Florida Department of Transportation

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MATERIALS BULLETIN NO. 14-13
DCE MEMORANDUM NO. 24-13
(FHWA Approved: 10/23/2013)

TO:	**DISTRICT MATERIALS AND RESEARCH ENGINEERS** **DISTRICT CONSTRUCTION ENGINEERS**
FROM:	Timothy Ruelke P.E., Director, Office of Materials David A. Sadler, P.E., Director, Office of Construction
COPIES:	Tom Byron, Rafiq Darji, Chad Thompson, Caitlin Alcorn, Nick Finch, Bob Burleson, Rudy Powell, Mike Bergin
SUBJECT:	**CONFLICT OF INTEREST CLARIFICATION**

The Code of Federal Regulations (CFR) (2013 ed.), in Title 23, Part 637, Subpart B, Section 209, (c); defines Conflict of Interest as follows: In order to avoid an appearance of a conflict of interest, any qualified non-Departmental laboratory shall perform only one of the following types of testing on the same project: Verification testing, quality control testing, IA testing, or dispute resolution testing.

The Standard Specifications for Road and Bridge Construction (2013 ed.), Article 6–4 Defective Materials states a Specialty Engineer, who is an independent consultant or the Contractor's Engineer of Record as stated within each individual Section shall perform any such (engineering) analysis. Additionally, Article 1–3 defines the Specialty Engineer as a Professional Engineer registered in the State of Florida, other than the Engineer of Record or his subcontracted consultant…The Specialty Engineer may be an employee or officer of the Contractor or a fabricator, an employee or officer of an entity providing components to a fabricator, or an independent consultant.

In light of the CFR definition, even though the Contractor has employed an independent consultant to perform the quality control test, the same consultant would not be acceptable to perform the Engineering Analysis (or dispute resolution) on a failed sample.

If you have any questions, please contact Timothy Ruelke at (352) 955-6600 or timothy.ruelke@dot.state.fl.us.

TR/DAS/mb