

Schedule 3: Guidance Note on Conflict of Interest

(See Clause 1.5)

1. This Note further explains and illustrates the provisions of Clause 1.5 of the RFP and shall be read together therewith in dealing with specific cases.

2. Consultants should be deemed to be in a conflict of interest situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of consultants should avoid both actual and perceived conflict of interest.

3. Conflict of interest may arise between the Authority and a consultant or between consultants and present or future contractors. Some of the situations that would involve conflict of interest are identified below:

(a) Authority and consultants:

- (i) Potential consultant should not be privy to information from the Authority which is not available to others;
- (ii) Potential consultant should not have defined the project when earlier working for the Authority;
- (iii) Potential consultant should not have recently worked for the Authority overseeing the project.

(b) Consultants and contractors:

- (i) No consultant should have an ownership interest or a continuing business interest or an on-going relationship with a potential contractor save and except relationships restricted to project-specific and short-term assignments; or
- (ii) no consultant should be involved in owning or operating entities resulting from the project; or
- (iii) no consultant should bid for works arising from the project.

The participation of companies that may be involved as investors or consumers and officials of the Authority who have current or recent connections to the companies involved, therefore, needs to be avoided.

4. The normal way to identify conflicts of interest is through self-declaration by consultants. Where a conflict exists, which has not been declared, competing companies

are likely to bring this to the notice of the Authority. All conflicts must be declared as and when the consultants become aware of them. The principle of *Uberrimae Fidei* will be applicable to the voluntary disclosure of the applicant regarding conflict of interest which has to ensure the highest standard of good faith during the disclosure of all material facts that could influence the decision of the other party.

5. Another approach towards avoiding a conflict of interest is through the use of “Chinese walls” to avoid the flow of commercially sensitive information from one part of the consultant’s company to another. This could help overcome the problem of availability of limited numbers of experts for the project. However, in reality effective operation of “Chinese walls” may be a difficult proposition. As a general rule, larger companies will be more capable of adopting Chinese walls approach than smaller companies. Although, “Chinese walls” have been relatively common for many years, they are an increasingly discredited means of avoiding conflicts of interest and should be considered with caution. As a rule, “Chinese walls” should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a consultant coupled with provision of safeguards to the satisfaction of the Authority.

6. Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.

7. Another form of conflict of interest called “scope-creep” arises when consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of the Authority but which will generate further work for the consultants. Some forms of contractual arrangements are more likely to lead to scope-creep. For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built-in incentives for consultants to extend the length of their assignment.

8. Every project contains potential conflicts of interest. Consultants should not only avoid any conflict of interest but should also report any present/ potential conflict of interest to the Authority at the earliest. Officials of the Authority involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.

9. Without limiting the generality of the above and Section 1.5, an Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:

(a) **Conflicting Associations:**

- directly or indirectly controls, is controlled by or is under common control with another Applicant; or
 - receives or has received any direct or indirect subsidy/ financial stake from another Applicant; or
 - has the same correspondence address or same legal representative/ agent as another applicant for purposes of this proposal; or
 - has a relationship with another applicant, directly or through common third parties, that puts it in a position to have access to information about or influence the Proposal of another applicant or influence the decisions of the Authority regarding this Procurement Process; or
- (b) **Unfair Competitive Advantage and Conflicting Activities:** had (or any of its Affiliates) been engaged by the Authority to provide goods, works, or services for a project, shall be disqualified from providing consulting services resulting from or directly related to those goods, works, or services. Conversely, a firm (or any of its Affiliates) hired to provide consulting services for the preparation or implementation of a project shall be disqualified from subsequently providing goods or works or services resulting from or directly related to the consulting services for such preparation or implementation or
- (c) **Conflicting Assignments:** would (including its Experts or any of its Affiliates) be or are providing consultancy services in another assignment for the same or another Authority that, by its nature, may conflict with this assignment.
- (d) **Commissions and Gratuities:** The Applicant shall disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents concerning the selection process or execution and performance of the resulting Contract. The information disclosed must include the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.; or
- (e) **Conflicting Relationships:** has close business/ family relationship with a staff of the Authority who are/ would be directly/ indirectly involved in any of the following activities:
- Preparation of the RFP document or ToR of the procurement process
 - Evaluation of Proposals or Award of Contract, or
 - Implementation/supervision of the resulting contract

- (f) For purposes of this RFP, Associate means, in relation to the Applicant, a person who controls, is controlled by, or is under the common control with such Applicant (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract.
- (g) Conflict of interest, for the process of determination, shall include presence of conflict, potential or actual, during one year preceding the last date of bid submission and shall include the factual conspectus related to the personnel specifically indicated as the lead professional of the project team termed as Team Lead/Principal Investigator.