

Procurement Related Disclosure for Major Infrastructure Projects

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Partnerships BC is committed to developing guidance documents and templates related to its core business of structuring and implementing partnership delivery solutions for public infrastructure. As part of this commitment, Partnerships BC develops and in some cases publishes guidance documents. The intent of these documents is to provide an overview to Partnerships BC's approach to issues of critical importance to Partnerships BC and the ongoing success of public infrastructure projects.

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1 INTRODUCTION

This paper provides an overview of Partnerships BC's guidance on disclosure practices for the competitive selection process of major public infrastructure projects.

This paper covers non-legislative disclosure before, during and after competitive selection processes. These guidelines deal with discretionary release of information, and not responses under the Freedom of Information and Protection of Privacy Act (FOIPPA) or disclosure otherwise required by law, such as by Sections 8 and 14 of the Budget Transparency and Accountability Act (BTAA). These guidelines have been developed to be consistent with both the application of FOIPPA and the BTAA.

2 WHAT IS DISCLOSURE?

Disclosure, in the context of public sector procurement practices, refers to the type, amount and timing of information related to procurement processes that is made public. During the procurement process, thousands of pages of documentation are developed by numerous parties, including private sector proponents, public sector agencies and advisers to both parties.

2.1 CONSIDERATIONS REGARDING DISCLOSURE

The phrase “competition and transparency” is included as a Guiding Principle of the Province of British Columbia’s Capital Asset Management Framework. Competition and transparency is defined in the Capital Asset Management Framework as:

- Agencies procuring private sector services will use fair, open, competitive processes, consistent with government procurement policies.
- Agencies will disclose the details of competitive processes and their outcomes, while protecting proprietary and commercially confidential information.

3 THE GOAL OF DISCLOSURE

The government’s policy is one of openness and transparency in procurement. Therefore, the goal is to serve the public interest by disclosing as much as possible without jeopardizing the ability of the government to generate the best value partnership agreement for taxpayers.

While the goal of transparency in public procurement of major infrastructure projects is important, openness should not result in harm to the competitive process or to the government’s negotiating position. It is important to maintain a competitive process that attracts and retains bidder participation.

For major infrastructure projects, Partnerships BC recommends a consistent approach to disclosure. However, each project and each individual competitive selection process will have its own specific requirements with respect to balancing the level of disclosure and the need to protect government's future negotiating position in both current and future projects. As a result, final decisions about disclosure will be made by Project Owners.

A consistent approach to disclosure also provides certainty for proponents. For major projects, disclosure practices should be explained to key stakeholders at the earliest stages of a project. Private sector participants in public procurement processes should be made aware of government's open approach. Setting disclosure guidelines at the beginning of a process helps establish ground rules and provides certainty to prospective private sector partners. Disclosure guidelines or policies can be included, or referenced, in early stages of the competitive selection process.

4 METHODS OF DISCLOSURE

The method of disclosure should be determined by project-specific considerations and with the goal of balancing disclosure and protecting government's negotiating position.

The table below describes Partnerships BC's recommended disclosure approach at typical stages before, during and after a major infrastructure project competitive selection process.

Table Table

Project Information Milestones	Disclosure Guidance and Rationale
Project approval	<ul style="list-style-type: none">▪ Ministries are accountable to meet BTAA disclosure requirements.▪ Disclosure of capital cost only in an order of magnitude or range is recommended at this time and during procurement because it is an estimate that is subject to change.
Request for Qualifications (RFQ) document	<ul style="list-style-type: none">▪ Disclosure is recommended in accordance with government policy and trade agreements, for all major infrastructure projects using an RFQ/RFP process.
Name and number of parties who respond to RFQ	<ul style="list-style-type: none">▪ Disclosure of the number of respondents is recommended to provide an indication of the level of interest in the project from prospective proponents.▪ Disclosure of names of respondents is not advised.
Name and number of parties who are short-listed at the RFQ stage and who are invited to respond to the Request for Proposals (RFP)	<ul style="list-style-type: none">▪ Disclosure of the number and names of short-listed respondent teams, including the names of the companies that make up the teams, is recommended.

Project Information Milestones	Disclosure Guidance and Rationale
document	
Report of the Fairness Adviser (RFQ stage)	<ul style="list-style-type: none"> ▪ Disclosure of reports is recommended in all cases where a Fairness Adviser is engaged.
Request for Proposals (RFP) document	<ul style="list-style-type: none"> ▪ Disclosure of the RFP is recommended.
Draft Project Agreement	<ul style="list-style-type: none"> ▪ Disclosure of the draft Project Agreement is not recommended given that this contract is the basis for commercial negotiations, and is subject to change.
Name of selected proponent	<ul style="list-style-type: none"> ▪ Disclosure of the selected proponent is recommended. The timing of this disclosure needs to be such that the Owner's negotiating position will not be harmed.
Report of the Fairness Adviser (RFP stage)	<ul style="list-style-type: none"> ▪ Where a Fairness Adviser has been engaged for the project, disclosure of the Fairness Adviser's report is recommended.
Project Report	<ul style="list-style-type: none"> ▪ Disclosure of a final Project Report is recommended for all projects where a Report is produced. Typically, these reports are done only for major infrastructure projects where a partnership delivery method has been implemented.
Final Project Agreement	<ul style="list-style-type: none"> ▪ For major infrastructure projects, disclosure is recommended.
Responses from Respondents (RFQ phase) and Proposals from Proponents (RFP phase)	<ul style="list-style-type: none"> ▪ Subject to FOIPPA, all documents and records submitted in response to the RFP are considered confidential. ▪ Proposals are not disclosed because disclosure of these documents could significantly harm the commercial and competitive interests of the proponents, and the ability of government to attract the best possible project at the best value for taxpayers. ▪ Note that both winning and unsuccessful bid prices are protected under the terms of most procurement processes, as commercially confidential for the bidders. Disclosure is not recommended.