



Ministry of
Transportation
and Infrastructure

BC Highway Reinstatement Program Highway 1 – Category B Project

Request for Proposals Development Phase

June 3, 2022



SUMMARY OF KEY INFORMATION

RFP Title	RFP – Highway 1 – Category B Projects Please use this title in all correspondence.
Contact Person	The Contact Person for this RFP may be reached by email at: Contact.Hwy1_CatB@gov.bc.ca
Submission Time for Submission #1	4:00 PM local Vancouver time on July 29, 2022
Submission Time for Submission #2	4:00 PM local Vancouver time on August 26, 2022
Submission Location	Electronically by email to the Contact Person

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1 INTRODUCTION

1.1 PROGRAM OVERVIEW

The extreme rainfall events in November 2021 had major impacts on highways and highway structures throughout southern British Columbia. The events caused closures on Highway 1, Highway 3, Highway 5 (Merritt to Hope), Highway 8 (Merritt to Spences Bridge), Highway 12, and Highway 99 (30 km west of Lillooet).

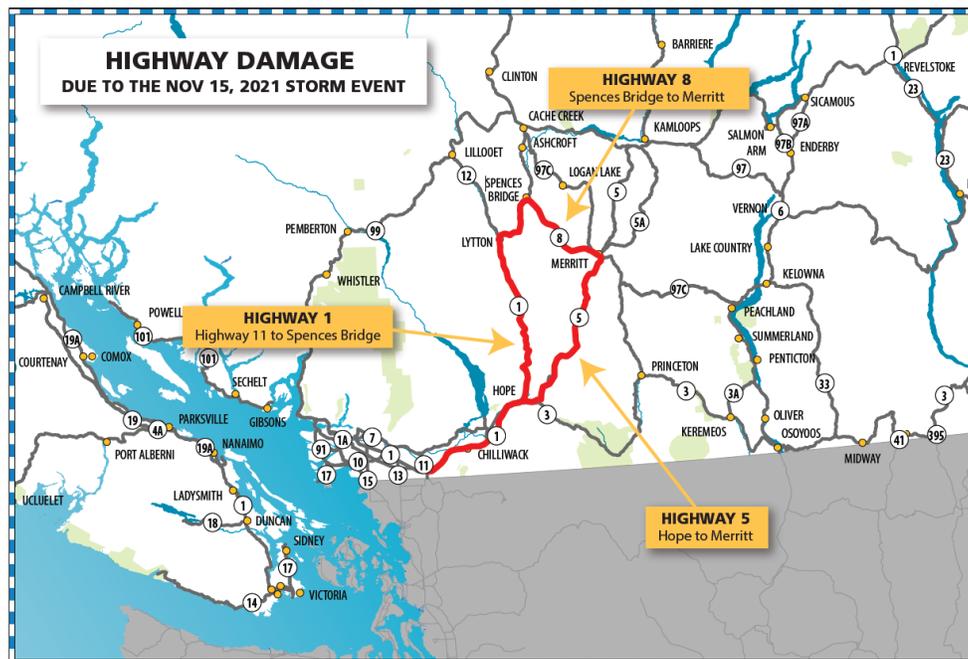
The Ministry of Transportation and Infrastructure (the “**Province**”) is conducting assessments of each impacted area in preparation for repairing compromised highways.

There are multiple construction and engineering projects that need to be expedited as part of the BC Highway Reinstatement Program (the “**Program**”). The Program will prioritize the following highway corridors:

- Highway 1 between Hope and Spences Bridge
- Highway 5 between Hope and Merritt
- Highway 8 between Spences Bridge and Merritt

A map identifying the locations within the Program is provided in Figure 1 below.

Figure 1: Highway Damage Map



Within the Program, the Owner will choose the most appropriate procurement and contract model based on the size, complexity, and urgency of a project.

The objectives of the Program are as follow:

- Deliver the work expediently;
- Recognize and respect the Indigenous territories the work is being conducted on;
- Create and support opportunities for Indigenous Peoples, Indigenous Businesses, underrepresented groups, trainees and apprentices;
- Ensure safety for workers and the public during construction;
- Design and innovate for climate change resiliency;
- Effective traffic management; and
- Provide value for public money.

If a capitalized term is not defined in Section 7 of this Request for Proposals (“**RFP**”), it will be defined in the section of this RFP in which it is first used.

1.2 PROJECT INTRODUCTION

Through this RFP, the Owner is procuring three design and construction teams, one for each of the three Highway 1 projects described below (each a “**Project**”, collectively “the **Projects**”). Each team will work collaboratively with the Owner through the Development Phase for its designated Project and may be invited by the Owner to continue to the Construction Phase for that Project.

The Owner anticipates selecting three Preferred Proponents. Subject to Section 5 of this RFP and the terms of the DPA, the Owner intends to award one Project only to each Preferred Proponent. It is intended that each Preferred Proponent will lead a design and construction team. Each Preferred Proponent will work collaboratively with the Owner to undertake the relevant works.

Below is a description of each Project. In addition to the construction work identified below, each of the Projects will require the following Design Services Areas:

- Geotechnical;
- Roads;
- Bridges; and
- Hydrological.

1.2.1 Falls Creek Project

Falls Creek, shown in Figure 2 and Figure 3 below, is located approximately 23 km north of Boston Bar, B.C., and 19 km south of Lytton, BC (50.065, -121.544). This Project may also be referred to as Jackass Mountain.

During the extreme rainfall events, the former deep fill culvert and its embankment suffered a washout and were damaged beyond repair. The Owner has erected a temporary single-lane 79.25 meter long modular steel bridge and has completed channel works to safely convey flow under the temporary bridge. The following reinstatement work is anticipated:

- Removal of the temporary structure;
- Design and construction of a crossing;
- Channel restoration; and
- Paving.

Figure 2: Damage to Highway 1 at Falls Creek (Photo taken on November 16, 2021)



Figure 3: Repairs to Highway 1 at Falls Creek (Photo taken January 22, 2022)



1.2.2 Tank Hill Project

Tank Hill, shown in Figure 4 and Figure 5 below, is located approximately 13 km east of Lytton, B.C. (50.255018°, -121.447309°) on Highway 1. Tank Hill was an underpass which carried two lanes of Highway under a Canadian Pacific Railway (CPR) overpass.

The extreme rainfall events resulted in the rail and highway embankment fills being washed out. CPR and the Owner worked collaboratively to rebuild the fills and install a temporary at-grade crossing, controlled by a pre-emption system and traffic lights on the highway. Temporary culverts were installed under the rail and highway fills. The following reinstatement work is anticipated:

- Integration with CPR works;
- Design and construction of grade separated crossing;
- Removal of temporary alignment;
- Channel design and construction;
- Paving;
- Environmental works; and
- Drainage.

The Owner and CPR are actively engaged to coordinate the activities.

Figure 4: Damage to Tank Hill from 2021 (Photo taken on November 17th, 2021)



Figure 5: Repairs to Tank Hill (Photo taken on January 24th, 2022)



1.2.3 Nicomen Bridge Project

Nicomen Bridge, shown in Figure 6 and Figure 7 below, is located approximately 18 km west of Spences Bridge, B.C. (50.268347, -121.401297) along Highway 1. Nicomen Bridge was originally constructed with two lanes and four spans with a total length of 69 metres.

The extreme rainfall events resulted in erosion undermining southernmost pier causing the structure to collapse. The Owner has repaired the collapsed span and anticipates the following reinstatement work:

- Demolition of the existing bridge;
- Design and construction of new crossing;
- Archaeological assessments;
- Environmental restoration;
- Embankment armoring; and
- Paving.

Figure 6: Damage to Nicomen Bridge (Photo taken on November 24, 2021)



Figure 7: Repairs to Nicomen Bridge (Photo taken on January 20, 2022)



Other bridge works in the immediate local area may be added to the scope of this Project at a later date.

1.3 SHORTLISTED CONSTRUCTION FIRM CANDIDATE RESPONDENTS

Through the BC Highway Reinstatement Program Request for Qualifications (“RFQ”) issued on November 26, 2021, a list of Construction Firm Candidates for projects within the Program was created. Based on the Project characteristics and Construction Firm Candidates’ RFQ scores, the Owner has shortlisted the following Construction Firm Candidates to receive this RFP and be invited to participate further in the Competitive Selection Process as Proponents:

- AEGP (Aecon-Emil Anderson Construction General Partnership);
- ECV Group (Eurovia BC Group of Companies, Carmacks Enterprises Ltd. and Vinci Infrastructure Canada Ltd.);
- Flatiron Constructors Canada;
- Ledcor CMI Ltd.; and
- Peter Kiewit Sons ULC.

Only these Proponents, with their prospective Proponent Team Members may submit a Proposal or otherwise participate in this RFP. In any event where a Construction Firm Candidate or Proponent discontinues participation in the RFP process, the Owner reserves the right to invite a replacement Proponent.

1.4 ENGINEERING AND DESIGN FIRM CANDIDATES

Proponents must select, as a Proponent Team Member, at least one Engineering and Design Firm Candidate that has qualified in at least one of the Design Services Areas described in Section 1.2. Proponents may add more than one Engineering and Design Firm Candidate to their Proponent Team. Proponents may select other engineering and design firms that are not Engineering and Design Firm Candidates to join their Proponent Team provided they follow the procedures set out in Section 3.7.

The Engineering and Design Firm Candidate List is posted to the Infrastructure BC webpage: <https://www.infrastructurebc.com/projects/announced-in-procurement/bc-highway-reinstatement-program/>.

The Proponent must select the same Proponent Team Members for all Projects.

1.5 TEAMING

Proponents are not permitted to form joint ventures with any of the other Proponents, or with other Construction Firm Candidates or construction firms. Teaming with Engineering and Design Firm Candidates, as described in Section 1.4 is permitted. Subcontracting to other Construction Firm Candidates or other specialist firms is permitted. Additional information is provided in Section 5.11.

An engineering and design firm may participate in more than one Proponent Team provided the following conditions are satisfied:

- (a) the firm has identified to each relevant Proponent that it will be participating in more than one Proponent Team;
- (b) the firm must be included as a sub-consultant and not as a Prospective NOP;
- (c) the firm must not be providing a Key Individual for a Proponent Team;
- (d) if the firm is submitting a Qualification Response, it must submit the same Qualification Response for each Proponent Team;
- (e) no representative from the firm will attend any Workshop or Topic Meeting for any Proponent Team; and
- (f) each relevant Proponent will include with its Proposal a statutory declaration made by a senior representative of the relevant firm stating that:
 - (i) the firm has complied with section 5.8 of this RFP; and
 - (ii) the firm has not disclosed any information it receives from any Proponent to any other Proponent.

2 PROJECT OVERVIEW

The Owner intends to enter into a Development Phase Agreement (“DPA”) with each Preferred Proponent to commence design and other planning and preparatory work for the Project on which they are selected and designated as the Preferred Proponent. Each Preferred Proponent is to develop a proposal (including binding target cost) for the Construction Phase for the relevant Project. Each Preferred Proponent will be comprised of at least two Non Owner Participants (“NOPs”) (one Construction Firm and one Engineering and Design Firm) that will sign the DPA.

Figure 8 below provides an overview of the phases and corresponding participant terminology for the Projects, as well as a listing of the project agreements.

Figure 8: Project Phase, Titles, Agreements Overview

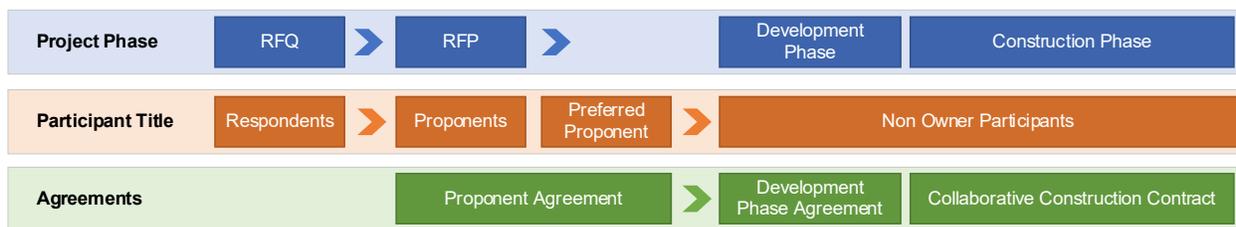
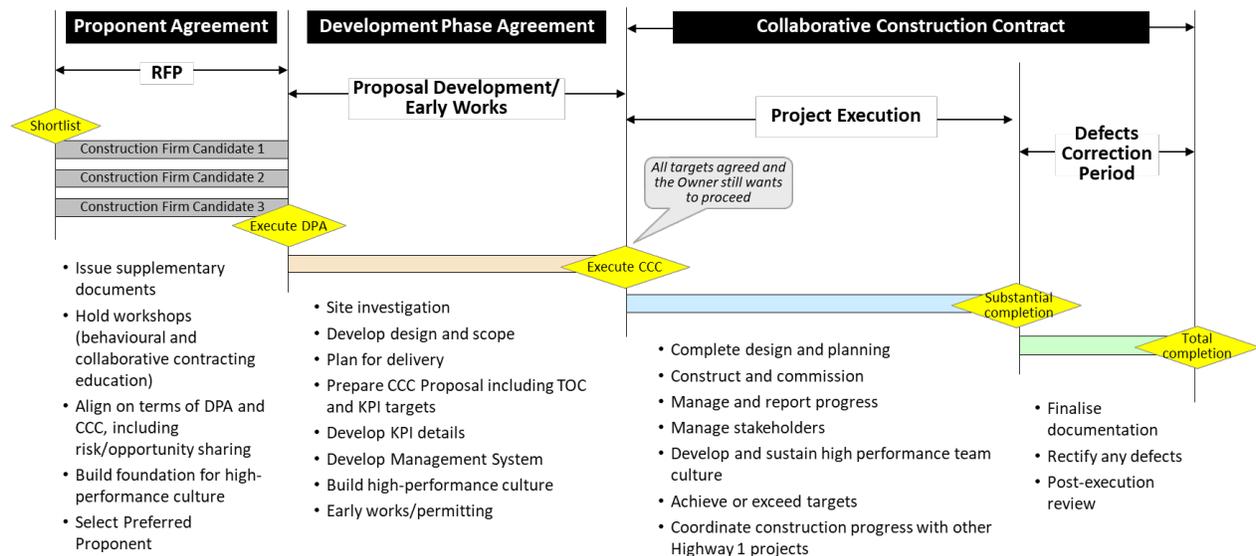


Figure 9 below provides an overview of the collaborative process and the goals and deliverables of each stage.

Figure 9: Collaborative Process Overview



The DPA will set out the rights and obligations of the parties in respect of the Development Phase of each Project and will contain, among other things, the scope of the services to be delivered by the NOPs along with other commercial terms. The Draft DPA is included as Appendix E to this RFP. During the Development

Phase of a Project, in accordance with the DPA, the Owner will work with the NOPs as an integrated team to define the Project scope and schedule, develop project management systems and plans, finalize the Collaborative Construction Contract (“**CCC**”), and develop a robust and defensible Target Outturn Cost (“**TOC**”) as part of the CCC Proposal.

During the Development Phase, the Owner anticipates advancing the following:

- (a) Acquisition of project land;
- (b) Consultation with Indigenous Groups;
- (c) Public and stakeholder consultation;
- (d) Permitting;
- (e) Interface agreements (railways) (only for Tank Hill Project);
- (f) Interface agreements (utilities); and
- (g) Communications.

2.1 COLLABORATIVE CONSTRUCTION CONTRACT

Once the Owner accepts the CCC Proposal for a Project, the Owner intends to invite the NOPs to execute the CCC as finalized during the Development Phase. The CCC will govern the collaborative relationship between the Owner and the NOPs to complete the design and construction of the relevant Project. The parties to the CCC will be the Owner and the NOPs. The Draft CCC (“**Draft CCC**”) will be issued by way of Addendum.

The objective of the CCC is to set out the terms and conditions for the Owner and NOPs to work as an integrated team to finalize the design and construction of the relevant Project in accordance with the CCC Proposal.

Any description or overview of the Draft CCC in this RFP is indicative only and will not supersede, supplement, or alter the Draft CCC and/or the CCC, as applicable.

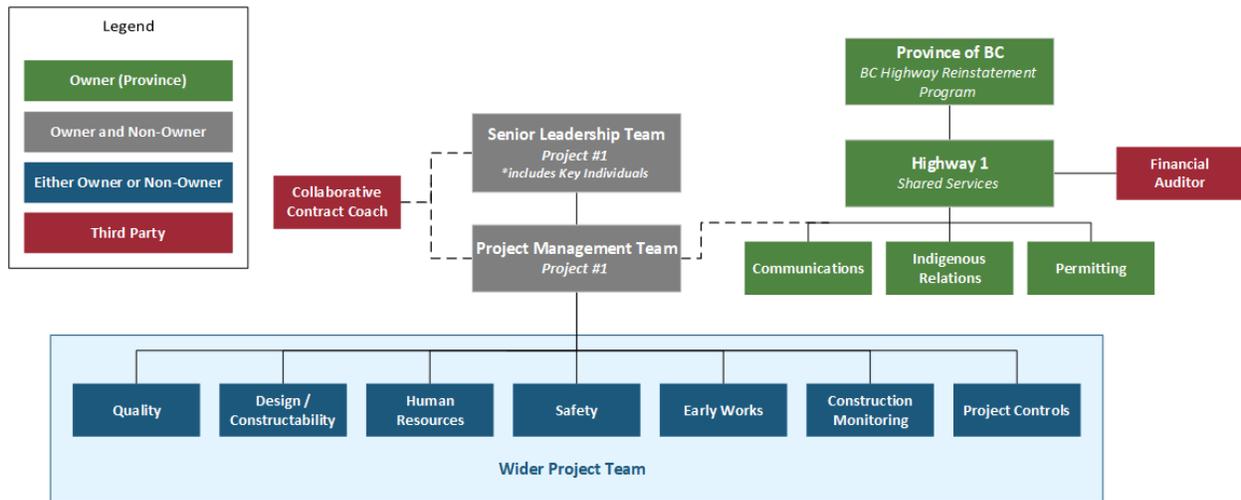
The Owner is developing an industry agreed upon form of CCC, based on negotiations with NOPs on other projects within the Program and the Commercial Alignment Workshops to be held under this RFP.

2.2 PROJECT GOVERNANCE AND TEAM STRUCTURE

The Owner anticipates that the DPA for each Project will set out the organization and responsibilities of the Senior Leadership Team (“**SLT**”) and the Project Management Team (“**PMT**”) for both the Development Phase and Construction Phase of the relevant Project.

Figure 10 below provides an overview of the functional organization proposed for a Project team.

Figure 10: Project Functional Organizational Chart



This organization may change for the Construction Phase of a Project, depending on the work carried out during the Development Phase.

2.2.1 Senior Leadership Team

An SLT will provide leadership and governance to the PMT during the Development Phase and Construction Phase of each Project. The SLT of each Project will be comprised of one individual from each NOP, one individual from the Owner, and one individual from Infrastructure BC. The Owner anticipates providing the following same two individuals as members of the SLT for each Project:

Organization	Member
MOTI	Executive Program Director
Infrastructure BC	VP Transportation and Utilities

The role of the SLT is to provide strategic direction, governance and oversight, and high-level leadership to the PMT. The SLT will take steps to create and sustain the kind of inspiring environment and culture whereby it becomes inevitable that each Project achieves or betters its target objectives.

The Project DPA will establish the SLT and set out its duties and responsibilities. The SLT will continue under the CCC. During the Development Phase and Construction Phase, the SLT will provide advice to the PMT. Each SLT representative must have the appropriate delegation of authority to bind its respective organization to all SLT decisions and all decisions of the SLT must be unanimous. The NOPs, by executing the DPA and CCC, will acknowledge and accept the role of Infrastructure BC as if they are a signatory to the DPA and CCC.

The Proponent will identify, at minimum, two SLT member Key Individuals (which will be one from the Construction Firm NOP and one from the Engineering and Design Firm NOP).

2.2.2 Project Management Team

The PMT will be responsible for delivery of the relevant Project by the integrated team, developing the project design and planning activities in the Development Phase and carrying out the construction work and required activities during the Construction Phase.

The PMT will be comprised of qualified individuals from the Owner, and the NOPs as appropriate to their skills and experience. Specifically, the Proponents are invited to nominate Key Individuals for the role of Project Director, Design Manager and Construction Manager.

The Project Director provides effective day-to-day support to the PMT, that in turn leads and manages the wider project team. Under the CCC, the Project Director is accountable for ensuring that the PMT meets or exceeds the agreed Project Objectives and targets. The Project Director, in concert with the PMT, must create and sustain a project environment and culture conducive to the results the PMT has committed to.

2.2.3 Highway 1 Program Shared Services

The Owner will provide a number of services at a Program level for the Highway 1 corridor. These services are intended to include:

- Communications;
- Indigenous Relations; and
- Pre-construction permitting.

2.2.4 Owner Provided Resources

The Owner anticipates providing the following resources to support the Projects:

- Collaborative Contract Coach: The role of the Collaborative Contract Coach is to help the Participants work collaboratively as an integrated team and overcome adversarial tendencies often associated with construction contracts.

2.2.5 Owner Retained Advisors

The Owner anticipates retaining the following advisors to support development and review of the Projects:

- Third Party Estimator: To provide Participants with assurance that the target cost (and other aspects of the Development Phase proposal) comply with the CCC and represent good value for money.

- Financial Auditor: To enable open-book operations and provide Participants with assurance that payments under DPA and CCC are in accordance with their agreements, as described in Section 5.20.

2.3 PROJECT SCOPE

A summary of the anticipated scope of the Projects is provided in Figure 11 below. This summary should not be considered exhaustive.

Figure 11: Summary of Scope

Summary of Scope
<ul style="list-style-type: none">• Removal and reclamation of temporary alignment (if applicable);• Removal and return of temporary structure(s) (not applicable to Tank Hill Project);• Replacement of the existing bridges (not applicable to Tank Hill Project);• Design and construction in coordination with CPR (only applicable to Tank Hill Project);• Grading;• Paving;• Channel construction (including armouring and enhancements);• Upgraded drainage;• Traffic management;• Maintenance of designated infrastructure to specified standards during construction (including pavement, structures, drainage, etc.); and• Meet quality, health and safety, communications, environmental, and archaeological requirements.

2.4 LABOUR OBJECTIVES

The PMT will be required to implement and report on the labour objectives in the delivery of the Project, including:

- (a) achieving apprenticeship, trainee and training targets;
- (b) achieving employment targets for equity groups traditionally underrepresented in the skilled workforce; and
- (c) reporting on performance against labour objectives.

The PMT will also be required to provide information and documentation pertaining to the NOPs' compliance with the labour objectives as set out in the CCC. Incentive payments will be provided to encourage the NOPs to exceed the apprenticeship and training and equity employment targets that will be set out in the CCC.

2.4.1 Project Labour

Each Project will be delivered under a project labour agreement. The Owner, with the Construction Labour Relations Association of BC, negotiated a Project Labour Agreement (“**PLA**”) on April 13, 2022. The PLA sets out employment terms and conditions for the supply of workers to be utilized by the Construction Firm NOPs and their contractors and subcontractors, and recognizes the labour objectives. The PLA will be made available to Proponents in the Data Room.

Construction Firm NOP(s) will be required to execute and provide in the Proposal, a Letter of Adherence in the form as attached to the PLA. All construction subcontractors will be required to sign the Letter of Adherence and to carry out all Project work comprising “Capital Works” (as defined in the PLA) in accordance with the PLA.

2.4.2 Indigenous Groups

The Owner is in discussions with identified Indigenous Groups regarding potential training, employment, and contract opportunities. Any requirements with respect to Indigenous Groups will be finalized during the Development Phase. It is anticipated that there will be specific targets for contract opportunities, and in some cases, there may be a requirement to contract with a specific Indigenous business for a specific scope of work.

2.5 COMMUNICATIONS AND ENGAGEMENT

The Owner will provide the Highway 1 Traffic Coordination Plan to guide the PMT to develop and implement a traffic management plan during the Development Phase of the Project, providing the public, stakeholders, businesses, commuters, and traffic media with regular and timely traffic information.

The PMT's obligations regarding communications and engagement are anticipated to be set out in the CCC. Key communications and engagement responsibilities include:

- (a) notification of construction activities and anticipated traffic impacts, delays or closures;
- (b) following the Highway 1 Traffic Coordination Plan;
- (c) stakeholder engagement;
- (d) enquiry-response management; and
- (e) supporting the Owner's community relations activities, public and stakeholder consultation and media relations.

2.6 ENVIRONMENTAL

The PMT will oversee, direct and conduct the relevant Project work to ensure compliance with all applicable environmental obligations. These obligations may include:

- (a) protecting valued ecological components and socio-economic features within the Project Site during construction activities;
- (b) securing, where necessary, and complying with the conditions of environmental permits and approvals from regulatory agencies;
- (c) reducing potential environmental liabilities;
- (d) assuring the construction proceeds in accordance with all regulatory requirements and best management practices;
- (e) implementing environmental requirements as prescribed by regulatory agencies;
- (f) mitigating environmental impacts during construction; and
- (g) ensuring all monitoring and reporting requirements for environmental aspects are undertaken and documented.

A Construction Environmental Management Plan template developed by the Owner will be available to, and amended by, the PMT to meet the requirements of the CCC.

2.7 LANDS

The Owner will acquire all lands and land interests.

2.8 OTHER RESPONSIBILITIES

Responsibilities for the following will be developed by the Owner and NOP's during the Development Phase of each Project:

- a) Management plans (design, construction, quality, etc.);
- b) People and culture development;
- c) Project controls (financial, schedule);
- d) Safety;
- e) Quality management;
- f) Operations and maintenance during construction;
- g) Remaining permitting requirements;
- h) Traffic management;

- i) Utilities; and
- j) Archaeological obligations as identified.

2.9 RESPECT IN THE WORKPLACE

In order to have a construction site free of racism and discrimination, and promote a culturally safe and respectful environment, the Owner, with the NOPs, will develop and implement related policies and training, including a Respectful Workplace and a Health and Safety Management Plan as part of the CCC management plans. Approval by the SLT of suitable policies and a training plan will be a requirement of the CCC and a pre-requisite for construction to commence.

2.10 PAYMENT STRUCTURE

Payment will consist of a three limb structure. Limb 1 (comprising reimbursable Project costs) will be paid monthly in accordance with the payment provisions of the DPA. Limb 1 is paid on an open book basis and is subject to review and audit by the Owner and its advisors. Limb 2 (comprising NOPs' profit and a contribution towards non-Project-specific overheads) will be paid monthly during the Development Phase at 50% of its value, with the final 50% paid upon execution of the CCC, and monthly thereafter. A detailed breakdown of cost categories which fall within Limb 1 and within Limb 2 are included in the Draft DPA. Limb 1 plus Limb 2 is the Target Outturn Cost ("**TOC**").

Costs and mark-up associated with any early works that take place during the Development Phase will be reimbursed via payment of both Limb 1 and Limb 2 monthly with no reductions. All Limb 1 and Limb 2 payments from the Development Phase, including any early works, will form part of the TOC.

There is no Limb 3 associated with the DPA.

Subject to the CCC terms, Limb 3 may be subtracted from the NOPs compensation during the Construction Phase of the Project, or otherwise will be paid at the conclusion of the Project work. Limb 3 will be measured and adjusted in relation to Actual Outturn Costs ("**AOC**") and achievement of Project Key Performance Indicators ("**KPIs**").

Details of the three limb model are summarized in Figure 12 below.

Figure 12: Three limb Compensation Model Description

Limb 1 Reimbursable Costs	Reimbursement of actual direct costs and Project-specific overheads incurred in performing the Project works (including mistakes, rework and wasted effort).
Limb 2 The Fee	A fee (designated as a percentage of Limb 1) to cover profit and a contribution towards NOPs' non-Project-specific overheads.
Limb 3 Gainshare/painshare <i>(Construction Phase only)</i>	Payment of gainshare by the Owner to the NOPs, or payment of painshare by the NOPs to the Owner as the case may be, depending on how actual outcomes compare with pre-agreed Target Outturn Cost and Project KPIs.

There are two components to the gainshare/painshare:

(a) Component 1 is gainshare/painshare on how actual costs relate to the TOC.

(i) If the AOC, the actual cost of the Project upon completion, is less than the TOC, the difference is allocated as follows:

- 50% to the Owner
- 50% to the NOPs

(ii) If the AOC is greater than the TOC, the difference is allocated as follows:

- 50% to the Owner
- 50% to the NOPs,

up until Limb 2 reaches zero. Beyond that all costs are borne 100% by the Owner.

(b) Component 2 is KPIs

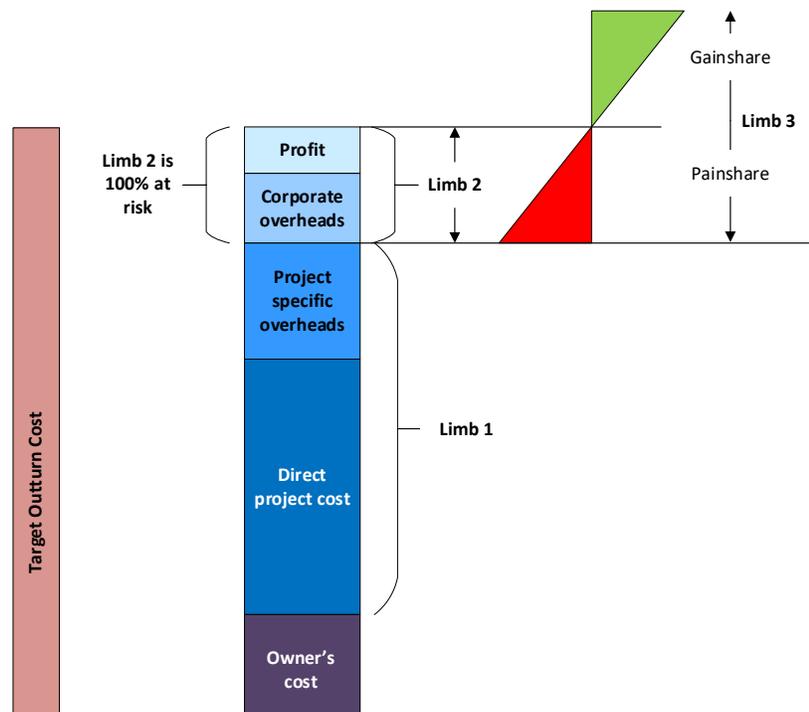
The Owner intends to establish a number KPIs with the NOPs that relate to the Project objectives identified in Section 1.1. There will be opportunities for the NOPs to earn a gainshare or painshare for each KPI depending on the results the Project achieves. The Owner has determined that there will be three or four KPIs and they are summarized in Figure 13 below. The amount of funding available to be paid to all KPIs will be seeded by the Owner with 7% of the Project TOC. The gainshare and painshare for each KPI is capped.

Figure 13: Project KPIs

KPI	Objective	Weighting
Schedule	<ul style="list-style-type: none"> Improve upon baseline schedule 	40%
Labour objective	<ul style="list-style-type: none"> Facilitate and optimize the supply of a diverse, skilled and safe workforce. Creation of career development opportunities to grow a diverse and local trade and professional workforce. Growing job opportunities for apprentices and trainees. 	20%
Business opportunities for identified Indigenous Groups	<ul style="list-style-type: none"> Increase subcontracting opportunities for identified Indigenous Groups beyond minimums 	20%
Traffic Management	<ul style="list-style-type: none"> Maintaining an appropriate level of service on temporary or permanent roads and highways during construction, to be determined during the Development Phase. 	20%

Figure 14 below provides a graphic example of the three limb compensation model.

Figure 14: Three Limb Compensation Model Diagram



3 RFP PROCESS

The purpose of this RFP phase is to invite the Proponents to prepare and submit a Proposal for all of the Projects. It is anticipated that, subject to the provisions of this RFP, a Preferred Proponent will be selected for each Project and offered the opportunity to enter into a DPA. Proponents may express a preference between the Projects, but must be willing to undertake any of the Projects if selected as a Preferred Proponent.

Eligibility to continue in the Competitive Selection Process and participate in this RFP phase, to the extent expressly provided for in this RFP, is conditional on:

- (a) the Proponent being identified as a Construction Firm Candidate pursuant to the RFQ;
- (b) selection of Engineering and Design Firms capable of performing in the Design Services Area, including:
 - (i) at least one firm from the Engineering and Design Firm Candidate List, and
 - (ii) other engineering and design firms if required or applicable to perform in the Design Services Areas, and who will be required to successfully submit a Qualification Response; and
- (c) the Proponent executing and delivering the Proponent Agreement in accordance with the RFP;

and thereafter:

- (d) the Proponent observing and ensuring that its prospective Proponent Team Members observe the provisions of this RFP, including observing and satisfying and ensuring that its prospective Proponent Team Members observe and satisfy the terms and conditions that may be required, or otherwise established by the Owner, in respect of any waiver or permission to be issued by the Owner under this RFP;
- (e) the Proponent observing and complying with and ensuring that its prospective Proponent Team Members observe and comply with the terms of the Proponent Agreement; and
- (f) the Proponent submitting a Proposal that substantially satisfies the provisions of this RFP.

Any failure or failures on the part of the Proponent or on the part of any prospective Proponent Team Member to observe, satisfy, or comply with such provisions, terms and conditions, may result in the Proponent being:

- (g) ineligible to continue further in the Competitive Selection Process; and/or
- (h) ineligible to receive any further invitations or information in connection with the Competitive Selection Process.

3.1 TIMETABLE

The anticipated timetable for the Competitive Selection Process is set out in Figure 15.

Figure 15: Anticipated Timetable

Activity	Date
RFP Issued	June 3, 2022
All-Proponent Commercial Briefing Workshop (virtual session)	June 24, 2022
Commercial alignment Workshop (virtual session)	July 11-22, 2022
Submission Time for Submission #1	July 29, 2022
Adjustment Event Alignment Workshop (virtual session)	August 8-19, 2022
Submission Time for Submission #2	August 26, 2022
Foundation Workshop (in-person session)	September 8-September 14, 2022
Preferred Proponents Announcement	October 2022

3.2 COMMUNICATIONS AND REQUESTS FOR INFORMATION

3.2.1 Communications

Proponents should only communicate with the Contact Person by email.

The following provisions will apply to any email communications with the Contact Person, or the delivery of documents to the Contact Person by electronic means where such email communications or electronic deliveries are permitted by the terms of this RFP:

- (a) the Owner does not assume any risk, responsibility or liability whatsoever and makes no guarantee, warranty or representation whatsoever to any Proponent:
 - (i) for ensuring that any electronic email system or computer system is in good working order, able to receive transmissions, or not engaged in receiving other transmissions such that a Proponent's transmission cannot be received; or
 - (ii) if a permitted email communication or electronic submission is not received or received in less than its entirety, within any time limit specified by this RFP; and
- (b) all permitted email communications with the Contact Person will be deemed as having been received by the Contact Person on the dates and times indicated on the Contact Person's electronic equipment.

Information offered from sources other than the Contact Person with regard to this RFP is not official, may be inaccurate, and should not be relied on in any way, for any purpose.

3.2.2 No Communication with Media or the Public

Proponents and Proponent Team Members, including their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other persons associated with any of them, will not communicate, in respect of any part or parts of the Projects or the Competitive Selection Process, with the media or the public without the prior written consent of the Owner.

Each Proponent will notify the Owner of requests for interviews or other requests from the media received by the Proponent or any of its Proponent Team Members, and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other persons associated with any of them, in connection with the Projects or the Competitive Selection Process.

3.2.3 Requests for Information

All requests for information (“**RFI**”) regarding any aspect of this RFP should be directed to the Contact Person by email using a Request for Information Form in the form attached as Appendix C to this RFP.

The following applies to any RFI:

- (a) responses to an RFI will be in writing;
- (b) all RFI’s, and all responses to RFI’s from the Contact Person, will be recorded by the Owner;
- (c) the Owner is not required to provide a response to any RFI;
- (d) a Proponent may request that a response to an RFI be kept confidential by clearly marking the RFI “Commercial in Confidence” if the Proponent considers that the RFI is commercially confidential to the Proponent;
- (e) if the Owner decides that an RFI marked “Commercial in Confidence”, or the Owner’s response to such an RFI, must be distributed to all Proponents, then the Owner will permit the Proponent to withdraw the RFI rather than receive a response. If the Proponent does not withdraw the RFI, then the Owner may provide its response to all Proponents;
- (f) notwithstanding Sections 3.2.3 (d) and (e):
 - (i) if one or more other Proponents submits an RFI on the same or similar topic to an RFI previously submitted by another Proponent as “Commercial in Confidence”, the Owner may provide a response to such RFI to all Proponents; and
 - (ii) if the Owner determines there is any matter which should be brought to the attention of all Proponents, whether or not such matter was the subject of an RFI, including an RFI marked “Commercial in Confidence”, the Owner may, in its discretion, distribute the RFI, response or information with respect to such matter to all Proponents.

3.3 INTERACTIVE PROCESSES

The Owner will facilitate an interactive process with the Proponents during the RFP response period which may include exchanges of information, discussions, and clarifications of issues through Workshops and Topic Meetings, and the submission and consideration of comments on and proposed amendments to the DPA and Draft CCC. The interactive processes are an integral part of the procurement and evaluation process and will be described in the RFP. Subject to COVID-19 restrictions, it is anticipated that these meetings will be held through a mix of virtual and/or in-person meetings.

3.3.1 Workshops and Topic Meetings Meeting

The Owner expects the interactive process to include:

- (a) meetings to enable communication between the Owner and the Proponents with respect to commercial and legal matters (“**Workshops**”) providing a process that helps ensure Proponents have a complete and accurate understanding of the Projects and the opportunity to provide the Owner with comments and feedback on material issues, including provisions in the Draft DPA and Draft CCC. There will also be a foundation Workshop, which will enable the Owner and Proponent to discuss key aspects of the Projects and the Proponent’s approach to these. and to discuss any suggestions they may have, all in accordance with and as further detailed in this RFP including in Section 3.3.2.;
- (b) one or more meetings to facilitate discussion between the Owner and the Proponents in respect of specific topics (“**Topic Meetings**”) which may include technical issues; all in accordance with and as further detailed in this RFP including Section 3.3.2; and
- (c) any other meetings, consultations or facilitative or facilitated processes in conjunction with or as part of the Competitive Selection Process.

The Owner may in its sole discretion from time to time, by written notice to the Proponents, deliver to the Proponents policies and procedures clarifying, supplementing, or otherwise modifying the terms of the Workshops and Topic Meetings procedures set out in this RFP, and on issuance of such written policies and procedures the Workshops and Topic Meetings procedures will be amended, supplemented, or replaced as applicable.

Each Proponent will:

- (d) participate in all the Workshops and Topic Meetings where required in accordance with Section 3.3.2 (a);
- (e) observe, abide by, and comply with the terms of this RFP in respect of the Workshops and Topic Meetings; and ensure that each individual in attendance at the Workshops or Topic Meeting observes, abides by, and complies with the terms of this RFP in respect of the Workshops and Topic Meetings.

Four Workshops are planned and indicated below and further referenced in Figure 15:

- (f) All-Proponent Commercial Briefing Workshop: this will be a half-day session to discuss the legal and commercial framework of the DPA and CCC, including details of what will constitute Limb 1 Reimbursable Costs. The primary purpose of this Workshop is educational, and there will be opportunities for Proponent questions to be answered.
- (g) Commercial Alignment Workshop: this will be a full-day workshop held separately with each Proponent to discuss and align on the provisions of the Draft DPA and the Draft CCC. Prior to this workshop each Proponent will provide details of their concerns or required clarifications on the Draft DPA and Draft CCC, and these issues will be worked through in priority order at the workshop, to clarify or resolve-in-principle as required, seeking fair and reasonable outcomes. At the conclusion of this workshop Proponents will be expected to confirm that their commercial submission (Package 5) will be in accordance with the understandings reached at the workshop, and that no further substantive changes will be required to the Draft DPA and Draft CCC. Proponents will receive a briefing note in advance of this workshop with further details on required attendees, process, and conduct. The Owner does not anticipate that the terms of the Draft DPA and Draft CCC will vary amongst the Projects subject to project-specific issues.
- (h) Adjustment Event Alignment Workshop: this will be a six-hour workshop held separately with each Proponent to align on the types of events and circumstances that will be Adjustment Events. Prior to this workshop each attendee will complete and return a questionnaire issued by the Owner outlining a range of risk scenarios likely to be encountered on the Projects, with questionnaire responses indicating whether the attendee thinks each risk should be shared between the CCC Participants, or borne solely by the Owner (i.e. an Adjustment Event). Workshop attendees will consider each risk scenario and align on which ones will be Adjustment Events. At the conclusion of this workshop each Proponent will be expected to confirm that if they are selected to execute the DPA, no further substantive changes will be required to the Adjustment Event Guidelines used for the purposes of setting targets under the DPA and administering the CCC. Proponents will receive further briefings in due course in preparation for this Workshop. The Owner does not anticipate that the Adjustment Events Guidelines will vary amongst the Projects subject to project-specific issues; and
- (i) Foundation Workshop: this will be a five-hour workshop held separately with each Proponent to discuss key aspects of the Projects and the Proponent's proposed approach, enabling the Owner to assess the substance and value of those proposals, and to gain an understanding of the Proponent's capacity to develop a high performing integrated team. The Foundation Workshop will provide each Proponent the opportunity to demonstrate its ability to add value in delivering the Program Objectives, and its leadership and collaborative behaviours in action. This workshop will be structured and facilitated by PCI Group Pty Ltd ("**PCI**"). Proponents will receive a briefing note in advance of this workshop with further details on required attendees, process, and conduct.

The Fairness Reviewer will be invited to all Topic Meetings and Workshops.

The Owner may, in its discretion, including at the request of any Proponent(s), schedule additional Workshops or Topic Meetings, if the Owner considers it desirable or necessary, schedule such additional Workshops and Topic Meetings at the dates, times and locations and for the duration that the Owner considers appropriate, and hold such Workshops and Topic Meetings separately with any Proponent or together with all the Proponents.

3.3.2 Procedures for Workshops and Topic Meetings

(a) Workshops

- (i) Unless the Owner notifies the Proponents that a Workshop is optional, the Proponent will attend each Workshop and may, subject to any restrictions established by the Owner on prior written notice to the Proponent, determine the appropriate representative or representatives, including the number of representatives, who will attend each Workshop on behalf of such Proponent.
- (ii) Each Proponent will attend all Workshops that are designated by the Owner as optional, unless a Proponent provides written notice to the Owner at least three business days before the scheduled Workshop date that such Proponent has declined the invitation to attend, provided that the Owner may proceed with the applicable Workshop with any other Proponents that have not declined attendance at any such additional optional Workshop.

(b) Workshop Agendas and Summaries

- (i) Prior to each scheduled Workshop and not later than the date specified by the Owner in its written notice to the Proponents, each Proponent will deliver to the Contact Person a list of attendees and requested agenda items, if any. For the commercial alignment workshops, Proponents should include any issues, comments and requested amendments to the Draft DPA and Draft CCC proposed to be discussed at such Workshops.
- (ii) Any issues, comments and requested amendments to the Draft DPA and Draft CCC should be submitted in table format, identifying the Draft DPA and/or Draft CCC wording that is the subject of the issue, the comment or requested amendment, highlighting the Proponent's priorities, and setting out the corresponding summary of the issue or comments, and where applicable the requested substitute wording and accompanying memorandum summarizing the rationale for the requested amendment.

(c) Topic Meetings

- (i) Attendance at Topic Meetings is not mandatory, and the Proponent or any of the other Proponents may decline to take part in any one or more Topic Meetings, provided that

the Owner may proceed with a Topic Meeting or Topic Meetings with any other Proponent that has not declined attendance at any particular Topic Meeting.

- (ii) The Proponent may, subject to any restrictions established by the Owner on prior written notice to the Proponent, determine the appropriate representative or representatives, including the number of representatives, who will attend each Topic Meeting on behalf of the Proponent.

3.3.3 Evaluation of Proponent and Proponent Team Members at Topic Meetings and Workshops

Part of the evaluation of the Proponent's Proposal will be based on:

- (a) information shared by the Proponent or prospective Proponent Team Members or obtained by the Owner; and
- (b) the conduct of the Proponent, and the prospective Proponent Team Members

at or during any Workshop or Topic Meeting.

3.3.4 Non Binding Nature of Topic Meetings and Workshops

In any Topic Meeting or Workshop a Proponent may seek information or comments from the Owner and the Owner in its sole discretion may, but in no event will be obligated to, determine whether to provide, and the timing and method for providing, any such information or comments, or any response at all.

If a Proponent wishes to have any matter confirmed, including any statement made by any of the Releasees at or during a Workshop or Topic Meeting, the Proponent will submit an RFI describing the matter and requesting that the Owner confirm the matter by response to Proponents and, if the matter relates to a clarification or change to a term of this RFP, the Draft DPA or the Draft CCC, requesting that the Owner confirm the matter by Addendum clarifying or amending, as the case may be, the applicable term of this RFP, the Draft DPA or the Draft CCC.

No part of the evaluation of the Proponent's Proposal will be based on:

- (a) Owner information obtained or shared, except as provided by the Contact Person; or
- (b) the conduct of the Owner, Infrastructure BC, or their respective representatives, including officers, directors, employees, consultants, agents, and advisors; at or during any Workshop or Topic Meeting.

3.3.5 Finalization of the Development Phase Agreement

The Owner has issued the Draft DPA with this RFP. In addition to considering comments and issues discussed in the Workshops and Topic Meetings, the Owner may from time to time invite Proponents to review and submit further comments in respect of the Draft DPA.

Any information or documentation provided to, or which comes to the attention of the Owner at, or in connection with, any Workshops or Topic Meetings, including in, or as a result of questions raised during any such meetings, and further Proponent-requested amendments or information relating to commercially sensitive matters, may be subject to disclosure to the other Proponents at the discretion of the Owner.

Proponents may submit additional comments, requested amendments and issues following the Workshops and/or Topic Meeting discussions.

The Owner will consider comments, issues and requested amendments to the Draft DPA received from the Proponents. Without limiting any other provision of this RFP, including Section 5.1, the Owner may in its discretion, on its own initiative, or as a result of Proponent comments or requests, at any time and from time to time, including after the Submission Time for Submission #2, by Addenda amend, restructure, or supplement the initial and any revised form of Draft DPA, including by incorporating any such Proponent requested and any other changes. A Workshop is anticipated during the RFP phase which focuses on the Development Phase process and Development Phase Agreement.

The Owner will issue the Definitive DPA by Addendum to this RFP.

3.4 AUTHORIZATIONS, ORDERS, AND APPROVALS

Without limiting any other term of this RFP, the execution of each DPA and CCC is subject to the issuance of all necessary Owner and governmental authorizations, orders and approvals required in connection therewith, including the following:

- (a) any approvals required under the *Financial Administration Act* (British Columbia);
- (b) issuance by the Lieutenant Governor in Council of orders in council made under the *Transportation Act* (British Columbia); and
- (c) any other regulatory or other approvals required under the laws of the Province of British Columbia or Canada.

Unless otherwise provided for in this RFP, required authorizations, orders and approvals may be obtained by the Preferred Proponents and the Owner, as applicable, prior to the Effective Date.

3.5 PROPOSAL REQUIREMENTS

Proposal requirements are set out in detail in Appendix A to this RFP and include formatting and content requirements relating to the Proposals.

3.5.1 Submission Time and Submission Location for Proposals

Proposals are to be addressed to the attention of the Contact Person and must be received at the Submission Location before the Submission Time for Submission #1 or Submission Time for Submission #2 (as applicable), as stated in accordance with the Summary of Key Information.

3.6 EVALUATION PROCESS

3.6.1 Validity of Proposals

By submitting a Proposal, each Proponent agrees that:

- (a) its Proposal will remain fixed and irrevocable from the Submission Time for Submission #2 until midnight at the end of the 60th day following the Submission Time for Submission #2 (the “**Proposal Validity Period**”); and
- (b) after the expiry of the Proposal Validity Period, its Proposal may not be adjusted unless the Proponent provides notice to the Owner of any proposed adjustment and demonstrates to the satisfaction of the Owner that the Proponent has used its best efforts to continue to maintain the commitments (e.g. Key Individuals), but that despite such best efforts, the specified adjustments are required solely as a direct result of one or more events that mitigate changes that:
 - (i) are external to the Proponent and the Proponent Team Members; and
 - (ii) could not have been prevented by, and are beyond the control of, the Proponent and any of the Proponent Team Members; and
- (c) a Proponent may indicate in its Proposal a Proposal Validity Period that exceeds 60 days, which shall be the Proposal Validity Period for such Proponent in accordance with this RFP.

The Owner will evaluate and score each Proposal and each Proponent’s participation in the Workshops against the criteria described both in Appendix B and in Section 3.6.2. The Owner may, in its discretion, also consider any or all additional information received from the steps described in Section 3.6.2 below.

Appendix B describes the evaluation criteria and indicates the weightings for each criterion. Scores will be awarded for how effectively the Proponent’s Proposal and participation in the Workshops respond to the requirements set out in Appendix A, in a manner consistent with the evaluation criteria described in Appendix B.

The Owner will not evaluate a Proposal or the Workshops if the applicable Proponent has been disqualified, or its Proposal has been rejected, in accordance with this RFP.

3.6.2 Evaluation of Proposal and Workshops

The Owner may, in its discretion, take any one or more of the following steps, at any time and from time to time, in connection with the review and evaluation of any aspect of a Proposal, including if the Owner considers that any Proposal, or any part of a Proposal, requires clarification or more complete information, contains defects, ambiguities, alterations, qualifications, omissions, inaccuracies or misstatements, or does not for any reason whatsoever satisfy the Owner that the Proposal meets any requirements of this RFP at any time, or for any other reason the Owner in its discretion deems appropriate and in the interests of the Owner and this RFP, or either of them:

- (a) waive any such defect, ambiguity, alteration, qualification, omission, inaccuracy, misstatement or failure to satisfy, and any resulting ineligibility on the part of the Proponent, or any Proponent Team Member;
- (b) independently consider, investigate, research, analyze, request or verify any information or documentation whether or not contained in any Proposal or the Workshops;
- (c) request interviews or presentations with any, all or none of the Proponents to clarify any questions or considerations based on the information included in Proposals or provided in the Workshops, during the evaluation process, with such interviews or presentations conducted in the discretion of the Owner, including the time, location, length and agenda for such interviews or presentations;
- (d) conduct reference checks relevant to the Projects or any of them with any or all of the references cited in a Proposal and any other persons (including persons other than those listed by Proponents in any part of their Proposals) to verify any and all information regarding a Proponent or a Proponent Team Member, inclusive of its directors/officers and Key Individuals, and to conduct any background investigations that it considers necessary in the course of the RFP, and rely on and consider any relevant information from such cited references in the evaluation of Proposals and the Workshops;
- (e) conduct financial capacity, credit, criminal record, litigation, bankruptcy, taxpayer information and other checks;
- (f) not proceed to review and evaluate, or discontinue the evaluation of any Proposal or Workshop, and disqualify the Proponent from this RFP; and
- (g) seek clarification or invite more complete, supplementary, replacement or additional information or documentation from any Proponent or in connection with any Proposal or Workshop or any part of their component packages.

Without limiting the foregoing or Appendix A, the Owner may, in its discretion (and without further consultation with the Proponent), reject any Proposal which in the opinion of the Owner: (i) is materially incomplete or irregular, (ii) contains any false or misleading statement, claims or information, or (iii) finds any criminal affiliations or activities by a Proponent or Proponent Team Member.

To enable the Owner to take any one or more of the above-listed steps, the Owner may enter into separate and confidential communications of any kind whatsoever, with any person, including any Proponent or Proponent Team Member. The Owner has no obligation whatsoever to take the same steps, or to enter into the same or any communications in respect of all Proponents and Proposals or Workshops, or in respect of any Proponent, including the Proponent whose Proposal or Workshop is the subject of the review or evaluation, as the case may be.

The review and evaluation, including the scoring of any Proposal, or Workshop may rely on, take into account and include any information and documentation, including any clarification, more complete,

supplementary and additional or replacement information or documentation, including information and documentation obtained through any of the above-listed investigations, research, analyses, checks, and verifications.

Proponents may not submit any clarifications, information, or documentation in respect of the Proposal after the final Submission Time, without the prior written approval of the Owner or without an invitation or request by the Owner.

If any information, including information as to experience or capacity, contained in a Proposal or a Workshop is not verified to the Owner's satisfaction, the Owner may, in its discretion, request verification of any information, and if the verification is not to the Owner's satisfaction, the Owner may decline to consider the information.

The Owner is not bound by industry custom or practice in taking any of the steps listed above, in exercising any of its discretions, in formulating its opinions and considerations, exercising its discretions in making any decisions and determinations, or in discharging its functions under or in connection with this RFP, or in connection with any Proponent, Proposal, or any part of any Proposal.

3.6.3 Evaluative Workshops

Through the various interactions during this RFP the Owner will evaluate each Proponent in relation to the Evaluation Criteria shown in Appendix B.

In relation to the leadership capabilities of the Proponent's proposed Proponent Team Members and overall capacity to be a high-performance team, the Owner anticipates this delivery model to set a new standard of performance for the delivery of projects, embodying the true spirit of collaboration. Over the course of the Workshops, the Owner will evaluate the individual leadership and management capabilities and experience of the Proponent and its Proponent Team Members, as well as the Proponent's ability to work collaboratively with the Owner's Team to generate effective and innovative solutions and plans.

To this end, the Owner will assess the following characteristics during the Workshops and throughout the interactive RFP processes:

- (a) Demonstrated leadership capabilities of the SLT;
- (b) Demonstrated leadership and management capabilities of the Key Individuals excluding the SLT;
- (c) Fair and reasonable behaviour demonstrated in Workshops; and
- (d) Overall evidence of capacity to be a high-performance team, including approach to collaborative construction contracts.

In relation to behaviours demonstrated in commercial alignment Workshops, the Owner is mindful that delivery of the Projects will involve navigating a wide range of uncertainties, some of which will require participants to resolve competing interests. It is important that the Proponents demonstrate a fair and

reasonable attitude to commercial alignment, and that initial commercial discussions are conducted in a way that promotes trust and fair dealings between the parties. For these reasons the Owner will assess the following characteristics during the commercial alignment Workshops:

- (e) The extent to which the Proponent demonstrates a balanced approach to commercial discussions – including the ability to listen for understanding, willingness to consider all parties' perspectives and legitimate needs, desire for equitable and mutually acceptable solutions, rather than only promoting its own self-interest and/or negotiating on the basis of entrenched positions;
- (f) The sense of reasonableness regarding legal concerns and willingness to enter a collaborative relationship in which most risks are shared between the participants (to maximize collective performance and project success) rather than seeking to minimize its own exposure to risk (regardless of collective performance and project outcomes); and
- (g) The extent to which the Proponent conducts itself honestly and with integrity during commercial discussions, including open discussion of its needs, expectations and constraints, willingness to:
 - (i) be open regarding its areas of concern;
 - (ii) the reasons for these; and
 - (iii) to seek true alignment with all participants.

The Owner will not evaluate the comments provided by the Proponent in relation to the Draft DPA or review of the Draft CCC. The Owner expects and welcomes genuine and honest feedback and comments.

Except as may be expressly stated otherwise in this RFP, including Section 5.7, the Owner will retain all information received from a Proponent during a Proponent specific Workshops and Topic Meetings as strictly confidential, and will not disclose such information to the other Proponent or any third party. The Owner may disclose such information to its consultants and advisors who are assisting or advising the Owner with respect to the Projects.

3.7 ENGINEERING AND DESIGN QUALIFICATION SUBMISSION

The Proponent must include as part of the Proponent Team, engineering and design firms with demonstrable experience in all of the Design Services Areas noted in this RFP. The Proponent must select an Engineering and Design Firm Candidate that has qualified in at least one of the Design Services Areas noted in this RFP, and may select other engineering and design firms to join the Proponent Team if applicable. A Proponent that includes one or more engineering and design firm(s) that are not an Engineering and Design Firm Candidate, must submit an Engineering and Design Services Qualification Response for that firm(s) as set out in Section 6 of Template A-1 in Appendix A to this RFP.

The Owner will evaluate the Qualification Response for any firm which is not an Engineering and Design Firm Candidate. Any such firm submitting a Qualification Response to fulfill a Design Services Area must be determined by the Owner to be qualified. Any Qualification Response used to fulfill a Design Services

Area which does not demonstrate to the satisfaction of the Owner consistent with the requirements of Appendix D of this RFP will result in discontinuation of the evaluation of the Proponent's Proposal, unless the Proponent has a sufficiently qualified firm from the Candidate List in that Design Service Area.

Additionally, Engineering and Design Firm Candidates which received a qualification in a required Design Services Area may elect to submit Section 6 of Template A-1 in Appendix A to this RFP for any Design Services Area where that Engineering and Design Firm Candidate has not achieved a score of 9 in their RFQ – BC Highway Reinstatement Program – Engineering and Design Services Response evaluation.

Additional information related to the handling of Engineering and Design Firm Candidates, and engineering and design firms is provided in Section 4.3.

3.8 DEBRIEFING

Representatives of the Owner will, upon request within 60 days following the announcement of the Preferred Proponent, meet with Proponents and provide them with a debriefing.

3.9 CLOSE PROCESS

3.9.1 DPA – Finalize Terms and Close

It is the intention of the Owner that, subject to Section 3.9.2, any issues with respect to the Draft DPA will be finalized prior to the final Submission Time so that the Definitive DPA, once issued, will not be further modified and is to be executed by each Preferred Proponent without further negotiation or amendment, except for changes, modifications, and additions:

- (a) relating to the determination by the Owner in its discretion regarding which parts, if any, of the relevant Proposal are to be incorporated by reference or otherwise into the DPA or otherwise pursuant to express provisions of the Definitive DPA, and changes and additions as a consequence of or in connection with such incorporations;
- (b) to those provisions or parts of the Definitive DPA which are indicated as being subject to completion or finalization or which the Owner determines in its discretion require completion or finalization, including provisions which require;
 - (i) the modification or the insertion or addition of information relating to the relevant Proponent's formation (corporate, partnership or other); and
 - (ii) the modification or the insertion or addition of information in order to reflect accurately the nature of the relevant Proponent's relationships with its Proponent Team Members;
- (c) required by the Owner in its discretion to complete, based on the relevant Proposal, any provision of the Definitive DPA, including changes, modifications and additions contemplated in or required under the terms of the Definitive DPA;

- (d) that the Owner, in its discretion, considers are necessary to create or provide for a duly authorized and legally complete, enforceable, and binding agreement; and
- (e) that the Owner, in its discretion, considers are necessary solely to enhance clarity in legal drafting.

3.9.2 Negotiations

The negotiations may, in the Owner's discretion, extend to any matter whatsoever, including changes and additions to, and removals of, any one or more aspects or parts, including design, technical, scope, schedule, commercial, risk, pricing aspects or parts, of the relevant Project, the Definitive DPA, the Proposal, and the Project work.

Neither the Owner nor the relevant Preferred Proponent will be under any obligation or duty, whether in contract, tort, statute or common law, to negotiate any matter, to continue negotiations or to obtain execute a DPA through this process.

The Owner may at any time and from time to time and for any reason that the Owner in its discretion considers to be in the interests of the Owner, including if the relevant Preferred Proponent declines to accept the Owner's invitation to enter into negotiations, revoke the invitation and, if applicable, terminate negotiations with the relevant Preferred Proponent and proceed to take any one or more steps that the Owner in its discretion considers to be in its interests or to its advantage including:

- (a) proceed with the same Proponent as Preferred Proponent to finalize and settle the relevant Definitive DPA;
- (b) discontinue the process with the Proponent, select another Proponent as Preferred Proponent and invite that Proponent to enter into the negotiations contemplated in this Section 3.9.2; or
- (c) any of the steps contemplated in Section 5.3.

3.10 FAIRNESS REVIEWER

Jane Shackell, QC, has been appointed as the Fairness Reviewer by the Owner with responsibility, as an independent observer, to review the development and implementation of the Competitive Selection Process up to the selection of the Preferred Proponents from a fairness perspective. The Fairness Reviewer will provide a written report in respect of the Proposal evaluation process which will be made public by the Owner.

The Fairness Reviewer will be:

- (a) provided with full access to all documents, meetings and information related to the evaluation processes under the RFP that the Fairness Reviewer, in its discretion, decides is required; and
- (b) kept fully informed by the Owner of all documents and activities associated with this RFP.

Proponents may contact the Fairness Reviewer directly with regards to questions about the fairness of the Competitive Selection Process. The reports, commentary, and opinions of the Fairness Reviewer on any issue of fairness with respect to the Competitive Selection Process, are final determinations of any issues of fairness with respect to the Competitive Selection Process.

3.11 STIPEND

The Owner will not provide any compensation to Proponents for participating in the RFP stage of the Competitive Selection Process.

3.12 RELEASES AND WAIVERS

(a) Each Proponent and each of its respective Proponent Team Members:

- (i) agrees that the Releasees and each of them will not under any circumstances be responsible or liable for or in respect of any Claims by any person (including such Proponent or any of its Proponent Team Members, including any person claiming through any of them, or any of their respective contractors, sub-contractors, directors, officers, employees, consultants, advisors or agents);
- (ii) releases, acquits and forever discharges the Releasees and each of them from any and all Claims; and
- (iii) agrees that it will not bring, and by participating in the Competitive Selection Process, waives, any Claims against the Releasees and each of them in excess of an amount equivalent to the lesser of \$5,000 or the actual and reasonable out of pocket costs directly incurred and paid by such Proponent in preparing the Proposal,

for any matter whatsoever arising out of, in connection with or relating in any way to the Competitive Selection Process or any one or more parts of the Competitive Selection Process, including matters or issues contemplated or considered in the reports, opinions or commentary of the Fairness Reviewer, the decisions and rulings of the Conflict of Interest Adjudicator and the Derivative Activities, or any of them.

(b) Each Proponent will indemnify, and where a Proponent is a partnership (general or limited), a consortium or joint venture, each partner in the partnership and each of the entities comprising the consortium or joint venture will jointly and severally indemnify and hold harmless the Owner and each of the other Releasees from and against any and all Claims brought by or on behalf of:

- (i) any of its present, former or prospective Proponent Team Member or Proponent Team Members against the Owner or any other Releasee or Releasees, or;
- (ii) any person as a result of any act or omission of such Proponent or any of its Proponent Team Members;

arising out of, in connection with or relating in any way to the Competitive Selection Process or any one or more parts of the Competitive Selection Process, including matters or issues contemplated or considered in the reports, opinions or commentary of the Fairness Reviewer, the decisions and rulings of the Conflict of Interest Adjudicator and the Derivative Activities, or any of them, including in connection with the performance of the obligations of each of the Proponent Team Members of such Proponent under this RFP.

4 GENERAL INFORMATION AND INSTRUCTIONS

4.1 BACKGROUND INVESTIGATIONS, SURVEYS, AND STUDIES

Investigations, surveys, and studies have been and are anticipated to continue to be undertaken with respect to the Projects. Reports and other material relating to these activities will be available in the Data Room during the Development Phase.

4.2 DATA ROOM

The Owner has established a Data Room for the Projects and the Competitive Selection Process.

At any time and from time to time during the Competitive Selection Process, the Owner may, in its discretion and without any notification, update information in the Data Room, including by adding, supplementing, replacing, or modifying information. Proponents are solely responsible for checking the Data Room frequently and on an ongoing basis to inform themselves of any such updates. Proponents are solely responsible for ensuring that they have software, which allows them access to, and use of, any information in the Data Room.

In the event of conflict or inconsistency between material downloaded from the Data Room and the applicable material as posted in the Data Room, the posted contents of the Data Room will govern and take precedence.

All information in the Data Room is subject to the terms of the Proponent Agreement and the Data Room Terms of Access.

The data room link will be provided to Proponents with login details.

4.3 IDENTIFICATION OF NON OWNER PARTICIPANTS

Each Proponent Team must contain at least one Construction Firm NOP and one Engineering and Design Firm NOP.

Where there is more than one entity making up the Proponent, any or all of those entities may be nominated as a Prospective NOP, provided that at least one of the entities is nominated as a Prospective NOP. Each other entity making up the Proponent must be included in the Proponent Team in a subcontracting role.

Any engineering and design firm, whether or not they are an Engineering and Design Firm Candidate, may be named as Prospective NOP, subject to following the procedures set out in Section 3.7, if applicable. Other required engineering and design firms must be included in the Proponent Team in a sub-consulting role.

5 GENERAL MATTERS

5.1 AMENDMENT OR CANCELLATION OF COMPETITIVE SELECTION PROCESS

This RFP may be amended only by Addenda issued by the Owner through the Contact Person.

The Owner may in its discretion at any time, and from time to time, by Addendum, amend, supplement or otherwise modify, any part or all of this RFP, including the Draft DPA and the Definitive DPA and the Draft CCC, including by extending or accelerating any schedules, timetables, or dates, including any timetables or schedules for the Competitive Selection Process or the Projects, by adding to, reducing or otherwise modifying the evaluation process, including the ranking, for Proposals, or the scope or any other part of the Projects or any of them, or by suspending, postponing, canceling or re-issuing, all or any part of this RFP.

5.2 NO CONTRACT

Other than to the extent provided for in the Proponent Agreement, this RFP is not a contract between the Owner and any Proponent, nor is this RFP an offer or an agreement to purchase work, goods or services. No contract of any kind for work goods or services whatsoever is formed under, or arises from this RFP, or as a result of, or in connection with, the submission of a Proposal, unless the Owner and a Preferred Proponent execute and deliver the DPA, and then only to the extent expressly set out in the DPA.

5.3 NO OBLIGATION TO PROCEED OR MAKE ANY SELECTION

Each of the Proponents and their respective Proponent Team Members, acknowledges and agrees that, notwithstanding any term of this RFP, the Owner is not in any way whatsoever obligated to continue with or complete any phase or stage of the Competitive Selection Process and may in its sole discretion do any one or more of the following:

- (a) at any time, from time to time, for any reason whatsoever, including for reasons that the Owner in its sole discretion considers to be in the interests of or advantageous to the Owner, or to reflect the terms of applicable trade agreements, modify, including by limiting, expanding, replacing, substituting, extending, suspending, postponing or cancelling, any stage of the Competitive Selection Process or the whole or any part or parts, including the scope, of one or more of the Projects;
- (b) by delivery of a Termination Notice to the Proponents, at any time, for any reason whatsoever, including for reasons that the Owner in its sole discretion considers to be in the interests of or advantageous to the Owner, terminate the Competitive Selection Process, including if the Owner elects in its sole discretion not to continue negotiations with any Preferred Proponent to settle the relevant DPA or elects in its sole discretion not to execute and deliver the settled form of DPA;
- (c) not accept, review, or evaluate any one or all of the Proposals;

- (d) not select a Preferred Proponent;
- (e) select a Proponent as the Preferred Proponent on more than one of the Projects;
- (f) not offer the opportunity to enter into or award a DPA to any Proponent or at all;
- (g) implement or issue any other procurement or other process for, or proceed in any other manner whatsoever, including using the Owner's own forces, contractors, or authorities, with the whole or any part or parts of the Projects or any of them; and
- (h) proceed, including in conjunction with any one or more of the activities, processes or work described in subsections 5.3 (h)(j) and (h)(ii) below with all or any part of the design, construction, financing, operation or other activities in respect of the whole or any part or parts of the lands and infrastructure comprising or anticipated to comprise the Projects or any of them through any other procurement or other process of any kind whatsoever, including negotiation, or prosecution of work using the Owner's own forces, contractors or authorities.

Without limiting any other term of this RFP, if the Owner fails to select a Preferred Proponent for one or more of the Projects within 180 days after the final Submission Time or terminates the Competitive Selection Process or cancels any part of the Competitive Selection Process, including this RFP, at any time and subsequently proceeds with any one or more of the activities, processes or work described in subsections 5.3 (a) to (h) above, the Owner may in its sole discretion:

- (i) contract directly with any person for any or all matters related directly or indirectly to all or any part of the design or construction in respect of all or any part or parts of the lands and infrastructure comprising or anticipated to comprise the relevant Project(s); and
- (ii) contract directly with any one or more of any of the Proponent Team Members of any of the Proponents, or with any one or more of the contractors, sub-contractors, consultants, advisors or other persons engaged by or through any of them, and no Proponent Team Member of any Proponent will take any step or action that might prevent or impede the Owner from so doing.

A negotiation process referenced in this Section 5.3 may:

- (i) proceed with a Proponent who submitted the Proposal which the Owner considers, in its discretion, to be most advantageous to the Owner in relation to the relevant Project, and the Owner may attempt to finalize an agreement, including a DPA, as applicable, with that Proponent on terms, conditions, and as to scope acceptable to the Owner; or
- (j) proceed with any Person whom the Owner considers, in its discretion, to be capable of completing the relevant Project, or any parts thereof, for a price and on terms and conditions acceptable to the Owner, and to be otherwise appropriate.

5.4 PROPOSAL REVIEW AND EVALUATION

The evaluation of Proposals will be conducted by the Owner with the assistance of other persons as the Owner may decide it requires, including technical, financial, legal, and other advisors or employees and representatives of the Owner, Infrastructure BC, and other government agencies and private sector advisors and consultants.

The Owner will evaluate Proposals in the manner set out in Appendix B to this RFP and as set out in Section 3.6.

The Owner may in its discretion establish its own methods and procedures for the review, evaluation and ranking of Proposals and the selection of the Preferred Proponents, if any.

The Owner may in its discretion take any one or more of the following steps, at any time and from time to time in connection with the review and evaluation, including ranking, of any aspect of a Proposal, including if the Owner considers that any Proposal or any part of a Proposal requires clarification or more complete information, contains defects, alterations, qualifications, omissions, inaccuracies or misstatements, or does not for any reason whatsoever satisfy any requirements of this RFP at any time, or for any other reason the Owner in its discretion deems appropriate and in the interests of the Owner and the Competitive Selection Process, or either of them:

- (a) waive any such defect, ambiguity, alteration, qualification, omission, inaccuracy, misstatement, or failure to satisfy, and any resulting ineligibility on the part of the Proponent, or any Proponent Team Member;
- (b) independently consider, investigate, research, analyze, request, or verify any information or documentation whether or not contained in any Proposal;
- (c) conduct credit, reference, criminal record, litigation, bankruptcy, taxpayer information and other checks and obtain references from persons, including persons other than those listed by Proponents in any part of their Proposals;
- (d) not proceed to review and evaluate or discontinue the evaluation of any Proposal and disqualify the Proponent from this RFP and the Competitive Selection Process; and
- (e) seek clarification, rectification or more complete, supplementary, replacement or additional information or documentation from any Proponent or in connection with any Proposal.

Without limiting the foregoing or Appendix B to this RFP, the Owner may in its discretion (and without further consultation with the Proponents), decline to review, evaluate or rank, or may reject outright any Proposal which in the opinion of the Owner:

- (h) is materially incomplete or irregular,
- (i) contains omissions, exceptions or variations not acceptable to or material to the Owner,

- (j) contains a false or misleading statement, claim or information, or
- (k) for which background investigations reveal any false statements, criminal affiliations or activities by a Proponent or Proponent Team Member and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other persons associated with any of them.

To enable the Owner to take any one or more of the above-listed steps, the Owner may enter into separate and confidential communications of any kind whatsoever, including by meetings or interviews, with any person, including any Proponent. The Owner has no obligation whatsoever to take the same steps or to enter into the same or any communications in respect of all Proponents and Proposals, or in respect of any Proponent, including the Proponent whose Proposal is the subject of the review or evaluation, as the case may be.

The review and evaluation, including the ranking, of any Proposal may rely on, take into account and include any information and documentation, including any clarification, more complete, supplementary, and additional or replacement information or documentation, including information and documentation obtained through any of the above-listed investigations, research, analyses, checks, and verifications.

Proponents will not submit any clarifications, rectifications, information, or documentation in respect of the Submission #1 after the Submission Time for Submission #1, and in the respect of Submission #2 after the Submission Time for Submission #2, without the prior approval of the Owner or at the invitation or request of the Owner.

If any information, including information as to experience or capacity, contained in a Proposal is not verified to the Owner's satisfaction through such checks, the Owner may, in its discretion, not consider such cited experience, capacity or other information.

The Owner is not bound by industry custom or practice in taking any of the steps listed above, in exercising any of its discretions, in formulating its opinions and considerations, exercising its discretions in making any decisions and determinations, or in discharging its functions under or in connection with this RFP, or in connection with any Proponent or any Proposal.

The Owner's decision in its discretion as to whether or not a Proposal substantially satisfies the requirements of this RFP, and the Owner need not consult with any Proponent in making its decision.

The Owner has no obligation or duty, in any way, whether in contract, tort or otherwise, to accept the Proposal that receives the highest ranking in accordance with the evaluation criteria set out in this RFP, or any Proposal.

5.5 PARTICIPATION IN THE COMPETITIVE SELECTION PROCESS

If a Proponent fails to observe any term of this RFP or to comply with any term of the Proponent Agreement, or fails to ensure that its Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other persons associated with any of them observe the terms of this RFP or of the Proponent Agreement, or the Owner becomes aware through investigations or checks, or otherwise, of false statements, criminal affiliations or activities by a Proponent or any Proponent Team Member or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other persons associated with any of them, as the case may be, the Owner may, in its discretion at any time and from time to time, including during the review and evaluation, including ranking, of any Proposal:

- (a) acknowledge the Proponent's ineligibility to continue to participate in the Competitive Selection Process;
- (b) decline to or cease to review, evaluate or rank, or reject outright the Proponent's Proposal;
- (c) decline to consider a Proponent for selection as a Preferred Proponent, regardless of whether or not the Proponent receives the highest ranking in accordance with the evaluation criteria set out in this RFP;
- (d) decline to continue with a Preferred Proponent if one has been selected and designated for a particular Project;
- (e) disqualify the Proponent from the Competitive Selection Process; or
- (f) waive the failure or failures on such terms and conditions as the Owner may in its discretion require to satisfy the Owner's consideration of the interests of the Owner, including the public interest, or of any other matter that in the Owner's discretion is appropriate in respect of the Competitive Selection Process.

5.6 CONFLICTS IN DOCUMENTS

If a Proponent considers any term of this RFP, or the Definitive DPA to be in conflict with any other part of this RFP, or the Definitive DPA, then the Proponent will notify the Contact Person in writing in accordance with Section 3.2, giving the details of such apparent conflict and seeking clarification. If any such conflict exists but notice is not given by a Proponent, the provision which, in the sole opinion of the Owner, will provide the higher overall value or benefit to the Owner, will govern and take precedence.

Subject to the foregoing, in the event of any conflict or inconsistency, the DPA, including all schedules to the DPA, will govern and take precedence over this RFP.

5.7 CONFIDENTIALITY AND FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

All documents and other records in the custody of or under the control of any of the Owner and Infrastructure BC are subject to the *Freedom of Information and Protection and Privacy Act* (British Columbia) (FOIPPA) and other applicable legislation.

Subject to the terms of the FOIPPA, the Confidentiality Conditions in Schedule 1 of the Proponent Agreement and Section 5.10, all Proposals and other documents and records submitted by a Proponent in connection with this RFP will be considered confidential.

The Owner will, subject to all applicable Laws, including the FOIPPA, and except as may be otherwise required or necessary to enable the review and evaluation of Proposals and the administration of this RFP stage and any other part of the Competitive Selection Process, use reasonable efforts to maintain the confidentiality of Proposals.

By submitting a Proposal, the Proponent represents and warrants to the Owner that the Proponent has complied with applicable Laws, including by obtaining from each Person any required consents and authorizations to the collection of information relating to such individual and to the submission of such information to the Owner as part of the Proposal for the purposes of this RFP and the Competitive Selection Process.

5.8 NO COMMUNICATION OR COLLUSION

Proponents and Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other persons associated with any of them will not discuss or communicate, directly or indirectly, with any other Proponent or actual or prospective Proponent Team Member or contractor, subcontractor, director, officer, employee, consultant, advisor, representative or agent, or any other persons associated with any of them of such other Proponent, regarding the preparation, content or representation of their Proposals or any other aspect of the Competitive Selection Process. Each Proponent is to ensure that its Proposal has been prepared and submitted without collusion or fraud and in fair competition with other Proponents and Proponent Teams. Subject to the provisions of Section 1.4 for engineering and design firms, Proposals will be submitted without any connection, including a connection arising solely through shareholdings or other equity interests in or of a Proponent or Proponent Team Member, knowledge, comparison of information, or arrangement, with any other Proponent or any director, officer, employee, consultant, advisor, agent, or representative of any other Proponent, including any Proponent Team Member of such other Proponent.

5.9 NO LOBBYING

Proponents are to ensure that they and their respective Proponent Team Members, and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other persons associated with any of them, will not in relation to the Projects, this RFP, the DPA, CCC, or the Competitive Selection Process, engage in any form of political or other lobbying

whatsoever, and will not except as expressly contemplated by this RFP attempt to communicate in relation to any of these matters, directly or indirectly, with any representative of the Owner, Infrastructure BC, including any minister or deputy minister of the Province of British Columbia, any member of the Executive Council of the B.C. Government, any members of the Legislative Assembly, any Restricted Parties, or any director, officer, employee, consultant, advisor, representative or agent of any of the foregoing, as applicable, for any purpose whatsoever, including for purposes of:

- (a) commenting on or attempting to influence views on the merits of the Proponent's Proposal, or in relation to Proposals of other Proponents;
- (b) influencing, or attempting to influence, the outcome of this RFP stage, or of the Competitive Selection Process, including the review, evaluation, and ranking of Proposals, the selection of the Preferred Proponents, or any negotiations with a Preferred Proponent;
- (c) promoting the Proponent or its interests in the Project, including in preference to that of other Proponents;
- (d) commenting on or criticizing aspects of this RFP, the Competitive Selection Process, the Projects, the DPA, CCC, including in a manner which may give the Proponent a competitive or other advantage over other Proponents; and
- (e) criticizing the Proposals of other Proponents.

5.10 DISCLOSURE

The following information has been or will be publicly disclosed at: <https://www.infrastructurebc.com/>:

- (a) the Request for Qualifications for the BC Highway Reinstatement Program,
- (b) the names of the Proponents, and
- (c) the Relationship Review Process Description.

Additional information that may be publicly disclosed, subject to government policy and FOIPPA, by posting it at <https://www.infrastructurebc.com/> includes:

- (d) this RFP,
- (e) the name of each Preferred Proponent and their respective Proponent Team Members,
- (f) each Development Phase Agreement, once executed, and
- (g) each Collaborative Construction Contract, once executed.

The Draft DPA and Draft CCC are confidential and are not intended to be made publicly available unless otherwise required by government policy or Law.

5.11 CHANGES TO PROPONENT TEAM MEMBERS

If for any reason a Proponent wishes to make or requires to add, remove or otherwise change a Proponent Team or a Proponent Team Member after the Submission Time for Submission #1, or there is a material change in ownership or control (which includes the ability to direct or cause the direction of management actions or policies of a member) of a Proponent Team Member, or there is a change to the legal relationship among any or all of the Proponent and its Proponent Team Members, then the Proponent will submit a written request to the Owner for approval of the change.

The Proponent will include in such written request the reason for the proposed change, a comprehensive description of the proposed change, the full legal name(s) of the person(s) affected by or involved with the proposed change, together with a clear and concise description of the legal nature and status of such person(s), sufficient to correctly and fully legally describe the persons affected by or involved with the proposed change, and sufficient information and documentation, including as to suitability, knowledge, skills, resources, experience, qualifications and abilities of the individuals or entities involved in the proposed change to demonstrate that the proposed change, if permitted, would result in the Proponent and the Proponent Team Members, considered as a whole and considered separately, meeting or exceeding, in the sole opinion of the Owner, the suitability, qualifications, experience, and abilities of the Proponent, and the Proponent Team Members considered as a whole before the proposed change. The Proponent will provide such further information and documentation as the Owner may request in the Owner's discretion for the purpose of considering any such request, and any such additional information and documentation, including the request for a proposed change, may in the discretion of the Owner be included in the evaluation of the Proponent's Proposal.

The Owner may, in its discretion, by written notice refuse or permit the proposed change. Any permission of the Owner may be on such terms and conditions as the Owner may consider appropriate in its sole discretion. Any change to a Proponent Team Member that results in any additional person becoming an entity comprised in any Proponent Team Member, or where any additional person is an entity comprised in any additional persons specified by the Owner in its discretion under this RFP as being included in the Proponent Team, in each case subsequent to the execution and delivery of the Proponent Agreement will be required to execute and deliver to the Owner an agreement, in form and content satisfactory to the Owner in its sole discretion, to be bound by the terms of the Proponent Agreement in the same manner and with the same effect as if such person had been an original signatory to the Proponent Agreement.

The Proponent will immediately notify the Owner if, after submission of any component of the Proposal a material change in circumstances, including a change, occurs which may adversely affect a Proponent's ability to enter into or perform a DPA including any aspects of the Project work.

Such a change may not automatically render a Proponent ineligible so as to be disqualified from the Competitive Selection Process. The Owner's decision in its discretion as to whether or not to disqualify a Proponent as a result of such a change will be final and binding.

5.12 RELATIONSHIP DISCLOSURE AND REVIEW PROCESS

The Owner reserves the right to disqualify, at its discretion, any Proponent, that in the Owner's opinion has an actual or perceived conflict of interest or unfair advantage or has a relationship that has the potential for creating an actual or perceived conflict of interest or unfair advantage, whether existing now or likely to arise in the future, or may permit the Proponent to continue and impose such condition as the Owner may consider to be in the public interest or otherwise, as required by the Owner.

Each Proponent will, by written notice addressed to the Contact Person, promptly after becoming aware of any such relationship, whether before or after delivery of the Proposal, fully disclose all relationships that the Proponent or any of its Proponent Team Members has or may have, with the Owner, or any agency, authority, board, tribunal, commission or department of the Owner, Infrastructure BC, any Restricted Party or any other person providing advice or services to the Owner with respect to the Projects or any of them and all relationships of which it or any of its Proponent Team Members is aware between any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other persons associated with any of them with the Owner or any agency, authority, board, tribunal, commission or department of the Owner, Infrastructure BC, any Restricted Party or any other person providing advice or services to the Owner with respect to the Projects or any of them that constitutes an actual or perceived conflict of interest or unfair advantage or has the potential for creating an actual or perceived conflict of interest or unfair advantage

At the time of disclosure of such relationship, the Proponent will include sufficient information and documentation to demonstrate that appropriate measures have been or will be implemented to mitigate, minimize or eliminate any actual, potential or perceived conflict of interest or unfair advantage, as applicable. The Proponent will provide such additional information and documentation and may be required to implement such additional measures as the Owner may require in its discretion in connection with the Owner's consideration of the disclosed relationship and proposed measures.

The Relationship Review Process Description is posted on the Infrastructure BC's website at <https://www.infrastructurebc.com/wp2/wp-content/uploads/Relationship-Review-Process-Description.pdf>.

5.13 RELATIONSHIPS

5.13.1 Restricted Parties

At the RFP stage, and without limiting the definition of Restricted Parties, the Owner has identified the following persons as Restricted Parties, including their former and current employees who fall within the definition of Restricted Party:

- a) Boughton Law Corporation
- b) DLA Piper (Canada) LLP
- c) DLA Piper Australia

- d) GeoNorth Engineering Ltd.
- e) G.R.E. Consulting Ltd.
- f) Miller Thomson LLP
- g) Northwest Hydraulics Consulting Ltd.
- h) PCI Group Pty Ltd.
- i) Stites Consulting Inc.
- j) The Province, BCTFA, or Infrastructure BC.

This is not an exhaustive list of Restricted Parties. Additional persons may be added to or deleted from the list during any stage of the Competitive Selection Process through an Addendum.

5.13.2 Use or Inclusion of Restricted Parties

The Owner may, at its discretion disqualify any Proponent, or may permit a Proponent to continue and impose such conditions as the Owner may consider to be in the public interest or otherwise required by the Owner, if the Proponent, any of its Proponent Team Members, or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives and agents, and any other persons associated with any of them is a Restricted Party or if the Proponent, any of its Proponent Team Members or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives and agents, and any other persons associated with any of them uses, directly or indirectly, a Restricted Party:

- (a) to advise or otherwise assist the Proponent respecting the Proponent's participation in the Competitive Selection Process; or
- (b) as a Proponent Team Member or as an employee, advisor or consultant to the Proponent or a Proponent Team Member.

Each Proponent is responsible to ensure that, in connection with the Proponent's participation in the Competitive Selection Process, neither it nor any of its Proponent Team Members nor any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other persons associated with any of them is or includes or uses, consults or seeks advice, directly or indirectly, from any Restricted Party or includes any Restricted Party in the Proponent Team.

5.13.3 Shared Use Persons

Shared Use Persons may enter into arrangements with any and all Proponents but may not enter into exclusive arrangements with any Proponent and a Proponent may not enter into exclusive arrangements with any Shared Use Person. Shared Use Persons include persons who have unique or specialized information or skills such that the Owner considers, in its discretion, their availability to all Proponents to be desirable in the interests of the Competitive Selection Process.

The following persons have been identified as Shared Use Persons:

- There are currently no Shared Use Persons

Persons may be added to or deleted from the list during any stage of the Competitive Selection Process.

5.13.4 Required Use Persons

NOPs will be required to enter into contractual arrangements with Required Use Persons for predetermined scopes of work in relation to one or more of the Projects. The scopes of work may be the supply of a service (such as design or construction services) or a good (such as equipment or materials). The Owner is currently in discussions with potential Required Use Persons and expects to identify the Required Use Persons and the scope of work during either the Development Phase or the Construction Phase. It is expected that Required Use Persons will be Indigenous Groups and affiliated businesses.

The following persons have been identified as Required Use Persons:

- a) Archaeology, Environment, Wildlife Limited Partnership (A.E.W L.P)
- b) Kahmoose Construction (Boothroyd) equipment (Falls Creek Project only)
- c) Kanaka Bar Indian Band
- d) Nhwelmen Lake Limited Partnership
- e) Nicomen Indian Band

Persons may be added to or deleted from the list during any stage of the Competitive Selection Process.

5.13.5 Conflict of Interest Adjudicator

Doug Hopkins has been appointed as the COI Adjudicator to provide rulings on conflicts of interest, unfair advantage, or exclusivity issues, including whether any person is a Restricted Party. The Owner may, at its discretion, refer matters to the COI Adjudicator.

5.13.6 Proponent Requests for Advance Rulings

A Proponent, current or prospective Proponent Team Member or a current or prospective advisor or consultant to a Proponent or Proponent Team Member who has any concerns regarding whether it or any of its current or prospective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives, or agents, is or may be a Restricted Party or has a concern about a conflict of interest or unfair advantage it may have, is encouraged to request an advance ruling.

To request an advance ruling, the person seeking the ruling should submit to the Contact Person by email, all relevant information and documentation, including, the following information:

- (a) the names and contact information of the Proponent and the person in respect of which the advance ruling is requested;

- (b) a detailed description of the relationship that may constitute or give rise to an actual, potential, or perceived conflict of interest or unfair advantage;
- (c) a description of the steps taken to date and future steps proposed to be taken to eliminate or mitigate the conflict of interest or unfair advantage; and
- (d) copies of any relevant documentation.

The Owner may make an advance ruling or may refer the request for an advance ruling to the COI Adjudicator. If the Owner refers the request to the COI Adjudicator, the Owner may make its own submission to the COI Adjudicator.

If a Proponent or current or prospective Proponent Team Member or advisor or consultant is identified as a Restricted Party, it may be listed in an Addendum to this RFP or in subsequent Competitive Selection Process documents as a Restricted Party.

5.13.7 Owner Requests for Advance Rulings

The Owner may also independently make advance rulings or may seek advance rulings from the COI Adjudicator, where the Owner identifies a potential or perceived conflicts of interest, unfair advantage or a person who may be a Restricted Party. The Owner will, if it seeks an advance ruling from the COI Adjudicator, provide the COI Adjudicator with relevant information in its possession. If the Owner seeks an advance ruling from the COI Adjudicator, the Owner will give notice to the relevant Proponent, and may give notice to the possible Restricted Party so that it may make its own submission to the COI Adjudicator.

5.13.8 Decisions Final and Binding

The decision of the Owner or the COI Adjudicator, as applicable, is final and binding on the persons requesting the ruling and all other parties including Proponents, Proponent Team Members, and the Owner. The Owner or the COI Adjudicator, as applicable, has the discretion to establish the relevant processes from time to time, including any circumstances in which a decision may be amended or supplemented.

The Owner may provide any decision by the Owner or the COI Adjudicator regarding conflicts of interest to all Proponents if the Owner, in its discretion, determines that the decision is of general application.

5.13.9 Exclusivity

Unless permitted by the Owner, in its discretion, or permitted as a Shared Use Person or Required Used Person, each Proponent will ensure that no Proponent Team or Proponent Team Member, or any Affiliated Person of any member of its Proponent Team, participates as a member of any other Proponent Team.

If the Proponent contravenes the foregoing, the Owner reserves the right to disqualify the Proponent, or to permit the Proponent to continue and impose such conditions as may be required by the Owner. Each Proponent is responsible, and bears the onus, to ensure that the Proponent, the Proponent Team and each Proponent Team Member, and their respective Affiliated Persons do not contravene the foregoing.

A Proponent or a prospective Proponent Team Member who has any concerns regarding whether participation does, or will, contravene the foregoing is encouraged to request an advance ruling. To request an advance ruling on matters related to exclusivity, the Proponent or prospective Proponent Team Member should submit to the Contact Person, the following information:

- (a) names and contact information of the Proponent or prospective Proponent Team Member making the disclosure;
- (b) a detailed description of the relationship that raises the possibility of non-exclusivity;
- (c) a detailed description of the steps taken to date, and future steps proposed to be taken, to mitigate any material adverse or potential material adverse effect of the non-exclusivity on the competitiveness or integrity of the Competitive Selection Process; and
- (d) copies of any relevant documentation.

The Owner may require additional information or documentation to demonstrate to the satisfaction of the Owner in its discretion that no such non-exclusivity exists or, if it does, that measures satisfactory to the Owner in its discretion have been or will be implemented to eliminate or mitigate any risk to the competitiveness or integrity of the Competitive Selection Process.

5.13.9.1 Exclusivity – The Owner May Request Advance Rulings

The Owner may also independently make advance decisions or may seek an advance decision from the COI Adjudicator, where the Owner identifies a matter related to exclusivity. The Owner will, if it seeks an advance ruling from the COI Adjudicator, provide the COI Adjudicator with relevant information in its possession. If the Owner seeks an advance ruling from the COI Adjudicator, the Owner will give notice to the relevant Proponent so that it may make its own response to the COI Adjudicator.

The onus is on the Proponent to clear any matter related to exclusivity or to establish any conditions for continued participation, and the Owner may require that the Proponent make an application under Section 5.13.8.

5.13.9.2 Exclusivity – Rulings Final and Binding

The decision of the Owner or the COI Adjudicator, as applicable, is final and binding on the persons requesting the ruling and all other parties including Proponent, Proponent Team and Proponent Team Members and the Owner, as applicable. The Owner or the COI Adjudicator, as applicable, has discretion to establish the relevant processes from time to time, including any circumstance in which a decision may be amended or supplemented.

The Owner may provide any decision by the Owner or the COI Adjudicator regarding matters related to exclusivity to all Proponents if the Owner, in its discretion, determines that the decision is of general application.

5.14 DELIVERY AND RECEIPT

Proponents are solely responsible for ensuring that they have received the complete RFP. By submitting a Proposal, each Proponent represents that the Proponent has verified receipt of a complete RFP, has understood the complete RFP, and delivers the Proposal on the basis of the complete RFP, including all Addenda.

Neither the Owner nor any of the Representatives will be in any way responsible or liable for or make any guarantee, warranty or representation whatsoever as to:

- (a) the timely, complete, effective, condition (including security) upon delivery, or receipt of any, communication, enquiry, response, information or other documentation, including this RFP, or any and all Addenda, any part of a Proposal, or any amendments to any part of a Proposal, from or by any Person, including a Proponent or the Owner, or
- (b) the working order, functioning with or without errors or interruptions, or malfunctioning, or capacity of any electronic email or information system, including the Data Room or any notices in respect of the Data Room.

All permitted email communications or delivery of documents relating to this RFP will be deemed to have been received by the Owner on the dates and times indicated on the Owner's electronic equipment.

Each part of this RFP, any and all Addenda and any other communications, responses or other documentation delivered by or on behalf of the Owner will be deemed validly delivered to and received by the intended recipient, including any Proponent, at the time that this RFP, such Addenda, communications, responses or other documentation, as the case may be, is issued by electronic email to the email address designated by the Proponent as the sole email address for receipt of information in connection with this RFP.

5.15 PROPONENT TEAM MEMBERS AND SUBCONTRACTORS

Proponents are responsible for ensuring that their Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other persons associated with any of them observe the terms of this RFP.

5.16 NO RELIANCE

Neither the Owner nor any of the Representatives makes any representation, warranty, guarantee or endorsement, or has any liability, obligation or responsibility whatsoever in contract, tort or otherwise, with respect to the scope, quality, timeliness, accuracy, reliability, appropriateness, sufficiency, relevance or completeness of any Information or any statements, representations, assurances, commitments, or agreements which Proponents believe they may have received or reached with any stakeholders, interested parties, or other persons.

No actions or omissions, communications or responses, including Information, statements, opinions, comments, consents, waivers, acceptance or approvals made or raised by or on behalf of the Owner or any of the Representatives, any Proponent or its respective Proponent Team Members or their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other persons associated with any of them, or any other Person, whether positive or negative, including if set out in any document or information provided by any Proponent or its respective Proponent Team Members or their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other persons associated with any of them, in relation to any matter, including the Competitive Selection Process, this RFP, the Draft DPA, the Definitive DPA, the Draft CCC, or the Projects, at any time or times during the Competitive Selection Process, including during this RFP stage or during or before any Workshop or Topic Meeting, will be binding on the Owner or be relied upon in any way by the Proponent, or the Proponent Team Members or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other persons associated with any of them for any purpose whatsoever; be deemed or considered to be an indication of a preference by the Owner or any Representative even if adopted by the Proponent or another of the Proponents, or will amend or waive any term of this RFP in any way for any purpose whatsoever, unless and only to the extent expressly incorporated by Addendum, or expressly set out in a Response to Proponents issued by the Owner to the Proponents.

By submitting a Proposal, each Proponent represents and warrants to the Owner that its Proposal has been prepared, relies and has been submitted solely on investigations, examinations, knowledge, analyses, interpretation, information, opinions, conclusions, judgments, and assessments independently undertaken, formulated, obtained, and verified by the Proponent, its Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, and any other persons associated with any of them, and not in any way upon any action or omission, the scope, timeliness, accuracy, completeness, relevance, or suitability of any Information.

Any and all use of or reliance upon, in any way whatsoever, any Information, including as described in this Section 5.16 or any statements, representations, assurances, commitments or agreements which Proponents believe they may have received or reached with any stakeholders, interested parties, or other persons will be at their sole risk and without recourse of any kind whatsoever against the Owner or any of the Representatives.

5.17 NO LIABILITY

Notwithstanding any other provision of this RFP neither the Owner nor the Representatives will have any responsibility, obligation or liability whatsoever whether in contract, tort or otherwise, for or in respect of any Claims by any person, including any Proponent, Proponent Team Member, prospective Proponent Team Member or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other persons associated with any of them, for any matter

whatsoever arising out of, in connection with, or relating in any way to the Competitive Selection Process, or any part of the Competitive Selection Process, including this RFP, matters or issues contemplated or considered in the opinion of the Fairness Reviewer, the Derivative Activities, or one or more Derivative Activity, or any of them, any Proponent or Proponents, the Proposal or any Proposal, any Shared Use Person or arrangements involving a Shared Use Person, any use of or reliance on the Restricted Parties list, any identification of or failure to identify, in a timely manner or at all, any person as a Restricted Party, any ruling or advice of or failure to provide a ruling or advice, in a timely manner or at all, of the Conflict of Interest Adjudicator.

5.18 DISPUTE RESOLUTION

The Authorized Representative for the Proponent identified in its Proposal will, within 14 days of any dispute arising in any way in connection with this RFP, submit written notice to the Contact Person of such dispute.

All such disputes for which proper notice has been given to the Contact Person, that are not resolved through negotiation between the Owner and the Proponent within 60 days of the date of the written notice of the dispute, may by mutual agreement be referred to and finally resolved by binding arbitration in accordance with the Arbitration Act (British Columbia). This RFP stage and the Competitive Selection Process will continue despite any such ongoing dispute resolution.

5.19 LEGAL ADVISOR

DLA Piper (Canada) LLP and DLA Piper Australia (together “DLA Piper”) are Restricted Parties. By submitting a Proposal, the Proponent, and each Proponent Team Member, expressly consents to DLA Piper continuing to represent the Owner for all matters in relation to this RFP and the Projects, including any matter that is adverse to the Proponent, or any Proponent Team Member or any of their respective related parties, despite any information of the Proponent, or any Proponent Team Member or any of their respective related parties, and any solicitor-client relationship that the Proponent, or any Proponent Team Member or any of their respective related parties, may have had, or may have, with DLA Piper in relation to matters other than this RFP and the Projects. This Section 5.19 is not intended to waive any of the Proponent’s, or relevant Proponent Team Member’s, rights of confidentiality or solicitor-client privilege. The Owner reserves the right at any time to waive any provision of this Section 5.19.

5.20 FINANCIAL AUDITOR

The Owner will appoint (the “**Financial Auditor**”) as the third-party Financial Auditor to conduct the establishment audit process during the Development Phase and ongoing auditing services for the Owner to ensure Participants are complying with the DPA and CCC. In addition, they will be responsible for certifying payment per the DPA and CCC. Details on the Financial Auditor scope of services will be included in the Data Room.

5.21 PROCUREMENT ADVISOR

Infrastructure BC has engaged PCI, based in Australia, to support delivery of the Development Phase and Construction Phase for each of the Projects, and will retain its services to provide strategic oversight and guidance to the Collaborative Construction methodology through the lifecycle of the Projects.

6 INTERPRETATION

References to this RFP or the DPA, or to the documents which make up the appendices or schedules to this RFP or the DPA, or to any part of those documents, refer to the most current version of those documents, including all modifications, amendments, and Addenda thereto made and issued by the Owner to Proponents.

The headings, captions and formatting of this RFP are inserted for convenience of reference only and do not form a part of this RFP, and in no way define, limit, alter or enlarge the scope or meaning of any provision of this RFP.

As used in this RFP, words imputing any gender includes all genders, as the context requires and is used as a reference term only and unless the context otherwise indicates to the contrary, the singular includes the plural, and the plural includes the singular.

All monetary amounts referred to in this RFP are to lawful currency of Canada.

References to “herein”, “hereunder”, “hereof” and similar terms, unless otherwise expressly provided, refer to this RFP as a whole and not to any article, section, subsection, or other subdivision of this RFP.

References to a section, article or a paragraph in this RFP is a reference to the whole of the section, article or paragraph in this RFP, and references to a section, article, paragraph, or other part by number is a reference to the section, article, paragraph, or other part, as applicable.

References to a schedule, an appendix or volume by number in this RFP or in an appendix or volume to this RFP refers to an appendix or volume, as applicable, of this RFP unless the context otherwise expressly indicates.

Each schedule, appendix and volume attached to this RFP is an integral part of this RFP as if set out at length in the body of this RFP.

References in this RFP to a statute whether or not that statute is defined, means a statute of the Province of British Columbia, unless otherwise stated.

References in this RFP to any statute, statutory provision, regulation, bylaws, or code include any statute, statutory provision, regulation, bylaw, or code which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated, or replaced by the same and include any orders, regulations, by-laws, ordinances, codes of practice, instruments or other subordinate legislation made under the relevant statute or regulation.

In this RFP, the words “include”, “includes”, “including” and others of like import, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather as permitting the general term or statement to

refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

References in this RFP to “in the opinion of the Owner”, “at the discretion of”, “in its discretion”, “in the discretion of the Owner”, “in the Owner’s discretion”, “in the sole opinion of the Owner”, “the exercise by the Owner of any right, power or remedy” or similar words or phrases when used in respect of the Owner will be interpreted to mean the sole, absolute and unfettered, including unfettered by any implied or express duties of good faith or of fairness, discretion, opinion or exercise, as the case may be, of the Owner.

References in this RFP to the Owner entering into a DPA, to the Owner not entering into a DPA, to the Owner proceeding with any part or parts of the Projects or any of them or the Project work, to the Owner contracting with any Person, including as contemplated in Section 5.3, will be interpreted to include any one or more of the Province, alone, the Province together with BCTFA or BCTFA entering into the relevant DPA, not entering into the relevant DPA, proceeding with any part or parts of the Projects or any of them or the Project work, contracting with any Person, including as contemplated in Section 5.3.

Reference to a “person” includes a reference to an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union or government authority.

This RFP may be subject to the terms of one or more trade agreements.

7 DEFINITIONS

In this RFP, unless the context otherwise expressly requires,

- (a) the following definitions apply to the following terms, and
- (b) any other capitalized term has the meaning given to that term in the Draft DPA.

“Addendum” means a written document specifically identified as an “Addendum” and issued by the Owner to amend this RFP.

“Affiliated Persons” or affiliated persons, or persons affiliated with each other, are:

- (a) a corporation and
 - (i) a person by whom the corporation is controlled,
 - (ii) each member of an affiliated group of persons by which the corporation is controlled, and
 - (iii) a spouse or common-law partner of a person described in subparagraph (i) or (ii);
- (b) two corporations, if
 - (i) each corporation is controlled by a person, and the person by whom one corporation is controlled is affiliated with the person by whom the other corporation is controlled,
 - (ii) one corporation is controlled by a person, the other corporation is controlled by a group of persons, and each member of that group is affiliated with that person, or
 - (iii) each corporation is controlled by a group of persons, and each member of each group is affiliated with at least one member of the other group;
- (c) a corporation and a partnership, if the corporation is controlled by a particular group of persons each member of which is affiliated with at least one member of a majority-interest group of partners of the partnership, and each member of that majority-interest group is affiliated with at least one member of the particular group;
- (d) a partnership and a majority-interest partner of the partnership;
- (e) two partnerships, if
 - (i) the same person is a majority-interest partner of both partnerships,
 - (ii) a majority-interest partner of one partnership is affiliated with each member of a majority interest group of partners of the other partnership, or

- (iii) each member of a majority-interest group of partners of each partnership is affiliated with at least one member of a majority-interest group of partners of the other partnership;
- (f) a person and a trust, if the person
 - (i) is a majority-interest beneficiary of the trust, or
 - (ii) would, if this subsection were read without reference to this paragraph, be affiliated with a majority-interest beneficiary of the trust; and
- (g) two trusts, if a contributor to one of the trusts is affiliated with a contributor to the other trust and
 - (i) a majority-interest beneficiary of one of the trusts is affiliated with a majority-interest
 - (ii) beneficiary of the other trust,
 - (iii) a majority-interest beneficiary of one of the trusts is affiliated with each member of a majority interest group of beneficiaries of the other trust, or
 - (iv) each member of a majority-interest group of beneficiaries of each of the trusts is affiliated with at least one member of a majority-interest group of beneficiaries of the other trust.

“Authorized Representative” means the authorized representative for the Proponent, identified as such in the Proponent’s Proposal.

“BCTFA” means BC Transportation Financing Authority, a corporation continued under the *Transportation Act* (British Columbia).

“BC Highway Reinstatement Program” or **“Program”** means all projects related to highway reinstatement work on highway corridor 1, 5, and 8, resulting from the extreme weather events of mid November 2021.

“Claims” includes claims, actions, proceedings, causes of action, suits, debts, dues, accounts, bonds, warranties, claims over, indemnities, covenants, contracts, losses (including direct and consequential losses), damages, remuneration, compensation, costs, expenses, grievances, executions, judgments, obligations, liabilities (including those relating to or arising out of loss of opportunity or loss of anticipated profit), rights and demands whatsoever, whether actual, pending, contingent or potential, whether express or implied, whether present or future and whether known or unknown, and all related costs and expenses, including legal fees on a full indemnity basis, howsoever arising, including pursuant to law, equity, contract, tort, statutory or common law duty, or to any actual or implied duty of good faith or actual or implied duty of fairness, or otherwise.

“CCC Proposal” means the submission of price, schedule and other required information (as set out in the Schedule 5 of the relevant DPA) by the NOPs for the purposes of Province review and approval to enter into the CCC.

“Collaborative Construction Contract” or **“CCC”** means:

- (a) the Draft CCC, as may be changed, modified or added to in accordance with this RFP and the relevant DPA; and
- (b) after execution, the agreement or agreements, as the case may be, executed and delivered by the Owner and Non Owner Participants for development the execution of the relevant Project.

“Competitive Selection Process” means

- (a) the procurement process for the Projects and any part or phase or phases of the procurement process, and includes this RFP and the RFQ, the Proponent Agreement, any and all processes relating to the RFQ and this RFP, the Workshops, Topic Meetings, any additional meetings, and any consultations, meetings and participation relating to or arising from any of the Workshops, Topic Meetings or additional meetings, other consultative and facilitative/facilitated processes, relationship review processes, including processes conducted and reports, determinations, rulings, assessments and opinions issued by the Fairness Reviewer or the Conflict of Interest Adjudicator, or by the Owner or committees of the Owner pursuant to any relationship review process policies referenced in the RFQ or this RFP, processes and decisions and determinations made with respect to Changes, and the consultations, discussions, negotiations, closings and settling of agreements and documents relating to the Projects; and
- (b) activities, participation, continued participation, waivers, evaluation, inclusion, exclusion, disqualification, determinations, opinions, rulings, reports, comments, advice, notices including notices of ineligibility, and decisions, including rejection or acceptance of any responses, submissions, information, documents, Qualification Responses, Proposals or any other proposals, whether they, or any of them, substantially satisfy the requirements of this RFP or otherwise,

involving the Owner, the Conflict of Interest Adjudicator, the Fairness Reviewer, any relationship review committee of the Owner, a Proponent, any Proponent Team Member, any or all the Proponents or Proponent Team Members, or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, or any other Person, in connection with the matters described in subsections (a) and (b) of this definition.

“Conflict of Interest Adjudicator” or **“COI Adjudicator”** has the meaning set out in Section 5.13.5.

“Construction Manager” means the individual identified who will be responsible for management and coordination of all Project construction issues and activities as described in the Proponent’s Proposal.

“Construction Firm Candidate” means a construction firm that participated in the Program Construction Services RFQ, and deemed qualified by the Owner and added to the Construction Firm Candidate List.

“Contact Person” means the contact at the e-mail address Contact.HWY1_CATB@gov.bc.ca as may be amended from time to time by the Owner in accordance with this RFP.

“Data Room” means the electronic Data Room established by the Owner for the Projects and the RFP that is a secure website.

“Data Room Terms of Access” means the Data Room terms of access identified as such on the main page of the Data Room.

“Definitive CCC” means the final draft form of the Draft CCC, as revised and amended from time to time by subsequent Addenda issued in accordance with this RFP.

“Definitive DPA” means the final draft form of the Draft DPA, as revised and amended from time to time by subsequent Addenda issued in accordance with this RFP.

“Derivative Activities” means the steps, activities, processes, and work contemplated in Section 5.3 and

“Derivative Activity” means any one of such steps, activities, processes and work.

“Design Services Area” means the engineering and design services that are required for the Project as identified in Section 1.1, and as qualified through the Program Engineering and Design Services RFQ.

“Development Phase Agreement” or **“DPA”** means:

- (a) the Definitive Draft DPA, as may be changed, modified or added to in accordance with this RFP; and
- (b) after execution, the agreement or agreements, as the case may be, executed and delivered by the Owner and each Prospective NOP Proponent Team Member for development of the relevant Project.

“Design Manager” means the individual who will be the Coordinating Professional Engineer for the relevant Project, responsible for management and coordination of all Project design issues, including the design of roads, bridges, all other structures, and having no other Key Individual responsibility, as described in the Proponent’s Proposal.

“Draft CCC” means the initial draft form of the Definitive CCC to be issued by way of Addendum, as revised and amended from time to time by Addenda.

“Draft DPA” means the initial draft form of the Definitive DPA issued with this RFP, as revised and amended from time to time by Addenda issued in accordance with this RFP.

“**Effective Date**” means for each Project the date that the relevant DPA or CCC is executed by the Owner and Non Owner Participants.

“**Engineering and Design Firm(s)**” means the Engineering and Design Firm Candidate engaged by the Proponent to design the relevant Project, as described in the Proponent’s Proposal and as may be changed pursuant to this RFP.

“**Engineering and Design Firm Candidate**” means an engineering and design firm who is on the List posted to the Infrastructure BC website, <https://www.infrastructurebc.com/projects/announced-in-procurement/bc-highway-reinstatement-program/>

“**Fairness Reviewer**” has the meaning set out in Section 3.10.

“**Freedom of Information Act**” or “**FOIPPA**” means the *Freedom of Information and Protection and Privacy Act* (British Columbia).

“**Indigenous Groups**” means groups which will be identified to the Preferred Proponents.

“**Information**” means any and all information in electronic, digital, hard copy or any other form whatsoever, which is given or made available, directly or indirectly, to Proponents and to Proponent Team Members and their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, representatives or agents, and other persons associated with any of them, or any of them, by posting in the Data Room, or during or before any Workshops or Topic Meetings, whether before or after issuance of this RFP, by or on behalf of the Owner or any of the Representatives and related in any way to the Projects or any of them, the Competitive Selection Process, including this RFP, the Draft DPA, the Definitive DPA, the DPA, a Proposal, the Project work, the Project Sites, or any part of any of them, or the requirements of any Governmental Province, or any requirement of any of any of them.

“**Infrastructure BC**” means Infrastructure BC Inc.

“**Key Individuals**” means specific persons, exclusive to one Proponent, being:

- the Project Director,
- the Design Manager;
- the Construction Manager,
- each Construction Firm NOP’s Senior Leadership Team Member, and
- each Engineering and Design Firm NOP’s Senior Leadership Team Member,

as such persons may be changed in accordance with and subject to the permission of the Owner pursuant to this RFP.

“**Letter of Adherence**” means a letter of adherence between each Construction Firm NOP(s) and those Unions Signatory to the PLA.

“**Non Owner Participant**” or “**NOP**” means each entity that enters into a Development Phase Agreement with the Owner.

“**Owner**” means each entity that enters into a Development Phase Agreement representing the Owner, including the Province.

“**Preferred Proponent**” means each of the Proponents selected by the Owner pursuant to this RFP to finalize and execute a Development Phase Agreement for a Project and “**Preferred Proponents**” means all of the Preferred Proponents.

“**Project**” or “**Projects**” has the meaning set out in Section 1.2 of this RFP.

“**Project Director**” means the individual proposed by the Proponent to be responsible for managing and coordinating all aspects of the Owner and NOP’s responsibilities, including acting as the NOP’s Representative under the relevant DPA and CCC, and having no other Key Individual responsibility, as described in the Proponent’s Proposal.

“**Project Experience Nominated Projects**” means those projects that a Proponent includes in its Proposal to demonstrate the strength and relevance of its Proponent Team experience and capabilities as related to the Evaluation Criteria in Appendix D to this RFP.

“**Project Labour Agreement**” or “**PLA**” means the labour agreement signed April 13, 2022 between the Construction Labour Relations Association of BC and those unions signatory thereto, as amended, supplemented or replaced from time to time.

“**Project Management Team** or **PMT**” means the team for each Project comprised of a member from the Owner and the Project Director, Construction Manager and Design Manager from the Non Owner Participant firms who participate in the Development Phase and Construction Phase to finalize the design and build the relevant Project in accordance with Target Schedule and Target Price.

“**Proponent**” means a Construction Firm Candidate that has been invited as a shortlisted Respondent and executes the Proponent Agreement, and, in the case of a partnership (general or limited) or a consortium or joint venture, includes each of the partners (general or limited) in the partnership and each of the entities comprising the consortium or joint venture, as the case may be, in each case as such entity may be changed from time to time in accordance with and subject to the provisions of this RFP.

“**Proponent Agreement**” means the agreement relating to the Competitive Selection Process substantially in the form attached to this RFP, to be executed and delivered by the Proponent.

“Proponent Team” means, in the case of each Proponent, that Proponent and the Proponent’s prospective Key Individuals, and prospective Engineering and Design Firm(s).

“Proponent Team Member” means a member of a prospective Proponent Team as identified in the Proposal and as may be changed pursuant to this RFP and where appropriate includes any prospective Proponent Team Member.

“Proposal” means the documentation and information described in Section 3.5 and in Appendix A to this RFP, and submitted in response to and in accordance with this RFP, together with all clarifications, rectifications, and more complete, supplementary and additional information and documentation submitted by the Proponent from and after the Submission Time for Submission #1 or Submission Time for Submission #2 (as applicable) in response to any request of the Owner.

“Proposal Validity Period” has the meaning set out in Section 3.6.1.

“Prospective NOP” means the Proponent (or, where the Proponent consists of more than one entity, each entity that is identified in the Proposal as being a prospective party to the relevant DPA and CCC) and each Engineering and Design Firm that is identified in the Proposal as being a prospective party to the relevant DPA and CCC.

“Province” means Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure.

“Qualification Response” has the meaning provided in Appendix D – Engineering and Design Services – Qualification.

“Relationship Review Process Description” means the Relationship Review Process Description for the Owner at: <https://www.infrastructurebc.com/wp2/wp-content/uploads/Relationship-Review-Process-Description.pdf>

“Releasees” means and includes each of the Province, BCTFA, Infrastructure BC, the Fairness Reviewer, the Conflict of Interest Adjudicator, and each of their respective directors, officers, representatives, any of their elected officials, including members of the Executive Council, managers, employees, consultants, contractors, advisors and agents and successors and assigns.

“Representatives” means the Owner, Infrastructure BC, the Fairness Reviewer, the Conflict of Interest Adjudicator, or any of their or the Owner’s respective elected officials, directors, officers, employees, servants, representatives, agents, consultants and advisors, and includes members of the Executive Council.

“Request for Information” or **“RFI”** means a request for information in the form attached as Appendix C to this RFP.

“Required Use Persons” has the meaning set out in Section 5.13.4.

“Respondent” has the meaning given to it in the RFQ.

“Response to Proponents” is a written document specifically identified as a “Response to Proponents” as described in Section 3.2.3.

“Restricted Party” means those persons (including their former and current employees) who had, or currently have, participation or involvement in the Competitive Selection Process or the design, planning or implementation of the Projects or any of them, and who may provide a material unfair advantage or confidential information to any Proponent that is not, or would not reasonably be expected to be, available to other Proponents

“RFP” or **“Request for Proposals”** means this Request for Proposals including all appendices, and Addenda.

“RFQ” or **“Request for Qualifications”** means the Request for Qualifications issued on November 26, 2021, titled “RFQ – BC Highway Reinstatement Program – Construction Services”, including all “Addenda” thereto as defined in the RFQ.

“Senior Leadership Team or SLT” has its meaning set out in Section 2.2.

“Shared Use Person” has the meaning set out in Section 5.13.3.

“Submission Location” means electronic submission by email with attachments in the email, via the Contact Person.

“Submission Time for Submission #1” has the meaning set out in the Summary of Key Information.

“Submission Time for Submission #2” has the meaning set out in the Summary of Key Information.

“Termination Notice” means a written notice designated as a “Termination Notice” and issued by the Owner to the Proponents for the purpose of giving the Proponents notice of termination by the Owner of the Competitive Selection Process.

“Topic Meetings” or **“Topic Meeting”** means the meetings described in Section 3.3 and “Topic Meeting” means any one of such meetings.

“Workshops” or **“Workshop”** means the workshops described in Section 3.3 and “Workshop” means any one of such workshops.

APPENDIX A – RFP PROPOSAL GUIDELINES

1. Proposal Guidelines Overview

This Appendix A outlines the requirements that a Proponent must follow to demonstrate that its Proponent Team is capable of performing the responsibilities and obligations of the NOP under the Development Phase Agreement and Collaborative Construction Contract for any of the Projects. The Proponent's Proposal shall follow the instructions and template set out in this Appendix A.

2. Proposal Requirements

Proposals are to follow the delivery and format requirements described in this Section 2 to facilitate consistency in Proposal review and evaluation, and to facilitate consideration of each Proposal.

2.1 Language

Proposals are to be in English. Any portion of a Proposal not in English may not be evaluated.

2.2 Delivery

Template A-1: Form of Submission #1 must be received at the Submission Location before the Submission Time for Submission #1. Template A-2: Form of Submission #2 must be received as the Submission Location for the Submission Time for Submission #2.

2.3 Format

The Proposal should:

- (a) use the templates and follow the guidance provided in this Appendix A;
- (b) be on 8.5" x 11" paper size pages;
- (c) at a minimum, use normal (2.54 cm) margins, 11-point font, and 1.15-line spacing;
- (d) include page numbers; and
- (e) be submitted as a searchable PDF.

2.4 Proposal Forms and Templates

Information provided by the Owner on any form or template required to be submitted as part of a Proposal (other than text in square brackets for instructional purposes) is not to be altered, qualified, or contradicted in any way by the Proponent either on the face of the submitted form or in any other part of its Proposal. Proponent's may delete blank pages if not required.

Template A-1: Form of Submission #1

1) Transmittal

Name of Proponent:	<i>[insert response here]</i>
Proponent's representative, including: Name; Employer; Mailing address; Telephone number; and Email address.	<i>[insert response here]</i>
Confirmation that, other than changes consented to by the Owner in accordance with Section 5.11 of the RFP, there have been no changes to information provided in the Proponent's RFQ Response.	<i>[insert response here]</i>

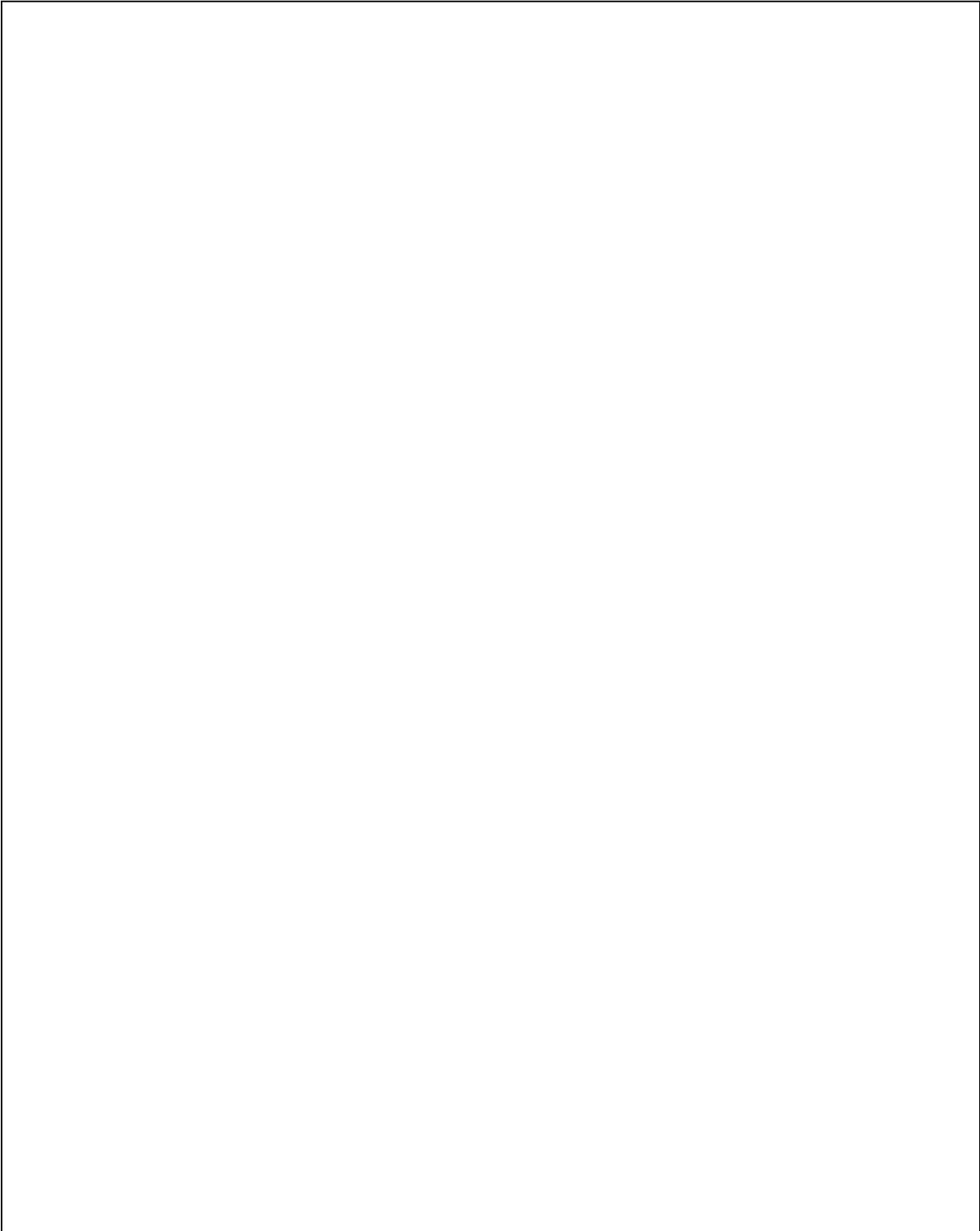
2) Proponent Information

- a) Provide the following information for each NOP:
- i) Full Legal Name;
 - ii) Incorporation number or extra-provincial registration number for British Columbia; and
 - iii) Memorandum and articles of incorporation, and documentation (provided as an attachment to this Proposal) demonstrating that the NOP is duly authorized to carry on business in British Columbia.

[insert response here]

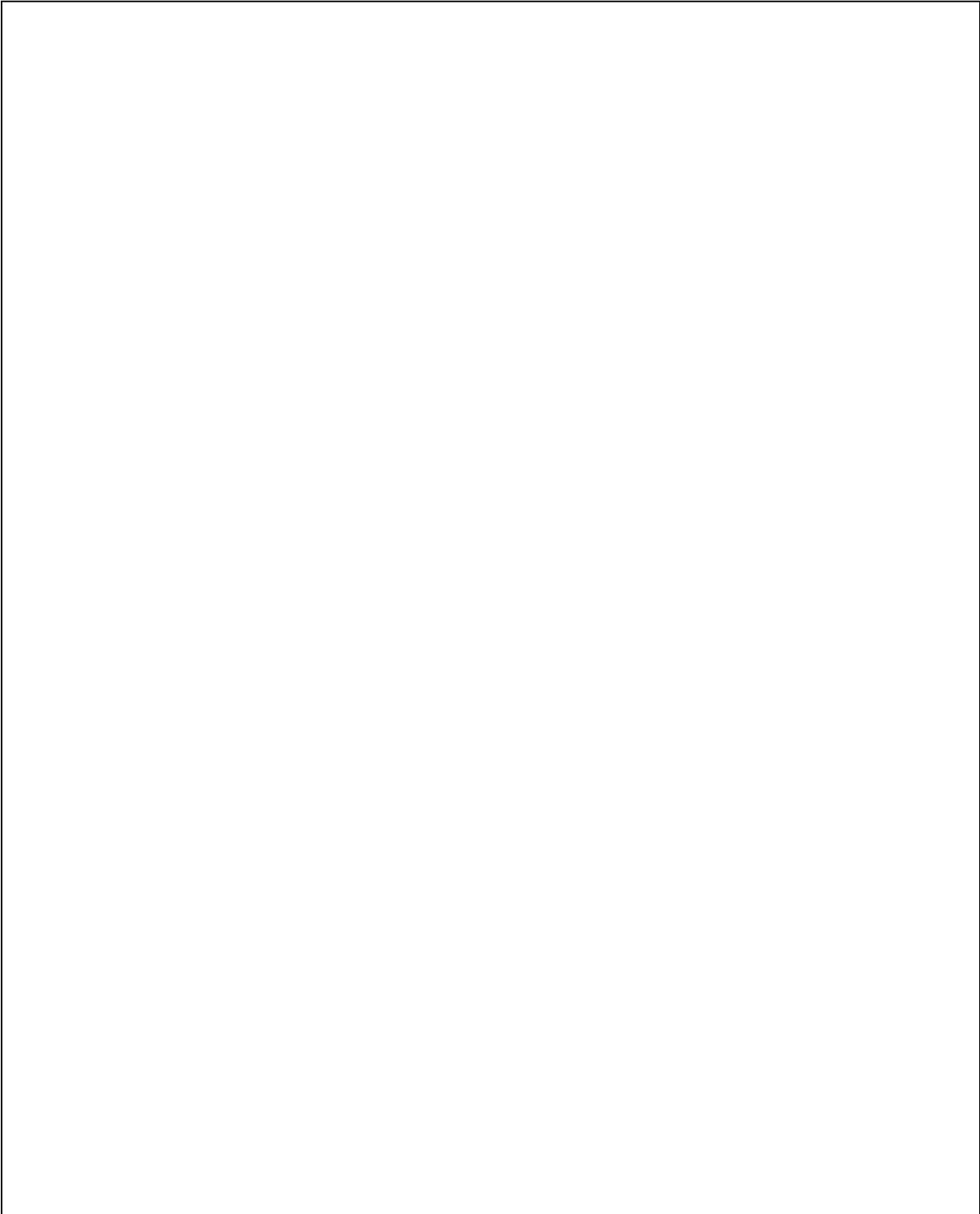
- b) In two pages or less, provide an organizational description indicating each Proponent Team Member (including NOP(s), subcontractors and subconsultants), their anticipated roles and responsibilities, contractual and reporting relationships.

[insert response here]



- c) In two pages or less, provide a rationale for your interest in each Project and indicate whether you have a preference as to which Project you would be awarded, if you are a Preferred Proponent.

[insert response here]



3) Key Individuals

Indicate in Figure A-1 below your nominees for each Key Individual. For each nominee, provide a resume no longer than five pages, including details of relevant project experiences and percentage time input anticipated in each stage of the Project.

The resume and experience cited for the Key Individuals should describe relevant qualifications, including education and experience in the same or substantially similar roles on projects of equivalent complexity.

Figure A-1. Table of Key Individuals

Key roles	Nominee	Nominee's current employer
Project Director	<i>[insert response here]</i>	<i>[insert response here]</i>
Design Manager	<i>[insert response here]</i>	<i>[insert response here]</i>
Construction Manager	<i>[insert response here]</i>	<i>[insert response here]</i>
Construction Firm SLT nominee(s)	<i>[insert response here]</i>	<i>[insert response here]</i>
Engineering and Design Firm SLT nominee(s)	<i>[insert response here]</i>	<i>[insert response here]</i>

4) Proposed Approach

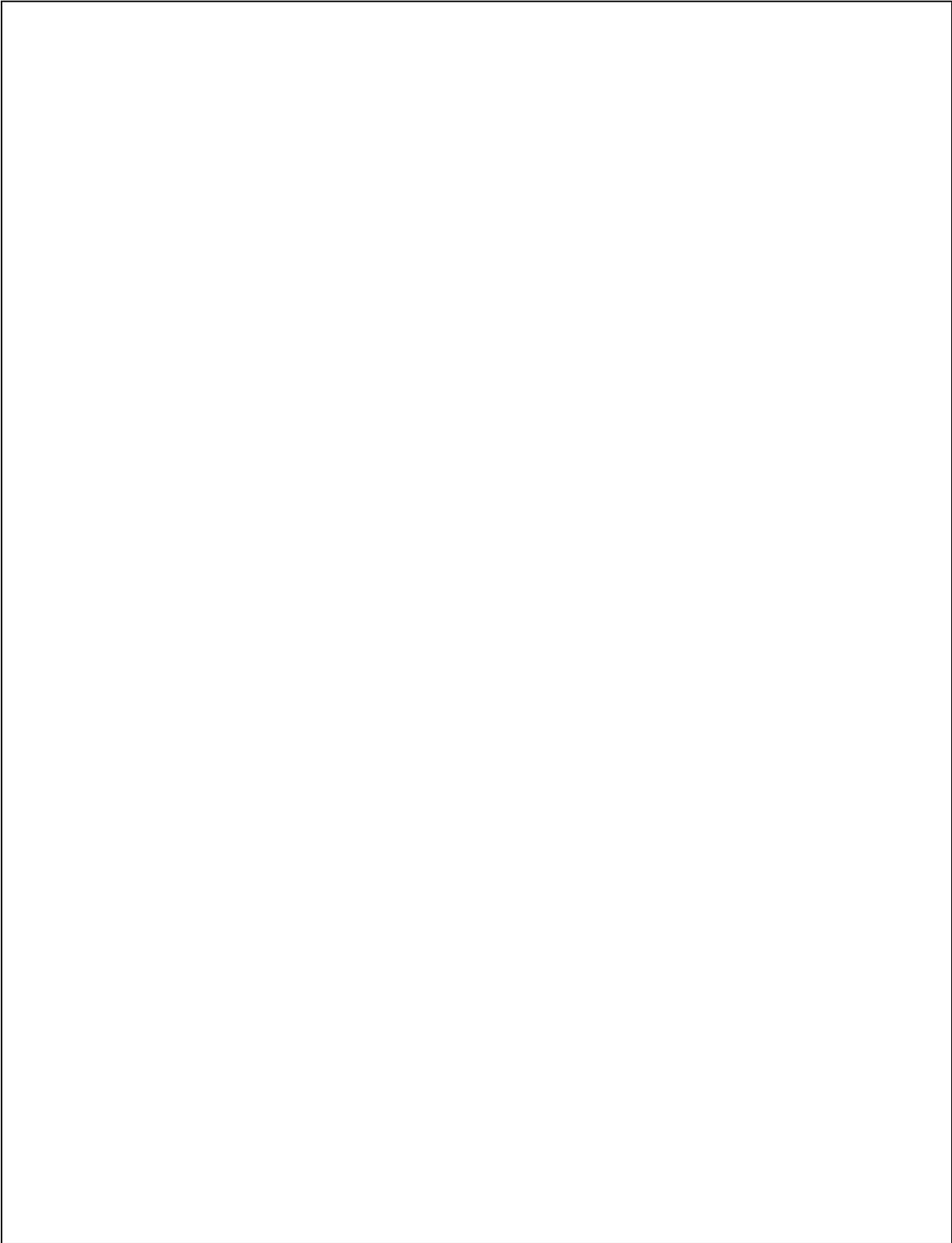
In a maximum of six pages describe the proposed approach to meeting each of the Project Objectives, (a) to (g) as described in the Draft DPA, working collaboratively with the Owner to align the interests of all parties consistent with the spirit and intentions of the Draft CCC:

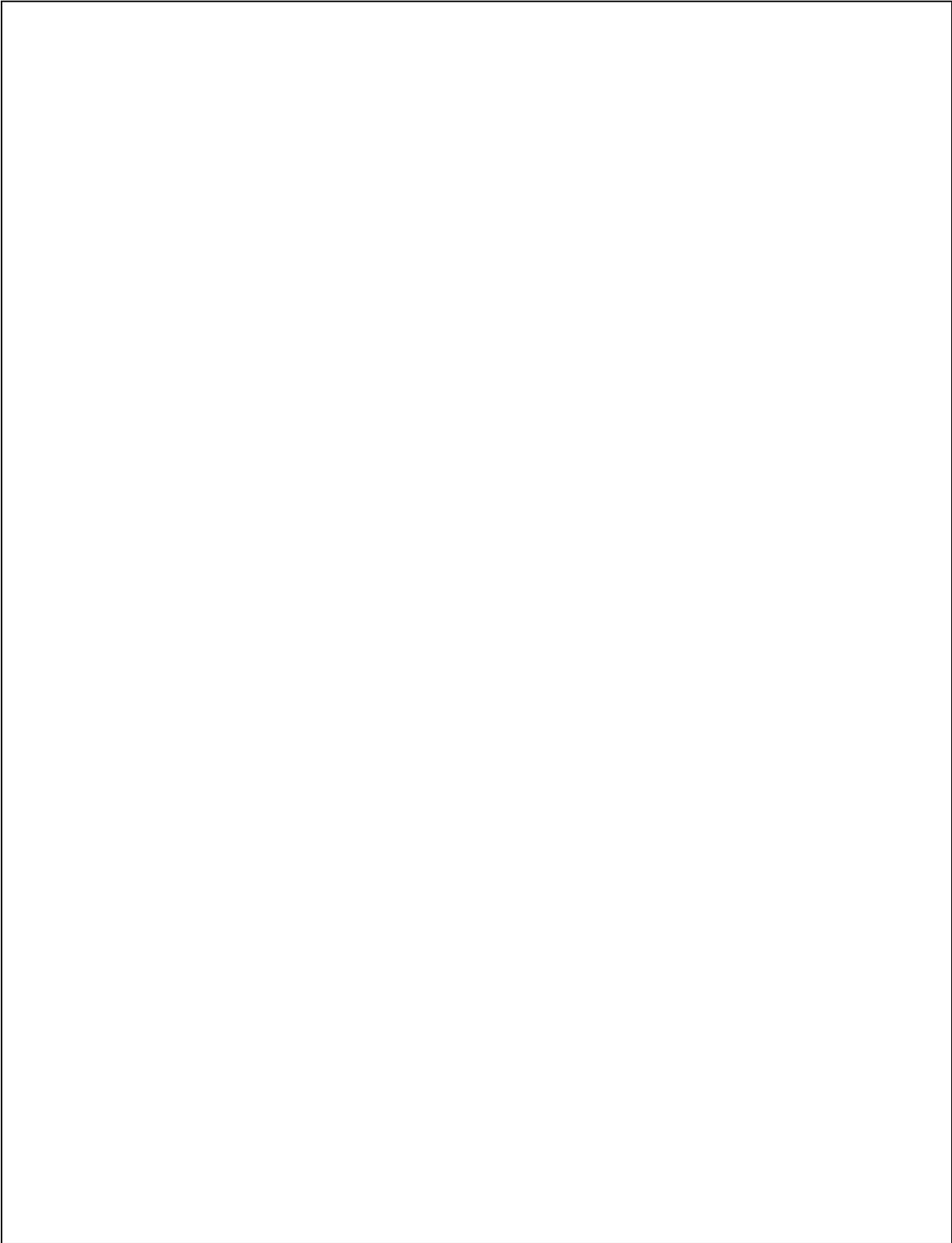
- (a) Deliver the work expediently;
- (b) Recognize and respect the Indigenous territories the work is being conducted on;
- (c) Create and support opportunities for Indigenous Peoples, Indigenous Businesses, underrepresented groups, trainees and apprentices;
- (d) Ensure safety for workers and the public during construction;
- (e) Design and innovate for climate change resiliency;
- (f) Effective traffic management; and
- (g) Provide value for public money.

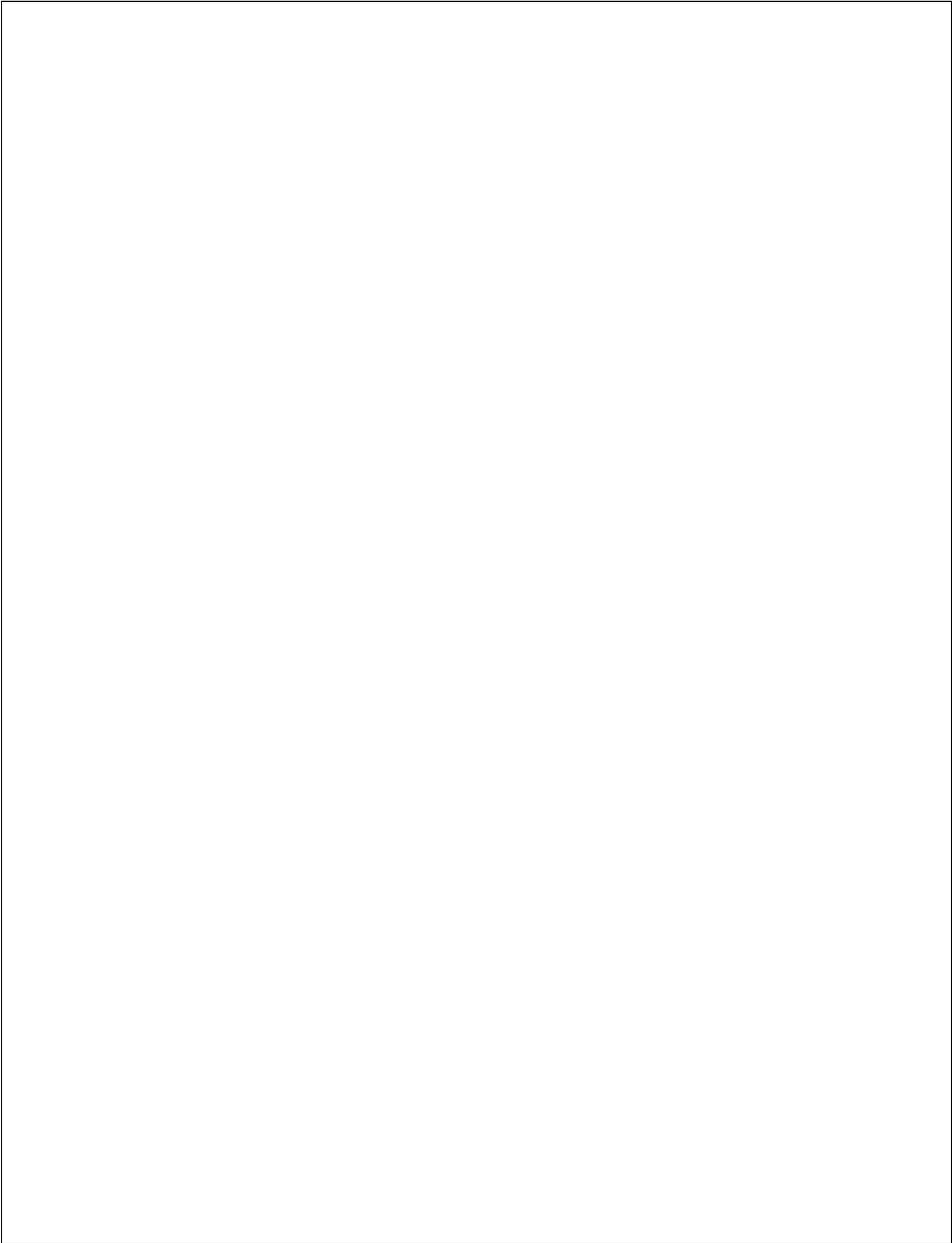
Proponents should use relevant project examples to demonstrate how the proposed approach has been successfully applied in previous projects. Examples should highlight experience in working collaboratively.

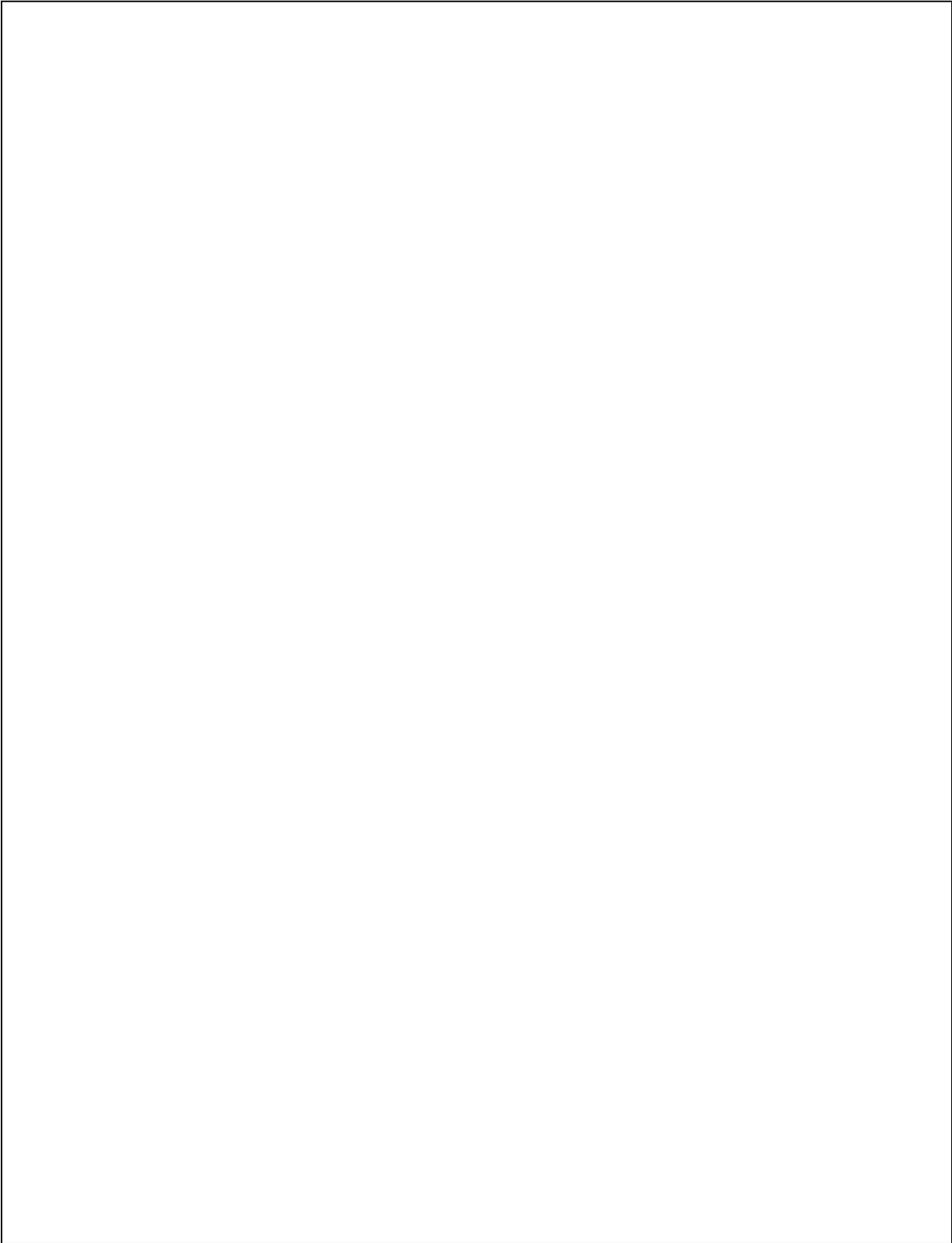
Note: The information presented here is anticipated to be discussed and evaluated further at the Foundation Workshop.

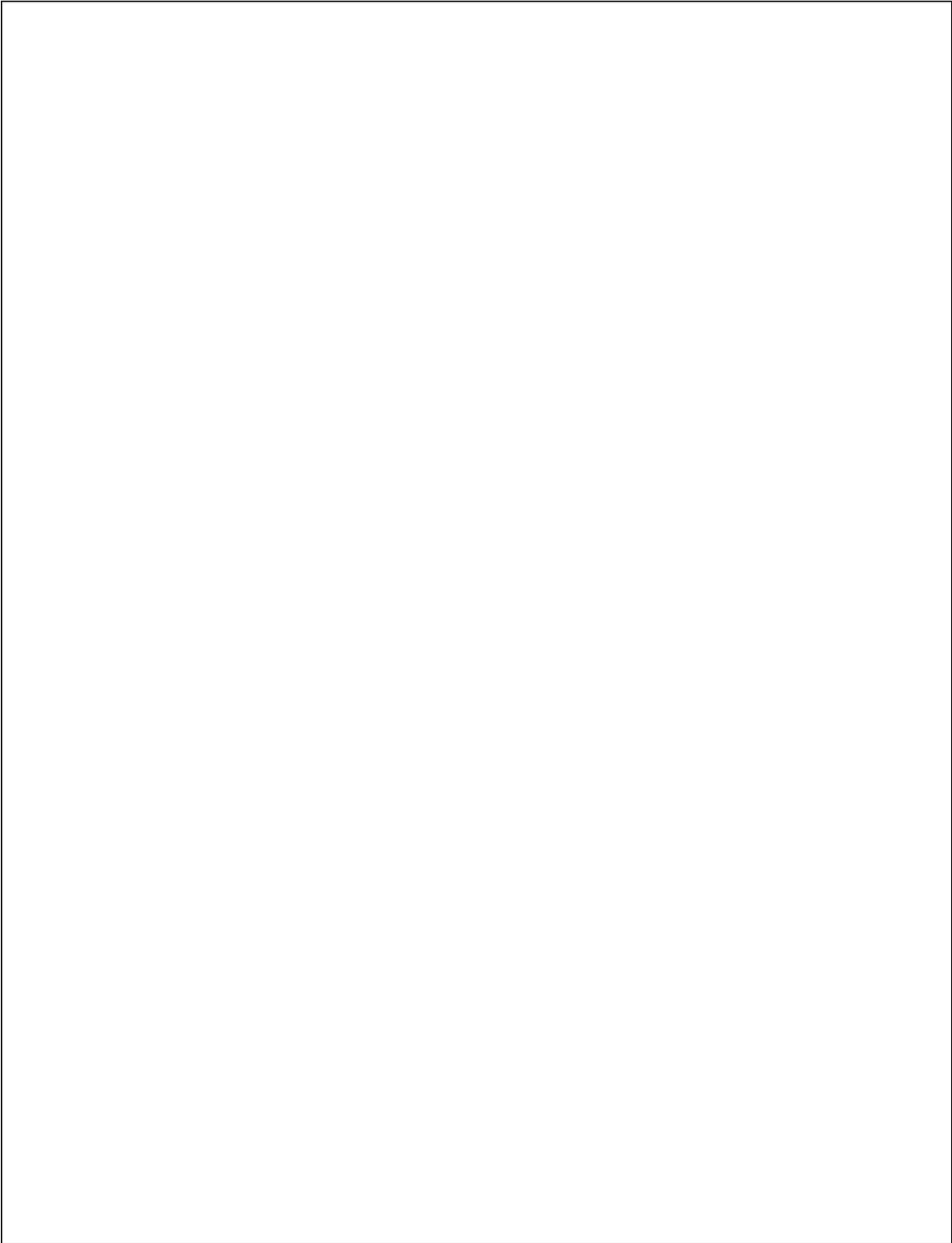
[insert response here]









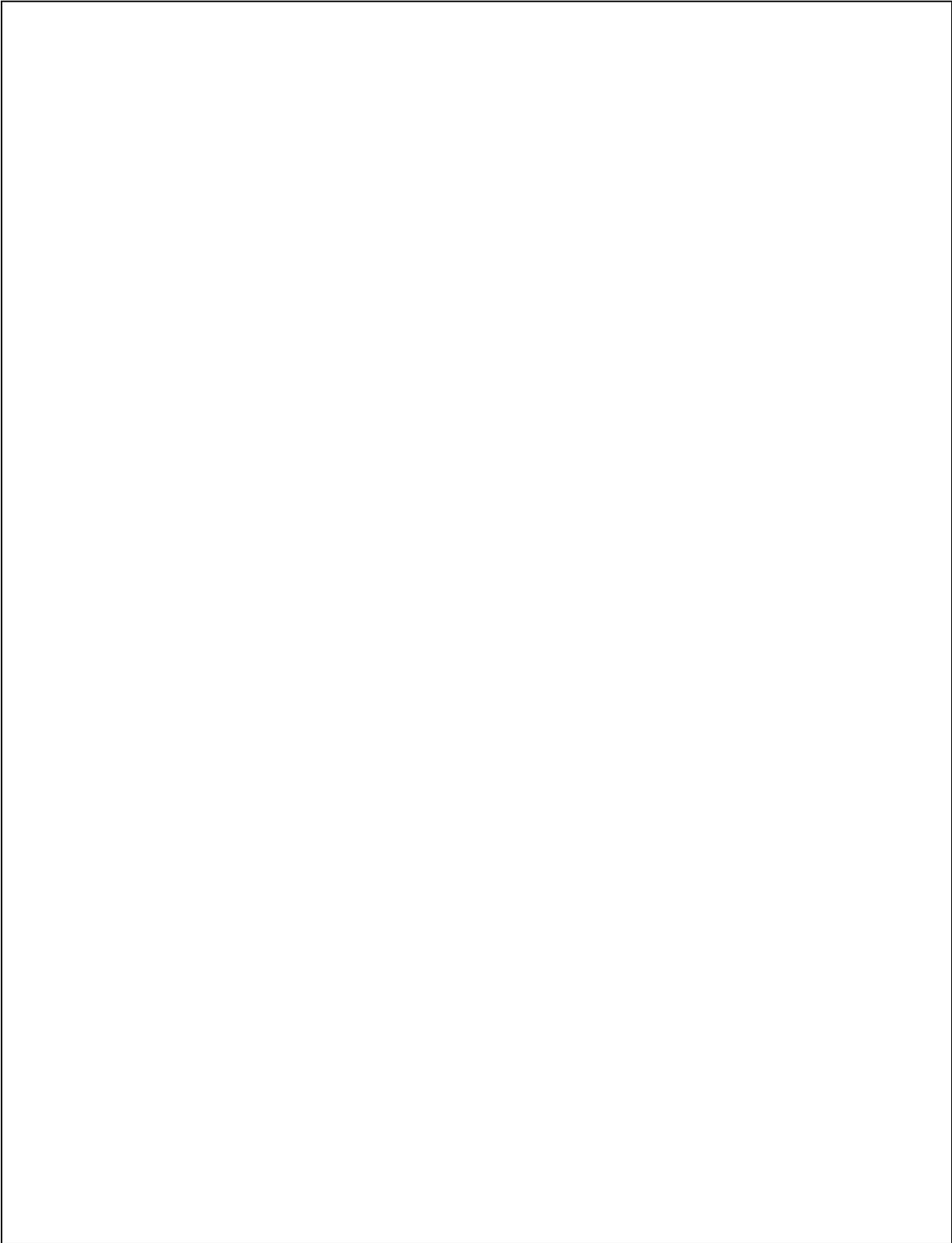


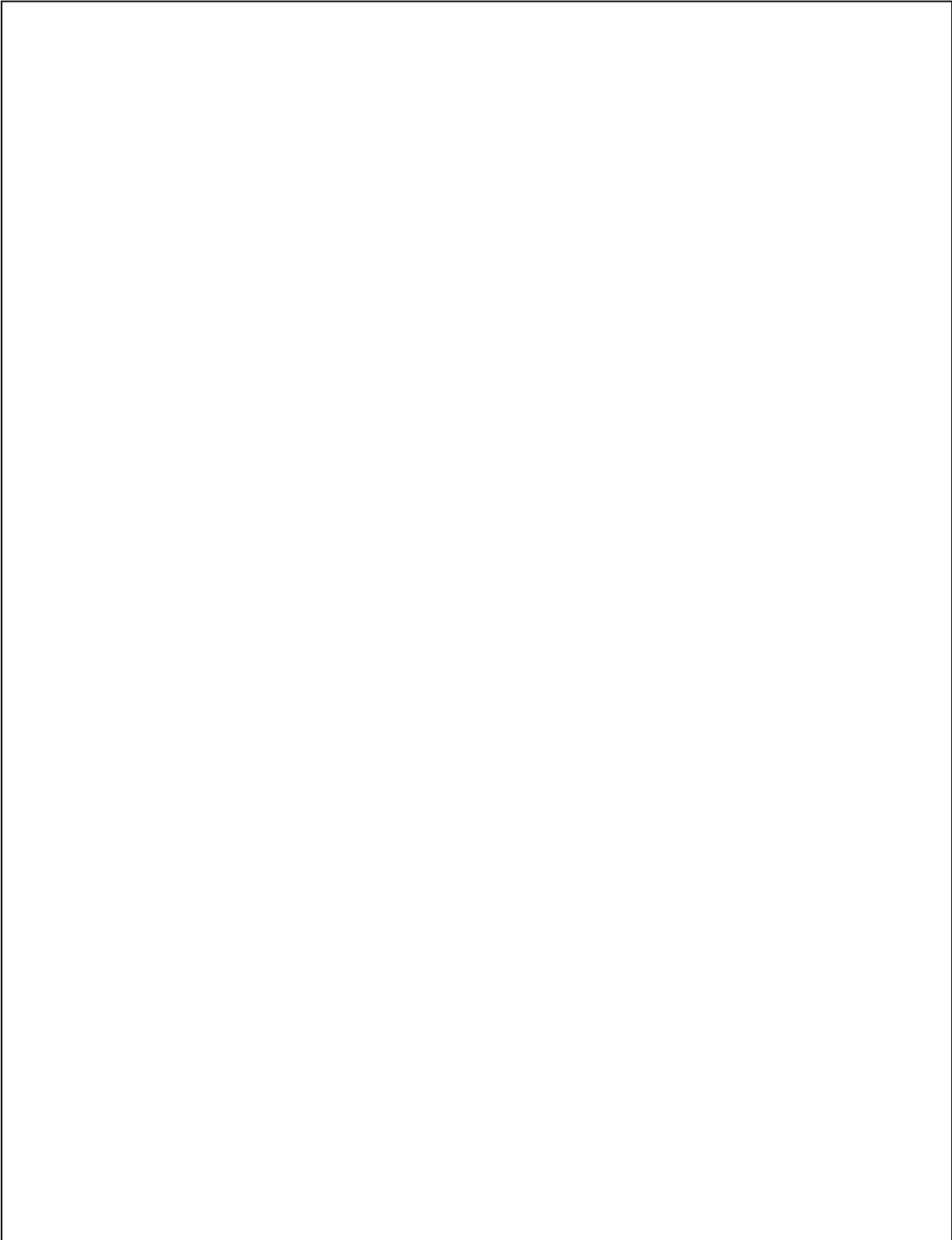


5) Rail Qualification Response

- a) In a maximum of three pages, describe the Construction Firm(s) experience constructing road infrastructure near rail, working near rail and/or interfacing with railway entities. Using up to two projects clearly establish relevance of the experience and describe how the experience and performance will be leveraged for the benefit of the Projects.

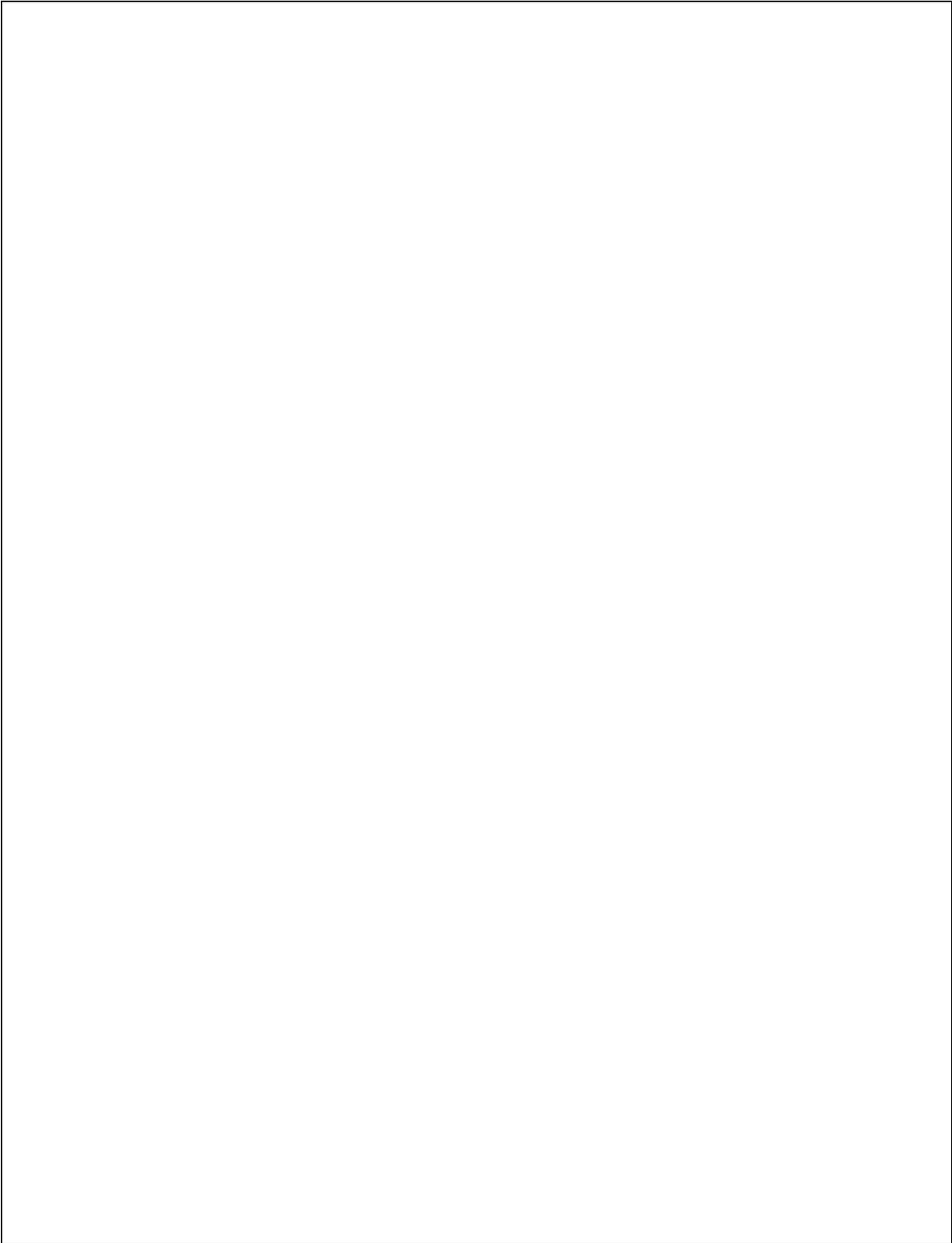
[insert response here]

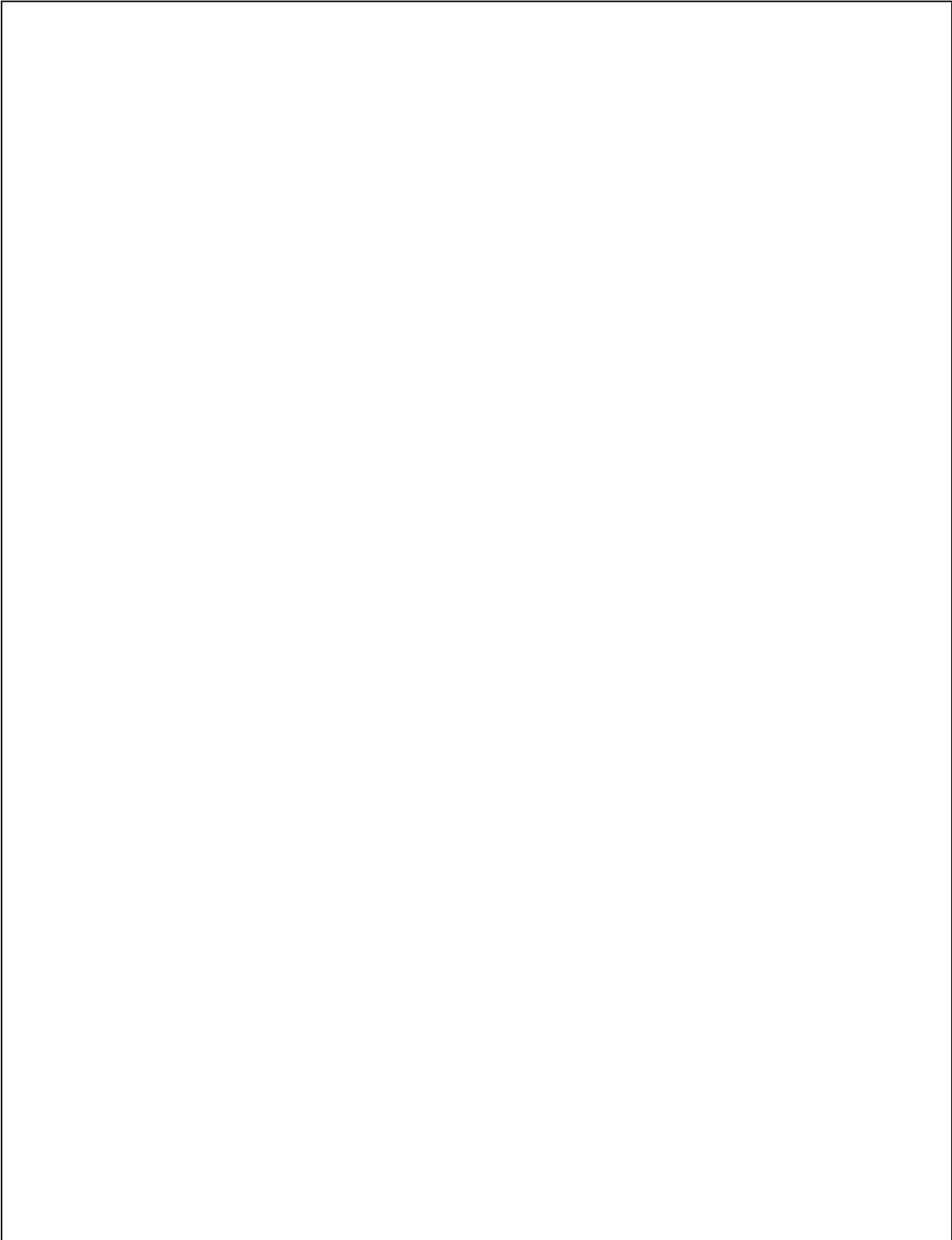




- b) In a maximum of three pages, describe the Engineering and Design Firm(s) experience designing road infrastructure near rail and/or interfacing with railway entities. Using up to two projects clearly establish relevance of the experience and describe how the experience and performance will be leveraged for the benefit of the Projects.

[insert response here]





6) Engineering and Design Services - Qualification (Optional)

Proponent's may submit an Engineering and Design Services – Qualification as provided in Appendix D to this RFP.

7) Engineering and Design Firm(s) Disclosure(s)

Complete Figure A-2 and the disclosure(s) below.

Note: Figure A-2 will be used to determine the Engineering and Design Firm Qualification score in accordance with Criteria 2 (a) of Appendix B to this RFP. If there is more than one entity listed for a Design Services Area, the score for Criteria 2 (a) will be averaged among all of the entities in that row.

Figure A-2. Engineering and Design Proponent Team Members

Design Services Area	Name of Proponent Team Member(s) from the Engineering and Design Firm Candidate List	Name of Proponent Team Member(s) <u>not</u> from the Engineering and Design Firm Candidate List
Geotechnical		
Roads		
Bridges		
Hydrological		

Engineering and Design Firm, _____ **[insert name here]** _____, commits to signing the subsequent Development Phase Agreement and Collaborative Construction Contract as a Non Owner Participant.

8) Execute and attach Proposal Certificate and Declaration provided in Appendix H to this RFP.

Proponent's must submit a Proposal Certificate and Declaration with Submission #1 following the instructions provided in paragraph (j) of the Proposal Certificate and Declaration.

Template A-2: Form of Submission #2

Value Proposition

1) Transmittal

Name of Proponent	<i>[insert response here]</i>
Name of Construction Firm NOP(s)	<i>[insert response here]</i>
Name of Engineering and Design Firm NOP(s)	<i>[insert response here]</i>

2) Proposed Limb 2 mark-up percentages for the Construction Firm NOP(s)

a) Historical financial performance and Limb 2 mark-up percentages

In Figure A-3 below, complete the following for each Construction Firm NOP indicating turnover in the three most recent complete financial years, with a breakdown for Limb 1 and Limb 2 in a manner consistent with the DPA.

Figure A-3. Historical Financial Performance of Construction Firm

<i>[Insert firm name]</i>			
Financial year:	2021	2020	2019
Revenue \$			
Direct Project Costs \$ (Limb 1 as per DPA definition)			
Limb 2 (Revenue minus Limb 1) comprising: (a) \$ Fixed (corporate) overhead (b) \$ Profit (c) Total Limb 2 \$ (a + b)			
Limb 2 expressed as a percentage mark-up on Limb 1 comprising: (a) % Contribution to fixed (corporate) overhead (b) % Profit (c) Total (a + b) Limb 2 % mark-up on Limb 1			

Note: Where there is more than one Construction Firm NOP, each Construction Firm NOP should complete a separate Figure A-3.

b) Proposed Limb 2 mark-up percentage

Provide proposed Limb 2 mark-up (as a percentage of Limb 1) for the proposed Construction Firm NOP(s) with a breakdown of Limb 2 between corporate overhead and profit. This should be valid for any or all Projects which might be awarded through this RFP process.

Limb 2 must cover all costs not covered by Limb 1. The Limb 2 will be the same for the Development Phase and Construction Phase. Proponents are to assume there are no changes to Schedule 5 to the DPA or Schedule 5 to the CCC when providing their Limb 2 percentage.

If the Establishment Audit process results in material changes to the types of cost that will be reimbursable as Limb 1 (compared to the DPA and CCC), these will be translated into fair and reasonable adjustments to Limb 2.

Figure A-4. Table of Proposed Limb 2 mark-up

Proposed Limb 2 (expressed as a percentage mark-up on Limb 1):	
(a) % Contribution to fixed (corporate) overhead:	
(b) % Profit mark-up:	
(c) Total (a + b) Limb 2 % mark-up on Limb 1:	

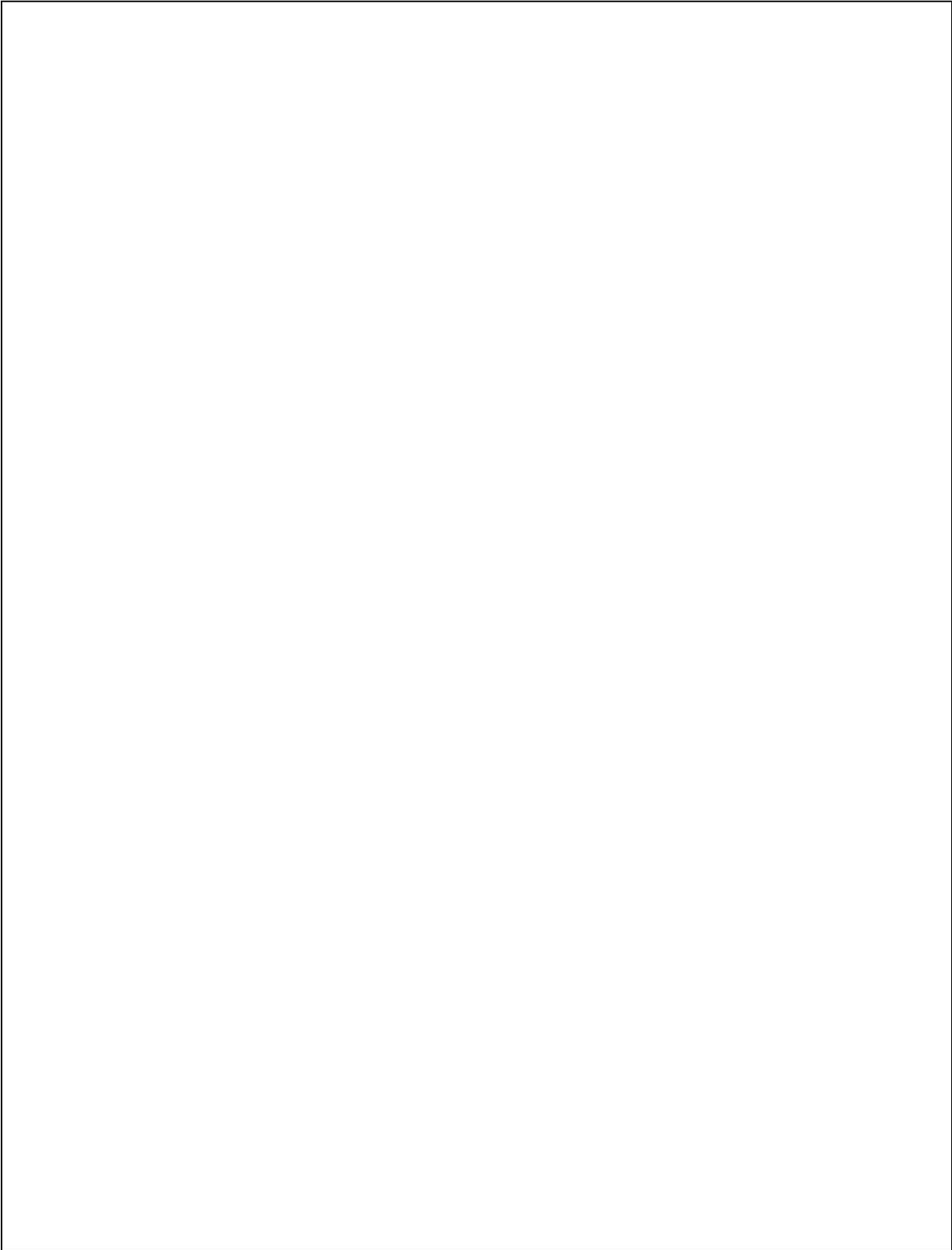
Note: Where there is more than one Construction Firm NOP, a single Limb 2 should be provided for all of the Construction Firm NOPs.

c) Rationale for proposed Limb 2 mark-up percentages per Construction Firm NOP

In two pages or less, provide a justification for the Limb 2 mark-up proposed for the Construction Firm NOP(s) (as provided in Figure A-4) in relation to each NOP(s)' historical financial performance over the last three financial years (as provided in Figure A-3).

This justification should address the range of results achieved on specific projects, the terms of the DPA and CCC (including the Proponent's Adjustment Event Guidelines) relative to the risk profile of other projects, market conditions, the specific circumstances of these Projects, and any other information the Proponent considers relevant.

[insert response here]



3) Proposed Limb 1 and Limb 2 multipliers for the Engineering and Design Firm NOP(s)

a) Historical financial performance and proposed multiplier

Complete Figure A-5 and Figure A-6 below. Historical financial performance for the latest three financial years should be for the BC or western region.

Note: Figure A-5 should be completed individually by each Proponent Team Member applying to be an Engineering and Design Firm NOP. Where Engineering and Design Firm NOPs intend to utilize resources other than salaried employees, a separate Figure A-5 for subconsultants or contract staff may be provided.

Figure A-5. Historical Financial Performance of Engineering and Design Firm

<i>[Insert firm name]</i>					
#	Item	2021	2020	2019	Example
A	Revenue				\$300,000
B	Base salary costs				\$100,000
C	Burden cost (i.e. compensation costs other than base salary)				\$37,000
D	Project-specific (variable) overhead				\$73,000
E	Corporate (fixed) overhead				\$40,000
F	Profit				\$50,000
Limb 1 multiplier					2.1 (B+C+D) / B
Limb 2 multiplier					0.9 (E+F) / B
Total Limb 1 + 2 multiplier					3.0 (B+C+D+E+F) / B

Figure A-6. Table of Proposed Multipliers

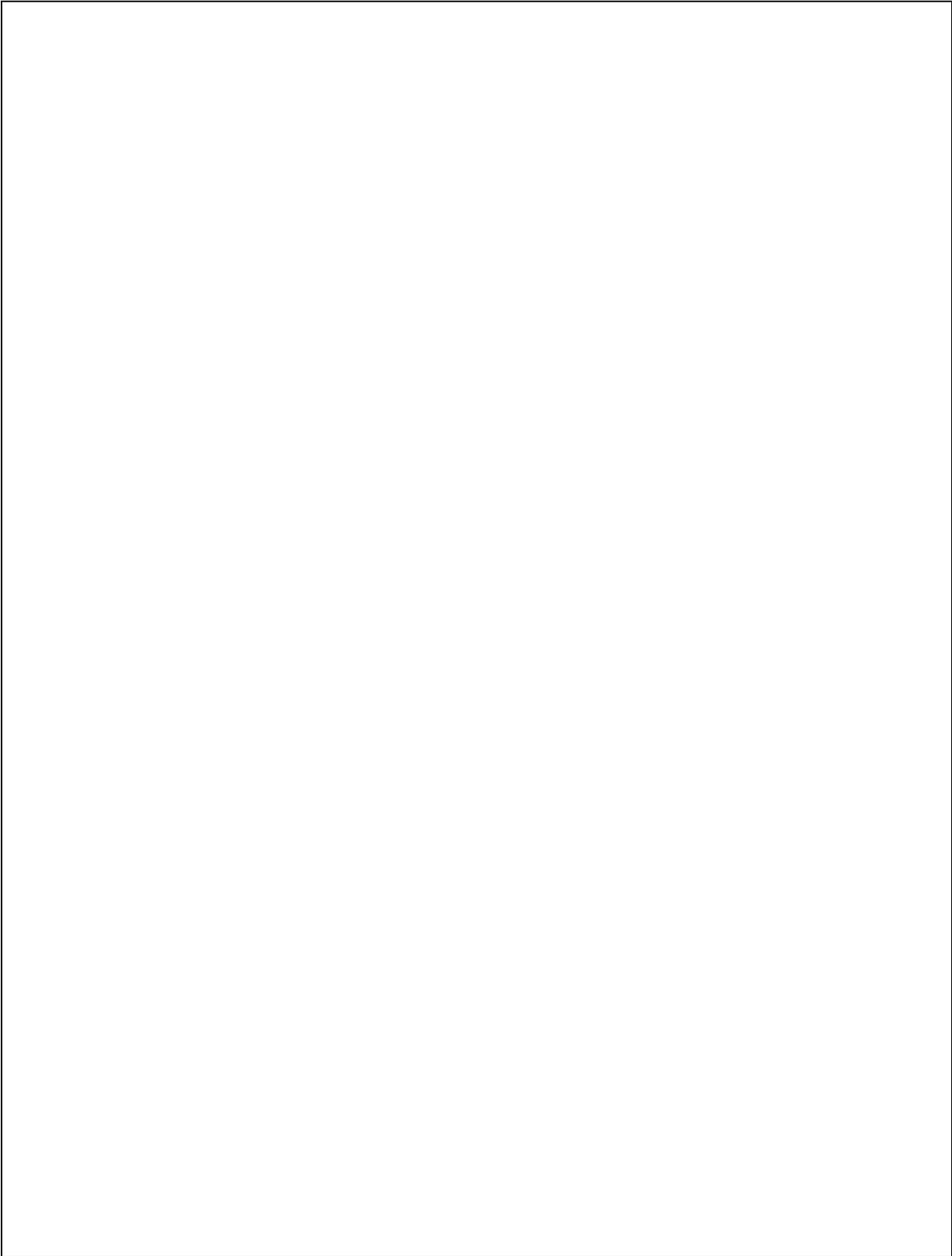
Item	Salaried Staff	Subconsultants or Contract Staff (if applicable)
Proposed Limb 1 multiplier		
Proposed Limb 2 multiplier		
Total Limb 1 + 2 multiplier		

Note: Where there is more than one Engineering and Design Firm NOP, a single multiplier should be provided for all of the Engineering and Design Firm NOPs.

b) Rationale for Limb 1 and Limb 2 multipliers for the Engineering and Design Firm NOPs

In two pages or less, provide a justification for the multipliers in relation to each Engineering and Design Firm NOP(s)' usual business practices and historical financial performance over the last three financial years (in particular for BC or western region). This justification should address the range of results achieved on specific projects, the terms of the DPA and CCC (including the Proponent's Adjustment Event Guidelines) relative to the risk profile of other projects, market conditions, the specific circumstances of these Projects, intended use of salaried staff vs. sub-consultants or contract staff, and any other information the Proponent considers relevant.

[insert response here]



4) Execute and attach Proposal Certificate and Declaration provided in Appendix H to this RFP.

Proponent's must submit a Proposal Certificate and Declaration with Submission #2 following the instructions provided in paragraph (j) of the Proposal Certificate and Declaration.

APPENDIX B – EVALUATION CRITERIA

Figure B-1: Evaluation Criteria	Weighting
<p>1. Construction Firm Candidate Qualification</p> <p>a) The Construction Firm Candidate RFQ scores achieved by the Construction Firm Candidate during the RFQ – BC Highway Reinstatement Program – Construction Services relevant to Project characteristics, which are:</p> <ul style="list-style-type: none"> i) Project Management; ii) Structures; iii) Roadworks; iv) Blasting; v) Traffic Management; vi) Working in steep, mountainous terrain with challenging geotechnical conditions including potentially unstable ground conditions; and vii) Maintenance during construction. <p>b) Construction Firm(s) Rail Qualification.</p>	15%
<p>2. Engineering and Design Firm Qualification</p> <p>a) The Engineering and Design Firm Candidate RFQ scores achieved by the Engineering and Design Firm Candidate during the RFQ – BC Highway Reinstatement Program – Engineering and Design Services, or in the event the Proponent submits an Engineering and Design Services – Qualification (Appendix D of the RFP), that Qualification Response will be used, relevant to the Project’s Design Services Areas:</p> <ul style="list-style-type: none"> i) Geotechnical; ii) Roads; iii) Bridges; and iv) Hydrological. <p>b) Engineering and Design Firm(s) Rail Qualification.</p>	15%
<p>3. Proposed Approach</p> <p>Proponent’s proposed approach to meeting project objectives.</p>	15%
<p>4. Key Individuals and Behavioural Assessment</p> <p>The experience and technical qualifications of Key Individuals.</p> <p>The Workshops will also be used to evaluate the following Key Individual qualities:</p> <ul style="list-style-type: none"> a) Demonstrated leadership capabilities of the SLT; b) Demonstrated leadership and management capabilities of the Key Individuals excluding the SLT; c) Fair and reasonable behaviour demonstrated in commercial alignment workshops; and d) Overall evidence of capacity to be a high-performance team, including approach to collaborative construction contracts. 	35%

<p>During Workshops, and in accordance with Section 3.3 of this RFP, Proponents will be evaluated on:</p> <ul style="list-style-type: none"> e) Extent to which the Proponent Team demonstrates a balanced approach to commercial discussions – including the ability to listen for understanding, willingness to consider all parties’ perspectives and legitimate needs, desire for equitable and mutually acceptable solutions, rather than only promoting its own self interest and/or negotiating on the basis of entrenched positions; f) Sense of reasonableness regarding legal concerns and willingness to enter a collaborative relationship in which most risks are shared between the participants (to maximize collective performance and project success) rather than seeking to minimize its own exposure to risk (regardless of collective performance and project outcomes); and g) Extent to which the Proponent Team conducts itself honestly and with integrity during commercial discussions, including open discussion of its needs, expectations and constraints, willingness to: <ul style="list-style-type: none"> i) be open regarding its areas of concern; ii) the reasons for these; and iii) to seek true alignment with all participants. 	
<p>5. Value Proposition</p> <p>The evaluation of the value proposition will take into account the following items when determining a score:</p> <ul style="list-style-type: none"> a) Limb 2 Mark-up percentage for Construction Firm NOP(s): The lowest Construction Firm NOP Limb 2 Mark-up (“X”) will receive the maximum available score under this item. A Construction Firm NOP Limb 2 mark-up (“Y”) which is higher than X will be scored as follows: X / Y multiplied by the maximum available score under this item. b) Rationale for proposed Limb 2 percentages per Construction Firm NOP(s) and rationale for proposed Limb 1+2 multipliers for Engineering and Design Firm NOP(s): The Owner will assess the extent to which proposed parameters are fair and reasonable, having regard to Proponent norms (including the analysis of historical financial performance), terms of the DPA and CCC relative to the Proponent’s business-as-usual risk profile, market conditions, specific circumstances of the Projects, and any other relevant information provided by the Proponent. A Proponent which provides a rationale that is assessed as completely fair and reasonable will receive the maximum available score under these items. 	<p>20%</p>

Ranking Process:

Subject to the terms of this RFP, each Proposal that substantially satisfies the requirements of this RFP, will be ranked according to the following process.

Each Proposal will be examined to determine whether the requirements of this RFP have been substantially satisfied.

The Owner will evaluate Proposals by applying the Evaluation Criteria and weighting in Figure B-1 above, in accordance with Appendix A.

Assessment of the relevant criteria above may take into account past performance of the Proponent and Proponent Team Members on other BC Highway Reinstatement Program projects if behaviours are inconsistent with the DPA and/or CCC principles.

The Owner anticipates inviting the three highest ranking Proponents to enter into a DPA for a Project. The Owner will allocate the Projects to the Proponents based on experience and the Proponent's preference.

Without limiting in any way the Owner's rights and discretions, including in Section 5.4 of this RFP, in respect of any of the requirements referenced in Appendix A to this RFP, the Owner may in its discretion, after reviewing the contents of the Proposal in accordance Appendix A, discontinue the evaluation of any Proposal in accordance with the provisions of Section 5.4.

APPENDIX C – REQUEST FOR INFORMATION FORM

HIGHWAY 1 – CATEGORY B PROJECTS

Request For Information / Clarification / Meeting

Request Number: (Proponent name and sequential number)

Raised By: (contact name)

Date Raised:

Date by Which Response Required:

Type of Request (please indicate with tick boxes): Information Clarification Meeting

Source of Query (reference document section and date, if applicable):

Meeting:

Date:

Other:

REQUEST / QUERY (One query / request per sheet)

Do you request this query to be “Commercial in Confidence”? YES NO

APPENDIX D – ENGINEERING AND DESIGN SERVICES – QUALIFICATION

BC Highway Reinstatement Program – Engineering and Design Services – Qualification

Table of Contents

Part 1. Qualification Response Guidelines

Part 2. Qualification Criteria and Content Requirements

2.1 Qualification Criteria

2.2 Qualification Response Content Requirements

Attached Sample Forms: Form E-1: Project Experience Nominated Project Details

Part 1. Qualification Response Guidelines

Qualification Responses should:

- a. Contain a consolidated file containing the entire Qualification Response.
- b. Be submitted in a searchable PDF format;
- c. Elections for the Design Service Area which are applied for.
- d. Be limited to 7 pages for each Design Service Area applied for (not including Project Experience Nominated Projects).

Design Service Area	
Geotechnical	<input type="checkbox"/>
Roads	<input type="checkbox"/>
Bridges	<input type="checkbox"/>
Hydrological	<input type="checkbox"/>

Part 2. Evaluation

2.1 Evaluation Criteria

The Owner will evaluate Qualification Responses by applying the Evaluation Criteria and weighting in Figure E-1, in accordance with each section of the Qualification Response content requirements outlined in Figure E-2.

Without limiting in any way the Owner’s rights and discretions, including in Section 5.3, in respect of any of the requirements referenced in Figure E-2, the Owner may in its discretion, after reviewing the contents of the Qualification Response in accordance with Section 3.1 of Figure E-2 of this Appendix E, discontinue the evaluation of any Response in accordance with the provisions of Section 5.3.

Figure E-1: Qualification Framework

Section	Qualification Areas	Scoring
<p>Section 2 Design Services</p>	<p>Strength and relevance of demonstrated experience and capability relating to:</p> <p>2.1 Corporate Experience and Performance in Technically Comparable Design Work</p> <p>2.2 Corporate Experience in and Performance of Engineering Services</p>	<p>Out of 10 points for each Design Services area applied for.</p>
<p>Section 3 Corporate Capability and Capacity to Perform the Design Services</p>	<p>Demonstrate the capability and capacity of the engineering and design firm to perform the Design Services as set out in Section 2.1 above, including the resources available to perform the design services in British Columbia</p>	<p>Out of 10 points per each Design Services area applied for.</p>

2.2 Qualification Response Content Requirements

Qualification Responses should include the section numbers and titles provided in Figure E-2 and should indicate how the information provided by the engineering and design firm relates to the specified content requirements in Figure E-2.

Figure E-2: RFQ Qualification Response Content Structure and Requirements

Section	Title	Qualification Response Content Requirements
1.	Introduction, Nominated Projects	
1.1	Proposed engineering and design firm	Provide the legal name of the entity
1.2	Contact Information	Provide the following details for the engineering and design firm’s Representative: <ul style="list-style-type: none"> i. Name ii. Employer iii. Mailing/courier addresses iv. Telephone numbers v. Email address
1.3	Project Experience Nominated Projects	Submit a maximum of 2 Nominated Projects using Form E-1 of this Appendix E for each design service area. Note that more current Project Experience Nominated Projects (that have reached substantial completion within the last 7 years) may be considered to have greater relevance than older projects. Note: Project Experience Nominated Projects must be a minimum value capital value of \$25 million. While the value of future Projects will be determined as Projects are developed by the Owner, it is possible that some Projects may be well in excess of the minimum valued stated here, and demonstration of engineering and design firm experience including the value of the Nominated Projects provided may be considered.

Section	Title	Qualification Response Content Requirements
2.	Corporate Experience and Track Record	
2.1	Corporate Experience and Performance in Technically Comparable Design Services	<p>Using up to two (2) Project Experience Nominated Projects (for each numbered item below) relevant to highway infrastructure, describe the engineering and design firm’s experience and capability for the Design Services Areas to which the firm is applying to:</p> <ul style="list-style-type: none"> i. Designing highways and structures in challenging geotechnical conditions; ii. Roads (including low volume roads); iii. Bridges (including in proximity to rail); iv. Hydrological; and use of technology to assist in adapting to Climate Change (for example early warning systems). <p>Engineering and design firms are to clearly establish the relevance of their Nominated Projects and how their experience and performance will be leveraged for the benefit of the Program. Refer to Form E-1 for establishing relevance.</p>
3.0	Corporate Capability and Capacity to Perform the Design Services	
3.1	Corporate Capability/ Capacity	<p>Describe the experience, capability, and capacity of the engineering and design firm Team to perform the Design Services as set out in Section 2.1 above, including a description of resource capacity available to perform the Design Services in British Columbia.</p>

Form E-1 Project Experience Nominated Project Details

(Maximum 3 pages in length per project)

Firm Name _____ Project number _____ (sequentially numbered)

Item	Notes to Respondents
Name of project	<i>Details including official project name and contract number (as applicable).</i>
Location of project	<i>Country, province/state, highway/road/bridge, site or project extent, urban/rural.</i>
Project owner	<i>Organization name.</i>
Capital Value	
Contract period (term)	<i>Contract commencement date, end of construction date, start of operations date and contract end date.</i>
Time period of involvement	<i>Commencement date and duration.</i>
Description of project	<i>Scope and complexity.</i>
Relevance	<i>Any information the Proponent / engineering and design firm considers relevant to the Qualification Criteria.</i>
Current status of project	<i>Describe the current status of the project relative to key milestone events.</i>
Contract model	<i>Contract model e.g., design-bid-build, design-build, design-build-finance, design-build-finance-operate, other.</i>
Traffic volume	<i>Total average daily traffic across all lanes (actual or estimated)</i>
Role(s) on project	<i>Specific role, duties and responsibilities of applicable engineering and design firm, including the estimated total time (in hours) spent in each role on that project, and any additional information that demonstrates relevant experience and ability. If the project involved a joint venture, identify the joint venture partner(s) and clearly define the breakdown of roles and responsibilities between or among the parties.</i>
Other information	<i>Any information the Proponent / engineering and design firm considers relevant to the Qualification Criteria.</i>

APPENDIX E – DRAFT DEVELOPMENT PHASE AGREEMENT

APPENDIX F – PROPONENT AGREEMENT

Highway 1 – Category B Projects

Proponent Agreement

Note:

This Proponent Agreement is to be duly executed by the Proponent in accordance with the definitions of those terms in the RFP.

THIS PROPONENT AGREEMENT made as of _____ **[INSERT DATE]**

Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure

Attention: **[Insert Name]**, Contact Person

Dear Sirs/Mesdames:

Re: Highway 1 – Category B Projects – Proponent Agreement in respect of the Request for Proposals issued by the Province on [Insert Date], as amended or otherwise clarified from time to time, including by all Addenda (the “RFP”)

This letter agreement sets out the terms and conditions of the Proponent Agreement between **[Insert Proponent Name]** (the “Proponent”), and the Province, pursuant to which the Proponent agrees with the Province as follows:

1.0 DEFINITIONS AND INTERPRETATION

1.1 Capitalized terms not otherwise defined in this Proponent Agreement have the meaning given to them in the RFP.

2.0 PARTICIPATION

2.1 The Proponent agrees that as a condition of participating in the RFP, including the Competitive Selection Process, Workshops and Topic Meetings, and receiving access to the Data Room, the Proponent will comply with the terms of this Proponent Agreement and the terms of the RFP.

3.0 CONFIDENTIALITY

3.1 The Proponent and the Proponent Team Members will comply with, and will ensure that all others associated with the Proponent and the Proponent Team Members also comply with, the Confidentiality Conditions attached as Schedule 1 to this Proponent Agreement, all of which conditions are expressly included as part of this Proponent Agreement.

4.0 TERMS OF RFP

4.1 The Proponent will comply with and be bound by, and will ensure that all of the Proponent Team Members and all others associated with the Proponent also comply with and are bound by, the provisions of the RFP all of which are incorporated into this Proponent Agreement by reference. Without limiting the foregoing, the Proponent agrees:

- (a) that the terms of the Proponent Agreement do not limit the obligations and requirements of the Proponent and the Proponent Team Members under the RFP, any Data Room agreement, or any other document or requirement of the Province; and
- (b) to be bound by the disclaimers, limitations and waivers of liability and Claims and indemnities contained in the RFP, including Section 3.12 (Releases and Waivers) of the RFP. In no event will the liability of the Province exceed the lesser of the actual out-of-pocket costs incurred and paid by the Proponent in preparing its Proposal.
- (c)

5.0 AMENDMENTS

5.1 The Proponent acknowledges and agrees that:

- (a) the Province may in its discretion amend the RFP at any time and from time to time; and;
- (b) by submitting a Proposal the Proponent accepts, and agrees to comply with, all such amendments and, if the Proponent does not agree to any such amendment, the sole recourse of the Proponent is not to submit a Proposal.

6.0 GENERAL

6.1 Notwithstanding anything else in this Proponent Agreement, if the Province, for any reason, cancels the Competitive Selection Process or the RFP, the Proponent and the Proponent Team Members agree that they continue to be bound by, and will continue to comply with, Section 3 of this Proponent Agreement.

6.2 This Agreement will enure to the benefit of and be binding upon the Province and its assigns and upon the Proponent and its respective successors and permitted assigns. For greater certainty, this Proponent Agreement will continue to be binding on the Proponent notwithstanding that it may subsequently cease to be a Proponent.

6.3 Each provision of this Proponent Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Proponent Agreement is held to be unenforceable or invalid in respect of any Person or circumstance, then such provision may be severed and such unenforceability or invalidity will not affect any other provision of this Proponent Agreement, and this Proponent Agreement will be construed and enforced as if such invalid or unenforceable provision had never been contained herein and such unenforceability or invalidity will not affect or impair the application of such provision to any other Person or circumstance but such provision will be valid and enforceable to the extent permitted by law.

- 6.4 This Proponent Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and cancel and supersede all prior proposals, agreements, understandings, representations, conditions, warranties, negotiations, discussions and communications, whether oral or written, statutory or otherwise, and whether express or implied, between the parties with respect to the subject matter of this Proponent Agreement.
- 6.5 This Proponent Agreement and the obligations of the parties hereunder will be interpreted, construed and enforced in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein and each party to this Proponent Agreement irrevocably attorns to the jurisdiction of the courts of British Columbia.
- 6.6 If the Proponent is a partnership (general or limited) or a consortium or joint venture:
- (a) each partner (general or limited) in the partnership and each of the entities comprising the consortium or joint venture, as the case may be, shall have executed this Proponent Agreement by its duly Authorized Representatives, both on behalf of the partnership, consortium or joint venture, as the case may be, and in its own behalf, in the same manner as if such partner or entity, as the case may be, was the sole party executing this Proponent Agreement; and
 - (b) if any partner or entity, as the case may be, has not executed this Proponent Agreement as required by subsection 6.6(a), this Proponent Agreement will be valid and binding on the partners and entities, as the case may be, who have executed this Proponent Agreement, each of whom by execution of this Proponent Agreement expressly agrees to be jointly and severally liable to the Province for the obligations that would have been assumed hereunder by the partner or entity, as the case may be, that has not executed this Proponent Agreement had it executed this Proponent Agreement.
- 6.7 By executing this Proponent Agreement, the Proponent, and each entity comprised in the Proponent hereby represents, warrants and agrees that:
- (a) it is jointly and severally liable with each of the other entities comprised in the Proponent to the Province for all covenants, obligations and liabilities of the Proponent as the case may be, set forth in this Proponent Agreement; and
 - (b) the signatories to this Proponent Agreement include all of the entities comprised in the Proponent.
- 6.8 Each of the Proponent Team Members will from time to time and upon the reasonable request of the Province make, do, execute, and deliver or cause to be made, done, executed and delivered all such further assurances, acts, instruments and documents as may be requested for the purpose of giving full force and effect to this Proponent Agreement.
- 6.9 The rights, powers and remedies conferred on the Province under this Proponent Agreement are not intended to be exclusive and each will be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to the Province under this Proponent Agreement, under the Competitive Selection Process or any part thereof, at law or in equity or

under statute, and the exercise by the Province in its discretion of any right, power or remedy will not preclude the later exercise of that same right, power or remedy or the simultaneous or later exercise by the Province of any other right, power or remedy.

- 6.10 The Proponent hereby represents and warrants, on its own behalf, that:
- (a) it has the requisite power, authority and capacity to execute and deliver this Proponent Agreement;
 - (b) this Proponent Agreement has been duly and validly executed and delivered by it or on its behalf by its duly Authorized Representatives; and
 - (c) this Proponent Agreement constitutes a legal, valid and binding agreement enforceable against it in accordance with its terms.
- 6.11 The Province may in its sole discretion request any party executing this Proponent Agreement to provide, and on such request such party will deliver to the Province, proof, in a form and content satisfactory to the Province in its sole discretion, that any signatory to this Proponent Agreement on behalf of such party had the requisite authority to execute this Proponent Agreement on behalf of and to bind such party and that this Proponent Agreement has been duly and validly executed and delivered by or on behalf of such party and constitutes a legal, valid and binding agreement enforceable against such party in accordance with its terms.
- 6.12 This Proponent Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the parties to this Proponent Agreement will constitute a full, original and binding agreement for all purposes. Counterparts may be executed in original, or electronic scanned or PDF file type (Adobe Acrobat Portable Document Format) form. This Proponent Agreement may be delivered by hand, or electronic mail, provided that if delivered by electronic mail, then in electronic scanned or PDF file type.

Yours truly,

Authorized Signatory

Full Name and Title

<> **[insert legal name(s) and appropriate signature block(s) for the Proponent.**

SCHEDULE 1 TO PROPONENT AGREEMENT CONFIDENTIALITY CONDITIONS

1. **Definitions.** In these confidentiality conditions:
- (a) **Confidential Information** means all documents, knowledge and information provided by the Disclosing Party to, or otherwise obtained by, the Receiving Party, whether before or after the date of the RFP, whether orally, in writing or other visual or electronic form in connection with or relevant to the Projects or any of them, the RFQ, the RFP or the Competitive Selection Process, including, without limitation, all design, operational and financial information, together with all analyses, compilations, data, studies, photographs, specifications, manuals, memoranda, notes, reports, maps, documents, computer records or other information in hard copy, electronic or other form obtained from the Disclosing Party or prepared by the Receiving Party containing or based upon any such information. Notwithstanding the foregoing, Confidential Information does not include information that:
 - (1) is or subsequently becomes available to the public, other than through a breach by the Receiving Party of the terms of this Schedule 1;
 - (2) is subsequently communicated to the Receiving Party by an independent third party, other than a third party introduced to the Receiving Party by the Disclosing Party or connected with the Projects or any of them, without breach of this Schedule 1 and which party did not receive such information directly or indirectly under obligations of confidentiality;
 - (3) was rightfully in the possession of the Receiving Party or was known to the Receiving Party before the date of the RFP and did not originate, directly or indirectly, from the Disclosing Party;
 - (4) was developed independently by the Receiving Party without the use of any Confidential Information; or
 - (5) is required to be disclosed pursuant to any judicial, regulatory or governmental order validly issued under applicable law;
 - (b) **Disclosing Party** means the Province or any of its Representatives;
 - (c) **Permitted Purposes** means evaluating the Projects, preparing a Proposal, and any other use permitted by the RFP or this Proponent Agreement;
 - (d) **Receiving Party** means the Recipient or any of its Representatives;
 - (e) **Recipient** means a Proponent; and
 - (f) **Representative** means a director, officer, employee, agent, accountant, lawyer, consultant, financial advisor, subcontractor, Key Individual, prospective or actual Proponent Team Member, or any other person contributing to or involved with the

preparation or evaluation of Proposals or proposals, as the case may be, or otherwise retained by the Recipient, the Province or Infrastructure BC in connection with the Projects.

2. **Confidentiality.** The Recipient will keep all Confidential Information strictly confidential and will not without the prior written consent of the Province, which may be unreasonably withheld, disclose, or allow any of its Representatives to disclose, in any manner whatsoever, in whole or in part, or use, or allow any of its Representatives to use, directly or indirectly, the Confidential Information for any purpose other than the Permitted Purposes. The Recipient will make all reasonable, necessary, and appropriate efforts to safeguard the Confidential Information from disclosure to any other person except as permitted in this Schedule 1, and will ensure that each of its Representatives agrees to keep such information confidential and to act in accordance with the terms contained herein.
3. **Ownership of Confidential Information.** The Province owns all right, title and interest in the Confidential Information and, subject to any disclosure requirements under applicable law, and except as permitted by this Schedule 1, the Recipient will keep all Confidential Information that the Recipient receives, has access to, or otherwise obtains strictly confidential for a period of three years after the date of the RFP, and will not, without the prior express written consent of an authorized representative of the Province, which may be unreasonably withheld, use, divulge, give, release or permit or suffer to be used, divulged, given or released, any portion of the Confidential Information to any other person for any purpose whatsoever.
4. **Limited Disclosure.** The Recipient may disclose Confidential Information only to those of its Representatives who need to know the Confidential Information for the purpose of evaluating the Project and preparing its Proposal and on the condition that all such Confidential Information be retained by each of those Representatives as strictly confidential. The Recipient will notify Infrastructure BC, on request, of the identity of each Representative to whom any Confidential Information has been delivered or disclosed.
5. **Destruction on Demand.** On written request, the Recipient will promptly deliver to Infrastructure BC or destroy all documents and copies thereof in its possession or control constituting or based on the Confidential Information and the Recipient will confirm that delivery or destruction to Infrastructure BC in writing, all in accordance with the instructions of Infrastructure BC (for this purpose information stored electronically will be deemed destroyed upon removal from all storage systems and devices); provided, however, that the Receiving Party may retain one copy of any Confidential Information that it may be required to retain or furnish to a court or regulatory authority, pursuant to applicable law.
6. **Acknowledgment of Irreparable Harm.** The Recipient acknowledges and agrees that the Confidential Information is proprietary and confidential and that the Province or Infrastructure BC may be irreparably harmed if any provision of this Schedule 1 were not performed by the Recipient or any party to whom the Recipient provides Confidential Information in accordance with its terms, and that any such harm could not be compensated reasonably or adequately in damages. The Recipient further acknowledges and agrees that the Province will be entitled to injunctive and other equitable relief to prevent or restrain breaches of any provision of this Schedule 1 by the Recipient or any of its Representatives, or to enforce the terms and provisions hereof, by an action instituted

in a court of competent jurisdiction, which remedy or remedies are in addition to any other remedy to which the Province may be entitled at law or in equity.

7. **Waiver.** No failure to exercise, and no delay in exercising, any right or remedy under this Schedule 1 by the Province will be deemed to be a waiver of that right or remedy.

APPENDIX G - DRAFT COLLABORATIVE CONSTRUCTION CONTRACT

APPENDIX H – PROPOSAL CERTIFICATE AND DECLARATION

PROPOSAL CERTIFICATE AND DECLARATION

TO: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (the “Province”)

RE: Highway 1 – Category B Projects (the “Projects”) as defined in the Request for Proposals entitled “Highway 1 – Category B Projects – Request for Proposals” dated xx, 2022 as amended in accordance with its terms, (the “RFP”)

[Insert Proponent Name] (the “Proponent”)

Proposal dated the <Insert Detail> day of <Insert>, 2022 (the “Proposal”)

The Proponent, on behalf of itself and on behalf of each Key Individual,

AND

Each of the undersigned Proponent Team Members, other than the Key Individuals and the Proponent (herein, the “Members”), on behalf of itself:

1. each hereby unconditionally and irrevocably represent, warrant, and certify from and after the date of this Certificate and Declaration, in connection with the Proposal, the RFP and the Competitive Selection Process, including without limitation, any consideration and evaluation of the Proposal as follows:
 - (a) the Proponent is duly authorized to deliver this Certificate and Declaration on behalf of the Proponent and of each Key Individual and each of the Members is duly authorized to deliver this Certificate and Declaration on their own behalf and the Proponent and each of the Proponent Team Members separately represent and warrant to the Province that this Certificate and Declaration is duly and validly made and given and can be relied upon by the Province;
 - (b) all statements made in the Proposal are and will be deemed to be separate and independent representations and warranties of the Proponent and as applicable, of each Proponent Team Member by or on behalf of whom such statement is made, and this Certificate and Declaration is in addition to and does not limit the representations and warranties made by delivery of the Proposal;
 - (c) the Proponent and each Proponent Team Member has received, reviewed, read and understood the RFP and this Certificate and Declaration;

- (d) neither the Proponent nor any Proponent Team Member has discussed or communicated, directly or indirectly, with any other proponent or its proponent team members or any of their respective contractors, subcontractors, directors, officers, employees, consultants, advisors, agents or representatives, or any other Person associated with any of them, regarding the preparation, content or presentation of their proposals, or any part thereof, relating to the RFP or the Competitive Selection Process, including without limitation their Proposal;
- (e) except as has been fully disclosed in writing to and consented to by the Province and any conditions corresponding to such consent having been and continuing to be satisfied, no Proponent Team Member, or any Affiliated Person of any Proponent Team Member, has participated as a member of any other Proponent team;
- (f) the Proposal has been prepared and delivered without any collusion, comparison of information or arrangement with any other proponents or any of their proponent team members or any of their respective contractors, subcontractors, officers, directors, employees, consultants, advisors, agents or representatives or any other persons associated with any of them, or fraud, and in fair competition, including in fair competition with other proponents and proponent teams;
- (g) to the best of the knowledge of the Proponent and each Proponent Team Member there has not been and as of the date of this Certificate and Declaration there is not any conflict of interest, actual or potential, that exists or may reasonably be expected to arise in the future with respect to preparation and submission of the Proposal;
- (h) neither the Proponent nor any Proponent Team Member has had access to or availed itself directly or indirectly of any confidential information of the Province, other than confidential information disclosed by the Province to all Proponents in connection with the preparation and submission of the Proposal;
- (i) neither the Proponent nor any Proponent Team Member is or has hired, retained or utilized the services of any Restricted Party, except as previously disclosed in writing to the Province in the Proponent's RFQ Response or otherwise and consented to in writing by the Province, and as detailed in Appendix A to this Certificate and Declaration, and in respect of such disclosure and consent, if any, any conditions imposed by the Province to the granting of such consent have been and continue to be satisfied;
- (j) the Proposal has been prepared, based and delivered, solely and exclusively, in reliance on independent due diligence, investigations, verifications, assessments, examinations, experience, knowledge, analyses, interpretation, information, opinions, conclusions, judgments, assessments, surveys and studies independently undertaken, formulated, obtained, formed and verified by or on behalf of the Proponent and the Proponent Team Members and that the Proponent and the Proponent Team Members considered necessary, desirable, beneficial or appropriate and to satisfy themselves as to all aspects of the Proposal, the Projects, [the Draft DPA, the Draft CCC] **[Note to Proponents: Wording in square brackets only to be included in certificate delivered with**

Submission #2] and the Competitive Selection Process, and not in reliance on information provided through or in connection with the RFP including the Data Room or the Competitive Selection Process;

- (k) the Proponent and each of the Proponent Team Members has had sufficient time, opportunity and resources to investigate and consider and have investigated and considered and satisfied themselves as to conditions and risks relating to the Projects, the RFP, the Competitive Selection Process and the Proposal, and the undertakings, formulations, and verifications referenced in paragraph 1(j) hereof;
- (l) all statements made by or on behalf of the Proponent and each Proponent Team Member in the each RFQ Response are continuing representations and warranties of the Proponent and/or such Proponent Team Member, as applicable, and remain true and correct as of the date of this Certificate and Declaration, save and except only
 - (i) those which are expressly amended in the Proposal, in which case they have been clearly identified in the Proposal as corrections or departures from the statements made in the relevant RFQ Response; and
 - (ii) those otherwise expressly disclosed to the Province in writing and consented to in writing by the Province prior to the relevant Submission Time;
- (m) neither the Proponent nor any Proponent Team Member nor any Member has, except as detailed in writing in Appendix B to this Certificate and Declaration, experienced either any material adverse change to its financial status or business since the most recent financial statement date as included in each RFQ Response;
- (n) except as detailed in writing in Appendix C to this Certificate and Declaration neither the Proponent nor any Member has knowledge of any actions, suits or proceedings in excess of \$10 million pending or, to the best of the knowledge of the Proponent and each Proponent Team Member, threatened against or affecting any of them in law or in equity or before or by any foreign, federal, provincial, municipal or other governmental department, court, commission, board, bureau, or agency, or before or by an arbitrator or arbitration board which could if adversely determined, have a material adverse effect on the solvency, liquidity or financial condition of the Proponent or any Member;
- (o) except as detailed in writing in Appendix D to this Certificate and Declaration, neither the Proponent nor any Member is aware of any ground on which any action, suit or proceeding described in paragraph 1(n) hereof might be commenced;
- (p) the Proponent and each Proponent Team Member has read, reviewed and understood the Proposal and authorized and consented to the submission of the Proposal on behalf of the Proponent and each Proponent Team Member;
- (q) the Proponent Team Members are as listed in Appendix E to this Certificate and Declaration; and

- (s) the representations, warranties and certifications set out in this Certification and Declaration are true and are made with the knowledge and intention that the Province will rely on the truth of them in accepting and evaluating the Proposal and that despite any prior or subsequent investigation the Province will be deemed to have relied upon them; and
2. each hereby unconditionally and irrevocably consent and authorize the Province and the authorized representatives of the Province to undertake or cause to be undertaken, in connection with the Proposal, the RFP and the Competitive Selection Process, or any of them, any and all of the investigations, verifications, and reference, credit and other checks described in the RFP, including without limitation criminal record investigations, credit enquiries, litigation searches, bankruptcy registrations and taxpayer information investigations on the Proponent and each of the Proponent Team Members; and
3. each hereby acknowledge that the Province reserves the right to require the undersigned to provide proof, in a form and content acceptable to the Province, that the signatory of this Certificate and Declaration on behalf of each such party has the requisite authority to execute this Certificate and Declaration on behalf of the undersigned and, in the case of the Proponent, on behalf of the Key Individuals.

[INTENTIONALLY BLANK]

Unless otherwise expressly defined, the capitalized terms used in this Certificate and Declaration have the meanings given to them in the RFP.

This Certificate and Declaration may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the signatories to this Certificate and Declaration will constitute a full, original and binding Certificate and Declaration for all purposes. Counterparts may be executed in original, or electronic scanned or PDF file type (Adobe Acrobat Portable Document Format) form.

THIS CERTIFICATE AND DECLARATION dated as of the **<Insert Date of SUBMISSION TIME>** day of **<Insert>**, 2022.

Important Notes for Signature by Proponent and Members

This Certificate is to be duly executed by the “Proponent” and each of the other “Proponent Team Members”, other than the “Key Individuals”, in accordance with the definitions of such terms in the RFP. It is the responsibility of the Proponent to ensure that each such party and, where applicable, each entity comprising such party has been properly identified by its legal name in this Certificate (together with the capacity in which they are signing) and has duly executed this Certificate, all in accordance with the applicable laws of the jurisdiction of formation of such party (or the legal entities which comprise such party) as applicable.

Use more than one counterpart signature page where applicable AND ensure that this Certificate is dated as of the Submission Time.

PROPOSAL CERTIFICATE AND DECLARATION

APPENDIX A

Paragraph 1(i) Disclosure

[Left Empty if Nothing to Disclose]

PROPOSAL CERTIFICATE AND DECLARATION

APPENDIX B

Paragraph 1(m) Disclosure

[Left Empty if Nothing to Disclose]

PROPOSAL CERTIFICATE AND DECLARATION

APPENDIX C

Paragraph 1(n) Disclosure

[Left Empty if Nothing to Disclose]

PROPOSAL CERTIFICATE AND DECLARATION

APPENDIX D

Paragraph 1(o) Disclosure

[Left Empty if Nothing to Disclose]

PROPOSAL CERTIFICATE AND DECLARATION

APPENDIX E

Paragraph 1(q) Disclosure

[Left Empty if Nothing to Disclose]