



# **Green Line Conflict of Interest Protocol Green Line Program**

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## 1. PURPOSE, SCOPE AND CONSEQUENCES OF NON-COMPLIANCE

### A. Purpose

The purpose of this Conflict of Interest protocol (the “Protocol”) is to establish the rules for identifying, disclosing, reviewing, resolving and reporting on potential, actual or perceived conflicts of interest, unfair advantage and bias encountered during the development and implementation of The City of Calgary’s (“The City”) Green Line LRT program (the “Green Line Program”), including any procurement processes related to the acquisition of goods and services for the Green Line Program. This Protocol is also intended to,

- (i) supplement the Conflict of Interest Policy (Policy number: HR-LR-004(B)) of The City of Calgary (the “Conflict of Interest Policy”) as it relates to the Green Line Program;
- (ii) describe what The City expects of its employees regarding the disclosure and avoidance of conflict of interest on the Green Line Program specifically;
- (iii) protect the interests of The City and City employees and to provide rules and guiding principles by which conflict of interest is to be avoided in order to protect the fairness and integrity of the competitive procurement process related to the Green Line Program;
- (iv) describe what The City and the Green Line Board will require of its advisors (and sub-consultants to its advisors) on the Green Line Program regarding the disclosure and avoidance of conflict of interest; and
- (v) describe what The City and the Green Line Board will require of the Proponents in the Green Line Program competitive procurements regarding the disclosure and avoidance of conflict of interest.

This policy is supported by the Code of Conduct Policy (Administration Policy HR-LR-005) and the Labour Relations Policy (Administration Policy HR-LR-002) of The City. Members of the Green Line Program Team are expected to comply with this project-based Protocol and with the Conflict of Interest Policy. This Protocol and the Conflict of Interest Policy are meant to be read together.

### B. Scope

This policy applies to,

- (i) individuals employed by The City and advisors (and their sub-consultants) retained by The City and the Green Line Board in relation to the Green Line Program; and
- (ii) Proponents and Proponent Team Members (and their respective advisors) in any competitive procurement process for goods and services related to the Green Line Program.

### C. Consequence of Non-Compliance

- (i) A breach of this Protocol by an employee of The City on the Green Line Program Team will be treated as a breach of the Conflict of Interest Policy and the consequences of non-compliance will be the same as those set out in the Conflict of

Interest Policy (see Section 2.0 of the Conflict of Interest Policy). For clarity, a failure to disclose a conflict of interest is a breach of this Protocol.

- (ii) With respect to advisors (and sub-consultants of advisors) of The City and the Green Line Board, in the event of a breach of this Protocol by the advisor or sub-consultant of the advisor, The City or the Green Line Board (as applicable) will take action in accordance with their contractual agreement with the advisor.
- (iii) With respect to Proponents, Proponent Team Members and their respective advisors, the consequences of non-compliance will be set out in the competitive procurement documents.

**D. Responsibilities of Employees of The City**

- (i) The responsibilities of employees and management of The City with respect to this Protocol are the same as those set out in the Conflict of Interest Policy (see Section 4.0 of the Conflict of Interest Policy).

**2. BACKGROUND**

Canadian procurement law obliges procuring authorities to carry out “fair” procurements. While there are several aspects to the concept of fairness, all fairness obligations tend to focus on whether the competitive procurement process and, in particular, the procuring authority’s evaluation of Proponents, has been conducted fairly. Among the key elements of fairness are the obligation to avoid conflict of interest, unfair advantage, and bias.

Conflicts of interest can present a problem when they arise from either the procuring authority’s conduct or from a Proponent’s conduct, or both. Therefore, conflicts of interest, unfair advantage and bias in competitive procurements have to be assessed from two perspectives: (i) procuring authorities must ensure that their own treatment of Proponents, particularly as they relate to evaluation decisions, are free from conflict of interest and bias (for example, a procuring authority’s judgement cannot be compromised by its own self-interest or the self-interest of its employees or advisors), and (ii) a procuring authority must ensure that Proponents do not have unfair advantages over other Proponents (for example, access to confidential information or access to decision-makers that other Proponents do not have). In general, procuring authorities can be compelled to disqualify a Proponent (or a member of a Proponent team) in order to preserve the integrity of the competitive procurement process. In making procurement decisions about conflict of interest, however, procuring authorities also should consider their obligation to run an “open” process and whether this means that they should seek to allow prospective Proponents and Proponent team members to mitigate their conflicts of interest.

The Canadian procurement case law contains numerous examples of circumstances in which a procuring authority has failed to deal with conflicts of interest or unfair advantage that compromised the integrity of the competitive procurement process. Conflicts of interest, unfair advantage and bias can take many forms and may result from several different fact situations but, in all cases, The City has a positive obligation to protect the integrity of the competitive procurement process. (Categories of typical circumstances that have arisen are set out below in Section 3 of this Protocol.)

In addition, The City has contracts with third parties providing goods and services to The City in relation to the Green Line Program that oblige the counterparty to disclose conflicts of interest and to avoid circumstances where the counterparty has a conflict of interest with The City. The City wishes to ensure the consistent treatment of all conflicts of interest related to the Green Line Program,

including those arising in the context of a competitive procurement process as well as those arising in other contractual arrangements through this Protocol.

### **3. WHAT IS CONFLICT OF INTEREST IN THE GREEN LINE PROGRAM CONTEXT?**

Conflict of interest, unfair advantage and bias in the procurement context can take many forms, each of which is dependent on the specific facts of the circumstances. In the procurement context, conflict of interest is generally defined as any interest of an individual or firm (on either The City or the bidding side) that conflicts, may conflict, or may be perceived to conflict, with The City's obligation to conduct an objective, unbiased and impartial procurement. On the bidding side, the definition of conflict of interest usually includes an interest of a Proponent that could or could be seen to compromise, impair or be incompatible with the effective performance of the Proponent's obligations under the relevant contract.

In assessing conflicts of interest, individuals must consider themselves and their family members (family members include an individual's spouse, child, brother, sister, parent, mother or father-in-law, son or daughter-in-law, or someone who shares the home of the person (other than a domestic employee)).

"Unfair advantage" is a generic term usually used to indicate any circumstance in which a Proponent has an unfair advantage over its competitors. Various types of conflict of interest can give rise to an unfair advantage, but an unfair advantage can also be the result of other factors (for example, access to confidential information not available to other Proponents).

Finally, "bias" in the procurement context is used to mean an approach or attitude that is unfavourable or more favourable to one or more Proponents as compared to other Proponents such that it impedes the implementation of an objective, and impartial competitive procurement process. The risk of bias is most significant during the evaluation process and is almost inevitably a City Conflict.

In this Protocol, conflicts of interest of The City are referred to as "City Conflicts" and conflicts of interest of Proponents are referred to as "Proponent Conflict(s)". City Conflicts include both conflicts of interest that arise in the context of a competitive procurement process as well as conflicts of interest arising in other contractual arrangements between a third party and The City related to the Green Line Program.

Examples of common fact situations during procurement processes that constitute conflicts of interest are:

- (i) Conflict of Interest – Personal: In the procurement context, this can occur as both a City Conflict and a Proponent Conflict. As a City Conflict, this would occur when an individual employee of The City or an individual on the advisory team has a personal interest that conflicts with (or is perceived to conflict with), or impedes, his or her ability to perform procurement duties objectively. The most common example of this occurs when a person (or a person's family member) has a personal or financial interest in a Proponent or a Proponent team member. The Proponent has an equivalent obligation to report such a situation as a Proponent Conflict because the Proponent will, pursuant to the RFQ or RFP documents, be obliged to report circumstances where a member of a Proponent team (individual or corporate) has interests or relationships that could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment by any individual on the Green Line Program Team.

- (ii) Conflict of Interest – Former Employees: This occurs when a former employee of The City wishes to participate on a Proponent team either to carry out duties under the contract or to advise the Proponent. This is most often reported as a Proponent Conflict.
- (iii) Conflict of Interest – Professional: In the procurement context, this can occur as both a City Conflict and a Proponent Conflict. This occurs when a person's professional role in one capacity conflicts with his or her role in another professional capacity. The classic example of this is the conflict of interest that exists for project advisors to The City if they purport to also provide advice to Proponents. A more subtle version of this occurs when advisors are only involved at the early stages of a project and wish to participate on or advise a Proponent team on the project (or where an advisor has a pre-existing relationship with a Proponent).
- (iv) Conflict of Interest – Participation on Multiple Proponent Teams: This is a circumstance where a Proponent (or a member of a Proponent team) has a financial interest in more than one proposal. This is usually regulated by rules in the procurement documents.
- (v) Unfair Advantage – Access to Confidential Information: This occurs when a Proponent has access to confidential information about the project that is not available to other Proponents and, therefore, creates an unfair advantage to the Proponent.
- (vi) Unfair Advantage – Advance Notice of a Procurement: This occurs when a Proponent has advance notice of a procurement that is so significant that it gives the Proponent materially more time to investigate, plan, or prepare a response to a procurement process and, therefore, creates an unfair advantage to the Proponent (and that may result in a corresponding unfair disadvantage to other Proponents).
- (vii) Unfair Advantage – Relationship with The City: This is a circumstance in which a prospective Proponent or Proponent team member has a pre-existing relationship with The City that may impede The City's ability to be impartial and objective in the evaluation of the Proponent or Proponent team member (and that may result in a corresponding unfair disadvantage to other Proponents).
- (viii) Bias or Reasonable Apprehension of Bias: This can cover a range of possible fact situations, but usually arises from bias demonstrated by the procuring authority in its evaluation process or its final decision on award. Bias is often thought of as a consequence of a conflict of interest or a type of conflict of interest.

#### **4. MANAGEMENT OF CITY CONFLICTS**

##### **A. Introduction**

For the purpose of this Protocol, City Conflicts include conflicts of interest of The City itself, employees of The City, advisors to The City, and sub-consultants to advisors to The City.

The process to manage City Conflicts must be carried out in five stages as follows:

- (i) establish the obligation to disclose conflicts of interest, unfair advantage and bias;

- (ii) identify the Green Line Program Team and implement the process of making mandatory disclosures;
- (iii) record the conflict of interest disclosures and investigate further (as required);
- (iv) review and resolve conflicts of interest that are disclosed and record the resolution; and
- (v) for conflicts of interests arising in a competitive procurement process, re-assess the disclosures after receiving full information on the Proponents and Proponent teams, paying particular attention to evaluation team members.

**B. Establish the Obligation to Disclose Potential, Perceived or Actual Conflicts of Interest**

This Protocol establishes the obligation of all City employees and advisors (and any sub-consultants to the advisors) involved in the Green Line Program to disclose any potential, perceived or actual conflicts of interest that are either listed in Section 3 of this Protocol or that are similar to those conflicts listed in Section 3 of this Protocol. In order to assist City employees and advisors (and sub-consultants to advisors) in completing an analysis of their own actual, potential or perceived conflicts of interests (or knowledge of bias or unfair advantage), a guideline document setting out a practical approach to identifying conflicts is set out as Attachment 1 to this Protocol.

**C. Identify Members of the Green Line Program Team and Others**

The Manager, Legal Services (or her designate) shall establish a list of all individuals, firms and companies that constitute the Green Line Program team ("Green Line Program Team") and shall notify each individual, firm and company that they are obliged to (i) complete a "Conflict of Interest Declaration" as soon as possible identifying any known potential, perceived or actual conflict of interest and (iii) update the Conflict of Interest Declarations on an immediate basis if a new conflict of interest becomes known. As each new advisor is added to the Green Line Program Team the advisor firm and its team members will be obliged to complete a Conflict of Interest Declaration. A standard Conflict of Interest Declaration (for City employees and advisors) is set out as Attachment 2 to this Protocol.

It is also in the interest of The City to identify those consulting firms who have assisted with the Green Line Program in the past and who may be intending to join Proponent teams as advisors or team members. To do this, The City should, by letter to all consulting firms that have worked on the Green Line Program in the past, invite the consulting firms to request a "pre-clearance" for conflict of interest issues.

**D. Identify "Ineligible Persons"**

At the outset of each competitive procurement process for the Green Line Program, The City must identify those persons and firms who are so integral to the development of the Green Line Program and the related procurement that they are automatically precluded from participating on a Proponent team. The names of those persons and firms that are ineligible shall be published in the procurement documents.

**E. Record the Disclosure**

The completed Conflict of Interest Declarations shall be provided to the Manager Legal Services – Green Line who will retain them as project documents and who will compile a list of individuals and firms that have reported a conflict of interest. If further investigation is required to provide sufficient

facts related to the conflict of interest, the further investigation will be carried out by the Manager Legal Services – Green Line or her delegate with the engagement of the rest of the Green Line Program Team on an as needed basis.

F. Review and Resolve City Conflicts

City Conflicts are to be reviewed and resolved by a conflict of interest adjudicator appointed by the Green Line Board for the Green Line Program (the “GL Conflict Adjudicator”). Details of the GL Conflict of Interest Adjudicator are set out in Section 6 – Green Line Conflict of Interest Adjudicator of this Protocol. The City recognizes that conflicts of interest can be managed or mitigated and that not all conflicts of interest are of equal importance or of equal risk to the Green Line Program.

In reviewing City Conflicts, the GL Conflict of Interest Adjudicator may consider:

- (i) a person or firm’s access to information with respect to the Green Line Program;
- (ii) a person or firm’s role or position and the nature and importance of its role in relation to the Green Line Program;
- (iii) the currency of any information prepared, accessed, or obtained by the person or firm;
- (iv) the relevance of any information prepared, accessed, or obtained by the person or firm; and
- (v) whether the person is an evaluator in the Green Line Program procurement (in general, evaluators will be held to a higher standard).

In assessing strategies to manage or mitigate a conflict of interest, the GL Conflict of Interest Adjudicator may do one or more of the following:

- (i) remove a person from the Green Line Program Team or limit the duties of that person on the Green Line Program;
- (ii) require removal of a person or firm from a Proponent team;
- (iii) declare a person or firm ineligible to participate on a Proponent team;
- (iv) remove a person from a Green Line Program evaluation team(s);
- (v) minimize or eliminate the impact of a conflict of interest by disclosing information that the relevant person or firm had access to;
- (vi) determine that the conflict of interest is so remote as to be of little or no consequence to a Green Line Program procurement and disclose such a decision to Proponents or prospective Proponents;
- (vii) seek directors’ or officers’ certificates from advisor firms confirming that there has been no negative impact arising from the conflict of interest;
- (viii) establish or require the establishment of ethical walls (including security and ethical walls around persons and documents) to manage the conflict of interest and seek



directors' or officers' certificates from advisor firms that ethical walls are in place and have been monitored and respected; and

- (ix) implement any other strategy that has the genuine effect of managing or mitigating the conflict of interest.

## **5. MANAGEMENT OF PROPONENT CONFLICTS**

### **A. Introduction**

For the purpose of this Protocol, Proponent Conflicts include conflicts of interest of Proponents, Proponent team members, all persons named in a Proponent's submission as having a role in the project, and all persons who participate in the preparation of the Proponent's submission.

The process to manage Proponent Conflicts must be carried out in four stages as follows:

- (i) establish the obligation to disclose conflicts of interest and unfair advantage (including Proponent interests that may conflict with the proper carrying out of duties under the relevant contract);
- (ii) identify the members of the Proponent team (individual and firm) so that City Conflicts can be checked;
- (iii) record the conflict of interest disclosures and investigate further (as required); and
- (iv) review and resolve conflicts of interest that are disclosed and record the resolution.

### **B. Establish the Obligation to Disclose Potential, Perceived or Actual Conflicts of Interest**

The rules with respect to Proponent Conflicts must be explicitly set out in the competitive procurement documents (in both the Request for Qualifications ("RFQ") and Request for Proposals ("RFP")). Such rules must include,

- (i) a list of persons who are prohibited from participating on Proponent teams ("Ineligible Persons");
- (ii) rules as to whether a firm or person can participate on more than one Proponent team;
- (iii) a definition of conflict of interest under the competitive procurement process;
- (iv) rules requiring Proponents to disclose conflicts of interest as soon as they are discovered and rules as to how conflict of interest should be tested on a Proponent team;
- (v) conflict of interest declarations for Proponents and Proponent Team Members;
- (vi) rules requiring Proponents to disclose all members of their Proponent team (both persons and firms and including persons who participated in the preparation of the Proponent's submission) so that City Conflicts can be properly checked; and
- (vii) rules setting out The City's discretion in handling conflict of interest issues, and The City's rights in the face of a conflict of interest issue.

C. Identify Members of the Proponent Team

The RFQ and RFP should each include a Proponent obligation to disclose the names (individuals and firms) of the Proponent team members. To achieve this, the “Proponent team” must be defined to ensure that all key members of the team (both individuals and firms) are caught in the rules that apply related to conflict of interest. These Proponent team member lists are the lists against which relevant City employees and advisors on the Green Line Program Team need to check their own conflicts of interest. This process should be carried out before the RFQ evaluation process or RFP evaluation process occurs to ensure that all conflicts are resolved before the evaluation process is underway. The RFQ and RFP should require that the Proponent team member lists are submitted for review before the submission deadline.

D. Record the Disclosure

All Proponent Conflicts raised during the competitive procurement process shall be reported to the Manager Legal Services – Green Line who will retain them as project documents and who will compile a list of individuals and firms from the Proponent teams that have reported a conflict of interest. If further investigation is required to provide sufficient facts related to the conflict of interest, the further investigation will be carried out by the Manager Legal Services – Green Line or her delegate with the engagement of the rest of the Green Line Program Team on an as needed basis.

E. Review and Resolve Proponent Conflicts

Proponent Conflicts are to be reviewed and resolved by the GL Conflict of Interest Adjudicator. Details of the GL Conflict of Interest Adjudicator are set out in Section 6 – Green Line Conflict of Interest Adjudicator of this Protocol. The City recognizes that conflicts of interest can be managed or mitigated and that not all conflicts of interest are of equal importance or of equal risk to the Green Line Program.

In reviewing Proponent Conflicts, the GL Conflict of Interest Adjudicator may consider:

- (i) a person or firm’s access to information with respect to the Green Line Program;
- (ii) a person or firm’s role or position and the nature and importance of its role in relation to the Green Line Program;
- (iii) the currency of any information prepared, accessed, or obtained by the person or firm;
- (iv) the relevance of any information prepared, accessed, or obtained by the person or firm;
- (v) whether the Proponent Conflict relates to an evaluator in the Green Line Program procurement (in general, evaluators will be held to a higher standard); and
- (vi) if the Proponent Conflict relates to an ability to carry out the duties of the successful Proponent under the applicable contract, the seriousness of the inability to carry out the duties under the contract.

In assessing strategies to manage or mitigate a conflict of interest, the GL Conflict of Interest Adjudicator may do one or more of the following:

- (i) require the removal of a person from the Proponent team;

- (ii) declare a person or firm ineligible to participate on a Proponent team and amend the Ineligible Persons list;
- (iii) remove a person from the Green Line evaluation team(s) or the Green Line Program Team;
- (iv) minimize or eliminate the impact of a conflict of interest by disclosing information that the relevant person or firm had access to;
- (v) determine that the conflict of interest is so remote as to be of little or no consequence to the Green Line Program procurement and disclose such a decision to Proponents or prospective Proponents;
- (vi) seek directors' or officers' certificates from advisor firms confirming that there has been no negative impact arising from the conflict of interest;
- (vii) establish or require the establishment of ethical walls (including security and ethical walls around persons and documents) to manage the conflict of interest and seek directors' or officers' certificates from advisor firms that ethical walls are in place and have been monitored and respected; and
- (viii) implement any other strategy that has the genuine effect of managing or mitigating the conflict of interest.

## **6. GREEN LINE CONFLICT OF INTEREST ADJUDICATOR**

### **A. Appointment of the GL Conflict of Interest Adjudicator**

The Green Line Board shall appoint an individual, who is not an employee of The City, to fulfill the role of adjudicator of conflicts of interest for the Green Line Program (the "GL Conflict of Interest Adjudicator"). The GL Conflict of Interest Adjudicator should have relevant experience in identifying, disclosing, reviewing and resolving conflict of interest issues in the context of public sector procurement processes. Experience in the construction market in Canada and the adjudication of construction disputes would be an asset. The GL Conflict of Interest Adjudicator will provide independent and objective determinations of all conflict of interest issues put before them in accordance with this Protocol.

### **B. Mandate of the GL Conflict of Interest Adjudicator**

- (i) The GL Conflict of Interest Adjudicator shall make determinations with respect to the resolution of City Conflicts and Proponent Conflicts and with respect to the resolution of circumstances of unfair advantage or bias during a Green Line Program competitive procurement process.
- (ii) The GL Conflict of Interest Adjudicator,
  - (a) shall receive input from the Green Line Program Team on all City Conflict and Proponent Conflict issues;
  - (b) may request through the Manger Legal Services – Green Line or her delegate further information from the submitter of the Request for Decision as the Adjudicator deems required to make the necessary determinations in accordance with (i) above;

- (c) may request further assistance from the Green Line Program Team on an as needed basis; and
  - (d) may request legal advice from the City Solicitor or her delegate, the Manager Legal Services – Green Line, or external counsel.
- (iii) The GL Conflict of Interest Adjudicator will review and make determinations with respect to City Conflicts and Proponent Conflicts in a timely manner and will provide brief written reasons of such determination (the “Determination”).
  - (iv) The information provided to the GL Conflict of Interest Adjudicator and any communications with the Green Line Program Team, the City Solicitor or the Manager Legal Services – Green Line are confidential and shall be labeled as such.

The City shall provide a copy of the Determination of the GL Conflict of Interest Adjudicator to the Submitter of the Request for Decision, the Green Line Program Team, and a sub-committee designated by the Green Line Board (the “Board Sub-committee”).

C. Reconsideration of Determinations of the GL Conflict of Interest Adjudicator

The Submitter of the Request for Decision may request that The City reconsider the conflict of interest Determination. Requests for reconsideration shall be made in writing (not to exceed five pages in length) and must contain sufficient detail to permit a reconsideration of the conflict of interest, including any new information that was not available to the GL Conflict of Interest Adjudicator at the time of the initial Determination. Requests for reconsideration must be made no later than ten business days following receipt of the Determination.

When a request for reconsideration is received by The City, it shall be made available to the GL Conflict of Interest Adjudicator and the Board Sub-committee concurrently. The GL Conflict of Interest Adjudicator shall consider any information provided in relation to the request for reconsideration and provide a final determination of the conflict of interest to the Board Sub-committee (“Reconsideration Determination”) in a timely manner, having regard to the information provided and the issues raised in the request for reconsideration.

The Board Sub-Committee shall review each Reconsideration Determination made by the GL Conflict of Interest Adjudicator only for the purpose of ensuring that the conflict of interest was considered and resolved in accordance with the procedures set out in this Protocol. In the course of its review of the procedure followed by the GL Conflict of Interest Adjudicator, the Board Sub-committee may consider any information that was before the GL Conflict of Interest Adjudicator and shall be entitled to make inquiries of the GL Conflict of Interest Adjudicator and to meet with the GL Conflict of Interest Adjudicator as the Board Sub-committee, in its sole discretion, considers appropriate.

The Board Sub-committee may either accept the Reconsideration Determination of the GL Conflict of Interest Adjudicator, or if in the view of the Board Sub-committee, the Reconsideration Determination requires further review and consideration, the Board Sub-committee may refer the matter to the Green Line Board for final resolution. The Green Line Board shall have regard to any reasons of the GL Conflict of Interest Adjudicator, any information that was before the GL Conflict of Interest Adjudicator in respect of the matter, and the terms and provisions of this Protocol.

D. Communications

All communications with the GL Conflict of Interest Adjudicator, all parties involved in a conflict of interest matter and the Board Sub-committee will be conducted in accordance with a protocol established by the Manager Legal Services – Green Line.

**ATTACHMENT 1 – PRACTICAL GUIDELINES TO CITY CONFLICTS OF INTEREST**

**INTRODUCTORY GUIDELINES**

1. The City has developed a Conflict of Interest protocol (the “Protocol”) to establish the rules for identifying, disclosing, reviewing, resolving and reporting on potential, actual or perceived conflicts of interest, unfair advantage and bias encountered during the development and implementation of the procurement process for the Green Line Program.
2. The Protocol groups conflicts of interest into two key buckets: “City Conflicts” (which include conflicts of interest of The City, its employees, its advisors, and sub-consultants to the advisors), and “Proponent Conflicts” (which include conflicts of interest of Proponents, Proponent team members, all persons named in a Proponent’s submission as having a role in the Green Line Program, and all persons who participate in the preparation of the Proponent’s submission). While the Protocol deals with both City Conflicts and Proponent Conflicts, **these guidelines are with respect to City Conflicts only.**
3. In conjunction with the Protocol, these guidelines have been developed to specifically assist City employees, advisors and sub-consultants to advisors in completing an analysis of their own actual, potential or perceived conflicts of interests (or knowledge of bias or unfair advantage).
4. Employees and advisors should review the Protocol carefully in order to familiarize themselves with conflict of interest terminology and some of the key issues with respect to City Conflicts. Note that two key concepts from the Protocol are:
  - (a) Employees and advisors have a positive obligation on an ongoing basis to disclose and avoid all actual, potential, and perceived conflict of interest (and knowledge of bias and unfair advantage) on the Green Line Program as set out in the Protocol.
  - (b) The City expects each employee and advisor to complete and update a “Conflict of Interest Declaration”, a form of which is attached to the Protocol in Attachment 2 to the Protocol. If you have questions on anything related to completing or updating the Conflict of Interest Declaration, please contact the Manager Legal Services – Green Line, who will provide support with respect to filling out these declarations.
5. Employees and advisors are advised that their obligations under other, general policies of The City, including the Conflict of Interest Policy (Policy number: HR-LR-004 (B)), continue to apply.

## QUESTIONS AND ANSWERS

The following are some common questions with respect to conflicts of interest, along with some answers, guidance and commentary that is intended to aid employees and advisors in complying with their conflict of interest obligations under the Protocol.

NO.	QUESTION	ANSWER/GUIDANCE/COMMENTARY
1.	<i>What is a conflict of interest?</i>	<ul style="list-style-type: none"> <li>It is important to remember that a conflict of interest can take on many different forms. Whether an employee or advisor has a conflict of interest is highly dependent on the facts of the situation.</li> <li>Generally, you should think of a conflict of interest as any interest of an employee or advisor that conflicts, that could conflict, or that could be perceived to conflict with, (a) The City's obligation to conduct a fair, objective, and unbiased procurement, or (b) the employee or advisor's ability to perform its project or procurement duties objectively.</li> <li>Examples include: (a) an employee who is on an evaluation team owns shares in a company on a Proponent team; (b) an employee who is involved in the project has a personal or familial relationship with an individual on a Proponent team; and (c) an employee on the project team used to work for a company on a Proponent team.</li> </ul>
2.	<i>I have a situation that might be a conflict of interest, but I am not sure. How can I tell what to disclose?</i>	<ul style="list-style-type: none"> <li>Always err on the side of caution when it comes to disclosing conflicts of interest. It is far better, for both you as an individual and The City, to over-disclose than to under-disclose.</li> <li>Remember that you have an ongoing obligation to disclose any additional potential, perceived or actual conflicts of interest even after you have filled out your Conflict of Interest Declaration. This is an <u>ongoing obligation</u>.</li> <li>Remember when filling out your Conflict of Interest Declaration to take time to read through it carefully. Pay attention to ensure that you have disclosed anything you think might be an issue.</li> <li>Make sure to ask the Manager Legal Services – Green Line if you have any questions on the Conflict of Interest Declaration or any other questions with respect to what to disclose.</li> </ul>
3.	<i>Why is it important to The City that I disclose all potential, perceived or actual conflicts of interest?</i>	<ul style="list-style-type: none"> <li>The City has a legal obligation to carry out fair procurement processes and to conduct fair evaluations.</li> <li>Avoiding conflicts of interest, unfair advantage, and bias is one of the most important elements to ensuring that a procurement is conducted fairly.</li> <li>Failure by employees and advisors to disclose even a minor or potential conflict of interest could call the integrity and fairness of an entire procurement or evaluation process into question and could create significant legal risk and liability for The City.</li> <li>Legal liability aside, an unfair procurement process or evaluation could also result in negative publicity for The City, which could result in reputational damage and/or lack of credibility in the bidding community for future procurements by The City.</li> </ul>

NO.	QUESTION	ANSWER/GUIDANCE/COMMENTARY
4.	<i>Why is it important from an individual perspective that I adhere to the Protocol and that I disclose all potential, perceived and actual conflicts of interest?</i>	<ul style="list-style-type: none"> <li>From an individual perspective, a failure by a City employee to comply with the Protocol will be treated as misconduct by The City, and could result in disciplinary action being taken, up to and including dismissal from employment and other potential consequences.</li> <li>A failure by a City advisor or sub-consultant to comply with the Protocol could lead to removal of that advisor or sub-consultant from the project and other consequences.</li> </ul>
5.	<i>Why is it important that I disclose potential, perceived and actual conflicts of interest as early as possible in the procurement process?</i>	<ul style="list-style-type: none"> <li>It is very important to disclose all potential, perceived or actual conflicts of interest as soon as possible in the procurement and as soon as they come to your attention.</li> <li>The earlier disclosure is made in the process, the more easily the conflict of interest is mitigated and the less risk to the procurement. For example, if an evaluator discloses a major conflict of interest before the Proposal submission deadline, The City can take steps to remove the evaluator, revise the evaluation criteria if needed, and generally mitigate the conflict of interest. If an evaluator discloses a major conflict of interest following evaluation right before award, The City will be placed in a very difficult position with respect to its legal obligations and will need to make difficult decisions about whether or not to cancel the procurement and reissue another set of procurement documents. This could result in a variety of consequences, including loss of credibility in the marketplace, wasted resources, and unwarranted delays to the project.</li> </ul>
6.	<i>Who do I have to consider when declaring potential, perceived or actual conflicts of interest? Why do I have to consider family members?</i>	<ul style="list-style-type: none"> <li>In assessing conflicts of interest, you have to consider not only yourself, but your family members, including your spouse, children, brother, sister, parent, mother or father-in-law, son or daughter-in-law, and anyone who shares your home (other than a domestic employee). Because you have close relationships with family members and are not considered “arms-length” from them, their interests could impact you and therefore could result in an actual, potential or perceived conflict of interest with respect to your role on the project team.</li> <li>Examples include, (a) an employee’s wife has a significant financial interest in, investment in, or be employed by a company on a Proponent team; or (b) an employee’s daughter is married to the bid director of a Proponent. These are both potential conflicts of interest and should be disclosed on an employee’s Conflict of Interest Declaration.</li> </ul>
7.	<i>Why could my past involvement with a company on a Proponent team lead to a potential, perceived or actual conflict of interest?</i>	<ul style="list-style-type: none"> <li>An employee’s past involvement with a company on a Proponent team could give rise to a conflict of interest for multiple reasons. For example, if the employee was employed by a company on a Proponent team and had information or knowledge of a Proponent’s bid, this could lead to that employee being unable to (or being seen to be unable to) be impartial and objective in the evaluation of that Proponent. This could lead to a corresponding unfair disadvantage to other Proponents or a perception of an unfair disadvantage.</li> <li>Remember that even the <u>perception</u> of a conflict of interest or a <u>potential</u> conflict of interest is an issue and needs to be disclosed so that the Manager Legal Services – Green Line and the GL Conflict of Interest Adjudicator can take the appropriate steps.</li> </ul>



NO.	QUESTION	ANSWER/GUIDANCE/COMMENTARY
8.	<i>What will happen after I disclose a potential, perceived or actual conflict of interest? Will I be removed from the project team?</i>	<ul style="list-style-type: none"> <li>It is important to remember that the solution is not always an outright removal of an employee or advisor with a conflict of interest from the project team. The GL Conflict of Interest Adjudicator will consider a number of factors, including the nature of the employee's role (for example, evaluators will be held to a higher standard).</li> <li>The GL Conflict of Interest Adjudicator is tasked with managing and mitigating conflicts of interest. Depending on the severity and nature of the conflict of interest, this could result in limiting the employee or advisor's duties on the project team or removing the employee or advisor from the project team altogether. If, for example, an employee declares a potential or perceived conflict of interest that is very minor or remote and, following legal advice, the GL Conflict of Interest Adjudicator determines that the conflict of interest is so remote as to be of little or no consequence to the procurement, the employee may be able to continue performing its duties (or modified duties) on the project team.</li> <li>The conflict of interest declaration could also result in requirements placed on the Proponents or removal of certain companies or individuals from a Proponent team, depending on whether or not the employee or advisor's conflict of interest declaration is with respect to relationships with Proponents. For example, if an employee on the project team has a spouse who works for a company on a Proponent team but who is not planning to be involved in the procurement, The City could require the establishment of ethical walls at the company and seek an officer's certificate from the company stating that the employee's spouse has not and will not be involved in the procurement.</li> </ul>
9.	<i>What if someone else's potential, perceived or actual conflict of interest comes to my attention? What should I do?</i>	<ul style="list-style-type: none"> <li>If it comes to your attention that another employee on the project team may have a potential, perceived or actual conflict of interest and has not disclosed it, you should urge that employee to disclose the information. In the event that this does not occur, you should report the situation to the Manager Legal Services – Green Line and the GL Conflict of Interest Adjudicator.</li> <li>This could arise, for example, in instances of evaluator bias that the evaluator himself or herself does not perceive, but that you perceive. This could be difficult to detect, but if you discover that an evaluator has a pecuniary interest in the outcome of an evaluation, or if the evaluator's words or actions lead you to believe that the evaluator has formed a pre-determined or unfair view or conclusion about a particular Proponent (whether favourable or unfavourable), you need to address the issue and raise it with Manager Legal Services – Green Line and the GL Conflict of Interest Adjudicator. Depending on the severity of the conflict of interest and the stage in the procurement in which it is discovered, this could result in a variety of consequences.</li> </ul>
10.	<i>Can I request a reconsideration of a determination that is made by the GL Conflict of Interest Adjudicator?</i>	<ul style="list-style-type: none"> <li>Yes, see Section 6C of the Protocol.</li> </ul>

**ATTACHMENT 2 – CONFLICT OF INTEREST DECLARATION**

Conflict of Interest Declaration of: **[Insert name, employer and position]**

- (i) I have read and understand The City of Calgary Conflict of Interest Protocol (the “Protocol”) and I have sought guidance from the Manager Legal Services – Green Line for any part of the Protocol that I do not understand;
- (ii) I have reviewed the attached Schedule A and acknowledge that the persons and entities listed therein are members of a Proponent team;

**[DELETE THE STATEMENT THAT DOES NOT APPLY]**

- (iii) I represent and warrant that I am not in a Conflict of Interest with respect to my duties and role as a member of the Green Line Program Team. I further represent and warrant that to the best of my knowledge and belief, my spouse, partner, children, parents, mother or father-in-law, son or daughter-in-law, or someone who shares the home with me, and I do not have any interests, activities or relationships, financial or otherwise, nor are we providing any services to any of the persons or entities listed in Schedule A that would cause to be created a perceived, potential, or actual Conflict of Interest with respect to my duties and role as a Participant in this Evaluation Process. I acknowledge that a financial interest, for the purposes of this paragraph, may include employment, stock ownership, a creditor or debtor relationship or a prospective employee or employer relationship with any of the persons or entities in Schedule A.

**OR**

I have listed on Schedule B all of the relationships that my spouse, partner, children, parents, mother or father-in-law, son or daughter-in-law, or someone who shares the home of with me, or I have with the persons or entities listed in Schedule A that result in a perceived, potential, or actual Conflict of Interest with respect to my duties and role as a member of the Green Line Program Team.

- (iv) I agree to immediately disclose in writing to The City (the Manager Legal Services – Green Line) and the GL Conflict of Interest Adjudicator any situation that may be reasonably construed as constituting a perceived, potential or actual Conflict of Interest in connection with the Evaluation Process, including a situation arising from any updated Schedule A.
- (v) Unless authorized in writing by The City, it shall also be a Conflict of Interest for me to use, and I shall not use, information acquired through participation as a member of the Green Line Program Team for my personal gain, the personal gain of any member of my immediate family, or in a manner that would result in a benefit to any third party.
- (vi) I acknowledge that I may be required to re-certify the above statements based on updates or revisions to Schedule A from time to time.
- (vii) I acknowledge and agree that The City or the GL Conflict of Interest Adjudicator may, in their respective sole and absolute discretion, prescribe certain requirements to

resolve or mitigate any perceived, potential, or actual Conflict of Interest, disclosed or otherwise, with respect to my participation as a member of the Green Line Program Team.

- (viii) "Conflict of Interest" means, for the purposes of this Declaration, any perceived, potential or actual situation or circumstance where I have a commitment, relationship (contractual or otherwise), financial interest, knowledge of confidential information or involvement in any litigation or proceeding with respect to any of the entities listed in Schedule A that,
- (a) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of my independent judgment in my participation as a member of the Green Line Program Team; or
  - (b) could or could be seen to compromise, impair or be incompatible with the effective performance of my role as a member of the Green Line Program Team, including with respect to any evaluation responsibilities I may have with respect to the Green Line Program.

This Conflict of Interest Declaration is signed \_\_\_\_\_ day of \_\_\_\_\_, 20[ ].

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Signature of Declarant

Print Full Name of Declarant, title and organization

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Signature of Witness

Print Full Name of Witness

## **SCHEDULE A**

**[Note: This Schedule will list persons and entities that are members of a Proponent team.]**

**SCHEDULE B**

**[Note: To list all relationships in accordance with Section (iii) of the Conflict of Interest Declaration, as applicable. If no relationships, write "N/A".]**

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