

Procurement Related Disclosure for Public Private Partnerships

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Partnerships BC is committed to developing and sharing best practices related to its core business of structuring and implementing public private partnerships that provide taxpayers value for money. As part of this commitment, Partnerships BC documents and publishes best practices guidance documents. The intent of these documents is to provide an overview to Partnerships BC's approach to issues of critical importance to the ongoing success of public private partnerships as a procurement model in Canada.

These documents are available to the public at www.partnershipsbc.ca.

For additional information on Partnerships BC best practices, contact the Vancouver office at 604-660-1087.

Introduction

This paper provides an overview of disclosure practices for public private partnerships, and is based on an approach developed and adopted by Partnerships BC in 2005.

This paper covers legislative (Province of British Columbia) and non-legislative disclosure related to project plans and procurement-related documents and activities. 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, however, with an attempt to be consistent with both the application of the FOIPPA and the BTAA.

What is disclosure?

Disclosure, in the context of public sector procurement practices, refers to the type, amount and timing of information related to procurement decisions 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 advisors to both parties.

Considerations Regarding Disclosure

“Competition and transparency” is stated as a Guiding Principle of the Province of British Columbia’s Capital Asset Management Framework. Competition and transparency is further 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.*

The goal of disclosure

The government’s policy is one of openness and transparency in procurement. Therefore, the goal is to disclose as much as possible in the public interest without jeopardizing the ability of the government to generate the best value agreement for taxpayers. To serve the public interest, Partnerships BC developed a disclosure practice that provides as much information as possible to the public, while protecting commercially sensitive information, so that private companies will continue to participate in our market.

While the goal of transparency in public private partnerships is important, openness should not result in harm to the competitive process nor to the government’s negotiating position. It’s important to maintain a competitive process that attracts and retains bidder participation and generates the best value agreement.

Communicating about disclosure

Partnerships BC’s disclosure practices are a matter of public record, and these practices help the organization achieve public support for specific projects, and for the public private partnership model overall.

A consistent approach to disclosure also provides certainty for proponents. Decisions about disclosure practices should be made 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. For example, disclosure guidelines or policies can be included, or referenced, in early stages such as Requests for Expressions of Interest, or Requests for Qualifications, and should definitely be included or referenced in Requests for Proposals and subsequent information to proponents.

Methods of disclosure

The method of disclosure (e.g. posting it on a project website, making information available upon request, or issuing a news release, etc) should be determined by project-specific considerations and with the goal of transparency in mind. The method of disclosure often varies according to the stage in the process.

The table below describes the recommended disclosure approach at typical stages of the procurement process. Not all stages outlined below are applicable to all public private procurement processes.

PROCUREMENT RELATED DISCLOSURE GUIDELINES FOR PUBLIC PRIVATE PARTNERSHIPS	
MILESTONE	DISCLOSURE GUIDANCE AND RATIONALE
Request for Expressions of Interest document (REOI)	<ul style="list-style-type: none"> • Disclosure is recommended. Generally the REOI should be publicly available such as on a project website. <ul style="list-style-type: none"> ○ There is strong public interest in making this document public given that the REOI generally outlines the values and objectives of a project.
Name & number of parties who respond to EOI	<ul style="list-style-type: none"> • Disclosure of the number of respondents is recommended to provide a public update of the level of interest in the project from prospective proponents. • Disclosure of names is generally not advised, but should be determined based on the specific project and its circumstances. The ability to attract qualified respondents may be affected by disclosing names at this stage; as such, names should generally be disclosed only when shortlists are established or qualifying stages are reached. Further, disclosure of names may not be meaningful as respondents may choose not to continue in the competitive process, and have not yet been qualified to proceed to the next stage of procurement. <ul style="list-style-type: none"> ○ It is recommended that the nature of respondents be characterized and that context about the number be provided. (i.e., if teams are expected to consolidate in later stages).
Name & number of parties who are short listed at EOI stage	<ul style="list-style-type: none"> • Disclosure of the number of shortlisted or prequalified proponents is recommended. • Disclosure of names is also recommended, but should be determined based on the specific project and its circumstances. In some cases, competitive tension may be better maintained by not disclosing shortlisted proponent names. Depending on the nature and intent of the REOI process, however, projects may want to publicize names to encourage proponent team formation.
Request for Qualifications document (RFQ)	<ul style="list-style-type: none"> • Disclosure is recommended. Generally the RFQ should be publicly available such as on a project website or through a link to the BC Bid site. In addition, addenda to the RFQ will be made available to proponents who register through the BC Bid process.
Name & number of parties who respond to RFQ	<ul style="list-style-type: none"> • Disclosure of the number of respondents is recommended. • Disclosure of names should be determined based on the specific project and its circumstances, consistent with the guidance provided on the EOI stage, above.

PROCUREMENT RELATED DISCLOSURE GUIDELINES FOR PUBLIC PRIVATE PARTNERSHIPS	
MILESTONE	DISCLOSURE GUIDANCE AND RATIONALE
Name & number of parties who are short listed at RFQ stage and receive RFP	<ul style="list-style-type: none"> Disclosure of the number and names of successful parties is recommended.
Request for Proposals (RFP)	<ul style="list-style-type: none"> Disclosure of RFP is recommended.
Draft Project / Concession Agreement	<ul style="list-style-type: none"> Disclosure of the draft Project/Concession Agreement is not recommended given that this contract is the basis for commercial negotiations, is subject to change and could harm the negotiating interests of the province, and of proponents, in future projects.
Name of preferred proponent	<ul style="list-style-type: none"> Disclosure of preferred proponent is recommended, however, the timing of this disclosure needs to be such that the government's negotiating position will not be harmed. Disclosure of a preferred proponent may be best at a stage when evaluation and decision making are sufficiently advanced, so that the information reflects the likely outcome of the procurement process.
Fairness Opinion (if applicable)	<ul style="list-style-type: none"> Disclosure of the final report is recommended at or soon after financial close. There may be interim opinions issued at earlier stages in the process.
Value for Money Report (following conclusion of an agreement)	<ul style="list-style-type: none"> Disclosure of a final Value for Money Report for the project soon after financial close is recommended. This is the stage when a commitment is made. <ul style="list-style-type: none"> Final value for money assessment should include a Multi-Criteria Analysis for the project; a value for money analysis of final agreement achieved versus a base case, such as a public delivery option for the project if one was considered; and any further innovations/savings captured during the procurement process. This report will also include the objectives, costs and benefits, and risks of the project.
Final agreement	<ul style="list-style-type: none"> Disclosure is recommended within 30 – 60 days of financial close, protecting information that is personal, proprietary or commercially confidential.
Proposals from Proponents	<ul style="list-style-type: none"> Disclosure of proposals from proponents and respondents is not recommended because disclosure of these documents could significantly harm the commercial and competitive interests of the proponents, and the ability of the government to attract the best possible project at the best cost.