BRITISH COLUMBIA Kicking Horse Canyon Project

Relationship Review Consultant Protocol

Kicking Horse Canyon Project – Phase 4

April 2019

Protocol for Consultants on Major Ministry Transportation Projects with regard to participation on an Owner's Team while also participating on a Respondent/Proponent Team on another Project

1. The Ministry of Transportation and Infrastructure ("Ministry") has developed this protocol for relationship review and management of Conflicts of Interest (as defined in the Relationship Review Process Description for the relevant project) in instances where:

    a) there is overlapping timing of the competitive selection processes for multiple major projects;

    b) there is a common owner (either Ministry, TransLink or other public agency) across one or more of major projects, and where Partnerships BC is engaged on some or all of the projects there will be a consistency of approach and sharing of information for the owner teams; and

    c) there are a number of consultant firms and individual consultants that will be engaged by the owner on some major projects (the "Owner's Team") while engaged by a respondent/proponent team (the "Bid Team") on others.

2. For consultants who are engaged on the Owner's Team on one or more of the projects and also are, or intend to, participate on a Bid Team of any of the other projects, the following process will apply:

    a) The Ministry will include language in the Restricted Party letters that are sent to those consultants exclusive to the Owner's Team for a specific project (for example, Project A) to the effect that these Restricted Parties are responsible to notify the Owner's Team (through the Contact Person during that project's Competitive Selection Process) on any project for which the Restricted Party is considering becoming a member of a Bid Team (for example, Project B). The Relationship Review Committee ("RRC") for the Project B Owner's Team will then make a ruling as to whether the Restricted Party is also restricted for the purposes of Project B, or permitted to participate, or permitted to participate subject to such measures as the RRC requires in order to prevent or mitigate a Conflict of Interest. Failure by the Restricted Party to so notify the Project B Contact Person will put the Project B Bid Team at risk of becoming ineligible to participate in the RFQ/RFP process for Project B if the Restricted Party is determined by the Project B RRC to also be a Restricted Party for Project B.

    b) During the relationship review processes undertaken for the RFQ/RFP evaluations for each project, the Owner's Team RRCs will review a list (prepared and distributed by Partnerships BC) of Restricted Parties across the multiple projects. Each RRC will review the list to determine whether any of the Bid Team members for a project are also Restricted Parties for the purposes of one of the owner's other projects (for example, the RRC for Project B will review the list of Restricted Parties for Project A). If so, and if that Restricted Party has not previously been cleared to participate on a Bid Team, the Bid Team will be advised to make a request for ruling with respect to the Restricted Party. For example, if the RRC for Project B identifies a Restricted Party on the Owner's Team for Project A that is participating on a Bid Team on Project B, and that Restricted Party has not previously been cleared to participate on a Bid Team for Project B, the Bid Team will be advised to make a request for

ruling to the RRC for Project B. **These reviews by the RRCs in no way relieves a Restricted Party of the obligations set out in 2a) above and the associated risks of failing to do so.**

3. When reviewing a request for ruling with respect to a Restricted Party on one project (for example, Project A) who wishes to participate on a Bid Team of another project for which the request has been made (for example, Project B), the applicable RRC should consider the facts of the specific relationship including:

    a) Has the Restricted Party (on Project A) had, or will it have, through its role on an Owner's Team (on Project A), or co-location in an office, access to confidential information which may give rise to a Conflict of Interest on Project B?

    b) Are there similarities between the projects such that having access to confidential information with regard to the Owner's Team (on Project A) could create a Conflict of Interest should the Restricted Party participate as the member of a Bid Team (on Project B)?

    c) Is the individual/firm currently engaged on the project (for example, Project A) on which they are a Restricted Party? Does the Project A Owner's Team intend to re-engage the consultant?

    d) Has the Restricted party been part of an evaluation team that would allow it to be privy to the RFQ evaluation considerations and thus provide an opportunity for the Restricted Party (for example, on Project A) to influence the development of the documentation or approaches as a member of the Project A Owner's Team that could benefit the Bid Team (for example, on Project B) of which the Restricted Party proposes to be a member?

    e) Is the timing of the relevant projects such that no Conflict of Interest could result?

4. If there is a Conflict of Interest caused by the Restricted Party (on Project A) participating as a member of a Bid Team on another project (Project B), the Project B RRC should consider whether the Conflict of Interest can be mitigated, minimized or eliminated through ethical barriers including:

    a) Will this confidential information be disclosed to all Project B respondents/proponents in the Data Room?

    b) In instances where the Project A and Project B Owner's Teams are co-located, will there be sufficient firewalls in place to prevent sharing of confidential information between teams (that is, adequate ethical barriers are in place to prevent the sharing of confidential information between the Owners' Teams for Project A and Project B so that a Restricted Party for Project A will not have access to confidential information for Project B on which they are on a Bid Team)? This could include the Project B Owner taking the risk of ensuring that the two Owners' Teams do not share information or do not share information with specific individuals. This could include: declarations by members of the Owners' Teams that they understand that certain information cannot be shared with certain individuals including having separate servers, separate support staff, no discussions in public areas, and no discussion when certain individuals are in the room.

    c) Can sufficient ethical barriers be put in place between the individuals (employees, subcontractors etc.) of a Restricted Party participating on the Project A Owner's Team and other individuals of a Restricted Party who are not participating on the Project A Owner's Team? This could include the Project A Restricted Party (assuming that it is a firm) putting ethical barriers in place between the individuals on the Project A Owner's Team and those on the Project B Bid Team. Examples include: declarations by the Owner's Team members

that they understand that confidential information cannot be shared with non-Owner's Team members, declaration from the firm that there is no overlapping membership between the Owner's Team and the Bid Team, segregation of all files including secured servers, separate support staff, notification to all non-Owner's Team members to not discuss the project with the Owner's Team members.

5. Please note that this protocol does not apply in instances where:

    a) an individual or firm leaves the Owner's Team (whether an employee of the public sector or private sector) and joins (for example, as an employee or a subsidiary) a Restricted Party on the same project; or

    b) a Restricted Party wishes to participate on a Bid Team for the same project on which they have been restricted.

    In those instances, the Relationship Review Process Description and the terms of the RFQ/RFP with regard to the Restricted Party designation will apply.

6. This Protocol supplements the Relationship Review Process Description and the provisions of the RFQ/RFP for each major project. Please review those documents for more information regarding the relationship review processes and provisions for the relevant project.