



January 10, 2014

Eric G. Madden
Executive Vice President
American Council of Engineering Companies of Pennsylvania
800 North Third Street, Suite 301
Harrisburg, PA 17102

Dear Mr. Madden:

I am writing to advise you and the ACEC of potential conflict of interest issues professional firms should be aware of relative to PennDOT's Rapid Bridge Replacement Project and how the Department is addressing them.

Enclosed you will find Section 7.3 "Organizational Conflicts of Interest" from the Rapid Bridge Replacement project Request for Qualifications (RFQ) advertised on December 12, 2013.

Here are some likely scenarios and guidance firms should consider related to this project and any potential conflicts:

- Any firm performing work for PennDOT (Central Office or the Districts) directly related to the project will not be permitted to offer their services to prospective or shortlisted proposers until such time as all short listed proposers have submitted, and the Department has accepted, final proposals in response to the Request for Proposals (RFP) advertisement. This work includes but is not limited to preliminary design, environmental clearance, and right-of-way clearance.
- Any firm who may have performed work for PennDOT on bridges identified as eligible for the project prior to it being known and identified as such may offer their services to prospective or shortlisted proposers at any time, however they must submit to the Issuing Office a plan to ensure individuals who worked on the project(s) are not involved in any way with work being performed for purposes of submitting a Statement of Qualification (SOQ) in response to the RFQ and/or a proposal on behalf of a shortlisted team.
- Geotechnical firms performing core boring work for the Department may however offer their services to shortlisted proposers upon notification by the Department that all geotechnical information has been provided to the short listed teams or upon advertisement of the Request for Proposals (RFP), whichever comes first.

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- Professional firms with geotechnical subcontractors or affiliates may offer geotechnical related services to shortlisted proposers upon notification by the Department that all geotechnical information has been provided to the short listed teams or upon advertisement of the Request for Proposals (RFP), whichever comes first so long as they have not performed any non-geotechnical work related to the project for PennDOT.
- Professional firms with geotechnical subcontractors or affiliates may offer non-geotechnical services and/or be identified as team members for the purposes of submitting a SOQ in response to the RFQ provided the work is limited to providing core boring samples to PennDOT and they submit to the Issuing Office a plan to ensure individuals who perform core boring sample work will not be permitted to share any of that information with individuals performing work for a proposing team.

In addition to Section 7.3 "Organizational Conflicts of Interest" attached, firms should also refer to the RFQ and any posted Addendums on the procurement website, www.P3forPA.pa.gov on the "Updates, Current Advertisements" page, for additional guidance and direction.

Thank you for your attention to notice and please share with your membership however appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan A. Kendro". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bryan A. Kendro, Director
Office of Policy & Public Private Partnerships
PA Department of Transportation

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7.3. Organizational Conflicts of Interest

Any person or firm under contract with the Commonwealth in connection with the Project will not be allowed to participate in any capacity on a Proposer team. Any person or firm previously under contract with the Commonwealth in connection with the Project (including, without limitation, with respect to the preparation of preliminary plans, planning reports or other project development products for the Project) may be able to participate on a Proposer team, if such firms first submit a written request for a determination of no conflict from PennDOT and receive written confirmation that they may participate, or conditionally participate on a Proposer team.

Any person or firm undertaking geotechnical survey related services for PennDOT for purposes of the Project may be able to participate in a Proposer team after the date for submission of proposals pursuant to the RFP, provided that such person or firm first submits a written request to the Issuing Officer for a determination of no conflict from PennDOT and receives written confirmation that they may participate, or conditionally participate, on a Proposer team.

Additional exceptions to this policy may be granted by PennDOT, upon written request from such person, if it is determined that the person's involvement is in the best interest of the public and does not constitute an unfair advantage. Proposer teams seeking such exception shall submit such written request as soon as possible because PennDOT shall not extend the SOQ Due Date or be responsible for any inability or failure to respond prior to the SOQ Due Date to any such request.

In addition to the foregoing, the organizational conflict of interest rules found in 23 CFR § 636, Subpart A, including 23 CFR § 636.116, also apply to this procurement. 23 CFR § 636.103 defines an "organizational conflict of interest" as follows:

"Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage."

Proposer shall provide information concerning organizational conflicts of interest and disclose all relevant facts concerning any past, present or currently planned interests which may present an organizational conflict of interest. Proposer shall state how its interests or those of any of its team members, consultants, contractors or subcontractors, including the interests of any chief executives, directors or key personnel thereof, may result in, or could be viewed as, an organizational conflict of interest.

Proposer is prohibited from teaming with, receiving any advice or discussing any aspect relating to the Project or the procurement of the Project with any person or entity with an organizational conflict of interest, including, but not limited to:

- a) KPMG Corporate Finance LLC;
- b) Allen & Overy LLP;
- c) HW Lochner, Inc.;
- d) Public Financial Management, Inc.;
- e) CDM Smith;
- f) Parsons Brinckerhoff;

- g) Ames & Gough;
- h) NTM Engineering, Inc; and
- i) Affiliates (meaning includes parent companies, subsidiary companies, entities under common ownership, joint venture members and partners, and other financially liable parties for an entity) of any of the above.

Such persons and entities are also prohibited from participating on a Proposer team as an Equity Member, Major Non-Equity Member, Proposed Guarantor, contractor, subcontractor, consultant or subconsultant.

By submitting its SOQ, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, the Proposer must make an immediate and full written disclosure to PennDOT that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest that the Proposer knew, or should have known about, but failed to disclose is determined to exist during the procurement process, PennDOT may, at its discretion, disqualify the Proposer. If an organizational conflict of interest that the Proposer knew, or should have known about, but failed to disclose exists and the Proposer has entered into a PPA as the Development Entity, PennDOT may, at its sole discretion, terminate the PPA. In either case, PennDOT reserves all legal rights and remedies.

Proposers are also advised that PennDOT's guidelines in this RFQ are intended to augment applicable federal and state law, including federal organizational conflict of interest laws and rules and the laws and rules relating to NEPA. Such applicable law will also apply to Proposer teams and teaming and may preclude certain firms and their entities from participating on a Proposer team.