

RELATIONSHIP REVIEW GUIDELINES

PART A:

1. The Project recognizes the public interest and value in conducting fair and open competitive processes, in obtaining unbiased advice and services, in preventing actual and apparent favouritisms in the award of its contracts, and in reducing the potential for unfair advantage to arise through the unauthorized use of confidential information obtained through employees (current or former) of the Project or the Province, or through contractors (current or former) engaged by the Project or the Province.
2. The Project further recognizes the public interest and value in ensuring that the required professional expertise and resources are available to participate in the Project for the purpose of ensuring the delivery of the Project in a safe, economically feasible, and timely manner.

PART B:

1. These guidelines are in addition to the relevant terms of the Standards of Conduct for Public Service Employees, and of the Ministry of Finance Core Policy Manual (Procurement), that are attached to these guidelines in Appendix "1" and in Appendix "2", respectively.
2. The Project wishes to consider each matter that may fall under these guidelines on a case – by – case basis, taking into account the individual circumstances of each matter and the considerations contemplated in these Guidelines.
3. The reference in these guidelines to the "Project", includes any internal review panel, the Project Director, and the Ministry of Transportation Executive Sponsor (the 'Executive') for the Project.
4. These guidelines will be available, on request, to any person, including to participants in the Project, (Advisors, Evaluators and prospective proponents) and the Conflicts Adjudicator.

PART C:

1. Matters that fall under these guidelines, including relationship reviews of prospective proponents, will generally be carried out by the Relationship Review Committee with recommendations made to the Project Director or the Executive, as the case may be. Recommendations will be made available to the relevant participant who is the subject of the review. The participant or the Project may direct matters to the Conflicts Adjudicator for determination and recommendations.
2. The participant and the Project should provide all relevant information. Any persons related to the participant and the Project with relevant information should make themselves available to the Conflicts Adjudicator to facilitate the Conflicts Adjudicator in arriving at a determination and recommendations in the matter.
3. If, in considering a particular instance of possible actual or perceived conflict of interest or unfair advantage, the Project is unable to determine with confidence whether or not a prospective participant or participant will be permitted to participate or to continue to participate, the Project will disclose its views to the subject participant or prospective participant and request a binding determination, with or without recommendations, from the Conflicts Adjudicator.

4. The Project acknowledges that any determination that it may make in accordance with these guidelines may be appealed by a prospective participant or participant, as the case may be, to the Conflicts Adjudicator for a binding determination.

PART D:

1. As a general guideline, the Project expects each participant in the Project, including persons evaluating proposals (“Evaluators”), persons advising the Evaluators (“Advisors”), and prospective proponents, to arrange their affairs so as to prevent actual conflicts of interest or unfair advantage from arising, and so as to reduce the potential for the appearance of a conflict of interest or unfair advantage from arising.
2. Any participant who finds itself in an actual, perceived or potential conflict of interest or unfair advantage is encouraged to disclose the matter to the contact person designated in the procurement documents. The contact person will refer the matter to the Relationship Review Committee or to the Conflicts Adjudicator retained by the Province in connection with the Project for a determination and recommendations, as the case may be, as to whether or not any particular participant, or member of a participant team, is in a conflict of interest or a perceived conflict of interest situation or is possessed of confidential information which would provide an unfair advantage to that participant.
3. The obligation to disclose is ongoing. If a participant becomes aware of an actual, perceived or potential conflict of interest or unfair advantage at any time during the Project, including any competitive process associated with the Project, the participant is encouraged to disclose the matter as described in this Part D, paragraph “2”.
4. The failure to disclose an actual, perceived or potential conflict of interest or unfair advantage may result in a number of consequences and measures being taken by the Project, including
 - (a) disqualification from the Project, including any competitive process associated with the Project,
 - (b) the requirement to implement mitigative measures, and
 - (c) segregation or termination from the Project, as the case may be.

PART E:

1. In considering an actual or perceived conflict of interest or unfair advantage, the Project should take into account all considerations that are relevant to the specific matter, the individual circumstances of each matter, and the considerations contemplated in these guidelines.
2. The process by which the information is disclosed to the Project should provide for sufficient time for reasonable due diligence, including necessary conflict searches, and should demonstrate that such reasonable due diligence has been undertaken by the disclosing participant and the participant’s firm, as the case may be (e.g., first – hand knowledge of individuals regarding personal and professional relationships and formal intra – firm or intra-company conflict searches).
 - (a) Relevant considerations to this guideline would include whether or not a responsible person from each prospective Evaluator’s or Advisor’s firm has conducted a formal internal conflict search within the organization to identify whether any prospective proponent or member of a prospective

- proponent's team is or may be a current or former client or business partner of such Evaluator's or Advisor's firm.
- (b) Relevant considerations to this guideline would include whether the conflicts search extended to past relationships and, if the participant is a corporate entity, to officers or directors of the participant.
3. After considering all relevant information, the Project should consider whether, based on the information disclosed to the Project, the Project considers there to be
- (a) an actual conflict of interest,
 - (b) a perceived conflict of interest, or
 - (c) an actual or possible unfair advantage.
4. If the answer under paragraph 3 is "no" to each of the matters, then the participant is free to participate in the Project.
5. If the answer under paragraph 3 is "yes" to an actual conflict of interest or to an actual unfair advantage, then the Project should consider whether
- (a) the participant should be automatically excluded from the Project, or
 - (b) the participant might be permitted to participate or to continue to participate in the Project, subject to the implementation of suitable measures designed to mitigate the actual conflict of interest, or the unfair advantage.
5. While it will usually be the case that a participant that is in an actual conflict of interest or whose participation gives rise to an unfair advantage, will be automatically excluded from the Project, exceptions may be considered in circumstances where the applicable legislation and policies permit such exceptions, where the Province will not be exposed to legal liability as a result of the exception, and where the Project determines that the public interest would be furthered by allowing the exception.
6. (a) Circumstances that would, subject to case-specific considerations, likely give rise to automatic exclusions would include,
- instances of familial relationships,
 - instances giving rise to the breach of relevant legislation or government policy, and
 - instances giving rise to the breach of professional or other governing body rules regarding these matters.
- (b) Circumstances that would not usually give rise to automatic exclusions would include,
- a participant or proposed participant has worked on the Project, but has not been involved in any strategic planning or preparatory work (e.g., involved in preliminary design assignments for various sections of the Project, or involved in providing geotechnical engineering services).
7. If the answer under paragraph 3 is "yes" to a perceived conflict of interest or a possible unfair advantage, the Project should consider whether, the participant might be permitted to participate or to continue to participate in the Project, subject to the implementation of suitable measures designed to mitigate the perceived conflict of interest, or the possible unfair advantage.
8. While it will usually be the case that a participant that is in a perceived conflict of interest or whose participation may give rise to a possible unfair advantage, will

not be automatically excluded from the Project, exceptions may be considered in circumstances where the applicable legislation and policies require such exclusion, where the Province will be exposed to legal liability if the exclusion does not occur, or where the Project determines that the public interest would be furthered by requiring the exclusion.

9. If the Project, on consideration of the relevant factors, including the case-specific factors, is of the view that the participant should be permitted to participate or to continue to participate in the Project, then the Project should consider suitable safeguards that may be implemented to mitigate the perceived conflict of interest, or the possible unfair advantage.
10. Suitable safeguards might, subject to case-specific considerations, include the following safeguards and be based on the following accompanying factors.
 - (a) **Firewalls -**
 - (1) This measure would include the segregation of individuals and information within a prospective participant firm or company, thereby allowing the prospective participant firm or company to participate or continue to participate in the Project.
 - (2) Segregated individuals may include those persons who were involved in an earlier phase of the Project or in work associated with or relevant to the Project.
 - (3) Segregated information may include
 - ✚ confidential information obtained as a result of a participant's or prospective participant's former contracts with the Province or the Project,
 - ✚ confidential information obtained from former or current government employees.
 - (4) The Project may require assurances or demonstration of the type of firewalls and the effectiveness of the firewalls.
 - (5) The Project may require information (including in affidavit form) as to when firewalls were put into place, how they operate, and whether there is any form of notification within the subject firm or company of their existence.
 - (b) **Relevance or Materiality of Subject Information -**
 - (1) This factor may include considering whether or not the participant or prospective participant has in its possession information that will or could be made public or disclosed to other participants, as the case may be, or that gives no significant advantage to the participant or prospective participant.
 - (2) It should usually be the case that where the information that a participant, or prospective participant, has is 'raw data', the information will not be considered material.
 - (3) This factor may include considering whether or not the participant or prospective participant has in its possession information that will not and should not be made public or disclosed to other participants, as the case may be, or that will give a significant advantage to the participant or prospective participant, including the following:
 - ✚ planning, budgetary, or business information, or

perceived conflicts of interest or unfair advantage and determining whether delivery of a certification or acknowledgement by a prospective participant or participant of its compliance with any such rules would be sufficient mitigation.

- (2) This factor may include obtaining the advice of any such professional or governing body to the participation of a prospective participant or the continued participation of a participant, as the case may be.**
- (3) This factor may include considering the case law relevant to conflicts of interest and unfair advantage matters.**

APPENDIX "1"

"Standards of Conduct for Public Service Employees"

| <http://www.bcpublicservice.ca/policies/Directives/5-8/05-4soc.htm>

APPENDIX “2”

Ministry of Finance Core Policy Manual (Procurement)

| http://www.fin.gov.bc.ca/ocg/fmb/manuals/CPM/06_Procurement.htm