

**Relationship Review Process Description**

**TransLink Major Projects**

**August 2017**

## **A. Introduction**

This document describes the process (“Relationship Review Process”) for identifying issues related to conflicts of interest/unfair advantage/bias (collectively referred to as “Conflict of Interest”) for the following TransLink major projects (collectively the “Major Projects” and individually a “Major Project”):

- a project to replace the existing Pattullo Bridge with a new four-lane bridge spanning the Fraser River in the general location of the existing bridge. This project will also decommission and remove the existing bridge;
- a project to build the Surrey-Newton-Guildford Light Rail Transit system in Surrey, British Columbia; and
- a project to extend the Millennium Line SkyTrain system from its current terminus station at VCC-Clark Station to a new western terminus at Arbutus Street in the City of Vancouver.

This Relationship Review Process has been established in order to appropriately manage Conflicts of Interest during the project development phase and during the formal competitive selection phase for each of the Major Projects.

This Relationship Review Process may be updated from time to time.

## **B. Background/Objectives**

Each Major Project will be delivered in whole or in part with some degree of private sector involvement. Therefore, this Relationship Review Process has been set up to address the following objectives:

- To protect the integrity of the competitive selection processes and to avoid any actual Conflicts of Interest, and appropriately address any perceived Conflicts of Interest, through maintenance of a clear division between key individuals and organizations involved in the public sector side of the Project and potential proponents; and
- To assist in establishing equitable access by proponents and each of the Major Projects to scarce technical and managerial skills critical to the success of each of the Major Projects.

The Relationship Review Process will assess all relationships as they affect the applicable Major Project and while the interests of third parties and other provincial initiatives may be taken into consideration in the Relationship Review Process, this process is not intended to protect these other interests.

The relationships of individuals and organizations that are involved in planning for the Major Project will be reviewed from time to time, to determine whether joining a potential proponent’s team would represent an actual or perceived Conflict of Interest with respect to other proponent teams.

In addition, relationships of all individuals and organizations involved in the procurement evaluation process for each of the Major Projects will be reassessed after the receipt of any submissions from potential proponents.

It is also important to identify individuals and organizations who are involved in a Major Project but do not present a Conflict of Interest by joining a proponent team. These individuals and organizations will need to be notified of their status during the various phases of the applicable Major Project, as appropriate.

Organizations or individuals found by the Relationship Review Committee to have a Conflict of Interest may compromise one or more proponents' ability to participate in the competitive selection process for the applicable Major Project.

### **C. Relationship Review Committee and Conflict of Interest Adjudicator**

The Relationship Review Committee for each Major Project is established to consider:

- individuals and organizations currently working on the applicable Major Project and,
- on an ongoing basis, individuals and organizations seeking to participate from time to time as proponent team members and proponents, as the case may be, on the applicable Major Project,

to determine whether actual or perceived Conflicts of Interest exist with respect to the applicable Major Project.

The Relationship Review Committee has four members. Additional individuals will advise and support the Relationship Review Committee. Membership of the Relationship Review Committee and its advisors will be reviewed annually, and may be changed accordingly.

The quorum for meetings of the Relationship Review Committee shall be three persons.

Members of the Relationship Review Committee will be responsible for making the determinations required under the Relationship Review Process.

At the discretion of the Project Director for the applicable Major Project, membership of the Relationship Review Committee may be amended from time to time, including providing for temporary absences of Relationship Review Committee members.

Advisors to the Relationship Review Committee facilitate, assist and advise the members of the Relationship Review Committee in making the required determinations under the Relationship Review Process.

A conflict of interest adjudicator has been engaged to make binding rulings with respect to cases brought forward either by the Relationship Review Committee or by request directly from a potential proponent during the selection process.

The conflict of interest adjudicator will review each case brought forward to determine whether a Conflict

of Interest exists and will document this ruling in writing. In the case of a perceived Conflict of Interest, the conflict of interest adjudicator will be at liberty to provide non-binding comments as to measures which can be taken to mitigate any perception of Conflict of Interest.

The Relationship Review Committee may seek advice from the conflict of interest adjudicator at any time in the process, and this advice will be taken into account by the Relationship Review Committee in carrying out its duties.

## **D. Scope of Review**

At its discretion, the Relationship Review Committee will assess, from time-to-time, those individuals and organizations that are working, or have worked, on the Major Project, to determine their status with regard to the Major Project, including:

- Organizations;
- Owners and employees of organizations; and
- Government staff and contract personnel.

The Relationship Review Process identifies both organizations, as a whole, and specific individuals within an organization, as the information or relationship giving rise to a restriction can extend beyond an ownership or employment relationship.

Even when an individual who is identified as having a relationship that limits their involvement exclusively to the public sector side of the Major Project leaves their current organization, a Conflict of Interest or unfair advantage may still result if he/she were to join a proponent team.

Individuals within an organization that are not already specifically identified as exclusive will be reviewed on a case-by-case basis as they are disclosed by a proponent team or as the Relationship Review Committee becomes aware of them.

Each assessment by the Relationship Review Committee will reflect the information provided by an individual or organization at a particular point in time. The assigned classification may be reviewed and revised from time to time, as appropriate, to reflect changing circumstances. For example, an individual who is currently categorized as exclusive to the Major Project might, in time, not present a Conflict of Interest by joining a proponent team if they no longer have access to material non- public information nor continue to have influence with the Project decision makers.

Current advisors to the Major Projects will be asked to disclose to the Relationship Review Committee any potential Conflicts of Interest at the time they first become aware of them.

## **E. Underlying Assumptions**

In developing the Relationship Review Process, the following assumptions apply:

- All applicable laws and professional rules will apply. In the event of a discrepancy between the relationship review process documented herein and any applicable law or rule, the higher or more onerous standard shall take precedence;
- Organizations, owners, employees, government staff and consultants have an ongoing duty to monitor their circumstances, to act prudently and to respect the confidentiality undertakings they have provided; and
- Where an individual or organization and its current employers have been identified as exclusive or shared use, it is very likely that related and affiliated persons of those individuals or organizations will also be exclusive or shared use. The actual determination will need to take into account the nature of the relationship, any arrangements that are in place to ensure confidentiality and the role which the individual or organization will have on the proponent team. The definition of related and affiliated persons, for the purposes of determining an individual's status on the applicable Major Project, may be found in Appendix A to this document.

## **F. Categorization**

For the Project, organizations, owners, employees, staff and consultants will fall into one of three categories:

- Exclusive to the public sector side of the transaction;
- Shared use; and
- Free of restrictions.

The provisions of each category are outlined below.

### **1. Exclusive Use**

The exclusive use classification means that an individual or organization in this category is not permitted to participate in any way as a proponent.

Factors that may result in this classification include:

- Knowledge of, or access to material non-public information related to the Major Project;
- Relationships that could provide, or could reasonably be perceived as providing, an opportunity to influence the outcome of the Major Project selection process; and
- Relationships which could be considered to give rise to a reasonable apprehension of bias in relation

to the evaluation of a proposal or other submissions for the Major Project.

There will be an initial presumption that owners and employees of organizations that are exclusive will themselves be exclusive to the extent that they remain owners of, or employed by, the organization.

It may be possible for individuals or organizations to put in place appropriate ethical barriers to address any perceived or potential Conflict of Interest so that such individuals or organizations do not need to be classified as exclusive.

The Relationship Review Committee will provide guidelines, as described in Section H of this document, for acceptable ethical barriers.

## **2. Shared Use**

There may be circumstances in which the Major Project wishes to make it possible for all proponents to have access, on an equal basis, to an individual or organization that would otherwise be exclusive to the public sector side of the Major Project, or to one particular proponent. For example, there may be specialized traffic study information requiring interpretation by a particular individual or organization. Under these circumstances, the Major Project and the individual or organization should enter into a shared use arrangement approved by the Relationship Review Committee. Although the individuals and organizations that fall into this category would still present a Conflict of Interest if they participated as a member of any single proponent team, they could be a shared resource offered to all proponent teams under a controlled procedure.

When a shared use arrangement is in place for an organization, it is presumed to apply to all relevant owners and employees of such organization.

## **3. Free of Restrictions**

Individuals and organizations that fall into this category will be free to participate as member of any proponent team.

## **G. Determining Exclusivity**

As indicated above, the Relationship Review Committee in determining whether an exclusive arrangement is required will apply two considerations. These considerations relate to knowledge and influence, and are captured in the following questions:

- Does the individual/organization have proprietary or confidential **information or knowledge** in relation to a specific project, the Major Project and/or other initiatives that could materially improve, or reasonably be perceived to materially improve, the relative competitive position of a proponent?

**OR**

- Does the individual/organization make decisions or have **influence** over decisions that could

materially improve, or reasonably be perceived to materially improve, the relative competitive position of a proponent?

In applying the first question, to determine whether information or knowledge is material, the Relationship Review Committee will consider the nature of the information or knowledge, and the circumstances surrounding the information or knowledge: Some relevant questions for this determination are:

- Do all potential proponents have equal access to the same information or knowledge?
- How current is the information?
- How relevant is the information?

If the questions above indicate the possession of information or knowledge in relation to a specific project, the Major Project and/or other initiatives that could materially improve, or reasonably be perceived to materially improve, the relative competitive position of a proponent, the Relationship Review Committee will begin with the presumption that a Conflict of Interest exists. There may nonetheless be situations where the individual or organization has established sufficient procedures, barriers, separation and confidentiality so as to avoid or reasonably address any actual or perceived Conflict of Interest.

Consideration should also be given to whether an individual's or organization's involvement on other TransLink initiatives may give rise to a Conflict of Interest.

Before finalizing the determination of exclusivity, the Relationship Review Committee needs to evaluate the specific circumstances of that individual or organization with respect to the following considerations:

1. Does the individual or organization possess a unique skill which, if not available to all proponents, would significantly curtail the ability of other proponents to compete?

**OR**

Is there some other significant advantage in designating the individual or organization as shared use, rather than exclusive, in order to allow the individual or entity to participate in the competitive process in a manner which is fair to all proponents?

**AND**

2. Are there adequate, appropriate and effective ethical barriers and other measures in place to protect the integrity of the Major Project and to ensure that any actual, perceived or potential Conflict of Interest is mitigated and does not impair the competitive selection process?

Under these circumstances, consideration should be given as to whether the individual or organization can be classified as shared use (discussed below).

## **H. Ethical Barriers**

The following general guidelines should be considered when assessing the adequacy of an entity's ethical

barriers or other measures that an organization has put in place, including where an entity that wishes to participate in the competitive selection process has a relationship with an affected individual. In this section the term “affected individual” refers to an individual who has been classified as exclusive.

These guidelines should be adapted to each individual situation:

- (a) The organization must ensure that the affected individual(s) does not have any involvement in the entity’s preparation of responses to any element of the competitive selection process (for example, the applicable Major Project’s requests for qualifications or request for proposals, any interview process or other meetings.)
- (b) The organization must ensure that the affected individual(s) does not discuss the Major Project or any information relating to the Major Project with anyone else in the entity and that the affected individual is not put in a position where such discussions can occur or where discussions by one party (the affected individual or the entity) could be overheard by the other party.
- (c) No other member of the organization can discuss the Major Project with the affected individual(s).
- (d) The organization must segregate all files, including computer files, relating to the Major Project and, the affected individual’s files must be physically segregated in a secure manner from the organization’s regular filing system and accessible only by the affected individual.
- (e) No member of the organization may disclose to, or discuss with, the affected individual any documents relating to the entity’s intended response in the competitive selection process, including the applicable Major Project’s request for qualifications or request for proposals.
- (f) The measures taken by the organization to screen the affected individual should be stated in a written policy explained to all employees, or contractors as applicable, who are involved in the preparation of the proposals supported by a warning that violation of the policy may result in sanctions, up to and including dismissal or termination.
- (g) Affidavits, or declarations, or other acceptable evidence of compliance, must be provided to the Relationship Review Committee, by (i) the affected individual and (ii) other appropriate organization members (including all those directly involved in the competitive selection process on behalf of the organization, including those preparing responses to the applicable Major Project’s request for qualifications or request for proposals) setting out that they have adhered to and will continue to adhere to all elements of the screen.
- (h) The affected individual’s office or work station must be at a separate location or otherwise adequately and securely segregated from the offices or work stations of those working on responses to the applicable Major Project’s competitive selection process (including the request for qualifications or request for proposals).
- (i) The affected individual must use support staff different from those working on responses to the applicable Major Project’s request for qualifications or request for proposals and the support staff must be cautioned and subject to the same restrictions as the affected individual.



## I. Determining Shared Use

The Relationship Review Committee will apply three principle considerations to determine whether the shared use category should apply:

- Are there a **limited number of expert advisors** available in the relevant category?
- Are the expert advisors willing to provide services on a non-exclusive basis?
- Is the organization/individual prepared to provide services on an exclusive basis under a contract to the Major Project, who will in turn provide the results of this work or otherwise make these services available to all proponents?

In order to categorize an individual or organization in the shared use category, the severity of the resource constraint would be material enough as to likely:

- Lower the quality of proposals.
- Lower the quality of advisors available to a specific project and/or the Project.
- Increase the proponent’s cost of preparing a proposal.

## J. Evaluation of Submissions - Determining Membership on a Proponent Team

Each Major Project’s Request for Qualifications (“RFQ”) and Request for Proposals (“RFP”) will likely require proponents to disclose the individuals and organizations that comprise their team.

An individual or organization will be considered to be a member of a proponent team if they:

- Have a **direct significant financial interest** in the success in a proposal;
- Assisted in the **development of the proposal**. Assistance could encompass a wide range of involvement, including strategic advice, procurement of project financing and help in the drafting of the proposal; or
- Are members of a respondent or proponent team pursuant to the terms of the applicable Major Project’s RFQ or RFP?

Upon receipt of submissions to the applicable Major Project’s RFQ and RFP, the Relationship Review Committee will review the list of respondent and proponent team members included in the submission for conflicts with those involved in the Project’s evaluation process.

Where applicable and in its discretion, the Relationship Review Committee will investigate, on a case-by-case basis, whether the provisions for isolating an individual or a client service team are acceptable.

## **K. Evaluation Team Members**

Due to their role in the decision making process, individuals involved in the evaluation of submissions to the applicable Major Project's RFQ and proposals to the applicable Major Project's RFP will undergo a secondary Relationship Review Process.

Upon receipt of the list of proponent team members during the RFQ evaluation process and for any changes to team composition at the RFP stage, evaluation team members will be specifically requested to disclose any past, present and anticipated future relationships they have, or have had, with any individuals or organization detailed on that list.

The Relationship Review Committee will review these disclosures to determine whether or not, in its opinion, any disclosed relationship gives rise to a Conflict of Interest that is of a form / nature requiring that the evaluation team member be removed from the evaluation process or whether other appropriate steps need to be taken.

The Relationship Review Committee will take into account the particular circumstances of the disclosed situation to determine whether, in its opinion, there is a reasonable apprehension of bias in favour of one bidder. The reasonable apprehension of bias test must be handled with sensitivity to the decision-making context to which it is being applied. What will constitute a reasonable apprehension of bias will depend on the facts and context. Considerations might include, but would not be limited to:

- The nature of the relationship (e.g. contractual/personal; past/present);
- The length of the relationship; and
- Whether the evaluation team members, as a result of the relationship, may have a pecuniary interest in the outcome of the evaluation due to a direct or indirect financial relationship with a particular bidder.

The inclusion of members on the evaluation team who were familiar with personnel of a proponent's team, as a result of having worked with them on previous contracts, would not in itself constitute reasonable apprehension of bias.

If there is a sufficient number of persons who do not have a Conflict of Interest on an evaluation team, this arrangement may be an adequate safeguard against Conflict of Interest.

In response to real or perceived Conflict of Interest, the Relationship Review Committee may:

- Remove the evaluator and substitute an individual who is free from Conflict of Interest;
- Recommend disqualification of a proponent;
- Forward the issue to the conflict of interest adjudicator for a binding ruling; or,
- Take any other measure it considers appropriate.

## **L. Departures from the Project Team**

Over the course of project development and procurement, both firms and individuals may depart from a Major Project team, either because their tasks are complete or, in the case of individuals, to pursue other opportunities, which may include joining a proponent team. The restrictions for those individuals and firms who had previously been classified as exclusive to the public sector continue to apply until such time as the Relationship Review Committee revisits this determination and releases them from these restrictions.

Upon departure from the Project team, the onus is on the impacted individuals and firms to notify the Relationship Review Committee and request a review of their status. Those individuals on the Major Project team authorized to contract with firms and individuals will be asked to notify the Relationship Review Committee of any departures.

In determining whether a firm or individual should be released from their exclusivity restrictions, the Relationship Review Committee will apply the same criteria used in making their original determination (Section G). In the case where the individual or firm joins a potential proponent, appropriate ethical barriers may need to be established by the potential proponent in order to not compromise its ability to participate in the selection process, until such time that this individual or firm can be released of their restrictions.

## **Appendix A**

The following definitions of related and affiliated persons will be considered in determining relationships. They are sourced from the federal *Income Tax Act*.

### **Related Person**

“Related persons”, or persons related to each other, are:

1. Individuals connected by blood relationship, marriage or common-law partnership or adoption.
2. A corporation and:
  - i. A person who controls the corporation, if it is controlled by one person.
  - ii. A person who is a member of a related group that controls the corporation, or
  - iii. Any person related to a person describes in 1 or 2 above; and
3. Any two corporations:
  - i. If they are controlled by the same person or group of persons.
  - ii. If each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation.
  - iii. If one of the corporations is controlled by one person and the person is related to any member of a related group that controls the other corporation.
  - iv. If one of the corporations is controlled by any two corporations: one person and that person is related to each member of an unrelated group that controls the other corporation.
  - v. If any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation, or
  - vi. If each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.

### **Affiliated Person**

“Affiliated persons”, or persons affiliated with each other, are:

1. An individual and a spouse or common-law partner of the individual:
2. A corporation and:
  - i. A person by whom the corporation is controlled.
  - ii. Each member of an affiliated group of persons by which the corporation is controlled,

- iii. A spouse or common-law partner of a person described in subparagraphs 1 or 2.
3. Two corporations, if:
    - i. Each corporation is controlled by a person, and the person by whom one corporation is controlled is affiliated with the person by whom the other corporation is controlled.
    - ii. One corporation is controlled by a person, the other corporation is controlled by a group of persons, and each member of that group is affiliated with that person, or
    - iii. Each corporation is controlled by a group of persons, and each member of each group is affiliated with at least one member of the other group;
  4. A corporation and a partnership, if the corporation is controlled by a particular group of persons each member of which is affiliated with at least one member of a majority-interest group of partners of the partnership, and each member of that majority-interest group is affiliated with at least one member of the particular group;
  5. A partnership and a majority interest partner of the partnership: and
  6. Two partnerships, if:
    - i. The same person is a majority-interest partner of both partnerships,
    - ii. A majority interest partner of one partnership is affiliated with each member of a majority-interest group of partners of the other partnership, or
    - iii. Each member of a majority-interest group of partners of each partnership is affiliated with a least one member of a majority-interest group of partners of the other partnership.