

Relationship Review Process Description

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A. Introduction

This document describes the process (“Relationship Review Process”) for identifying issues related to conflicts of interest/unfair advantages/bias (collectively referred to as “Conflict of Interest”) for the Gateway Program. This Relationship Review Process has been established in order to appropriately manage Conflicts of Interest as the Gateway Program moves forward in project development and into the preferred proponent selection phase.

This document includes a description of the Relationship Review Process for the time prior to the receipt of proponent submissions as well as during the competitive evaluation process.

B. Background/Objectives

The Gateway Program 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 a project and potential proponents; and
- To assist in establishing equitable access by proponents and the Gateway Program to scarce technical and managerial skills critical for program success.

The Relationship Review Process will assess all relationships as they affect the Gateway Program 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 Gateway Program will be reviewed upon joining the Gateway Program and again as required as the nature of their involvement changes, to determine whether joining

a potential proponent's team for the Gateway Program would represent an actual or perceived Conflict of Interest and/or result in an unfair advantage **over** other proponent teams. In addition, relationships of all individuals or organizations involved in the evaluation process will need to be reassessed after the receipt of submissions from proponents.

It is also important to identify individuals and organizations who are involved in the Gateway Program, but who do not present a Conflict of Interest or gain an unfair advantage by joining a proponent team. These individuals and organizations will need to be notified of their status as appropriate during the various phases of the project.

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 Gateway Program.

C. Relationship Review Committee

The Relationship Review Committee is established to consider individuals and organizations currently working on the Gateway Program 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 projects comprising the Gateway Program, to determine whether actual or perceived Conflicts of Interest exist with respect to the Gateway Program or other B.C. infrastructure initiatives underway.

The Relationship Review Committee has four members. Additional individuals will advise and support the Relationship Review Committee. Members of the Relationship Review Committee and advisors to the Relationship Review Committee 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.

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.

Other advisors may be consulted as appropriate to support the Relationship Review Committee.

A conflict of interest adjudicator has been engaged to make binding rulings with respect to cases brought forward by the Relationship Review Committee. Cases can be referred to the conflict of interest adjudicator 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 the form of 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

All individuals and organizations that are working or have worked on the Gateway Program, will be assessed by the Relationship Review Committee to determine their status with regard to the Gateway Program, including:

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

The Relationship Review Committee will also be responsible for conducting this review on a periodic basis.

The Relationship Review Process identifies both organizations and specific individuals within the organization because 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 Gateway Program leaves their current organization, a Conflict of Interest or unfair advantage may still result if they 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 disclosed by a proponent team or as the Relationship Review Committee becomes aware.

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 Gateway Program 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 Gateway Program decision makers

In addition, elected officials and staff will be reminded to be sensitive to Conflict of Interest issues and the need for confidentiality.

Current advisors to the Gateway Program 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 standard of care shall take precedence;
- All elected officials and their staff, 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 has been identified as exclusive or controlled use, it is very likely that related and affiliated persons of those individuals or organizations will also be exclusive or controlled 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 Gateway Program, may be found in Appendix A to this document.

F. Categorization

For the Gateway Program, elected officials and their staff, individuals and organizations will fall into one of three categories:

- Exclusive to the public sector side of the transaction;
- Controlled 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 would result in this classification include:

- Knowledge of, or access to material non-public information related to the Gateway Program;
- Relationships that could, or could reasonably be perceived as providing an opportunity to influence the outcome of the Gateway Program 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 Gateway Program.

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 /employed by the organization.

It may be possible for the individuals or organizations to put in place appropriate ethical barriers to address any perceived or potential Conflict of Interest. The Relationship Review Committee will provide guidelines, as described in Section H of this document for acceptable ethical barriers.

2. Controlled Use

There may be circumstances in which the Gateway Program 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 Gateway Program or to one particular proponent. For example, there may be specialized traffic study information or geotechnical information requiring interpretation by the exclusive individual or organization. Under these circumstances, the Gateway Program and the individual or organization should enter into a controlled 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 proponent team, they could be a shared resource offered to all proponent teams under a controlled procedure.

When a controlled 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 a 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 Gateway Program 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 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 Gateway Program and/or other initiatives that could materially improve, or reasonably be perceived to 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 or bias.

Consideration should also be given to whether an individual's or organization's involvement on other MoT and TransLink initiatives, including the Golden Ears Bridge and the Sea-to-Sky Project would 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 controlled 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 "firewalls", confidentiality/ethical barriers and other measures in place to protect the integrity of the Gateway Program 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 controlled 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 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 project's requests for qualifications or request for proposals, any interview process or other meetings.)
- (b) The organization must ensure that affected individual(s) does not discuss the project or any information relating to the 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 project with the affected individual(s).
- (d) The organization must segregate all files, including computer files, relating to the 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 to 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 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 who are involved in the preparation of the proposals, or contractors as applicable, 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 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 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 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. Controlled Use

The Relationship Review Committee will apply three principle considerations to determine whether the controlled 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 Gateway Program, 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 controlled 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 Gateway Program.
- Increase the proponent's cost of preparing a proposal.

To illustrate the application of the second consideration, consider an example in which there are very few experts on traffic available in the Vancouver market. In such an instance, it may be appropriate to categorize this traffic expert as controlled use to ensure the public sector and all potential proponents have access to adequate advice.

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

A Request for Qualifications (“RFQ”) and a Request for Proposals (“RFP”) for the Gateway Program 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.

Upon receipt of submissions to the Gateway Program’s RFQ and RFP, the Relationship Review Committee will review the list of proponent team members included in the submission for conflicts with advisors, staff and elected officials involved in the Gateway Program.

The Relationship Review Committee will investigate whether the provisions for isolating an individual or a client service team are acceptable on a case-by-case basis. It is in the Gateway Program’s interests that the Relationship Review Committee retains the right to confirm the adequacy of such provisions at its sole and absolute discretion.

K. Evaluation Team Members

Due to their role in the decision making process, individuals involved in the evaluation of submissions to the RFQ and proposals to the 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 that the evaluation team members should be removed from the evaluation process.

The Relationship Review Committee should 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 the evaluation team of members 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 are 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
- Other measures as appropriate.

L. Departures from the Gateway Program Team

Over the course of project development and procurement, Gateway Program team members, both firms and individuals may depart from the Gateway Program team either because their tasks are complete or, in the case of individuals, to pursue other opportunities, which may include joining proponent teams. For those individuals and firms who have previously been classified as “exclusive” to the public sector side to a procurement, their exclusivity restrictions continue to apply until such time as the Relationship Review Committee revisits this determination and releases them from these restrictions.

Upon departure from the Gateway Program, the onus is on the individuals and firms of the Gateway Program to notify the Relationship Review Committee and request a re-visitation of their status. Those individuals at the Gateway Program authorized to contract with firms and individuals on behalf of Gateway will be asked to notify the Relationship Review Committee upon departure of a firm or individual from the Gateway Program.

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 the proponent’s ability to participate in the selection process, until such time that this individual or firm can be released of their restrictions.

All firms and individuals who have been released by the Relationship Review Committee from their “exclusivity restrictions” will be listed in a document that will be updated regularly and circulated to all Gateway Program team members and posted in the Gateway Program offices. Once these firms and individuals are on this

list, Gateway Program team members will be no longer be permitted to share any confidential Gateway Program information with those firms or individuals.

M. Government of British Columbia – Core Policy Manual

The procurement chapter of the Province of British Columbia’s Core Policy Manual addresses the issue of potential conflict of interest in two sections and therefore is of direct relevance to the Gateway Program.

Section 6.3.2.a.2 states: “An employee must not participate in a contracting decision if the contract involves a direct relative, a person married to a direct relative, or a person sharing the same household as the employee. A direct relative means a spouse, parent, grandchild, brother, sister, son, or daughter.”

Section 6.3.2.a.3 states:

“An employee who is exposed to an actual, perceived or potential conflict of interest in relation to an actual or proposed solicitation must disclose the matter to his or her supervisor and/or the contract manager. If, after review, it is determined that there is a conflict, the supervisor or contract manager must remove the employee from this particular contract situation. An employee who fails to disclose a conflict of interest can be subject to disciplinary action up to and including dismissal. Any suspected Conflicts of Interest must be investigated and resolved (Personnel Management Policy Manual, Standards of Conduct, policy 5.4)

J. Appendix A

The following definitions of related and affiliated persons will be used in determining relationships. They are taken from the 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.