



Corridor Program

Congestion Relief & Bus Rapid Transit Projects

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RE: I-405 Consultant Firewall Policy for Design Build Contracts

Purpose

The purpose of this memo is to document the firewall policy for consultants working on the I-405 projects that will be built using the Design Build contracting method.

Background

In 2001, Washington State legislation authorized Washington State Department of Transportation (WSDOT) to utilize Design Build for delivery of highway projects greater than \$10 million. In February 2002 WSDOT published a Request for Qualifications (RFQ) for a General Engineering Consultant (GEC) for the I-405 Corridor Program. At the time of RFQ advertisement, a firewall policy was established and included in the RFQ to allow consultants to evaluate whether to submit a Statement of Qualifications (SOQ) for the I-405 GEC. This firewall policy defined what future work the GEC and its sub-consultants would be precluded from participating in. As the I-405 Corridor Program has progressed since the GEC advertisement /selection and has moved into the Design-Build phase for early projects, the team has provided further clarification to the firewall policy.

I-405 Firewall Policy

The GEC contract is meant to be cradle-to-grave in delivery of the I-405 projects. As a result of this long-term commitment, it is necessary to identify the work that GEC firms can and cannot work on. The fundamental firewall rules are defined below:

- The GEC can participate in preliminary design and RFQ/Request for Proposal (RFP) development, but cannot participate in Design Build contracts for those packages.
- GEC sub-consultants can participate in preliminary design and/or RFQ/RFP preparation, but this work will preclude them from participating in Design Build contracts for those projects.
- GEC sub-consultants may participate in on-call contracts. On-call agreements have been executed for discipline-specific work to support the department in delivery. Consultants that have executed on-call agreements may or may not be tasked with work under those agreements, at the department's discretion.
- Narrowly focused on-call task orders will not preclude a consultant from participation in a Design Build contract for that project, as long as the work does not create a conflict of interest or unfair project knowledge situation. In general, typical design support activities

or data development will not create a conflict of interest for the consultant because this information is typically available to other consultants as part of the D-B package and this activity would not create an unfair advantage for Proposal development. Any firm in the position of working on I-405 with a narrowly focused role and identified as a D-B team member on an I-405 project, will not be co-located with the I-405 team during the time between announcement of the Proposers list and continuing through an affirmative Upset Amount Determination or through completion of a Best and Final Offer (BAFO), whichever is later. Co-location is defined as occupying office space at Suite 405 of 600 – 108th Ave NE in Bellevue. A particular staff person working for a firm that is on a D-B team can not participate in the preparation of proposals for response to an I-405 RFP.

- It has been determined that work in developing an RFQ, RFP, or estimate for a project would preclude a consultant firm from working on the Design Build contract for that project. This rule applies to any consultant: GEC, GEC subconsultant, On-Call, or other.
- Firms that are precluded from participation in a Design Build team may be contracted to provide support services to WSDOT during the Design Build contract in a number of potential roles.
- Parent or subsidiary companies participating in GEC Joint Ventures (JV) are precluded from D-B contracts they have participated in. This rule was included in the GEC RFQ but has not been applicable, as the GEC for I-405 is not a JV.

The burden of proof will fall on the consultant to demonstrate that participating in a D-B contract does not present a conflict of interest or unfair project knowledge situation. Specific requirements will be identified in a Request for Qualifications (RFQ) on an I-405 project for D-B teams to address the question of potential conflict of interest. Any D-B team may request in writing a preliminary review to ensure an acceptable team prior to submitting their Statement of Qualifications. In the case that a consultant firm is not clear on policy related to work and its effect on their ability to participate in future contracts, it is best to seek clarification from WSDOT Consultant Liaison Services.