public-Private Partnerships but is working closely with it. The FCP3 is also planning workshops and networking events.

The board of FCP3 comprises:

- chairperson – John Cal, associate vice president, facilities management at Florida International University
- vice-chairperson – Lee Weintraub, shareholder of Becker & Poliakoff
- treasurer – Richard Shavell, president of Shavell & Company
- director – Bill Parker president of InSource
- director – Clinton Glass, senior vice president at Balfour Beatty Construction
- director – Douglas Yoder, deputy director of regulatory compliance and capital improvements Miami-Dade water and sewer department
- director – Mark Blanchard vice president of AECOM
- director – Thomas te Riele, market president TD Bank
- Jose Galan acting director real estate development division Miami-Dade internal services department

The make-up of the board further suggests the high level of interest in the state's P3 programme from international developers as well as the interest from public authorities.

Conclusion

Florida's new legislation assures public authorities of their power to procure P3 and an increase in P3 activity is expected. The swift adoption of pro-P3 measures by various entities is a positive sign of the widespread support for the model. The FCP3 is set to further boost knowledge of the model in the state.

Florida's score on the inspiratia intelligence index is set to improve as FDOT solidifies its experience with the I-4 and wit task force leading to a better regulatory structure.

Although FDOT has not identified P3 deals past the I-4, the general level of activity is set to enlarge as a greater diversit infrastructure can now be procured.