



ACEC
BRITISH COLUMBIA

Position Paper

Partnering Considerations for Small Firms

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ACEC-BC Position Paper

Position Papers are articles developed by ACEC-BC Committees and published for use by consulting engineering companies as a general resource. The information provided highlights relevant issues and practices for the industry and should not be construed as legal advice.

ABOUT THIS DOCUMENT

All ACEC-BC member firms play a pivotal role in fostering an environment that is fair, transparent, mutually respectful, and “maintains the highest standards of integrity, professionalism, and ethics in all aspects of our work.” (ACEC-BC, 2024). To support these values, the Small Firms Council developed this position paper in conjunction with the Business Practice Committee to guide small firms partnering with other firms in the pursuit of consulting services contracts.

In competitive procurements, prime consultants frequently engage subconsultants in their proposals. The subconsultant typically brings a perspective or expertise that may not otherwise be available within the prime team – for example, technical expertise, market experience, or local presence. This paper emphasizes the importance of safeguarding the commercial interests of small firms that provide support to prime consultant proponents, who may be larger and more resourced firms.

STANDARD FORM AGREEMENTS

Familiarity with balanced, standard contract language is helpful for all firms. The following standard form agreements and ACEC-BC Position Papers provide a useful overview. A full set of references is listed at the end of this bulletin:

- [ACEC Document 32 – 2011 Agreement between Engineer and Sub-Consultant](#)
- [CCDC 31 – 2020 Service Contract Between Owner and Consultant](#)
- [ACEC-BC Position Paper: Recommendations when Entering into Sub-consultant Agreements](#)
- [ACEC-BC Position Paper: Limitations of Liability](#)

RISK CONSIDERATIONS

This bulletin is intended to support understanding and considerations associated with the risk of a prime consultant choosing not to retain a subconsultant that was included on the project proposal or significant reduction of originally anticipated scope. Future bulletins are expected to review other risks and mitigations.

While there are risks associated with pursuing any opportunity, for subconsultants, partnering presents unique risks including those resulting from whether the Prime engages the subconsultant(s) named in a proposal or not.

Once a contract is awarded, the prime may or may not retain a subconsultant included in the proposal. The removal or replacement of subconsultants who participated in proposal preparation can be damaging to relationships between firms, may diminish quality or continuity of performance for clients, and can undermine the value and contributions of the subconsultant.

For the subconsultant, being replaced can also result in direct financial losses and missed opportunities, as time and resources invested during the pursuit phase may not be recoverable or possible to leverage elsewhere. These impacts are typically proportionally larger for small firms. Combined with the higher likelihood of being in the subconsultant position, small firms are at higher risk in partnering arrangements than larger firms.

When considering the opportunity to partner with a prime consultant, subconsultants may wish to consider two primary factors:

1. **Reliance on the Subconsultant:** the degree to which the proposal relies on the subconsultant's qualifications (e.g., experience, credentials, intellectual property, reputation, location, etc.)
2. **Pursuit Costs:** the subconsultant's non-recoverable costs to pursue the opportunity (i.e., labour, expense, opportunity cost)

Typically, the higher the reliance on the subconsultant and/or the higher the subconsultant's cost to pursue the opportunity, the more effort is necessary to protect the sub-consulting firm from risk of non-inclusion in the contract after award.

TYPES OF AGREEMENTS

The scope of this bulletin is limited to introducing concepts and considerations for teaming, and is not intended to focus on delivery models, which will undoubtedly affect agreements. Future bulletins on this topic are planned.

When entering a partnership, consider the type of agreement that may best represent mutual interests. These may include the following:

Pre-contractual agreement: A pre-contractual agreement formalises the relationship between the prime and the subconsultant and supports continuity between proposal and project. Common types of pre-contractual agreements are:

Confidentiality or Non-Disclosure Agreement (NDA): A legally binding agreement to protect confidential information shared during pursuit and does not typically include an exclusivity clause. May or may not establish mutual intent to collaborate if successful, without creating contractual obligations. It is always a good idea to execute a confidentiality agreement/NDA if two firms will exchange confidential information; if using a different pre-contractual agreement, incorporate confidentiality/non-disclosure language.

Memorandum of Understanding (MOU) or Letter of Intent (LOI): A concise memo or letter confirming confidentiality and expressing intent to negotiate a sub-consulting agreement if the pursuit is successful. An MOU or LOI usually includes high-level commitments and is non-binding except for specific provisions (e.g., confidentiality).

Teaming Agreement: A teaming agreement outlines collaboration during the pursuit and typically includes roles, responsibilities, exclusivity, Intellectual Property (IP), marketing rights, how long the agreement lasts, how the agreement can be terminated, liability caps, and a dispute resolution ladder. These terms are typically binding for the pursuit phase. Content for inclusion in the anticipated sub-consulting agreement may be included to align the parties prior to award of the prime contract.

Joint-Venture-Style Teaming Agreement: Not a formal partnership, but a teaming agreement with joint venture-like features including a shared steering committee, minimum workshare and fee floor, and transparent cost tracking.

Pre-Contract (or Conditional) Sub-consulting Agreement: A preliminary set of terms and conditions agreed in advance, conditional on the success of the pursuit. Terms typically include scope of work, deliverables, rates, and could also include partial or full anticipated terms and conditions. A pre-contract or conditional sub-consulting agreement is typically used when the likelihood of success is high and the parties wish to move quickly to begin services upon award.

OTHER CONSIDERATIONS

The parties may wish to address the following considerations within the selected pre-contractual agreements:

Break Fee (Contribution Fee): Lump-sum plus documented expenses to compensate the subconsultant for substantial pursuit work if (i) the prime consultant wins but withholds the scope, or (ii) the pursuit is cancelled late. Typically reduced (e.g., 50 %) if the pursuit is lost.

Exclusivity: During the pursuit period, the subconsultant agrees not to support competing prime consultants in exchange for exclusive status. This can be a standalone agreement or a clause incorporated in or combined with another agreement type. This is typically time-bound to the specific pursuit or selection process.

Guaranteed Workshare and Fee Floor: Ensures the subconsultant receives an agreed minimum portion of the services by value or scope. May include right of first refusal on additional scope within the subconsultant's area of expertise.

Pursuit Cost Reimbursement: The prime consultant reimburses documented pursuit costs borne by the subconsultant if: (i) the prime consultant withdraws late, (ii) the prime consultant wins but withholds scope, or (iii) the pursuit is cancelled.

Scope-or-Fee Option: A remedy clause contingent on award obliging the prime consultant to either issue the anticipated sub-consulting agreement or pay the subconsultant a fee equal to the bid value originally attributed to its scope.

Teaming Addendum: A short schedule to the prime consultant's proposal that: (i) gives the prime consultant a Scope-or-Fee choice, and (ii) reimburses documented pursuit expenses (with a scaled cap) if the pursuit is abandoned or the subconsultant's scope is dropped.

IMPLEMENTATION

Small firms are encouraged to outline a process to fully understand the opportunity, assess the risk, and ensure appropriate mitigations are in place prior to investing time and resources in a pursuit (i.e., go / no-go decision). Firms are encouraged to evaluate the following considerations when determining the most appropriate pre-contractual agreement type and clauses for a given opportunity. This can include, but not be limited to, the following:

1. Document the reliance and cost factors between the prime consultant and subconsultant through practical means (e.g., meeting minutes, letters of intent, etc.).
2. Assess the risk posed by the pursuit.
3. Review and adopt mitigations to the risk, including a pre-contractual agreement if appropriate. Seek legal and insurance advice before executing any agreement, according to your firm's requirements.
4. Include relevant clauses into the agreement (i.e., Scope-or-Fee, Break Fee, Exclusivity, etc.) at values scaled to the project opportunity.

Strong partnerships between consulting firms can generate valuable opportunities. By clearly identifying and addressing risks, each party gains awareness of potential challenges and can take appropriate steps to mitigate them. Well-defined agreements covering scope, responsibilities, and protections establish clear expectations, promote alignment between parties and ensure contract terms are balanced and fair.

REFERENCES

- [ACEC Document 32 – 2011 Agreement between Engineer and Sub-Consultant](#)
- [CCDC 31 – 2020 Service Contract Between Owner and Consultant](#)
- [MMCD Client/Consultant Agreement – 2024 Update](#)
- [ACEC-BC Position Paper: Limitations of Liability](#)
- [ACEC-BC Position Paper: Indemnities](#)
- [ACEC-BC Position Paper: Recommendations when Entering into Subconsultant Agreements](#)