



PORT OF MIAMI TUNNEL PROJECT

Bid Protest Procedures

The Florida Department of Transportation issued a Request for Proposals to design, build, finance, operate and maintain the Port of Miami Tunnel Project. Included in this RFP were **Instructions to Proposers** detailing various administrative procedures and requirements. Section 6.0 explains the process for a **Protest of the RFP Requirements and Award**.

SECTION 6.0 PROTESTS

This Section 6.0 sets forth the exclusive protest remedies available with respect to the RFP, including this ITP and the award, if any, of the Agreement. Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies, and agrees that the decision on any protest, as provided herein, shall be final and conclusive. These provisions are included in this ITP expressly in consideration for such waiver and agreement by the Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies set forth in this ITP, it shall indemnify, defend, and hold FDOT, its directors, officers, officials, employees, agents, representatives, and consultants harmless from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees, and damages incurred or suffered as a result of such Proposer actions. The submission of a Proposal shall be deemed the Proposer's irrevocable and unconditional agreement with such indemnification obligation.

6.1 Protest of RFP Requirements and Award

Any person whose substantial interest will be determined by the requirements contained in the RFP, including this ITP, has the right pursuant to 120.57(3)(b), Florida Statutes, to protest the RFP requirements. Similarly, any person who is adversely affected by FDOT's decision or intended decision to award the Agreement has the right pursuant to 120.57(3)(b), Florida Statutes, to protest that decision.

6.2 Initial Notice of Protest

Those wishing to protest under ITP Section 6.1 must file a notice of intent to protest in writing pursuant to Sections 120.569 and 120.57(3), Florida Statutes within seventy-two (72) hours of the posting of the RFP or posting of the notice of the decision (or intended decision) to award the Agreement, as applicable. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time periods.

6.3 Formal Written Protest

The formal written protest shall be filed within ten (10) days after the date of the notice of protest is filed. The formal written protest shall state with particularity the facts and law upon which the protest is based, should include a copy of the RFP, must be legible, prepared on 8 ½ by 11 inch white paper, and contain the following:



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- A)** The name, address, telephone number, any FDOT identifying number on the RFP, if known, the name and identification number of each agency affected, if known, and name, address, and telephone number of your representative, if any, which shall be the address for service purposes during the course of the proceeding;
- B)** An explanation of how your substantial interests will be affected by the protested action;
- C)** A statement of when and how you received the RFP;
- D)** A statement of all disputed issues of material fact. If there are none, this must be indicated;
- E)** A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of FDOT's proposed action, as well as an explanation of how the alleged facts relate to the specific rules and statutes the petitioner contends require reversal or modification of FDOT's proposed action;
- F)** A statement of the relief sought, stating precisely the desired action the petitioner wishes FDOT should take in respect to FDOT's proposed action; and
- G)** Conform to all other requirements set out in Florida Statutes, Chapter 120 and Florida Administrative Code, Chapter 28-106, including but not limited to Florida Statutes 120.57 and Rules 28-106.201(2), 28-106.301(2), and 28-110 Florida Administrative Code as may be applicable.

6.4 Protest Bond

Any person who files a notice of protest regarding award of the Agreement shall post with FDOT, at the time of filing the notice of protest, a bond payable to FDOT in the amount of \$250,000. No such bond is required for filing a notice of protest regarding the RFP requirement.

6.5 Delivery of Notices

The notice of intent and the formal written protest must be sent to:

**Clerk of Agency Proceedings
Florida Department of Transportation
Haydon Burns Building
605 Suwannee Street, MS 58
Tallahassee, Florida 32399-0458**

with a copy to:



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**Office of General Counsel
Florida Department of Transportation
Haydon Burns Building
605 Suwannee Street, MS 58
Tallahassee, Florida 32399-0458**

6.6 Determination of Protested Issue

A formal hearing will be held if there are disputed issues of material fact. If a formal hearing is held, this matter will be referred to the Division of Administrative Hearings, where witnesses and evidence may be presented and other witnesses may be cross-examined before an administrative law judge. If there are no disputed issues of material fact, an informal hearing will be held, in which case the person filing the protest will have the right to provide FDOT with any written documentation or legal arguments which they wish FDOT to consider. Mediation, pursuant to Section 120.573, Florida Statutes, may be available if agreed to by all parties, and on such terms as may be agreed upon by all parties. The right to an administrative hearing is not affected when mediation does not result in a settlement. A petition for an administrative hearing shall be dismissed, if it is not in substantial compliance with the requirements of either Rule 28-106.201(2) or Rule 28-106.301(2), Florida Administrative Code, or if the petition has not been timely filed. Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. If the protest bond requirement set forth above or a statutorily authorized alternate is not posted when required, the agency shall summarily dismiss the petition. If the petition is dismissed, the protester will have waived his right to have the intended action reviewed pursuant to Chapter 120, Florida Statutes, and the action set forth in the notice shall be conclusive and final.